

**CITY OF SHERWOOD  
PLANNING COMMISSION MEETING  
855 No. Sherwood Blvd.**

**September 12, 1988 at 7:30 p.m.**

1. Call to Order
2. Minutes of August 15, 1988
3. Status Report from Bilet Products
4. Request by St. Francis Church to extend their Conditional Use permit allowing a temporary mobile office unit.
5. Approval Request for a Preliminary Development Plan of Orland Villa Planned Unit Development Phase 2 (PUD 88-1).
6. Request for Site Plan (SP 88-4) Approval of Ben Reid's Equipment and Rental business.
7. Request for a motion to approve Resolution #88-422 adopting the 1988 revisions to the City and County Urban Planning Area Agreement.
8. Citizen Involvement Program Discussion.



## Department of Environmental Quality

811 SW SIXTH AVENUE, PORTLAND, OREGON 97204-1334 PHONE (503) 229-5696

AUG 25 1988

Certified Mail No. P 129 561 757

Bilet Products Company  
c/o Milton R. Stewart  
Registered Agent  
Suite 2300  
1300 S. W. Fifth Avenue  
Portland, OR 97201

Re: NOTICE OF VIOLATION AND INTENT  
TO ASSESS CIVIL PENALTY  
Bilet Products Company  
NP-NWR-88-75  
Washington County

Prior to start-up, Bilet Products Company agreed to install noise controls, as necessary, to assure compliance with State noise regulations. By letter dated August 4, 1987 to Carole Connell, Consulting Planner for the City of Sherwood, a copy of which was provided to you, the Department listed several noise emission sources that should have been included in your noise compliance plan. Among the noise sources identified were the hog facility, cyclone dust collection system, stapling machines, and fork truck operations. The hog facility was totally enclosed within a sound insulated building but the other noise generating sources were not controlled. As a result, Bilet Products Company began operations in October 1987 in violation of the noise regulations.

Shortly after your facility commenced full operation, DEQ received several citizen noise complaints. Staff met with your Company on October 19, 1987 and monitored noise impacts at several nearby residential properties. At 1025 East Oregon Street under worst case conditions, noise impact levels exceeded the allowable daytime L50 55 dBA standard by a 2 decibel margin. The major noise contributors to this violation were the cyclone dust collector, stapling and nailing operations, and transitory pallet dropping on the floor and fork truck operations. You were provided the results of this survey by letter dated October 22, 1987 and requested to take necessary corrective action.

On November 13, 1987 a follow-up noise compliance survey again reconfirmed that your facility exceeds the allowable daytime L50 55 dBA standard by 2 decibels at 1025 East Oregon Street. You were subsequently issued a Notice of Violation on November 16, 1987 and requested to correct your noise problem.

Your facility was monitored a third time on April 7, 1988 from 1025 East Oregon Street. The maximum averaged noise level was 57 dBA, the same as that previously measured on October 19 and November 13, 1987.

A nighttime investigation was performed on July 26, 1988. Between 10:11 and 10:57 p.m. the cyclone dust collector was measured at 53 dBA from the apartments located at the intersection of East Oregon and Northeast Lincoln Streets. At this location

Bilet Products Company  
c/o Milton R. Stewart  
Page 2

the cyclone was producing noise impacts 3 decibels above the allowable nighttime L50 50 dBA standard. To the east, at 1025 East Oregon Street, the impacts were 4 to 6 dBA higher due to inside activities. The doors at the eastern end of the building were open. No stapling or nailing was occurring during the July 26, 1988 investigation.

DEQ has monitored Bilet Products Company in violation of the noise standards on four separate occasions. Repeated requests in writing, in person, and by telephone for voluntary compliance dating back to October 1987, have failed to produce acceptable results. With the exception of enclosing the hog facility, and installing polyvinyl chloride strips at the eastern end of the building, which proved to be only marginally effective, we are unaware of any further attempts to reduce excessive noise emissions to compliant levels.

Because you have operated in violation of both daytime and nighttime noise standards since October 1987, and have failed to comply with several Department requests for voluntary compliance, I have enclosed a formal notice warning you of our intent to assess civil penalties if violations continue to occur. Please note that the civil penalty schedule provides for penalties up to \$500 per violation for each day of violation.

Within 5 days of your receipt of this enforcement action, we request you contact this office and commit to implementing an acceptable noise compliance plan. The compliance plan must definitively outline the types of noise controls you intend to initiate and include a time schedule for installation. Your proposal is due by no later than 15 days from your receipt of this letter. Failure to comply with this request will leave us no recourse but to initiate civil penalty action for future noise violations.

The Department looks forward to your full cooperation. You may direct any questions you have about the noise regulations, or types of noise controls other industries have used to Mr. Terry Obteshka, Manager of the Noise Control Program. His telephone number is 229-5989.

Sincerely,



Thomas R. Bispham  
Administrator  
Regional Operations

TRB:d  
AD3361

Enclosure

cc: U.S. Environmental Protection Agency  
Northwest Region, DEQ  
Noise Pollution Control, DEQ  
Enforcement Section, DEQ

1                               BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2   OF THE STATE OF OREGON

3	DEPARTMENT OF ENVIRONMENTAL QUALITY,	)	NOTICE OF INTENT TO
4	OF THE STATE OF OREGON,	)	ASSESS CIVIL PENALTY
		)	No. NP-NWR-88-75
5	Department,	)	WASHINGTON COUNTY
		)	
6	v.	)	
		)	
7	BILET PRODUCTS COMPANY,	)	
8	AN OREGON CORPORATION,	)	
		)	
9	Respondent.	)	

10   I

11       This notice is being sent to Respondent, Bilet Products Company, an  
12 Oregon Corporation, pursuant to Oregon Revised Statutes (ORS) 468.125(1) and  
13 Oregon Administrative Rules (OAR) Section 340-12-040(1) and (2).

14   II

15       On or about July 26, 1988, between the hours of 10:11 p.m. and  
16 10:57 p.m., Respondent owned or controlled an industrial noise source  
17 located on an industrial or commercial site at 1050 Northeast Oregon Street,  
18 Sherwood, Oregon. Respondent thereby caused or permitted the operation of  
19 that industrial noise source such that the noise pollution levels generated  
20 by that source and measured at an appropriate measuring point exceeded the  
21 statistical noise levels specified in Table 8 of OAR 340-35-035, in  
22 violation of OAR 340-35-035(1)(b).

23   III

24       If five (5) or more days after Respondent receives this notice, the  
25 one or more violations cited in Paragraph II of this notice continue, or  
26 any similar violation occurs, and Respondent has not contacted the

1 Department and committed to the submittal of a noise compliance plan and  
2 schedule, the Department will impose upon Respondent a civil penalty  
3 pursuant to Oregon statutes and OAR, Chapter 340, Divisions 11 and 12. In  
4 the event that a civil penalty is imposed upon Respondent, it will be  
5 assessed by a subsequent written notice, pursuant to ORS 468.135(1) and (2),  
6 ORS 183.415(1) and (2), and OAR 340-11-100 and 340-12-070. Respondent will  
7 be given an opportunity for a contested case hearing to contest the  
8 allegations and penalty assessed in that notice, pursuant to ORS 468.135(2)  
9 and (3), ORS Chapter 183, and OAR Chapter 340, Division 11. Respondent is  
10 not entitled to a contested case hearing at this time.

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8-25-88  
Date

Tom Bispham  
Thomas R. Bispham, Administrator  
Regional Operations, DEQ

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Certified Mail No. P 129 561 757

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Church of St. Francis  
P.O. Box 279  
Sherwood, Oregon 97140

September 6, 1988

Planning Commission  
City of Sherwood, Oregon

RE: Use permit --mobile office unit, Tax lot 200, 300.

Dear Sirs,

Several years ago the City of Sherwood issued a permit of occupancy to St. Francis Church for a mobile unit. During the time that we have occupied said unit, we have adhered to the original conditions for approval with the exception that the annual renewal was simply overlooked, and for this we apologize.

During that period of time we have attempted to market our land, but have done so unsuccessfully. Due to the debt we incurred in building the new church, we have been unable to assume additional building debts.

Our intent is to build a new parish center on the new church site, in accord with space allocated for the same. As money has allowed we have been improving and preparing the site for this future addition. This center would contain office space, kitchen and hall space and instructional areas, and would be a beautiful and very important addition to our church complex and to our community here in Sherwood.

In the near future we will be submitting general architectural concepts to the archdiocesan building commission for approval. After that we should be engaging in a building fund for said construction. We would hope to have construction start in approximately three years.

In the meantime, we need our present set up to continue to operate efficiently and on schedule, for future master planing and fund raising. As I have just become pastor of St. Francis this past July 1, 1988, I hope to spend time in learning more about our community and doing the best I can to help facilitate the planing of the parish.

On behalf of St. Francis parish, I respectfully request an extension of our Occupancy Permit.

Respectfully yours,

*Fr. Joseph A. Baccellieri*  
Fr. Joseph A. Baccellieri  
Pastor

August 16, 1988

City of Sherwood  
Planning Commission  
Sherwood, Oregon

ATTN: Carole Connell

Dear Carole:

Please accept our apologies for not attending the scheduled meeting on Monday, August 15, 1988.

In our discussion and working with the report, we mistakenly scheduled Wednesday night for the hearing. This was our error. Ironically, we were at a meeting on Monday night with a general contractor in connection with the cost of improvements on Oregon Street requested in your report.

Thank you for rescheduling our hearing for September 12, 1988.

Sincerely,



H.W. Arnold  
P.O. Box 15086  
Portland, Oregon 97215

August 20, 1988

City of Sherwood  
Planning Commission  
Sherwood, Oregon

ATTN: Carole Connell

Dear Carole:

REF: Orland Villa Phase 2 PUD 88-1

We have no objections to the recommendations numbered 3, 4, 5, 6, 7, 9 and 10 listed in your report.

We feel that to require all of Oregon Street improvements be put in at this time is too much of a strain on the total cost of Phase 2. This would change the cost of these developed lots for low-cost housing as much as \$2,000.00 per space. We feel that part of the cost could be borne by both phases as they are developed respectively.

We are happy to petition the city regarding vacating Murdock Road to the east. We would, however, request the government procedures not hold up any installation of manufactured homes, should Phase 2 be ready for this prior to the completion of vacating the street.

Due to the time involved with engineering, financing and governmental delays, we request a two-year period to complete Phase 2 prior to a renewal of the approval. We also request that a minimum of 15' from the street rather than 20' setback be incorporated in Phase 2, as it will allow us to move some back as well as forward for the different styles in manufactured homes.

Sincerely,



H.H. Arnold  
P.O. Box 15086  
Portland, Oregon 97215



STAFF REPORT

TO: City of Sherwood  
Planning Commission

DATE TYPED: August 31, 1988

FROM: Carole W. Connell  
Planning Director

FILE NO. SP88-4

SUBJECT: Request for a site plan approval to construct an  
Equipment Sales and Rental Business.

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I. PROPOSAL DATA

Applicant: J. Ben Reid  
420 Roy Street  
Sherwood, Oregon 97140

Owner: Mary Lockwood  
26271 N. E. Butteville Road  
Aurora, Oregon 97002

Location: Located at 21405 Pacific Highway and further described  
as Tax Lot 1100, Map 2S-1-30D.

II. BACKGROUND DATA

The applicant is proposing to move his existing tractor and rental business from the Sherwood Plaza Shopping Center to the subject site. The property was conditionally rezoned to General Commercial on August 10, 1988. The applicant is now requesting review and approval of building plans. Approval of the zone change is contingent upon an approved site plan.

III. SHERWOOD CODE PROVISIONS

- A. Chapter 2 Section 2.109 General Commercial GC zone.
- B. Chapter 4 Section 4.100 Application Content.
- C. Chapter 5 Community Design and Appearance.
- D. Chapter 6 Public Improvements.
- E. Chapter 2 Section 2.114 Flood Plain.
- F. Sherwood Community Development Plan.

IV. SHERWOOD COMMUNITY DEVELOPMENT PLAN

A. COMMUNITY DESIGN

- 1. Community design has to do with how a community looks and functions. The physical design of a community should reinforce what is unique and special about it and facilitate the land use activities which are its

component parts. However, Sherwood is more than an assemblage of buildings, streets and utilities, and places of work, residence, leisure and meeting. The identity of Sherwood is determined by its natural setting, how its land use activities fit into that setting and what people see, feel, smell or hear as they participate in the life of the community.

## 2. GENERAL FINDINGS

- a. Community design and aesthetic quality must be consciously considered in the review of new developments in order to insure that Sherwood continues to be an attractive and efficiently functioning urban area.
- b. The visual attractiveness of site and structures will enhance property values.
- c. Careful attention to site design can result in the protection of natural and man-made features which contribute to community's identity.
- d. Visual variety in the mass, form, height, texture, and color is necessary to avoid the monotonous urban landscape resulting from urban sprawl.

## 3. GENERAL OBJECTIVES

- a. To establish community design and aesthetics as a planning consideration in evaluating new development.
- b. To develop and implement policy which will encourage appropriateness and compatibility of new development with the existing natural and man-made environment, existing community activity patterns, and community identity.
- c. To develop and implement policy which will minimize or eliminate adverse visual effects caused or perpetuated by the design and location of new development including but not limited to effects from:
  - 1) The scale, mass, height, area, and architectural design of buildings and structures.
  - 2) Vehicular and pedestrian ways and parking areas.
  - 3) Existing or proposed alteration of natural topographic features, vegetation and waterways.

- 4) Other developments or structures including, utility lines, storage, or service areas and advertising features which may result in the interference with sun and light exposure, views, vistas, privacy and general aesthetic value of the neighborhood or area.

#### 4. POLICIES AND STRATEGIES

In order to meet the above objectives the following policies are established:

- Policy 1 - The City will seek to enhance Community identity, foster civic pride, encourage Community Spirit, and stimulate social interaction through regulation of the physical design and visual appearance of new development.

**Strategy:**

- Seek to establish community identity buffers between Tigard and Tualatin. Preserve and/or develop natural or man-made features which serve to define the communities.
- Develop a new downtown area at Six Corners with mixed residential, commercial, recreational and cultural facilities which encourage use of the area beyond regular business hours.
- Develop a system of streets, bikeways, sidewalks, malls, and trails linking schools, shopping, work, recreation and living areas.

- Policy 2 - The natural beauty and unique visual character of Sherwood will be conserved.

**Strategy:**

- Eliminate the visual presence of public utilities where possible.
- Encourage the use of visually appealing fencing throughout the City.
- Establish a system of interconnected parks, greenways and visual corridors throughout the Planning Area.
- Develop and apply special site and structural design review criteria for multi-family, and manufactured housing, commercial and industrial developments.

Policy 4 - Promote creativity, innovation and flexibility in structural and site design.

**Strategy:**

- Encourage visual variety in structural design.

Policy 5 - Stabilize and improve property values and increase tax revenues by the prevention of lighting influences including those resulting from noise, heat, glare, air, water and land pollution, traffic congestion, improper site and structure maintenance and incompatible land uses.

**Strategy:**

- Use a variety of buffering techniques to minimize the effects of incompatible uses.

**V. FINDINGS OF FACT**

A. The subject property is 3.3 acres in size and is unoccupied except for some unused agricultural buildings. The site has a substantial slope from the northwest corner to the southeast corner. There are numerous large trees on the property. The applicant proposes to remove about six (6) feet of ground from the proposed building area to the front of the lot for stabilization.

B. The property is zoned General Commercial (GC) and the proposed use is allowed in the zone. The zone requires a twenty foot setback from adjoining residential zones on all sides but the highway. The building is under the height limit.

C. There are no known soils limitations, although the applicant did not provide any topography or soils data.

D. A portion of the Cedar Creek floodplain crosses the southwest portion of the site, extending about 100 feet into the property.

E. There are no known natural, historic or cultural features on the site other than the existing large trees.

F. Current approved access to the property is from a 25 foot driveway at the northeast corner. A condition of the zone change was development of a shared common access with the Driftwood Mobile Home Park. Since then Driftwood has requested Council reconsideration of the shared access. Apparently, if no change is made by Council, Driftwood will withdraw its request and the shared access will have to be dropped. The proposed plan can accommodate a shared access in the future. The Six Corners re-alignment and associated improvements begin about 1000 feet to the north of the site. There is a wide shoulder in the right-of-way adjoining the site. ODOT was notified of this request. A

condition of the zone change was for the construction of an acceleration and deceleration lane. The applicant is waiting for a response from ODOT.

G. City sewer is available from a highway line or the Cedar Creek trunk sewer line and water service must be extended to the property. Although the zone change required the extension of water across the property's highway frontage, it has been determined since then that the Water Master Plan loop in this area is in place on the other side of the highway. However, water service needs to be extended from its current location in front of the Driftwood to Reids property corner.

Storm drainage occurs naturally into Cedar Creek and the highway culvert. Catch basins will be necessary to divert site drainage into those facilities. The Tualatin Fire District has been notified and has indicated that at the time of development fire fighting access roads and water supplies shall meet the requirements of the Uniform Fire Code. A fire hydrant is located near the property's northeast corner.

H. Surrounding land use consists of a residential mobile home park (Driftwood) to the north; low density residential and agricultural to the west; Cedar Creek to the south and multi-family residential and vacant commercial land to the east.

I. Washington County was notified and responded with a letter attached as an exhibit to this application.

#### J. Landscaping

1. The site has a significant amount of large, existing trees in the creek area and in the vicinity of the proposed building driveway and rear parking area. The code requires preservation of trees with a four (4) inch or greater diameter to the maximum feasible extent. All the trees in the creek area are to remain, as are the large willow and various fruit trees in the northwest corner. The plan proposes to remove all trees in the building site. Two (2) very large deciduous trees adjoining the Driftwood property line are not illustrated. These may have to be removed when the site is graded. The applicant has indicated an interest in saving them if possible.

2. The code requires a six (6) foot high fence or evergreen screen along the three property lines abutting residential zones. The creek vegetation provides an adequate buffer on that side. A five (5) foot wide arborvitae hedge is proposed along the Driftwood line and a portion of the rear property line. Retaining all trees in the northwest corner will provide an adequate screen in that area. The arborvitae hedge along the rear property line should be extended south as far as possible to screen the fuel tank area from neighboring residential land.

3. The Code requires a landscaped divider between every fifteen (15) parking spaces. The plan illustrates a divider

which will be planted with annual flowers.

4. The Code requires a fifteen (15) foot clear vision strip where the driveway intersects the highway. The arborvitae hedge should be extended up to fifteen (15) feet from the front property line, assuming the shared access is not built. In this area the two existing deciduous trees should be limbed and retained if possible.

5. New developments on Highway 99W are required to provide a twenty five (25) foot landscaped visual corridor along the highway frontage. The plan illustrates thirteen (13) feet of bark dust, ivy and cedar fence along the highway. This should be increased to twenty five (25) feet unless a variance is requested.

6. A method for maintaining the landscaping is required. The applicant has indicated that an underground system will be installed in the front, hose bibes will be used to maintain the large arborvitae hedge adjoining the Driftwood and that the smaller arborvitae in the rear will be able to establish themselves alone.

7. Landscaping shall be installed prior to issuance of an occupancy permit, unless security equal to the cost of the landscaping is filed with the city.

K. The Code requires twenty five (25) parking spaces, plus one for every two employees. Twenty six (26) are illustrated on the site plan, thus two (2) more spaces are required.

L. The parking stalls are on a 90 degree angle which requires a 20' x 9' stall and 23 feet of back up aisle. The proposed stalls are 20' x 9' but the aisle is 20 feet wide. Three (3) additional feet should be provided to comply. Wheel stops must be provided for each stall. The parking lot is elevated and will be visible from Highway 99W. It is recommended that a low hedge be installed in front of the parking spaces to separate the lot from the sloping display area below.

M. The Code requires a minimum of 500 square feet of off-street loading which is exceeded by the rear paved areas illustrated on the plan.

N. The Code requires a minimum twenty four (24) foot driveway and the plan provides for a fifty (50) foot wide driveway. The code also requires a four (4) foot sidewalk from a development to a public right-of-way (Highway 99W). No sidewalk is provided. The code also requires a six (6) foot wide sidewalk along Highway 99W which is not shown. There are no sidewalks on Highway 99W now but as new developments are proposed the city must decide the overall function of Highway 99W. If full commercial development with access to each parcel is desired (e.g. as along 99W in Tigard) then sidewalks should be required. If limited access with alternative pedestrian routes and through traffic is desired

then sidewalks on Highway 99W are not needed. Sidewalks adjoining the recently completed Chevron development on 99W were not discussed or required.

O. The Code requires that all external merchandise display be screened by a six (6) foot high sight obscuring fence. The City finds this provision to be in conflict with permitted uses of the General Commercial (GC) zone. The zone permits automobile, R.V., motorized, truck, boat, farm and other equipment sales, rentals or service which typically are all displayed outdoors. The Code needs to be revised to distinguish between outdoor display standards.

P. The proposed building is about 15,720 square feet and is constructed primarily of steel, except for the front which will have a shake covered facade and wooden porch. The steel will be painted tan with dark brown trim.

Q. A separate wooden sign structure is proposed in the tractor display area, about 270 square feet in size with a wooden, painted sign lit by a spot light under the roof. The size and height comply with the sign code. A sign permit must be received prior to installation.

R. The proposed business is required to comply with the State DEQ noise standards.

S. A final condition of the zone change approval included dedication of Cedar Creek floodplain that lies within the subject property. The Flood Insurance Rate Map, (FIRM, 1982) indicates that at the closest point, the floodplain extends north about 100 feet from the center of the creek towards the subject property. The County Accessors map, FIRM map, and applicants drawing all illustrate a different version of the creeks location. The applicant shall provide an accurate survey in accordance with Section 2.114.06 of the Code.

T. A solid waste dump trailer will be located in the back of the building.

U. Security lighting will be installed in the back of the building and two power poles in front will provide light.

V. The City finds the following in response to the required findings for site plan approval:

1. The proposed development meets applicable zoning standards and all provisions of Chapter 5 if the listed conditions are completed as a part of the development.
2. The proposed development can be adequately served by services.
3. Landscaping and structure maintenance over time shall be in accordance with the approved plan or the occupancy

permit and business license shall be revoked.

4. The proposed development preserves the creek and its associated vegetation and other existing significant vegetation to the maximum extent feasible, if the listed conditions of approval are met.

W. A site plan approved by the Commission is valid for one (1) year following the date of approval. If at the end of that time construction has not begun the site plan approval shall lapse.

## VI. Conclusion and Recommendation

A. Based on the Background Data, Findings of Fact, and Ordinance Number 88-883 approving the zone change, staff recommends approval of the site plan request by Ben Reid for a new equipment sales and rental facility on Highway 99W subject to the following conditions:

1. The requirements for shared access contained in City Ordinance No. 88-883 Section 5 Condition Number 3 are waived if application MPA 88-2 (Zettlemoyer Major Plan Amendment) is withdrawn.
2. The location of Cedar Creek Floodplain on the subject property shall be determined by a registered civil engineer, approved by the City, and dedicated to the City, in accordance with Section 2.114.06 of the Sherwood Development Code.
3. City water shall be extended from its current location in Highway 99W adjoining the Driftwood Mobile Park south to the northeast corner of the subject property. City sewer shall be extended from the Cedar Creek or Highway 99W line to the subject property.
4. An acceleration/deceleration lane and other highway improvements shall be provided in accordance with Oregon Department of Transportation standards.
5. Fire protection improvements shall be provided in accordance with Tualatin Fire District requirements.
6. All existing vegetation over four (4) inches in diameter shall be preserved unless they interfere with site grading plans and construction of the building.
7. Extend the arborvitae hedge along the rear property line south to the existing creek vegetation.
8. Extend the arborvitae hedge adjoining the Driftwood exit along the driveway and terminate fifteen (15) feet from the property line for clear vision.



9. Widen the property's front (Highway 99W frontage) landscape corridor to twenty-five (25) feet and landscape as proposed.
10. Provide two (2) more parking spaces on the site.
11. Add three (3) feet to the back up aisle in the front parking lot. Provide wheel stops in front of each parking space that are four (4) inches high and three (3) feet back from front of the stall.
12. Provide a low evergreen hedge along the length of the parking lot in front of the stalls, if space is available or in place of the proposed ivy.
13. Provide catch basins with oil separators in the parking lot as required by the City.
14. Install a six (6) foot wide sidewalk along the Highway 99W frontage, in back of the drainage ditch. Provide a connecting walkway from the sidewalk to the business.
15. All utilities shall be installed underground.

City of Sherwood, Oregon  
RESOLUTION NO. 88-422

A RESOLUTION ADOPTING THE 1988 REVISIONS TO THE WASHINGTON COUNTY-SHERWOOD URBAN PLANNING AREA AGREEMENT.

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WHEREAS, Washington County and the City of Sherwood have had an Urban Planning Area Agreement outlining procedures to be used to coordinate the comprehensive planning activities of the county and the city since 1983, and

WHEREAS, the Urban Planning Area Agreement is to be renewed and modified every two years, and

WHEREAS, ORS 190.010 provides that units of local governments may enter into agreements for the performance of any or all functions and activities that a party to the agreement, its officers and agents, have authority to perform; and

WHEREAS, Statewide Planning Goal #2 requires that the plans and actions of City, County, State and Federal agencies and special districts shall be consistent with the comprehensive plans of cities and counties as adopted under ORS Chapter 197; and

WHEREAS, the Oregon Land Conservation and Development Commission requires each jurisdiction requesting acknowledgement of compliance to submit an agreement setting forth the means by which comprehensive planning coordination within the Regional Urban Growth Boundary will be implemented, and

WHEREAS, the COUNTY and the CITY, to ensure coordinated and consistent comprehensive plans, consider it mutually advantageous to establish:

1. A site-specific Urban Planning Area within the Regional Urban Growth Boundary within which both the COUNTY and the CITY maintain an interest in comprehensive planning;
2. A process for coordinating comprehensive planning and development in the Urban Planning Area;
3. Policies regarding comprehensive planning and development in the Urban Planning Area; and
4. A process to amend the Urban Planning Agreement.

NOW, THEREFORE THE CITY OF SHERWOOD RESOLVES AS FOLLOWS;

Section 1. That the Sherwood City Council supports the map and date modifications proposed by the 1988 amendments to the Urban Planning Area Agreement.

Section 2. That the City Council direct staff to propose modifications to the agreement following adoption of the Comprehensive Plan Update in 1989, if necessary.

Section 3. This Resolution shall become effective upon passage and adoption.

Duly passed by the City Council September 14, 1988.

Norma Jean Oyler, Mayor

Attest:

Polly Blankenbaker, Recorder

ANDERSON & DITTMAN  
ATTORNEYS AT LAW  
TIGARD PROFESSIONAL CENTER  
8865 S.W. CENTER STREET  
P.O. BOX 23006, TIGARD, OREGON 97223  
(503) 639-1121

DERRYCK H. DITTMAN  
ROGER F. ANDERSON

August 31, 1988

Carole W. Connell  
Planning Director City of Sherwood  
90 NW Park Street  
Sherwood, OR 97140

Re: Annexation / Plan Amendment  
Plan Map Amendment Question

Dear Ms. *Carole* Connell:

I have read and considered the material you provided. What Sherwood seeks to resolve is the procedure by which the county comprehensive plan and plan map are to be amended to the city plan and plan map designations for property upon annexation of land within county jurisdiction to the city. The city has previously gone through the annexation procedure and after the annexation has been completed, at some subsequent time, gone through a plan map amendment process to redesignate the subject property to the city's plan and plan map. There are obviously substantial administrative costs involved due to the staff time required, publication costs involved, etc. When annexations were few and far between, that cost and work burden was perhaps absorbed without as much noticeable impact as is present at a time when there are numerous annexations taking place.

ORS 215.130 (2) (a) provides:

"(2) An ordinance designed to carry out a county comprehensive plan and a county comprehensive plan shall apply to:

"(a) The area within the county also within the boundaries of a city as a result of extending the boundaries of the city or creating a new city unless, or until the city has by ordinance or other provision provided otherwise; ...."  
(emphasis supplied)

At the present time, the City of Sherwood and the City of Tualatin are reviewing with Washington County their respective existing urban area planning agreements. In that context you became aware of a letter dated July 22, 1988 to Kevin Martin, planner at

Carole W. Connell  
August 31, 1988  
Page 2

Washington County from James Jacks, Tualatin's planning director. That letter sets forth Tualatin's request that the UPAA between Tualatin and the county contain what Tualatin calls an "affirmation" that the city's plan for the designation for an area formerly outside the city boundary, but brought into the city by annexation, be automatically applied to the annexed property without any plan map amendment process even though the county ordinances implementing the county plan, and the county's plan (including the county map), were and remain applicable per ORS 215.130 (2) (a) "unless and until the city has by ordinance or other provision provided otherwise."

Tualatin sets forth the belief that the UPAA with such a provision in it would constitute such an "other provision" adequate to legally change the plan, plan map, and implementing ordinances applicable to the real property so annexed.

I have no problem with that being the agreement between the city and the county. I do have reservations about that alone being sufficient to make the city map, the city plan, and the city development code all applicable instead of the county plan, map, and implementing ordinances. Even if the city development code by ordinance provided that to be the case, I would have some reservations unless there is provided some notice to the annexed property owners and an opportunity for a hearing on the change from the county plan, map designation, and implementing ordinances to the city plan, map, and implementing ordinances. Under ORS 215.503, I think there is a right to such notice. I don't think that mere annexation itself eliminates that.

Even if a state statute said such notice and opportunity to be heard were not required, I think there may nonetheless be a constitutional requirement for notice lurking there.

While the county map designation and the city map designation may be the same or similar, I don't think they are identical and pretty certainly the implementing ordinances are different. I think a change to something different does take place, and while the city previously may have approved of a plan for the area then outside the city, I don't think that approval can in the future become an automatic rezoning without some formal act of the city when it does upon annexation obtain legislative and quasi-judicial jurisdiction.

I understand that some cities have adopted a combined process to save on hearing and notice costs by the annexation and zoning changes being considered together. (Eugene may have developed such

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a procedure and you may want to contact its planning department about that to see what process is followed there).

It would seem to me that annexed territories could be excepted from the city's usual map amendment hearing and notice process, if provision is made in the Development code that a notice by mail be sent to the owners of newly annexed territory. The notice would state that absent written objection being filed with the City Recorder on or before a certain date, the city intends to adopt the city planning designation of its comprehensive plan for the annexed area by ordinance, and upon doing so that the city plan and map designation will be effective instead of prior county zoning, and that city plan and map designation will be subject to city implementing ordinances. The notice could also set forth a statement like Tualatin's language suggested for the UPAA, to the effect that if a property owner, developer, or the city should in the future desire a use or designation other than that currently called for in the existing city plan to be applied to the area, an application for a plan map amendment may be requested pursuant to the city development code provisions at any time after the enactment of the ordinance making the existing city plan and plan map applicable.

I think that such a notice would satisfy due process, notice and hearing requirements and that the ordinance so enacted would satisfy the requirements of ORS 215.130 (2) (a).

I don't see a great likelihood of a problem arising over this matter, as typically annexation comes about as a result of property owners wanting city zoning and city services. However, in a situation of multiple owner annexations, it is conceivable that one owner opposing development by another owner could claim that the county zoning was still applicable because not validly changed to city zoning or that the change to city zoning was without proper notice and hearing, that development permits were improperly issued, without a valid change in land use designation due to lack of notice to affected property owners.

I am of the opinion that something more needs to be done notice-wise than just agreeing with the county that upon annexation the county plan and implementing ordinances will no longer be applicable and the city's counterparts will. I think ORS 215.130 (2) (a) contemplates more than that and even if it does not, then the due process rights of the property owners of the parcels annexed may require more than that.

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It may be that if annexation is based on a petition or consent of property owners, those owners could in the language of that petition request that an ordinance be enacted upon annexation making the city plan and map applicable, and waive notice and opportunity for further hearing on that subject, of course, to their right to apply for amendment under the usual amendment procedure and process. That approach may inject some additional complexity to the annexation process and make annexation more difficult. Simply providing notice after annexation and an opportunity to request a hearing may be a more preferable procedure where multiple parcels are involved.

Please review the foregoing thoughts, and then let's discuss any questions you may have. Perhaps some information as to the procedure used by other cities might be helpful, particularly if those cities have had the benefit of approving legal opinions on the procedure followed.

Very truly yours,

ANDERSON & DITTMAN

  
Derryck H. Dittman

DHD:sr

# **APPROVED MINUTES**



City of Sherwood  
Planning Commission Meeting  
September 12, 1988

1. **Call to Order:** Vice Chairperson Marian Hosler called the meeting to order at 7:30 p.m. Those present were: City Planner Carole Connell, Grant McClellan, Glenn Blankenbaker, Joe Galbreath, Jim Scanlon, and Kenneth Shannon. Chairman Glen Warmbier was ill.
2. **Approval of Minutes:** Kenneth Shannon moved to approve the minutes of August 15, 1988, Glenn Blankenbaker seconded and motion carried unanimously.
3. **Bilet Products Status Report:** Mr. Blakeslee of Bilet Products informed the Commission that the letter he received from DEQ was a real surprise. The letter from DEQ indicated Bilet Products has violated noise standards on four separate occasions and the letter contained a formal notice of DEQ's intent to assess civil penalties if violations continue to occur. Mr. Blakeslee advised the Commission that he is in the process of making administrative and structural changes to his facility to bring it into compliance. Mr. Scanlon asked Mr. Blakeslee about truck and train noise in the area. Mr. Blakeslee informed the commission that in the past DEQ has had to wait 20 minutes for the noise of trucks and autos to subside so they could get an accurate decibel reading for the Bilet facility. The Commission asked Mr. Blakeslee to report back again in October
4. **Request by St. Francis Church to extend their Design Review permit allowing a temporary mobile office unit.** Virginia Meyers, Chair of the Administrative Council for St. Francis Church asked the Commission to extend the Church's Permit of Occupancy for their mobile unit located on Tax Lots 200 and 300. Carole provided background of the issue. Mr. Galbreath moved to approve a one year extension of the Occupancy Permit. Mr. Blankenbaker seconded and the motion carried unanimously.
5. **Approval request for a Preliminary Development Plan of Orland Villa Planned Unit Development Phase 2.** Vice Chair Marian Hosler declared this item a public hearing and asked first for the staff report. City Planner, Carole Connell advised the Commission that Phase 2 had originally been approved in 1981, however the approval was contingent upon construction beginning within one year. Inasmuch as seven years have passed since the initial plan was approved and the development is now under new ownership, a revised Development Plan was going before the Planning Commission for approval. Carole reviewed her staff report, findings of fact and recommendation for approval with conditions.

Marian Hosler asked for the applicant's report. Hap Arnold, the new developer, presented the Commission with a revised plan indicating minor modifications to the original Phase 2 and 3 Plan. The lots have increased in size to allow for the larger mobile units and the commercial area was reduced in size. Lot 20 has been deleted.

Ms. Connell informed the Commission that there had been some question as to who owns Murdock Street - the City or the County. Research indicates the City owns the street and, therefore, will be responsible for vacation proceedings. Mr. Scanlon asked Ms. Connell what the usage would be after the lots were vacated. Ms. Connell indicated the existing lots in the development would be widened. Mr. Scanlon asked Ms. Connell how long the vacation process takes. Ms. Connell replied it falls under state statutes which requires about 60 - 90 days. Ms. Connell indicated there are very few property owners involved.

Marian Hosler asked for public testimony regarding Orland Villa. Marge Stewart, a City Council member who has been appointed by the Mayor to be a liason to the Planning Commission asked what the status of G & T street will be. Ms. Connell replied it would dead end rather than extend through the development towards Murdock Road and that Roy Street would eventually connect to Murdock Road in that area.

Mr. Blankenbaker asked Mr. Arnold why some Phase I requirements were incomplete (i.e, there should have been street trees on Orland and a ten foot landscaped corridor along the west line) when the sale was completed. Ms. Connell replied that a Notice of Decision is not recorded with the Title Report. Mr. Arnold indicated that the former owner should be responsible for this landscaping and the City should pursue the matter with the owner. Mr. Blankenbaker expressed his concern that there should be some guarantees to the City that work is not left uncompleted when a development is sold. Ms. Connell indicated improvements could be required before further mobile home placement permit requests in Phase I are issued.

Mr. Blankenbaker asked Mr. Arnold if a Homeowners Association will be formed for maintenance of Phase 2 Development. Mr. Arnold replied yes, when a certain number of lots are sold. Mr. Arnold indicated he would install playground equipment and the association would be responsible for maintenance of the playground, common areas, maintaining lights, and streets with association dues.

Mr. Blankenbaker asked Mr. Arnold to address the Commission on the availability of sidewalks. Mr. Arnold informed the Commission that he had overlooked sidewalks when the first plans were submitted. However, he did intend to install

sidewalks. It was decided that the sidewalks should be installed on the east side of Orland Circle.

The issue of adequate outdoor lighting was addressed. Mr. Arnold mentioned that he planned to install outdoor lighting consistent with Phase I.

Mr. Arnold asked the Commission to consider spreading the cost of the proposed street improvements over Phase 2 and 3. Mr. Arnold estimated the total cost of the street improvements would approach \$60,000. Mr. Blankenbaker informed Mr. Arnold that the City does not have any guarantees that Phase 3 will proceed. Mr. Scanlon advised Mr. Arnold that the City is in the process of closing all storm drains and black topping which might ease a little of the financial burden. However, Mr. Scanlon also felt the pedestrian access should be the whole length of Oregon Street frontage and tie into the existing sidewalk on Oregon Street up to and including the property line of the west side of Phase I. Mr. Arnold asked that the street improvements be reviewed by the engineering department to see if the costs could be lowered. The Commission had no objection.

Mr. Blankenbaker moved to accept the conditions of staff and approve Phase II with the following modifications: Number 6 should be amended to read sidewalks and curbs shall be provided. Sidewalks will be provided on the east side of the circle. Number 8 should be amended to read a petition to vacate Murdock Road will be initiated prior to installation of any units. Motion rides with a one-year period to complete Phase 2. Mr. Galbreath seconded and the motion carried unanimously.

6. **Request for Site Plan (SP 88-4) Approval of Ben Reid's Equipment and Rental Business.** The applicant, Ben Reid, is proposing to move his existing tractor and rental business from the Sherwood Plaza Shopping Center to the subject site. The property was conditionally rezoned to General Commercial on August 10, 1988. The applicant is now requesting review and approval of building plans. Ms. Connell also informed the Commission that Driftwood has asked the Council to reconsider the joint access requirement. Ms. Connell indicated shared access could happen at a later date.

There was some discussion regarding the acceleration and deceleration lanes in front of the proposed site. Mr. Reid indicated that there is a wide shoulder but limited distance due to the bridge just past the proposed site and therefore no room for an acceleration lane. City Planner Connell reported that ODOT will not require the acceleration lane and the recommendation number 4 of the staff report referring to an acceleration lane should be deleted.

Ms. Connell asked Mr. Reid if he planned to keep the two big trees by the driveway inasmuch as they were not drawn on

the plan. Mr. Reid indicated there was some confusion as to who owned the trees but since he has found out they are on his property he plans to maintain them.

Mr. Scanlon asked about the landscaping buffer. Mr. Reid indicated he would use a four foot chain link fence with 4-6' arborvitae spaced 2-3' on center. Mr. Reid indicated he would plant smaller arborvitae in the back since it backs up to farm land. Ms. Connell stated the arborvitae hedge along the Driftwood property line could extend up to 15' from the highway and comply with the clear vision standard, however the Commission agreed to extend the clear vision strip up to 55 feet from the front property line, assuming the shared access is not built.

Ms. Connell addressed the Commission regarding required sidewalks on Highway 99W. Mr. Blankenbaker expressed his concern that sidewalks would promote jaywalking across Highway 99W. After discussing this matter the Commission agreed that Number 14 of the Staff Report should read: The owner shall enter into an agreement with the City that should be recorded with the County which requires the owner to install sidewalks along the Highway 99W frontage when so determined by the City. Mr. Blankenbaker further added that in the event the owner does not comply the City can install the sidewalks and bill the expense to the landowner.

Mr. Reid expressed his concern with #9 and #11 of the Staff Report (widening the landscape corridor to 25 feet and adding three feet to the back up aisle in the front parking lot). Mr. Reid indicated that if he had to comply he would lose the willow tree and have to rearrange all of his landscaping. A lengthy discussion followed regarding possible solutions (i.e., moving the sign, eliminating a tiered display area, etc). Mr. Reid determined that the best solution would be to decrease the porch size from 12 feet to 9 feet and the Commission felt since Mr. Reid's building was over 25 feet from the frontage (Highway 99W) he was in compliance with the required landscape corridor.

Mr. Scanlon moved that the Commission approve the site plan with staff provisions as amended: Number 4 delete acceleration, #8 amend to read 55 feet from the property line for clear vision, #14 would not require sidewalks at this time, #9 was deleted and #16 was added to read "grading plan as part of earth moving process". Mr. Shannon seconded and the motion passed unanimously.

7. Request for a motion to approve Resolution #88-422 adopting the 1988 revisions to the City and County Urban Planning Area Agreement. Mr. Galbreath moved to approve the resolution. There was no discussion. Mr. Blankenbaker seconded and motion passed unanimously.

8. **Citizen Involvement Program Discussion** Ms. Connell mentioned that the Commission had been premature in discussing officers for the Citizen Involvement Program. Ms. Connell indicated that officers would be appointed after the first meeting of the Program. Mr. Blankenbaker indicated that one or two Planning Commission members should be present but not sit on the Council. Ms. Connell indicated that the Citizen Involvement Program would be announced in the next City Newsletter which is due to come out in October.

Glenn Blankenbaker moved to adjourn at 10:30 p.m. Kenneth Shannon seconded and the motion carried.

Kathi Steen  
Minutes Secretary