
City of Sherwood, Oregon
Planning Commission
January 14, 2014

Work Session Minutes

Planning Commission Members Present:

Chair Jean Simson
Vice Chair James Copfer
Commissioner Michael Cary
Commissioner John Clifford
Commissioner Beth Cooke
Commissioner Russell Griffin

Staff Present:

Julia Hajduk, Community Development Director
Brad Kilby, Planning Manager
Craig Christensen, Civil Engineering Associate II
Kirsten Allen, Planning Dept. Program Coordinator

Planning Commission Members Absent:

Commissioner Lisa Walker

Council Members Present:

Mayor Bill Middleton

Legal Counsel:

Chris Crean

1. Brad Kilby called the meeting to order at 6:11 pm and turned the time over to Chris Crean from Beery, Elsner, Hammond the City's contract attorney.

Chris went over a presentation regarding Ex Parte, Conflict of Interest, and Bias (see record, Exhibits 1 & 2). Discussion followed.

Brad Kilby, Planning Manager discussed what it meant to have a quorum and the importance of having a quorum in order to conduct a public meeting.

The work session adjourned at 6:59 pm.

Regular Meeting Minutes

Planning Commission Members Present:

Chair Jean Simson
Vice Chair James Copfer
Commissioner Michael Cary
Commissioner John Clifford
Commissioner Beth Cooke
Commissioner Russell Griffin

Staff Present:

Julia Hajduk, Community Development Director
Brad Kilby, Planning Manager
Michelle Miller, Senior Planner
Craig Christensen, Civil Engineering Associate II
Kirsten Allen, Planning Dept. Program Coordinator
Karen Brown, Building Permit Specialist

Planning Commission Members Absent:

Commissioner Lisa Walker

Council Members Present:
Mayor Bill Middleton
Council President Linda Henderson
Councilor Matt Langer

Legal Counsel:
Chris Crean

1. Call to Order/Roll Call

Chair Jean Simson called the meeting to order at 7:11 pm.

2. Agenda Review

The agenda consisted of the Consent Agenda, a Public Hearing for SP 13-03 and an Appeal Hearing for SP 13-01.

3. Consent Agenda:

a. November 26, 2013 Planning Commission Minutes

Chair Simson indicated there were scrivener's errors on page 10.

Motion: From Vice Chair James Copfer to approve the Consent Agenda. Seconded by Commissioner Michael Cary. All present Planning Commissioners voted in favor (Commissioner Walker was absent).

4. Council Liaison Announcements

Mayor Middleton reminded the Planning Commission of the TriMet Service Enhancement meeting on January 16, 2014 at 6:30 pm in the City Hall Community Room. He said the meeting would discuss the future of transit in Sherwood.

5. Staff Announcements

Brad Kilby, Planning Manager, stated that the ground breaking for the Sherwood Community Center was held on Friday, January 10th and there could be equipment on the site by the end of the month. He announced that the Public Hearing for PA 13-05 Front Yard Setbacks had been moved to February 11, 2014 and the next meeting would have the two continued hearings regarding the Transportation System Plan updates proposed by Washington County.

6. Community Comments

Robert James Claus, Sherwood resident spoke of when he first started in planning school where students were cautioned not to mix up policy making bodies in a city and staff functions.

Note: There was a malfunction with the microphones at the beginning of Mr. Claus' testimony. The clock was restarted when the problem was resolved.

Mr. Claus continued by commenting that when policy making bodies and staff functions are mixed, corruption creeps into the system. He remarked on giving sovereign immunity for appointed and elected officials and said there were people contributing funds to do away with that practice. Mr. Claus commented on an interview with the FBI about Councilor Langer. He said the FBI told him there needed to be a photograph of money being passed. Mr. Claus commented on sovereign

immunity for staff, the City paying for their legal defense, and City County Insurance paying for intentional torts. He gave an example of an intentional tort as a bank robber buying insurance before he robs a bank and the bank getting paid by the insurance. Mr. Claus put forward that City staff has this immunity and would structurally control the information the Planning Commission received; making public policy. He said that was the whole problem that has occurred in this city. Mr. Claus commented that Mayor Hitchcock would let people present until they got to the core of an issue, but ever since the City has had Beery, Elsner, Hammond for legal counsel the information has been struck down and answers not received. He commented that since City Manager, Joseph Gall came he has received courtesy replies regarding letters he had written. Mr. Claus commented that the Commission would continue to see examples where the staff implemented public policy by paring information. He expressed hope that the mayor would be watchful, because staff is in a position they should not be. Mr. Claus spoke regarding how he would treat his staff as well as Metro. He commented that staff could set policy by not giving the Planning Commission information and the Commission no longer able to make a structured decision. Mr. Claus said the Commission commented that he could not get to these staff personally because of sovereign immunity, with both coverage and defense. He said the private enterprise system holds people responsible for negligence. Mr. Claus commented that Mayor Middleton was fired as Police Chief through intentional torts and staff was covered by insurance.

There were no other community comments.

7. Old Business

b. Public Hearing – SP 13-03 Sherwood Industrial Park, Phase II

Chair Simson called the public hearing for SP 13-03 Sherwood Industrial Park, Phase II to order, read the public hearing statement and asked for any ex parte contact, bias, or conflicts of interest.

Chair Simson disclosed that she had been asked about the Planning Commission business meeting and said she briefly told them about the hearings on the agenda. She said it would not affect her ability to make an impartial decision. With no other disclosures, Chair Simson asked for the staff report.

Michelle Miller, Senior Planner reminded the Commission that they had continued the hearing for SP 13-03 Sherwood Industrial Park Phase II on November 26, 2013 where she presented a staff report and some testimony was heard from the applicant. She commented that the outstanding issue was the industrial design standards. She explained that there are some set standards that the applicant can comply but the applicant chose the alternative and more subjective standards that the Planning Commission reviewed. Michelle explained that the Planning Commission felt that the applicant had not met the alternative design criteria and during deliberation the applicant had asked for a continuance to address the concerns that the Planning Commission had. Michelle said that Exhibit H was a staff memo to the Planning Commission addressing the changes made to the design and Exhibit I was information from the applicant. She indicated that she had provided proposed findings as addressed in the Staff Memo (see Planning File SP 13-03, Exhibit J).

Michelle indicated that staff feels comfortable recommending approval of site plan with the improvements that the applicant has made.

Chair Simson asked for applicant testimony.

Mark Person, from Mackenzie representing the applicant and **Dale Poppe**, architect, came forward and Mr. Person indicated that the property owner, Jack Steiger, was in the audience. He confirmed that the applicant presented before the holiday and said the outstanding items were two alternative design criteria. Mr. Person indicated that the Planning Commission's feedback enabled them to address the issue and they were available to answer questions from the Planning Commission.

Chair Simson confirmed that the applicant was in agreement with the conditions of approval as discussed at the previous hearing. There were no other questions from the Commission.

Dale Poppe offered to go over the modifications made to the building plans and site. Chair Simson commented that the information submitted was sufficient for deliberations. She asked for additional public testimony. Having none, Chair Simson closed the public hearing.

There were no additional comments from staff.

Commissioner Griffin commented that the letter from the applicant explained the proposed changes to the application and said they were the revisions the Planning Commission was asking for.

Commissioner Clifford said he liked the improved color scheme where the bands divided the wall space of the building. Chair Simson and Commissioner Cooke were in agreement.

Motion: From Vice Chair James Copfer to approve application SP 13-03 Sherwood Industrial Park, Phase II based on the applicant testimony, public testimony received and the analysis, findings, and conditions in the staff Report. Seconded by Commissioner Michael Cary. All present Planning Commissioners voted in favor (Commissioner Lisa Walker was absent).

Chair Simson called for a recess at 7:31 pm and reconvened at 7:33 pm.

8. New Business

a. Public Appeal Hearing - SP 13-01 Pacific Family Dental Parking Lot Expansion

Chair Simson called the public appeal hearing to order and read the appeal hearing statement. She indicated that public testimony would be limited to those who previously submitted written or verbal testimony on the matter. Chair Simson asked for any ex parte contact, bias or conflicts of interest from the Planning Commission.

Commissioner Griffin indicated that he knew all of the individuals involved in the hearing and was friendly with both families. He said he interacted with both in the community and within a religious organization and Dr. Doyel was his dentist. Commissioner Griffin said he believed that he was capable of making a fair decision based on the facts in the packet and testimony that would be received. Regarding ex parte contact, he said he was at a public performance for a dance group that both his and Dr. Doyel's daughter performed in and spoke briefly with Dr. Doyel about the date of the hearing, but nothing substantive. Commissioner Griffin indicated that he would not recuse himself because he could make a fair decision based on the facts.

Commissioner Clifford disclosed that Dr. Doyel was his family dentist and other than running into him periodically at a school function or community events he only saw Dr. Doyel twice a year. He said he had never discussed the application or appeal and he had no reason to remove himself from making the decision.

Commissioner Cary related that he was a colleague of Dr. Doyel's and he had no bias for the application.

Chair Simson added that she was at a meeting the previous evening and had summarized for someone the agenda for the upcoming hearing. She said there was no substantive conversation that precluded her from being able to make a fair decision. She asked if anyone in the audience wished to challenge any Planning Commission member's ability to participate.

Robert James Claus sited Williamson Regional Planning Commission vs. Hamilton National Bank which, he said, required that administrative remedies must be exhausted and finality reached. Mr. Claus suggested that the packet was not complete because the Commission was directed to go online to read the file. He said he was challenging that if Commissioners had not read the file they should recuse themselves and reschedule the hearing. Mr. Claus said that the Commission did not have the whole file in front of them and he was asking before challenging individuals if they had read the file because. He commented that Commission members were expected to read the file, but Planning staff did not put the whole file in front of them.

Chris Crean said the entire file is available and the Planning Commission is presumed to have reviewed it. He went on by explaining that the file is distilled down in the staff report and everything is listed in the exhibits with the findings. Mr. Crean advised that Mr. Claus was arguing for the basis of an appeal, but he had not stated a reason for bias or conflict of interest, so there is no reason for anyone to recuse themselves. He said there was no reason to believe the Commission has not conducted their duties as Planning Commissioners by reviewing the entire record.

Mr. Claus said he did not believe a Commissioner could have a commercial relationship with the dentist or be in competition with him and not have a conflict of interest and he was challenging that statement.

Mr. Crean stated that the Planning Commissioners had stated the nature of their relationships and indicated there was no bias. He said if the commissioners felt the desire to respond to the allegations they were free to do so, but they have already stated, for the record, the nature of the relationship and disclosed that it would not bias their impartiality or their ability to objectively review the evidence and apply the evidence to the criteria in the record.

Mr. Claus commented that Mr. Crean had malice and said he did not believe those Commissioners could not be biased.

Susan Claus came forward and asked each commissioner to indicate if they had read the entire file or only what Planning Staff had given to the Commissioners. Mr. Crean said it was not the time to answer that question and indicated that the Planning Commissioners did not have to answer. Ms. Claus asked when that time would be. Mr. Crean answered that this was a time for the Planning Commission to ask for evidence from the audience, the appellant, and the applicant. He said the Planning Commission was not obligated to answer questions from anybody as the Planning Commission was gathering evidence not the Clauses.

Chair Simson called for a staff report.

Brad Kilby, Planning Manager began by saying that the entire packet was available online and on page 166 of the packet there was a cut sheet with a link indicating where all the materials were. He said all the materials were available and have been available since receiving them. Brad said that starting on page 39 of the packet was the memorandum and indicated that he would hand out a table directly related to the memo and the Hearings Officer's decision showing the issues that were addressed in the appeal application. He said each item is listed (same as the memorandum) and the items in green were addressed by the Hearings Officer (see record, Exhibit 3). Brad said the not green item suggested that the application was improperly processed as a new site plan and should have been processed as a major modification or whole new site plan for both properties. He explained that that commercial owners often divide their interests in a property for the purposes of financing or selling individual parcels, but there was nothing in City code that does not allow those individuals to share the same amenities such as parking, trash, access, or water quality. Brad said there would be arguments about whether or not the application should have been reviewed as two individual site plans. He explained that the Commission was conducting the site plan review for an office building that already has site plan approval. Brad said the items on the blue table are items that the Hearings Officer listed as issues that Mr. and Mrs. Claus brought in their testimony.

Brad gave the background on the site through a presentation (see record, Exhibit 4) and said the site was surrounded by Handley Street and SW Pacific Hwy on the north. He pointed to the existing site with the existing office building and showed the proposed parking expansion. Brad showed that the property line was a triangle and the applicant was proposing to remove a building to make room for the parking improvements, because they don't have enough parking for their own needs and are proposing to add parking. Brad said it would increase the off street parking from 38 spaces to 73 spaces which is within the margin between the minimum and maximum allowed in that zone and it was within their right to add the parking. He described the existing office building as 14, 504 square feet and explained that parking is based on the use of the building and the size of the building. He indicated that a medical office building would requires 3.9 spaces per thousand square feet.

Brad showed that the applicant would obtain access through two driveways on the existing site and stated that there would be no access off of SW Pacific Hwy into the parking lot. The parking lot will be curbed with a landscape buffer and there is no way to utilize SW Pacific Hwy to get into or out of that parking area. He said the single family residence on the site is currently being leased and will be allowed to continue to gain access onto SW Pacific Hwy.

Brad asserted that there was a question about the trash enclosure and said it was allowed to be off site. The specific code language does not preclude a trash enclosure from being on an adjacent parcel. Brad said that at any other commercial development in Sherwood may have three or four parcels of land that share one trash enclosure and it is allowed.

Brad commented that appeal issues addressed in his staff report are from what he read in the appeal application and said that there would be talk regarding the extension of Cedar Brook Way. He said the application had been reviewed by Engineering staff and said the approval of the land use application does not preclude future extension of that right of way. Brad said staff did not feel that there was not justification to require the dedication or improvement of that right of way from the impacts to the right of way. He said the size of the building is not being increased, nor the number of uses, in a manner that would generate additional traffic trips to the site. Brad gave the example that if the building had ten vehicular trips coming to the site, because ten people had a dentist appointment at 8 o'clock in the

morning, then at 8 o'clock in the morning in the future it would still be ten people going to that business. He said ODOT would not require frontage improvements and staff did not believe there was a nexus between a parking lot and the highway because they were not proposing to access the highway for that parking lot.

Brad related that there was a lot of talk in the appeal application regarding illegal uses and the site being non-conforming. He explained that those are not issues before the Planning Commission and were not issues the Hearings Officer felt he needed to address. Brad confirmed that the parking lot was built illegally and that City staff has worked with the applicant since late 2012 to get the application. He said the policy was that if you are working towards compliance then formal citations are not pursued.

Brad concluded his presentation by saying that staff recommended that the Planning Commission find that there was no basis for reversal or appeal and affirm the Hearing Officer's decision by adopting the Hearing Officer's final order as their decision along with his findings and the findings in the staff report. He gave members of the Commission and audience copies of the table mentioned at the beginning of his staff report.

There were no questions for staff.

Chair Simson asked for testimony from the appellants. Jim and Susan Claus came forward.

Jim Claus indicated he had a presentation (see record, Exhibit 5)

Susan Claus said she wanted to discuss the appeal fee before their testimony because it was a procedural issue. Mr. Claus said it was a procedural question similar to the bias question and it did not go to their testimony. He said there was a procedural requirement to make the request about the fees to the Planning Commission in order to appeal it.

Chair Simson responded that the fees were addressed in the staff report and were regulated by the City Council in their fee schedule and the Planning Commission did not have the ability to change or modify the fee.

Mrs. Claus turned to the section of their presentation regarding the fees and referred to several LUBA Cases regarding fees.

Note: The time clock was started and resulted in a discussion between Mr. and Mrs. Claus and City counsel, Chris Crean, regarding whether the time being spent should be part of the 30 minutes allowed the appellant for testimony. The Clauses argued that it was a procedural issue and Mr. Crean held that it was one of the appeal issues and all procedural or substantive issues have to be raised as part of the appeal.

Mrs. Claus continued and read from two LUBA decisions that stated: *The local final decision maker must allow the fee challenger to submit argument and evidence into the record to that LUBA can perform its review function , and; Determining the average cost of such appeals for purposes of the ORS statute requires some kind of arithmetic calculation of the average of a set of number.* She said the point was that there is a limit of how much you can charge for a local appeal. Mrs. Claus said they

had been charged half of a site plan review fee but there was no back up in the fee schedule to justify that fee; no time and materials or anything like that . She said these were citations that they were asking staff to put into the record. Mrs. Claus showed excerpts from City Council meeting minutes when the fee schedule was passed where Mrs. Claus testified regarding the lack of backup for being charged half of a site plan fee for an appeal fee. She gave the Walmart appeal fee as an example the at \$6500. She said the appeal fee for this one was \$3400 for a different site plan. Mrs. Claus said they were objecting to the appeal fees and would ask for an evidentiary hearing where staff submits evidence to substantiate that fee.

Mrs. Claus said that this was a tragic circumstance as they have known the Doyels for a long time and their property was adjacent to their property. She showed a map on the presentation and said there was a pre-existing Cedar Brook Way alignment that was a topic of this hearing but also talked about in the district and it needed to move forward with the Doyel property. Mrs. Claus commented that this particular site plan has incrementally expanded and [the review] only wanted to deal with that small expansion when the entire site was changed.

Mr. Claus asked the Commission to look at an aerial view of the site before development occurred that showed an old alignment of SW Handley street at Cedar Brook Way. Mr. Claus said the old extension of Handley was abandoned and given to Mr. Doyel. Mr. Claus said it goes to the question of proportionality that they would challenge because Mr. Doyel extended half of 70 feet of the road and the City was responsible for the other half. Mr. Claus said it was an exaction, and part of the challenge was the question of how much the City was burdening the Doyels. Mr. Claus said the gift of Handley Street and what amounts to two thirds of the property line, he did not know how you get proportionality. He said the preferred route from there across his property was about 200 feet.

Mrs. Claus showed an outline of the two parcels, tax lots 1600 and 2100, and explained that a “pork chop” shaped piece of land was part of the old Meinecke Road alignment that was vacated and subsumed as part of the property that the dentist office was built on (lot 1600). She said tax lot 2100 was the lot they are doing the parking lot expansion on. Mrs. Claus commented that the original application for the parking lot contained the working copy from the Cedar Brook Professionally Building (the dentist office) , as the final mark up, and explained that the final markup has all the conditions of approval from the planner on them. She pointed to the calculation for the required parking that required 48 spaces; thirty eight were on site and 10 were on street parking that abutted the site on the public right of way. Mrs. Claus showed a page of the site plans that showed where the parking would be. Ten on street spaces were shown in green with two parking lots containing 15 spaces in one and had 23 spaces in the other totaling 48.

Mr. Claus commented that this was from former Hearing Officer Paul Norr’s report and what Mrs. Claus was pointing out to the Commission was the Hearing Officer’s findings and the conclusion of how that permit was issued.

Mrs. Claus said the problem was that there is no parking on allowed on Cedar Brook way; there hasn’t been any parking on the Meinecke section of Cedar Brook Way and all the way through the extension there is no parking anywhere. She showed a picture pointing out the two no parking signs posted on Cedar Brook Way in front of Mr. Doyel’s office where spots 9 and 10 were supposed to be. Mrs. Claus showed several pictures illustrating the location of the no parking signs and said the point was the development is two parking spaces short of the required amount.

Mr. Claus commented that the parking was illegal from Day 1 and it was not an Istople and Latch estate which meant that Mr. Doyel had violated the rules and was occupying the buildings illegally. Mr. Claus commented about trees that Mr. Doyel cut down saying that they were supposed to be part of the canopy and said nothing has been done about that. He spoke about the illegality of the parking lot that has been put in and said it has been going on for 17 months. He recounted that the Doyels have had illegal parking, cut trees, received gifts from the abandonment of the road, and the City will pay to pave part of his street and those are material facts the Planning Commission has to look at and will understand why Mr. Doyel does not want to dedicate Cedar Brook Way which is a collector street. Mr. Claus said he supposed the reason was money, but they would show that staff has been trying to cover that up. He asserted that there were two City Councilman present who could testify that it was in the public record.

Ms. Claus showed an aerial view of tax lot 2100 showing the before conditions with vegetation, trees and a yard in front of the house. She showed an aerial view of the site with the gravel pad installed and commented that everyone acknowledged that it was illegal.

Mr. Claus commented on the parking lot being an illegal use and the use of it being stopped. He recounted that there was an abandonment gift, part of the road was paid for, massive illegal work was being done with contractors going in who were just awarded a storm water contract on Columbia Street. He said the work was done over seventeen months with Pat Allen heading off the state building inspectors until Mr. Claus called them. Mr. Claus said it went to the credibility of evidence and testimony. He said there was an illegally occupied building, illegal construction, illegal cutting of trees and graveling of the yard.

Mrs. Claus showed pictures on the site of the trees that were cut and said it was because the sign was being blocked. She said that per the Sherwood Municipal code the approved site plan should have been modified because of the changes of the visual corridor by cutting the trees and by using the parking from the adjacent lot.

Mr. Claus commented he brought up a technical question with Joe Turner, who disagreed with him. He cited the 1927 decision Ambler Realty vs. The city of Euclid that allowed zoning below its highest and best use without fifth amendment taking and the 1925 Nectow vs. Cambridge which says if you want to have an exception process in the code. Mr. Claus said there was an exception here, Mr. Doyel does not want to dedicate the road, he does not want to finish the visual corridor; he will dedicated it, but not plant it. Mr. Claus said he maintained that it was a variance with the other as an exception. Mr. Claus said the Hearings Officer said the City was issuing exceptions. Mr. Claus put forth that if the City was issuing exceptions there were conditions; it cannot be a self-imposed hardship, the neighbor cannot be impacted, and the general plan cannot be damaged to the general plan. Mr. Claus informed that they had been told that if they do not have cross easements to the Shannon and the Doyels we could not develop and commented that Mr. Doyel did not even have to dedicate it. Mr. Claus added that there were slope and wetland easements. He described a conversation with the City Engineer and said that once those easements are put in Cedar Brook Way could not be built until they were removed.

Mrs. Claus commented that changes have been made to the site plan she said that one of the options was revocation and showed that part of the code. She said one of the problems is that the development has been dealt with in a piecemeal way and two sites are engaged. Mrs. Claus commented that in

order to get the original site into compliance need site a second site and in order to take from the second site they have to have exclusive use of that parking lot and they have proposed putting a cross easement in for exclusive use to the first site. She said it was about proportionality and you cannot benefit the first parcel, by bringing it into compliance with the second parcel, and not talk about proportionality because we are doing a little thing to the second site.

Mr. Claus said he was challenging the legitimacy of putting in a parking lot next to an existing parking lot and developing a cross easement. He said there must be unity of title and it must be reciprocal. Mr. Claus said you could use deed restrictions to do that, but you could not use a cross easement. He said the applicant wanted to do is develop a small, half acre section of a site that has one acre of that site is developable, because the rest of it is in slope, easements, and roads. Mr. Claus said that when the applicant is done the site is 100% developed. He said he wanted deed restrictions because with a cross easement the applicant can take out the current user by coming back to the Planning Commission.

Mrs. Claus said there have been other parcels in this Cedar Brook district that have approached staff and tried to develop and in her case every time they have approached staff they have been told that whatever is done with Cedar Brook Way would be temporary and cross easements from the neighbors would have to be obtained. She said this applicant has been told he does not have to extend improvements between the two sites. Mrs. Claus commented that either Cedar Brook Way means something or it does not. She said the time to look at things is when development occurs and they are not being looked at. She commented that Mr. Doyel was doing illegal things, getting his site plan incrementally approved, and not having to extend it out. She said the Shannon property on the other side of her property went through an entire situation with staff and was deemed existing non-conforming without going before the Planning Commission.

Mr. Claus said that the problem was not that the Shannons, Elks, and Doyels have been able to expand their uses without changing their primary buildings and Mr. Doyel was putting in a parking lot, going out on 99W, and not putting a road in at all. He said a line has be drawn, because staff has made a policy decision. They tell us we have to build Cedar Brook Way and get a cross easement from Shannon and the applicant. Mr. Claus said they could beat that in court, but they had to challenge it first. He said 100% development is occurring on the site because of slope and wetland easements and roads. Mr. Claus said there was massive erosion going on in the creek that ODOT and City Engineer have been out to see. He said they dispute the report that Mr. Doyel has submitted by saying there is erosion between the sites and ODOT and others have implied they would help, but it was not moving forward as a collaborative effort.

Mrs. Claus gave an example of a pre-application meeting with the Clauses where the city indicated future street maps would be required with any land use submittal showing both frontage road and potential connections to adjacent properties and said they had a higher threshold and Cedar Brook Way has been integral to anything development.

Ms. Claus showed the preliminary site improvement plan for the application and said that after removing the 25ft visual corridor, the vegetative corridor, the extension of the road, the parking lot for the benefit of site 1, the pre-existing house, and the small usable space in front of the house and questioned the proportionality. She asked regarding the status of Cedar Brook Way extension and said it should be addressed.

Mr. Claus commented that they did not mind if everyone else could do the same thing and the Planning Commission had a chance to set policy. He said he would challenge that Cory Platt is not running a construction business out of the site but would not care as long as he did not alter the house. Mr. Claus commented on taking the appeal to LUBA because they will have no choice. He questioned why they had to get a reciprocal easement to cross the Shannon and Williams property. Mr. Claus commented on Mr. Doyel not having to dedicate the right of way and pushing proportionality on them. He said their portion of the road would be 600-700 feet. Mr. Claus said it could be resolved by saying that the city has decided that Cedar Brook Way does not have to be completed in order to develop 100%.

Mr. Claus said the worst part was finding out that \$40,000 to design the road had been approved to complete the alignment of Cedar Brook Way but it was tabled and that looked like malice to him. He said he did not like fighting with the neighbor, he said they were coming to the Planning Commission to tell them they could not develop their property under these conditions and asked the Commission to find a way not to have to put in Cedar Brook Way. He commented that if they could avoid some of these conditions by using existing buildings to make a living there would be no problem.

Mr. Claus spoke of his wife being taken to court by City legal counsel and the illegal parking lot being there for seventeen months. He said if he were a planning commissioner he would not want to live in a city that was so political, because it was political disowning and had nothing to do with the district. Mr. Claus said OPUS wanted to buy his forty acres, but former Mayor Mays found out and told them to develop on Langer's property. He said all they wanted to do was develop and get a development pattern. He said he wanted what Mr. Doyel was getting or he would litigate over it.

Seeing that the time remaining was short, Susan Claus asked for a continuance. Mr. Claus confirmed and said they would have to get in more material.

Mr. Claus commented on a cross over easement, not deed restrictions and asked if the building becomes illegal if the parking lot is abandoned. He said he did not know if he was being clear, but as he was out of time asked if there were any questions. He commented that thirty minutes was not enough time and said they will probably cure in mediation in federal court. Mr. Claus said they could not put up with this anymore.

When there were no questions from the Commission, Mr. Claus said that he was unsure the commission was understanding what they were saying. He said nobody had any objection and it was the procedural process of three people being able to get what they wanted when they supported Mays or when they are not a pain to the Langers.

Chair Simson indicated that she had received the request for a continuance and said this was not the first evidentiary hearing and she was unsure how it worked on appeal.

Mrs. Claus pointed out that the public hearing statement said a continuance was possible. Chair Simson responded that it said "If there was [a continuance]", Mrs. Claus indicated there were materials for the file.

The appellant had 2:19 minutes remaining.

Chair Simson called for a recess at 8:28 and reconvened at 8:34. She advised anyone wishing to testify to fill out a form. Only persons who provided testimony at the first hearing would be able to speak.

Chair Simson called the hearing back to order and asked for the applicant's testimony. She indicated that the applicant would be allowed 30 minutes.

Ty Wymann, the applicant's attorney, 851 SW 6th Avenue, Ste. 1500, Portland said the applicant Nathan Doyel and his wife Polly were present as well as Civil Engineer, Monte Hurley and Professional Planner, Chris Goodell from AKS Engineering and Forestry.

Mr. Wymann said he was introduced to the case only recently and said he did not have the familiarity with the record that AKS did. He said he has practiced land use and municipal law in the region for twenty years and has attended countless public hearings in jurisdictions. Mr. Wymann said the applicant is aware that the Planning Commission is made up of volunteers and his job was to address any questions the Commission may have about the application. He said what he heard was not about the application and an experienced Hearings Officer conducted a full hearing of the matter and wrote a lengthy, detailed decision. Mr. Wymann said the applicant was gratified by that decision and he would not try to add analysis to it. He said AKS Engineering and Forestry was asked to prepare a presentation. Mr. Wymann stepped down and allow AKS to present.

Chris Goodell, AKS Engineering 13910 SW Galbreath Drive, Ste. 100 Sherwood, said his company prepared the land use application and materials for the property owner and applicant, Mr.. Doyel. He said staff summarized the project and the application was simple in that there is an existing building and the application involves creating additional parking for that building. He said they appreciated staff's thorough staff report and the Hearings Officer's detailed decision approving the application. Mr. Goodell said they were asking that the Planning Commission affirm the Hearings Officer's decision based on the substantial evidence in the record and deny the appeal. He introduced Monte Hurley, project engineer, and said their objective was to answer any questions that the Planning Commission may have regarding the application materials.

Chair Simson asked if the Commission had any questions of the applicant regarding the appeal remembering that all information is on the record as the Planning Commission would not be receiving any new information.

The applicant had 25:14 minutes remaining. There were no proponents or opponents wishing to speak. Chair Simson gave the appellant an opportunity for rebuttal indicating that they could take the remainder of the 30 minutes.

Mr. Claus commented that the Commission was guaranteeing litigation if the decision was affirmed and said he had no choice because they could not build without putting in Cedar Brook way and other restrictions. He said there was destructive waste going on his property and ODOT was involved. He said they were asking for a study group to come and look and come up with a policy. The policy could be to wait to develop until we decide what to do with Cedar Brook Way. He said the Commission could turn to the mayor to spend the \$40k and layout Cedar Brook Way. Mr. Claus said the Commission could require Mr. Doyel to dedicate the road he should get back close to \$400k-500k on what the slope and wetland easements and road are taking. He asked what would happen if Mr. Doyel gets money for the slope and wetland easements that cannot be removed and the road is stopped. Mr.

Claus said they could not build and they would not let that happen. He said nobody seems to understand that it does not matter how much you cooperate or try to work with people you don't get anybody looking at the issues. The issues are simple, if you don't want Cedar Brook Way, take it out and tell staff to take it out. If you want it, take the \$40,000 and design it. He said to pay Mr. Doyel his money for the exactions, work with ODOT on the crossing, and then finish that district. Mr. Claus commented that the way the city was doing it was restraining trade so that they could not compete against the Urban Renewal District. Mr. Claus commented that Beery, Elsner, Hammond were a material part of that and he did not know the solution, but his guess was that it would occur in mediation in court, because nobody was even looking at this.

Chair Simson closed the public hearing and said it was not the first evidentiary hearing and the Planning Commission was not obligated to accept the continuance. She added that because it was an appeal, and appeals in Sherwood are done on the record only, no new evidence would be accepted. It was possible for the Commission to continue deliberation to a future date, but was not obligated to keep the record open. No requests to continue by Commission members were received. The Commission began deliberation.

Chair Simson asked for a final staff report.

Brad indicated that the application was beyond the 120 day and the applicant has agreed to toll the 120 days by 30 days to allow for the appeal hearing and that time period ended at 5 pm the following day. Brad said that if the Commission wanted to continue the hearing they would have to ask the applicant to toll their time.

Brad said there were a few things he wanted to comment on. He said that all of the issues brought up by the appellant had been addressed in the Hearings Officer's decision. Brad did not hear anything new from a staff's prospective that was not in the original record or considered by the Hearings Officer. Brad said he heard that the abandonment of the road was a gift and explained that when a road is vacated half of the road goes to the property where it was originally taken from and half goes to the other property where it was taken from. It is not a gift, but land that was originally part of those properties that was taken for public purposes and at some point not needed and vacated. Brad said that happens all the time.

Brad explained that the site plan included both parcels of land. He said it was not looked at as one parcel of land individually, we looked at the site. He said that City staff has been pursuing compliance with the applicant for well over a year and the application was submitted in September. The applicant has been made aware that the house is not to be used as a business, the gentlemen is a contractor and parks his equipment there when he is home. He has not come in for a home occupation permit, so we do not assume that it is acting as a business.

Chair Simson asked about looking at the application based on the impact that it would make. She compared it to an application in old town some years ago that had some non-conforming issues, but the Commission chose to review the parts of the site that would be impacted. She asked if this was a fair method.

Brad confirmed and illustrated that if the application had been processed as a major modification to a site plan then the review would be limited to the scope of the work. He said staff was specific that the

application should include the entire site so that all of the issues could be reviewed. That included consideration if the city could require dedication of Cedar Brook Way or frontage improvements on Pacific Hwy and all of those items were taken into consideration for the entire site not just the area for the parking lot. Brad said regarding how proportionality was defined that staff looked at traffic a use generates and how it would impact the street system. He said staff could not find anything that would allow us to proportionately say that they have impacted that transportation system to the point that we have to further exact improvements or right of way dedication from them. He said the that the city could go through and negotiate for that right of way in the future or the Claus family could not come in an negotiate that right of way with the Doyels to get their property served by that future extension. Brad said it was a right of way in the Transportation System Plan and a collector status road. If they were to buy that right of way and develop out as a collector status road they would get System Development Charge credits for the transportation development access toward the completion of that road.

Chair Simson asked if it was fair to assume that if the non-conforming use were to be an application that's what the trigger would be because it would change the trip generation. Brad responded that if the house was converted to a contractor's yard another review and evaluation would take place. He commented that the minimum lot size in the commercial zone is 10,000 square feet and a small coffee stand that would generate a lot of traffic could be developed on the site and need access through cedar brook way. He said that would trigger the need for those improvements.

Chair Simson said she had reviewed the record. She confirmed that the Hearings Officer was a land use attorney and said she found his findings to be complete in addressing the issues that were raised. She asked if there were any other comments or questions for staff.

Commissioner Cary asked for clarification regarding who would pay for this portion of the road when this property gets developed. Brad responded that it would depend on who needed the road giving the example that if a portion of the site were redeveloped and access was needed then the developer must provide access to an improved public street which is typically done by dedicating the right of way and doing a 3/4 street improvement. The city could decide that it wanted to pursue construction of the right of way and City Council makes it a priority to allocate funding towards that improvement. Or the Claus, Shannon, or any family that would benefit from having that right of way extended could approach Mr. Doyel about purchasing that land for the purpose of putting in the right of way and making the improvements. He reminded that those improvements could receive Transportation Development Tax credits.

Chair Simson referred to Exhibit 3 and commented that the table reiterates and answered the questions she believed the appellant had brought forward.

Brad was about to enter exhibits into the record when Chris Crean interjected that the code is clear that no new evidence can be accepted at an appeal. He said this appeal hearing is on the record and no new evidence can be accepted and anything that was given to staff becomes a public record, but should be rejected by the Commission and not considered. Brad asked regarding the presentation given by the Clauses. Mr. Crean responded that it was okay and had already been seen by everyone. Chair Simson commented that it was a reiteration of the document submitted. Mr. Crean agreed and said any additional documents outside of the record, pursuant to the City code, cannot be accepted and

considered by the Planning Commission. Mr. Crean indicated that it would be best to have an express motion from the Commission to indicate such. (See record, Exhibit 6)

Motion: From Vice Chair James Copfer for the Planning Commission to deny the appeal, find that there is no basis for reversal or repeal, and affirm the Hearing Officer's decision; and in doing so adopt the findings within the Hearing Officer's final order and the staff report, excluding any additional documents or materials presented in this evening's appeal hearing. Seconded by Commissioner John Clifford. All present Planning Commissioners voted in favor (Commissioner Lisa Walker was absent).

9. Adjourn

Chair Simson adjourned the meeting at 8:56 pm.

Submitted by:

Kirsten Allen

Kirsten Allen
Planning Department Program Coordinator

Approval Date: February 11, 2014