

**BEFORE THE LAND USE HEARINGS OFFICER
OF CITY OF SHERWOOD, OREGON**

Regarding an application by the City of Sherwood for CUP) **FINAL ORDER**
approval to add four, 70-foot high, light fixtures to illuminate) **Case No. 14-03**
the sports fields at Sherwood Middle School at 21920 and) **(Sherwood Middle**
21970 SW Sherwood Blvd. in the City of Sherwood, Oregon) **School Field Lights)**

A. SUMMARY

1. The applicant, the City of Sherwood, requests Conditional Use Permit (“CUP”) approval to add two, 70-foot high, light fixtures to illuminate the existing sports fields at Sherwood Middle School, located at 21920 and 21970 SW Sherwood Boulevard; also known as 2S132BA Tax Lot 0800 and 2S129CC Tax Lot 10600 (the "site"). In addition, the applicant proposes to locate an antennae on one of the light poles to provide future wireless telecommunications. The lights are proposed in addition to the four existing field lights on the site. The site is zoned IP (Institutional and Public). Abutting properties to the north and the majority of properties to the southeast and west, across SW Sherwood Boulevard, are zoned High Density Residential. Some properties to the southeast are zoned MDRH (Medium Density Residential High). Some properties to the west, across SW Sherwood Boulevard, Neighborhood Commercial and RC (Retail Commercial). Properties to the northeast are zoned LI PUD (Light Industrial Planned Unit Development). Additional basic facts about the site and surroundings and applicable approval standards are provided in the City of Sherwood Staff Report to the hearings officer dated April 29, 2014 (the "Staff Report") incorporated herein by reference, except to the extent modified by or inconsistent herewith.

2. City of Sherwood Hearings Officer Joe Turner (the “hearings officer”) conducted a public hearing about the application. City staff recommended that the hearings officer approve the application subject to conditions of approval in the Staff Report, as modified at the hearing. The applicant accepted those findings and conditions without exceptions. One person testified in writing with questions about the shutoff time for the lights. Exhibit B of the Staff Report.

3. Based on the findings and conclusions in this final order, and subject to the conditions of approval listed or incorporated by reference at the conclusion of this final order, the hearings officer approves the application in this case.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the duly noticed public hearing about this application on May 12, 2014.¹ All exhibits and records of testimony are filed at the City of Sherwood Planning Department. The hearings officer announced at the beginning of the hearing the rights of persons with an interest in the matter, including the right to

¹ The hearing for this application was combined with CUP 14-02, a proposal to locate four 70-foot tall light poles at Laurel Ridge Middle School.

request that the hearings officer continue the hearing or hold open the public record, the duty of those persons to testify and to raise all issues to preserve appeal rights and the manner in which the hearing will be conducted. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony and evidence offered at the public hearing.

2. At the hearing, City planner Brad Kilby summarized the Staff Report and the proposed development. He noted that the applicant proposed to locate the new light poles on the north and south sides of the existing track. The lights on the southern tower will point north, to light the track and the football field. The northern tower will have two sets of lights: one pointing south to light the track and the football field and another pointing north to light the baseball/soccer fields. The applicant will design, aim, and shield the lights to focus the light onto the fields and away from abutting properties. Light levels will not exceed 0.5 foot candles at the boundaries of the site.

a. The existing field lights on the site are on timers and turn off automatically between 10:00 and 10:30 p.m.

b. The proposed lights will not produce noise that is audible beyond the boundaries of the site.

c. He corrected two typographical errors in the Staff Report:

i. The first sentence of finding C.1 on page 4 of the Staff Report should read, “The site currently has public facilities and services including sanitary sewer, water, transportation and emergency services.”

ii. Finding 6 on page 5 of the Staff Report cites section 16.153 of the Sherwood Zoning and Development Code (the “SZDC”) in regard to heat and glare impacts. This finding should cite to SZDC 16.154.

d. He noted that the applicant submitted a revised photometric plan demonstrating that no lighting from the proposed lights extends beyond the property line in excess of one-half (0.5) foot candle. Therefore proposed condition B.5 in the Staff Report should be deleted.

e. He testified that a wireless communication antennae co-located on an existing structure would be reviewed as a Type I application, with no public notice. An antennae on an existing light pole that exceeds the height limit of the zone would require a minor modification of the conditional use permit. The proposed antennae will be unlikely to have any additional impacts. It will only extend one foot above the top of the tower. The proposed lights may extend further than the antennae.

3. City planner Michelle Miller and City public works director Craig Sheldon testified on behalf of the applicant, the City of Sherwood.

a. Ms. Miller testified that the City will operate the lights and after-school recreation programs at the schools. She noted that there are only four sports fields in the City of Sherwood and there is significant demand for their use from various recreational sports programs. The proposed lights will extend the use of the existing fields, allowing more time for games and practices. Most activities end by 9:30. The lights should be allowed to remain on until 10:30 to allow the participants to leave the field before the lights turn off. The CUP approval for the existing field lights at the Sherwood Middle School did not impose a shutoff time for the lights. She argued that schools are different from parks. Sports practices, games, and other outdoor activities are expected to occur at schools, including evening activities. In addition, the field lights at Snyder Park are located within 35 feet of the park boundaries. In this case the light poles will be setback 250 feet from surrounding properties, which will reduce the potential impacts of the lights on abutting residents. The existing tennis court lights on the site are a different technology than is proposed with this application. The proposed lights will be designed, aimed, and shielded to focus the light on the site and away from abutting properties. She accepted the findings and conditions in the Staff Report without objections. She waived the applicant's right to hold the record open to submit a final written argument.

b. Mr. Sheldon testified that the sports field lights at Snyder Park are set to turn off automatically at 8:15 p.m. The existing field lights on the site usually turn off by 10:00 p.m. Activities on the site at usually end by 9:30 but the lights remain on until 10:00 p.m. to allow participants to leave the field while the lights are on.

4. Scott Shumaker expressed concern that the proposed lights at the Laurel Ridge Middle School will impact the adjacent residential neighborhoods abutting the east and south boundaries of the school. The existing tennis court lights at Laurel Ridge Middle School are clearly visible from his home. They lights are on regardless of whether the courts are in use, even in the rain when the courts are unusable. The 10:30 p.m. shutoff time proposed by the applicant will impact the adjacent neighbors. He requested the hearings officer require that the lights turn off by 8:15 p.m. as is required for the field lights at the Snyder Park sports fields.

5. The hearings officer closed the record at the end of the hearing and announced his intention to approve the application, subject to the conditions in the Staff Report, as modified at the hearing. The hearings officer took under advisement the issue of when the lights should be required to turn off.

C. DISCUSSION

1. City staff recommended approval of the application, based on affirmative findings and subject to conditions of approval in the Staff Report, as revised at the hearing. The applicant accepted those findings and conditions, as amended, without exception.

2. The hearings officer concludes that the affirmative findings in the Revised Staff Report show that the proposed use does or can comply with the applicable standards of the Sherwood Zoning and Community Development Code (the "SZCDC"), provided that

the applicant complies with recommended conditions of approval as modified herein. The hearings officer adopts the affirmative findings in the Revised Staff Report as his own, except to the extent they are inconsistent with the following findings.

3. Field lights are a permitted use in the IP zone. The proposed light towers are subject to conditional use review due to their height, in excess of the 50-foot maximum structure height allowed in the IP zone. SZCDC 16.82.020.C sets out the applicable approval criteria for a conditional use. The hearings officer finds that the proposed light towers comply with the approval criteria, based on the following findings:

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

SZCDC 16.82.020.C(1)

- i. As noted in the Staff Report, the site is currently served by public utilities. The proposed light poles will only impact electrical service. The existing electrical service to the site is adequate to accommodate the lights.

- b. [The] Proposed use conforms to other standards of the applicable zone and is compatible with abutting land uses in regard to noise generation and public safety.

SZCDC 16.82.020.C(2)

- i. As discussed above, the proposed 70-foot tall light towers are permitted as a conditional use in the IP zone. The light towers comply with all other applicable dimensional standards of the zone. The lights will not generate noise. The lights will improve public safety by lighting the sports fields on the site during the winter months.

- c. The granting of the proposal will provide for a facility or use that meets the overall needs of the community and achievement of the goals and/or policies of the Comprehensive Plan, the adopted City of Sherwood Transportation System Plan and this Code.

SZCDC 16.82.020.C(3)

- i. The site is currently developed as a school, a needed public facility. The sports fields on the site provide recreational opportunities for students of the school and the general public through the City's recreational programs, which helps meet

the overall needs of the community. The proposed lights will extend the hours of use of the fields, increasing the use of the existing public investment.

- d. Surrounding property will not be adversely affected by the use, or that the adverse effects of the use on the surrounding uses, the neighborhood, or the City as a whole are sufficiently mitigated by the conditions proposed.

SZCDC 16.82.020.C(4)

i. The light poles will be visible, but they will not cause any other effects that impact surrounding properties. Although some people may not want to see the light poles, views of the light poles will not have a significant impact on the use of surrounding properties. The towers and lights have a relatively narrow cross section, minimizing their visual impact by design. The applicant will paint the light poles a neutral color to allow them to blend in with the background. The light poles will be setback 250 feet from the nearest abutting properties.

ii. The lights will be designed, aimed, and shielded to direct light onto the on-site play fields and away from abutting properties. The lights will be visible from offsite, but light levels at the boundaries of the site will not exceed 0.45 foot candles. This is consistent with SZCDC 16.154.010, which prohibits light levels in excess of one-half (0.5) foot candle at the boundaries of adjacent residential uses. The height of the proposed towers will allow the lights to be aimed downward onto the sports fields, reducing the amount of light that might otherwise shine onto adjacent properties. The existing tennis court lights noted by Mr. Shumaker at the Laurel Ridge Middle School are significantly shorter than the proposed light towers and they are not equipped with shielding.

iii. The lights could have an adverse impact on adjacent residents if left on until late in the evening. Although the lights will not shine onto adjacent properties, they will be visible.

(A) The applicant proposed to shut off the lights a 10:30 p.m. in order to allow more players the opportunity to participate in the City's recreational sports programs. Mr. Shumaker requested the lights be shutoff at 8:15 p.m. consistent with the lights used at Snyder Park.

(B) The Sherwood Planning Commission required that similar lights at Snyder Park turn off at 8:15 p.m. Unfortunately the Planning Commission did not provide any findings stating why 8:15 p.m. is an appropriate cutoff in that case.

(C) The hearings officer finds that the conditions on this site are different than at Snyder Park. The lights at Snyder Park are located within 35 feet of adjacent residential properties. In this case the lights are setback 250 feet from the

nearest abutting properties. Therefore the lights on this site will have less impact on adjacent residents and a later shutoff time is appropriate in this case.

(D) Rather than selecting an arbitrary shut off time, the hearings officer will rely on the objective standard provided by state noise regulations, OAR 340-35-035. Noise, like the proposed field lights, can have an adverse impact on residential uses. State law allows higher noise levels during the day, between 7:00 a.m. and 10:00 p.m., while requiring a significantly lower noise levels at night, between 10:00 p.m. and 7:00 a.m. See Table 7 of OAR 340-35-035. Since higher noise levels are permitted until 10:00 p.m., it seems appropriate to allow the lights to remain on until 10:00 p.m. as well. This is also consistent with the applicant's current practice as described by Mr. Sheldon. A condition of approval is warranted to that effect.

- e. The impacts of the proposed use of the site can be accommodated considering size, shape, location, topography and natural features.

SZCDC 16.82.020.C(5)

i. The roughly rectangular shaped 29.5-acre site is adequate to accommodate the impacts of the proposed lights. As noted above, the lights will be setback 250 feet from the nearest property boundaries. The site is currently developed with a school and sports fields. The applicant's technical specifications demonstrate that it is feasible to comply with all applicable criteria, including maximum offsite light levels. Existing privacy fencing and landscaping will also screen the lights from adjacent properties.

- f. The use as proposed does not pose likely significant adverse impacts to sensitive wildlife species or the natural environment.

SZCDC 16.82.020.C(6)

i. The site is currently developed with a school and sports fields. The light poles will be located within the developed areas of the site and will not cause any additional intrusions into existing natural areas. The lights will be designed, aimed, and shielded to direct light onto the on-site play fields and away from adjacent wetlands and natural areas. The lights will be visible from offsite, but light levels at the boundaries of the site will not exceed 0.45 foot candles.

- g. For a proposed conditional use permit in the Neighborhood Commercial (NC), Office Commercial (OC), Office Retail (OR), Retail Commercial (RC), General Commercial (GC), Light Industrial (LI), and General Industrial (GI) zones, except in the Old Town Overlay Zone, the proposed use shall satisfy the requirements of Section 16.108.070 Highway 99W Capacity Allocation Program, unless excluded herein.

SZCDC 16.82.020.C(7)

i. The site is not located in the Neighborhood Commercial (NC), Office Commercial (OC), Office Retail (OR), Retail Commercial (RC), General Commercial (GC), Light Industrial (LI), and General Industrial (GI) zones. Therefore SZCDC 16.82.020.C(7) is inapplicable.

h. For wireless communication facilities, no conditional use permit shall be granted unless the following additional criteria is found:

SZCDC 16.82.020.C(8)

i. The applicant is proposing that a single antenna be attached to one of the light poles that can serve in lieu of a whole wireless communication facility. The antennae would add one (1) foot to the height of this one pole. This co-location of the antennae does not cause the light pole to become a “wireless communications facility” as defined in Code Section 16.10.020. Therefore, the additional criteria SZCDC 16.82.020.C(9) are inapplicable in this case.

i. The following criteria apply to transportation facilities and improvements subject to Conditional use approval (in addition to criteria 1—7) per 16.66. These are improvements and facilities that are (1) not designated in the adopted City of Sherwood Transportation System Plan (TSP), and are (2) not designed and constructed as part of an approved subdivision or partition subject to site plan review.

SZCDC 16.82.020.C(9)

i. The proposed use is not a transportation facility. Therefore this additional criterion is inapplicable.

4. SZCDC 16.82.020.D authorizes the hearings officer to impose additional conditions of approval, “to protect the best interests of the surrounding properties and neighborhoods, the City as a whole...” In this case the hearings officer finds that the applicant should be required to conduct an analysis after the lights are installed and operational to demonstrate that actual light levels do not exceed 0.5 foot candles measured at the property lines of the site. A condition of approval is warranted to that effect.

5. ~~The hearings officer finds that~~ the application complies with all other relevant approval criteria based on the affirmative findings in the Staff Report, which are incorporated by reference herein.

D. CONCLUSION AND ORDER

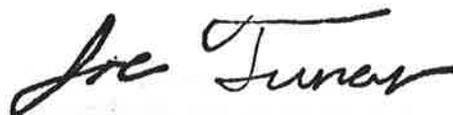
Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves File No. 14-03 (Sherwood Field Lights), subject to the following conditions of approval:

CONDITIONS

A. General Conditions

1. Compliance with the Conditions of Approval is the responsibility of the developer or its successor in interest.
2. This land use approval shall substantially comply with the preliminary plans and narrative prepared by the applicant and submitted March 24, 2014.
3. The continual operation of the property shall comply with the applicable requirements of the Sherwood Zoning and Community Development Code and Municipal Code, including all limitations on offsite lighting spill.
4. This approval does not negate the need to obtain permits, as appropriate from other local, state or federal agencies even if not specifically required by this decision.
5. The lights on the site shall be designed to turn off automatically no later than 10:00 p.m.
6. Within thirty (30) calendar days after the lights are installed and operational, the applicant shall conduct an analysis demonstrating that actual light levels do not exceed 0.5 foot candles measured at the property lines of the site.

DATED this 21st day of May 2014.



Joe Turner, AICP
City of Sherwood Hearings Officer