

AGENDA - DECEMBER 20, 1977

1. Approval of minutes of November 15 and December 6
2. Application by Dependable Fordath, Inc. to rezone a parcel located at 480 S. E. Willamette St. from R-3 (Multi-family residential) to C-1 (Limited Commercial).
3. Set meeting dates for January, 1978.



P. O. Box 167  
Sherwood, Oregon 97140  
625-5522 625-7377

December 16, 1977

MEMORANDUM

To: Planning Commission  
From: Todd Dugdale, City Planner  
Re: Recommended changes in Draft Policy Goals

The city has received review and comment from the County on the draft of the Comprehensive Plan Policy Goals and the staff has made a final review of the goals for State Goal Compliance.

Attached are staff recommendations for changes in the Policy Goals draft ordinance based on these actions.

Any questions or comments you have can be made at your meeting of December 20. Your comments will be forwarded to the Council prior to their action on December 28.

MEMORANDUM

To: Sherwood City Planning Commission and  
Todd Dugdale, City Planner

Re: Application of Dependable-Fordath, Inc. for Zone Change

Date: November 25, 1977

I received a copy of the application filed with the City by Dependable-Fordath, Inc. requesting a zone change from R-3 to C-1. The application has the notation on it that the purpose for the request is to increase office space for Dependable-Fordath's manufacturing operation on the parcel of property located across Highland Street from the subject property. There is also an indication that the request is for temporary use as such "until permanent space is available." It is my understanding that this application was referred to this office with an inquiry as to the propriety of a temporary zone change.

Before addressing that question, at the outset it is important to note that the applicant previously applied for a zone change to industrial for the property located across the street from the subject property. That zone change was granted partially based on specific findings with respect to making Highland Street a 60-foot street and the necessity for the applicant to dedicate the right-of-way required to do that. I enclose for your reference a copy of that zone change ordinance, along with exhibits thereto including the right-of-way design for Highland as prepared in a survey made for Dependable-Fordath, Inc. The basis of the earlier zone change request and the commitment to that street development must necessarily be a factor to consider in any land use decisions to be made now or in the future with respect to property abutting Highland Street.

Another factor which necessarily must be taken into consideration is what impact the present Sherwood Comprehensive Plan revisions will have on the future use of the property on the east side of Highland Street. Passage of the presently pending proposed interim development ordinance will of course have an impact on the approval of any use of the property other than for single-family dwellings.

The application, as I read it, asks for a change from R-3 (high-density residential) to C-1 (limited commercial). The use proposed, however, is an integral part or at least a use accessory to a use for which the I-1 or industrial classification is required. It would appear, therefore, that a zone

change from R-3 to C-1 would not permit the use proposed. Assuming for the moment, however, that the office space was not considered accessory to the industrial use, a close reading of the permitted uses in the C-1 zone would likewise appear to prohibit office use other than professional offices such as doctors, lawyers, accountants, etc. If the office use were considered to be of a general commercial use, it could be permitted in a C-1 zone only as a conditional use under the City's present zoning ordinance, which would mean that the applicant would not only have to obtain approval of the zone change, but would then have to secure conditional-use approval.

On the basis of the foregoing in and of itself, it would seem that the request should be denied without reaching the question of whether a "temporary" zone change would be permissible. However, because the question of the propriety of permits for temporary uses may arise again, I will in the following paragraphs make some general observations concerning that question.

Assuming for the moment that a zone change application is made to enable use of the property only for a specified period of time, can that zone change properly be granted, assuming that the requirements of conformance with the plan, established public need, and other compliance with LCDC goals and guidelines, and other legal requirements can be met? A zone change application is in effect an application for an amendment to the zoning map, and in many instances an amendment to the zoning map requires or will require an amendment to the comprehensive plan. It is very doubtful, therefore, that it would ever be proper to grant a temporary zone change for the reason that in theory all map amendments should only be for the purpose of implementing the plan or making changes consistent with the plan. If in fact the request being made would either implement or be consistent with the plan, then the approval should not be temporary but should be permanent.

In considering whether or not a temporary use of the property might be granted as a conditional use or a variance, different considerations would apply. If the use requested is one that is permitted as a conditional use within the zone, it would seem appropriate, given the right factual setting under some circumstances, to grant a conditional use which by its terms is conditioned to expire at a certain point in time. However, this situation would occur in rather limited instances and obviously would not involve such questions as spot zoning, conformity with the plan, etc., since the ordinance itself would have authorized the use, albeit conditionally.

The other area where the question could conceivably come up would be as a request for a temporary "variance." Some zoning ordinances provide for a special permit or variance procedure to allow property owners or applicants to maintain uses otherwise prohibited by the ordinance in a particular zone. The typical situation might be the granting of a temporary permit to maintain certain uses in undeveloped sections which are inconsistent with the use limitations of the district in which they are situated but which will be harmless until development begins. Obviously these temporary uses would not involve the building of expensive permanent structures. Under such an ordinance a permit could not be granted for a temporary use in a developed section, nor may such a temporary permit be extended where the property surrounding the permitted use has developed during the life of the temporary permit. For a general discussion of this type situation, see Section 18.66 and 19.32, Anderson, American Law of Zoning, Second Edition.

The Sherwood zoning ordinance, however, has no comparable provision which would allow a temporary variance as to the permitted use of the property. "No variances shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located." (Second sentence, Article VIII, Section 8.01, Sherwood Zoning Ordinance.)

In conclusion, with respect to the application now pending before the Planning Commission, it is my conclusion that the request should not be approved for several reasons:

1. The proposed actual use is not consistent with the rezoning that the applicant requests.


2. If the applicant were applying for an I-1 zoning designation, the proposed use obviously would be consistent with that zoning. However, that request could only be approved if it were established that such a zone change was consistent with the comprehensive plan and all the other legal requirements. On its face the rezoning of that one lot to an industrial use or even a commercial use at the present time when all the other property on that side of Highland Street is zoned for and much of it being used for residential purposes, would constitute spot zoning. It has been variously defined, but described by at least one court as being "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners." Spot zoning is of course the very antithesis of planned zoning.

Memorandum  
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3. I find no authorization under the Sherwood Zoning Ordinance which would permit a use prohibited by the ordinance in a particular zone merely because the applicant wishes to characterize his application as being for a temporary or limited period of time as opposed to a permanent zone change classification.

Respectfully submitted,

ANDERSON, DITTMAN & ANDERSON



Derryck H. Dittman

DHD:lm  
Enc.

MEMORANDUM

To: City Council, Sherwood, Oregon

Subject: Moore - Dependable-Fordath, Inc.

Date: November 20, 1973

Enclosed herewith please find proposed ordinance adopting findings and granting zone change for the Moore property being purchased by Dependable-Fordath, Inc.

It is noted from the findings that one consideration has been that the traffic impact on the area can be substantially ameliorated or lessened by the improvement of the street to specifications previously adopted for a 60-foot right-of-way, and further, that the applicant or applicant purchaser has offered to construct the proposed improvement on the property in recognition of that right-of-way line and to dedicate that portion of Tax Lot 4100, Map 2S132BA which would be within that right-of-way when the City commences that improvement. From a legal standpoint I believe it would be better if the dedication were made now for two reasons:

The location of the right-of-way for the proposed street should be a matter of public real property record to put any future purchasers of the property on notice thereof.

Secondly, it would be advantageous to the owner to have this dedication made so that that portion of his premises can be removed from the tax rolls. He would, of course, not be precluded from access to Willamette or Highland by reason of said dedication at this time.

There is no real advantage to anyone in delaying the dedication. If it is not now dedicated an agreement to dedicate ought to be executed and recorded at least to notify any future purchasers or assignees of the property.

I have prepared a deed of dedication and forwarded it to Dependable-Fordath, Inc., with the request that the foregoing be considered and the deed executed and returned to this office.

ANDERSON & DITTMAN

A

By: \_\_\_\_\_

DHD:lm

Enclosure

cc: Mr. Gary Hulalander  
Engineering Manager  
Dependable-Fordath, Inc.

P.O. Box 14038  
Portland, 97214

ORDINANCE NO. \_\_\_\_\_

CITY OF SHERWOOD, OREGON

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AN ORDINANCE ADOPTING FINDINGS WITH RESPECT TO APPLICATION OF J. LELAND MOORE and BLANCHE E. MOORE, husband and wife, FOR CHANGE OF ZONE CLASSIFICATION FROM R3 (HIGH DENSITY RESIDENTIAL) TO I-1 (GENERAL INDUSTRIAL) WITH RESPECT TO A PORTION OF TAX LOT 4100, MAP 2S1328A, GRANTING APPLICATION FOR CHANGE OF LAND USE CLASSIFICATION AND FIXING EFFECTIVE DATE

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THE CITY OF SHERWOOD DOES ORDAIN AS FOLLOWS:

Section 1: The Council finds that the lands hereinafter described have heretofore been and now are classified R-3 (High Density Residential) pursuant to the zoning ordinances of the City of Sherwood.

Section 2: The Council further finds that pursuant to prescribed procedures application for change of zone of said lands from R-3 (High Density Residential) to I-1 (General Industrial) was the subject of a public hearing held by the Planning Commission on October 30, 1973, and the commission has heretofore filed its written minutes of its hearing and the passage of motion recommending approval of the application in the zone change file (ZC 1-73).

Section 3: The Council further finds that after due and legal notice, a public hearing was held on November 14, 1973, before an impartial council, and at said hearing all parties at interest were afforded an opportunity to be heard and to present and abut evidence.

Section 4: Based on the evidence adduced at said hearing before said Council, the Planning Commission's recommendation, and the information disclosed in the application, the Council makes the following findings:

(a) That the existing R-3 classification for said lands was apparently adopted to provide a buffer between industrially zoned lands abutting on the north and west of the subject property and single family residential lands lying to the south and east of the subject property. However, said single family residential zones do not now abut the subject property, and the granting of this zone change will not cause any single family residential zones to abut the industrial zone. There will still remain multi-family zones between the subject property adequate to protect the value of single family residence property. It is certainly open to question as to why the subject property was ever zoned R-3 to begin with, since it is part of a larger tract lying within the existing industrial zone, and lies on the northwesterly side of Willamette and Highland Streets which would seem to be the logical zone division line.

The revised comprehensive plan for the City while not completed, tentatively calls for the classification of the subject property to be zoned industrial. Therefore, approval of the zone change is not contrary to the purposes of the original zoning plan, or the established and proposed land use objectives for the area.

Ordinance No. \_\_\_\_\_



(b) That there is a public need for lands in the Sherwood community to be classified for development for industrial uses and the lands hereinafter described properly meet that need, and that the particular site will not impose upon the neighborhood any undue burdens if developed for industrial purposes.

(c) That public services, including water and sewer, are available to said site, and the proposed use thereof does not impose upon the public any problems incident to the development disproportionate to the benefits thereby conferred, considering that the site location is accessible to the Southern Pacific Railroad, Willamette Street, and Highland Street, and the I-1 use will not give rise to undue traffic volume or hazards, particularly considering the projected improvements of the adjoining streets called for by the City's major trafficway plan and the additional setback provisions adopted pursuant to the plan, and considering the offer of applicant's purchaser, Dependable-Fordath, Inc., to dedicate that portion of Tax Lot 4100, Map 2S132BA, described in Exhibit "B" hereto attached and by reference made a part hereof for public street and utility right-of-way necessary to carry into effect, the major trafficways plan, upon request to do so by the City at such time as the City commences that street improvement project or earlier, if the applicant their heirs, successors and assigns so agree.

Section 5: The lands described on the attached sheet marked Exhibit "A" headed "Description" for zone change, Dependable-Fordath, Inc., be, and the same hereby are, zoned as I-1 (General Industrial) for use in accordance with the General Industrial classification of the zoning code of the City of Sherwood, which zoning code with reference to the general industrial district classification is by this reference made a part hereof.

Section 6: That the zoning map is hereby amended with respect to the property described on Exhibit "A" attached hereto and as depicted and as disclosed on Exhibit "C" attached hereto and by this reference made a part hereof, and the Recorder is hereby directed to maintain a copy of Exhibit "C" certified by her to be a true copy of the original attached hereto and bearing the number of this ordinance in a book on file entitled "Zone-Map Amendments", said book being kept and maintained as a part of the permanent records of the City of Sherwood.

Section 7: This ordinance shall become effective on the 31st day after its enactment by the City Council of Sherwood, Oregon.

PASSED: By the Council by \_\_\_\_\_ vote of all Council members present after being read by caption three times, and in body once, this \_\_\_\_\_ day of \_\_\_\_\_, 1973.

/s/ Marjorie Stewart  
Recorder

APPROVED: By the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 1973.

/s/ Jack O. Harper  
Mayor

DESCRIPTION FOR ZONE CHANGE  
DEPENDABLE - FORDATH, INC.

Part of the NE 1/4, NW 1/4, Section 32, T2S, R1W, W.M.,  
City of Sherwood, Washington County, Oregon, described by:

Beginning at a 5/8" iron rod on the east line of said NW 1/4 which is also the intersection of the north line of East Willamette Street and the west line of Highland Street; thence N 89° 52' 08" W along the north right-of-way line of East Willamette Street a distance of 127.46 feet to a 5/8" iron rod; thence S 47° 57' 59" W along said right-of-way line a distance of 42.69 feet to a 5/8" iron rod; thence N 42° 08' 22" W, a distance of 150.00 feet to a point; thence N 47° 55' 08" E, a distance of 350.55 feet to a point on the west right-of-way line of Highland Street; thence S 00° 04' 00" W along said right-of-way line, a distance of 317.87 feet to the point of beginning.

Contains 1.15 acres.

Ordinance #

Exhibit A



DESCRIPTION FOR  
STREET DEDICATION BY  
DEPENDABLE - FORDATH, INC.

Part of the NE 1/4, NW 1/4, Section 32, T2S, R1W, W.M.,  
City of Sherwood, Washington County, Oregon, described by:

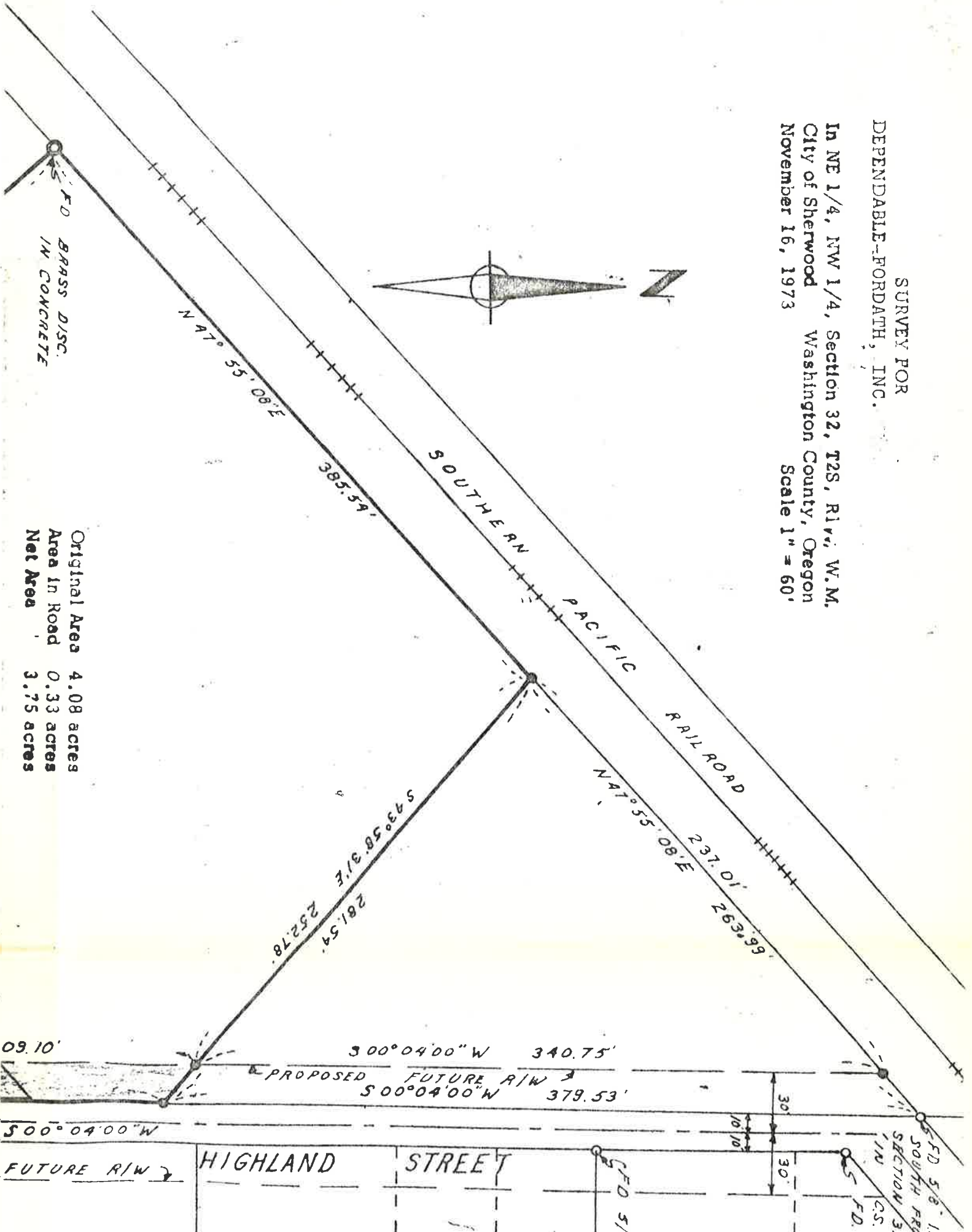
Beginning at a 5/8-inch iron rod on the east line of said NW 1/4 which is also the intersection of the north line of East Willamette Street and the west line of Highland Street; thence N 89° 52' 08" W along the north right-of-way line of East Willamette Street a distance of 127.46 feet to a 5/8-inch iron rod; thence N 47° 57' 59" E 47.11 feet to a 5/8-inch iron rod; thence along a 220 foot radius curve (central angle equals 47° 53' 59") to the left 183.92 feet, a long chord of which bears N 24° 00' 59" E 178.61 feet to a 5/8-inch iron rod; thence N 00° 04' 00" E 209.10 feet to a 5/8-inch iron rod; thence S 43° 58' 31" E 28.76 feet to a 5/8-inch iron rod on the east line of said NW 1/4 and west right-of-way line of said Highland Street; thence S 00° 04' 00" W 383.38 feet to the point of beginning.

Contains 0.33 acres.

Ordinance # \_\_\_\_\_  
Exhibit B

SURVEY FOR  
DEPENDABLE-FORDATH, INC.

In NE 1/4, NW 1/4, Section 32, T2S, R1W, W.M.  
City of Sherwood Washington County, Oregon  
November 16, 1973  
Scale 1" = 60'



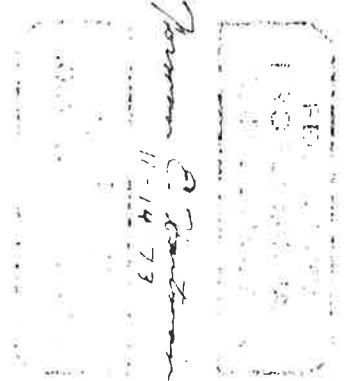
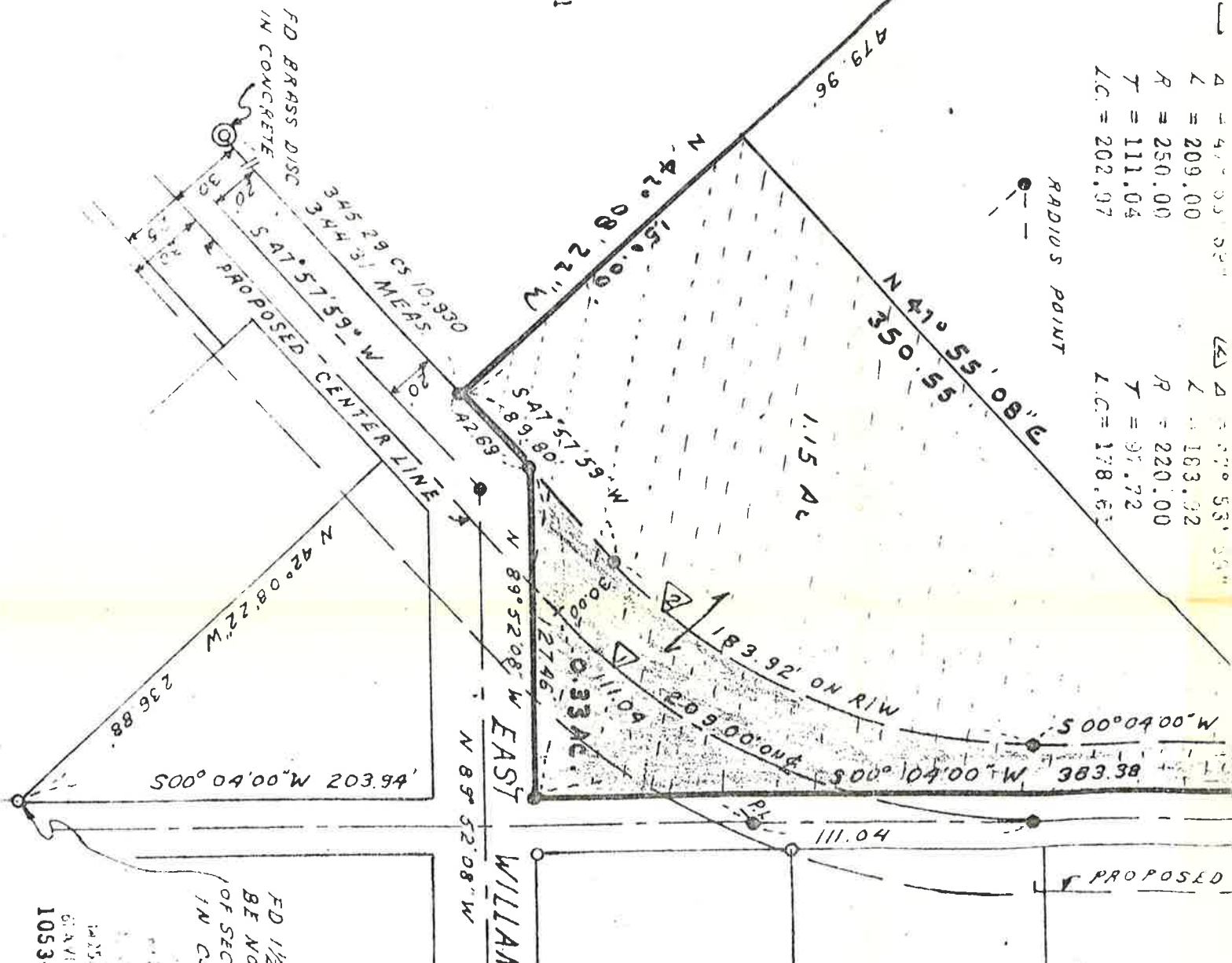
Original Area 4.08 acres  
Area In Road 0.33 acres  
Net Area 3.75 acres

L = 47° 03' 32"	L = 47° 53' 59"
R = 209.00	R = 183.32
T = 111.04	T = 220.00
L.C. = 202.97	L.C. = 178.61

Ordinance # \_\_\_\_\_  
Exhibit C

NOTES:

1. O Found monument as noted
2. ● Set 5/8" x 30" iron rod
3. Basis of bearing. West line plat of Sherwood acres and C.S. #4977
4. Reference Surveys  
Plat of Sherwood acres; plat of Tree Hill C.S. #4977; C.S. #13,020; C.S. #9420; C.S. #3492; C.S. #13,595, C.S. #7846; C.S. #10,014; C.S. 10,930; C.S. #2345 Deeds



# **APPROVED MINUTES**

PLANNING COMMISSION MEETING  
December 20, 1977

The regular meeting of the Planning Commission was called to order by Chairman Wayne Bender. Other members present were Paul Clayton, Elenora Jeffers, Marsha Taylor and Brian Yerka.

A correction of the minutes of the meeting of November 15 was made. On the Interim Control Ordinance the motion by Al Swenson should have been: that the Planning Commission recommends approval of the drafted Interim Control Ordinance as proposed in its entirety. Marsha Taylor seconded the motion and it was passed unanimously. The minutes of the meeting of December 6 were approved as read.

DEPENDABLE FORDATH ZONE CHANGE

There was a discussion regarding the letter written to the Planning Commission by City Attorney, Derryck Dittman and findings of staff which were:

1. The parcel in question lacks adequate size to accommodate required off street parking in a C-1 Zone.
2. The rezoning of the parcel would constitute an encroachment into an established residential use pattern and result in an incompatibility of use.
3. Appropriately zoned property is available in the immediate area for the use proposed.
4. There is no authorization under the Sherwood Zoning Ordinance which would permit a use prohibited by the ordinance in a particular zone merely because the applicant wishes to characterize his application as being for a temporary or limited period of time as opposed to a permanent zone change classification.

Brian Yerka made a motion and Elenora Jeffers seconded to deny the application of Dependable Fordath based on information from City Attorney, Derryck Dittman and staff. The motion passed unanimously. Todd Dugdale was instructed to draw up a findings report for City Council and Dependable Fordath.

COMMITTEE REPORTS-SITE REVIEW BOARD

Marsha Taylor reported on the Steel Manufacturing plant approval.

The apartment complex (Juhr-Heater) was delayed until several conditions are met regarding street access, sidewalk improvement, soil erosion and utility service plan.

City Council wants recommendations and findings submitted to them in writing after action is taken by Planning Commission.

RESIGNATIONS

Elenora Jeffers submitted her resignation from the Planning Commission at the end of her term, December 1977.

Wayne Bender also stated that he was resigning effective December, 1977.

JANUARY MEETINGS

Planning Commission meetings for January are as follows:

January 17 - Workshop meeting

January 31 - Regular meeting

The meeting adjourned at 8:30 P.M.

  
\_\_\_\_\_  
Gertie Hannemann, Secretary