
City of Sherwood, Oregon
Planning Commission Meeting Minutes
June 24, 2014

Planning Commission Members Present:

Chair Jean Simson
Vice Chair James Copfer
Commissioner John Clifford
Commissioner Beth Cooke

Staff Present:

Brad Kilby, Planning Manager
Bob Galati, Civil Engineer
Michelle Miller, Senior Planner
Kirsten Allen, Planning Dept. Program Coordinator

Planning Commission Members Absent:

Commissioner Russell Griffin
Commissioner Sally Robinson
Commissioner Lisa Walker

Council Members Present:

Mayor Bill Middleton

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 minutes, a public hearing for PUD 14-01/ SUB 14-01 Cedar Brook PUD, and a public hearing for LA 14-01 Kelley House Addition

3. Consent Agenda:

- a. May 27, 2014 Planning Commission Minutes

Motion: From Commissioner Beth Cooke to approve the Consent Agenda as amended. Seconded by Vice Chair James Copfer. All present Planning Commissioners voted in favor (Commissioners Russell Griffin, Sally Robinson, and Lisa Walker were absent).

4. Council Liaison Announcements

Mayor Middleton stated that the Transportation System Plan update was passed by the City Council with the Planning Commission's amendments.

5. Staff Announcements

Brad Kilby, Planning Manager, stated there would be no meeting on July 8, 2014 and gave an overview of the upcoming projects in the Community Development Department that would be heard by the Planning Commission:

Sanitary Sewer Master Plan

Storm Water Master Plan

Sherwood West Concept Plan

Tonquin Employment Area (working with Washington County for a Countywide Industrial Lands analysis)

Cedar Creek Trail

Private Development by application

Brad indicated that on July 22nd the Commission would hear the application for an expansion of the Springs Living facility through a Planned Unit Development.

Bob Galati, City Engineer added that there would be an implementation and rate study that would take place as a follow up to the Transportation System Plan update. He discussed an internal process that was underway regarding the traffic calming issues near Lynnly Way and said there were several neighborhoods with traffic calming issues. Bob said that the process involved Public Works, the Police Department, TVF&R, Engineering, the Community Development Division, and City Management. He revealed that staff was in the process of creating the policies regarding traffic calming and said the city was trying to solve the problem by enforcement action first so there was a clear distinction between traffic flow and traffic speed with traffic safety as a priority even if it was a high volume problem. Bob commented that the question of how to fund it has not been resolved.

Chair Simson asked how long it would take to create a process. Bob answered that it would be three to four months.

Chair Simson asked for Community Comments.

6. Community Comments

Robert James Claus, Sherwood resident commented that the Planning Commission was supposed to make public policy and the staff was to administer it. He commented on the development and use of computer models for predicting and visualizing land use planning and zoning and said the rapid transit district was a result of that visualization and that it was used by W.A.C. Bennet in Whistler, B.C.

Mr. Claus commented on traffic speed and said that the Planning Commission needed to visualize the town for what was wanted. He pointed out that some uses would be crowded out, because the transportation cannot carry it. Mr. Claus set Dr. Doyel's property as an example and said Dr. Doyel had half of [the parking] that was needed. Mr. Claus commented regarding the National Academy of Sciences Transportation Research Board, said it was not a government agency, and stated that they look at the computer models and how many parking spaces were needed per thousand square feet. Mr. Claus commented that Dr. Doyel resolved his parking issues at a huge expense and that it would happen in other places in the city.

Mr. Claus spoke of when urban renewal was planned in San Francisco and said models were used by the consultants who were able to forecast to the point where a ferry was needed. He said that there are people who can do that, but City planners cannot. Mr. Claus suggested that the Planning Commission would have to make choices as a policy making body and said there were riparian corridors to protect. He commented that the city was postured to take the step of conceptualization. Mr. Claus stated that the Planning Commission was to make policies and staff should go to the expert communities in the country that inform what should be done in order to sustain a livable environment.

Mr. Claus commented on past traffic models and said the traffic circles would not carry demand. He commented that it meant there would be huge expenses to redo things in the future. Mr. Claus commented that some of the things that have been done in this town will begin to have incredible traffic shocks.

With no other community comments Chair Simson turned to new business.

7. Old Business

a. Public Hearing – PUD 14-01/SUB 14-01 Cedar Brook Planned Unit Development (PUD) - continued from June 10, 2014

Chair Simson stated that this was a continued hearing, reviewed the order of testimony, and asked for any ex parte contact, bias, or conflicts of interest from Commission members not previously disclosed. She reminded that the Planning Commission would be forwarding a recommendation to City Council and would not be making the final decision. There were no disclosures.

Chair Simson asked for a staff report.

Michelle Miller, Senior Planner, stated that the Planning Commission had continued the hearing from June 10th and had directed the applicant to provide additional information. She said the applicant had provided Exhibits L through P in the packet, which included a memo addressing some of the exceptions to the standards, maps, an example of Covenants, Conditions, and Restrictions (CCR's), and parking district information. Michelle indicated that a letter had been received by Mara Broadhurst and an email from Joe Broadhurst with concerns about the PUD (see Planning record, Exhibit Q). She said the letter questioned parking issues and if the density could be reduced to add additional parking. Michelle explained that the parking requirements consider the net developable acreage and it would not influence density to add parking spaces to the project. She said the letter also questioned rezoning to neighborhood commercial or an alternative to the commercial designation, but that was not what the applicant proposed so an alternative to the zoning had not been reviewed in detail. Michelle stated that there are additional commercial parking nodes within the area at Dr. Doyel's office building, a commercial area adjacent to the site, with more commercial areas to the south on the other side of the highway. Michelle indicated that Bob Galati, the City Engineer, was present to address the storm water and bonding for the trail to Wyndham Ridge.

Bob Galati explained that the storm water issue came up in the letter from Mara Broadhurst and explained that the storm water was not directly discharged to the creek under normal flow conditions. He said the storm water needed to be treated by going through a water quality facility using Clean Water Services (CWS) design standards. Bob described that there was an existing water quality facility that may need to be upgraded to handle the additional flow going to it. He stated that when there is a high flow event and the storm water overflows it can be discharged to the stream, because the volume of the water that discharges from the system is mixing with some delusion and that is why CWS allows that to happen. Bob pointed out that the engineer of record would have to ensure that the design parameters meet a storm water quality event.

Bob said there were a couple of ways of dealing with the trail bonding, but in the City Municipal Code under Construction Permit (see section 16.108.020.d, Improvement Guarantees) when building public infrastructure as part of the construction process the developer provides the City with some sort of surety guarantee that the facility will be built within the timeframe of the overall site development. He explained that a bonding for the facility means that it is going to be constructed during the same timeframe that the rest of the site and the bond covers it in case the developer fails to do so. In which case the City picks up the project and finishes it. Bob said all the internal streets in the project are going to be bonded for all of the work done there and if the developer fails to complete them then the City will take the bond and finish it. He said providing a bond for a long term promise to construct a facility was different and he had not had a bond issued to construct something with an indefinite time period. Bob said that if the developer wished to forestall building an infrastructure item, for a longer period of time, then it would be something similar to a cash equivalency.

Chair Simson commented that Condition F.5 was a condition that the developer will design, construct or pay a fee in lieu of in some form of a bond process guaranteeing to build the trail or pay 125% of the cost to get their building permits for the houses.

Bob responded by referring to another DR Horton project in the City where they have building permits, but cannot get occupancy until the infrastructure is completed. He explained that in certain cases the developer may want to bond for a construction process at 125% of the construction cost, but generally the public infrastructure items are completed before occupancy is granted. Chair Simson pointed to condition G.5 regarding the pathway. Bob confirmed and stated that was how it would work when using a bonding scenario. He said if it was an extended project and the developer wanted to hold off for a couple of years, he did not think the surety company would issue a bond. Usually a bond company does not like that uncertainty. Bob stated that if it took an extended period to build and include occupancy for the rest of the facilities, it would usually be a cash equivalent and according to code the City will accept a performance bond, a cash deposit or an irrevocable standby letter of credit. He explained that the last two items mean that the money goes into a bank account and is available to the City, and the City can reimburse money to the contractor as they construct it. Bob acknowledged that it was a heavy hammer, but the only way he knew of to work the scenario. Bob confirmed with Chair Simson that the correct conditions of approval were in place.

John Clifford asked if the plan was conceptual or if an engineer had inspected the site to determine the cost of the infrastructure. Bob replied that there are industry standard estimates that are within 10-15% of the actual cost and with a little extra for all of the unknowns the estimates are fairly accurate so the contractor knows the amount up front and the City would confirm the amount by matching it against other projects.

Commissioner Clifford asked if the existing storm water facility as it stands now had ever gone over capacity. Bob replied that there has not been a capacity problem; that it lacked maintenance at times, but it was a stable system and performing well.

With no other questions from the Commission, Michelle addressed a scrivener's error on page 9 of the Planning Commission Packet dated June 10, 2014 and asked to delete "amount would be" on the second line under Option 4. She asked if the lot depth was necessary on the chart on page 19 and which lots would not meet the lot depth standard of 80 feet. Michelle turned to page 23, and discussed the design standards for townhome developments. She said the building would go through a process of final development approval and the elevations would be prepared at that time. Michelle recommended adding a condition prior to final development approval to "provide plans that meet the design criteria so that the front façade of the townhome may not include more than forty percent of the garage door area and that the roofs for each attached townhome must be distinct from the other".

Chair Simson indicated that this would be condition D.16. Michelle confirmed. Chair Simson said that front elevations for all of the buildings had not been provided and would be reviewed at final site plan approval. Michelle indicated that the applicant had provided an architectural pattern book and had indicated that they would provide plans that will meet the criteria, but it could not be confirmed until the Commission reviewed each house plan and townhome unit individually.

Michelle said that during the applicant's testimony they referred to the trail connection as part of the Cedar Creek Trail. She stated that the Cedar Creek Trail was currently under design review and the actual alignment will likely go on the north side of Cedar Brook Way further away from this development. Michelle added that

the proposed trail in this development will not be part of the Cedar Creek Trail, but may serve as a connection point as the Cedar Creek Trail gets developed over time.

Michelle asked for any questions for Staff from the Commission. There were none.

Chair Simson asked for applicant testimony. She asked the applicant if they understood Condition D.16 that the final elevation would need to match the townhome design standards. The applicant confirmed.

Steve Miller, with DR Horton Homes, indicated that he had submitted information to answer the Commission's questions as stated by staff. He said they had prepared a parking layout (see Planning record, Exhibit M) with locations for the fire hydrants. Mr. Miller stated that they would prefer to relocate the fire hydrant shown on the Street A from the west side to the opposite side to retain the parking space. He said there was a fire hydrant along the west side Cedar Brook Way that would remain and reduce the proposed parking by one.

Mr. Miller indicated that a color coded map was provided showing the setback reductions (see Planning record, Exhibit N). He related that in every proposed unit the minimum side yard setback would be four feet and in some instances the setback would be greater; Lots 1 and 28 would be greater than four feet from the street because of the sidewalk or open space tract. He said Lot 53, which was a pie shaped lot, had a distance of four feet near the alley, but increases towards Cedar Brook Way.

Mr. Miller indicated that the smallest front porch setbacks were at the attached units on the interior lots and next to the open space which would be a four foot setback. He acknowledged that it was a tight setback on the lot, but then the open space acts as a buffer to the street so the setback is much greater in relationship to the street. Mr. Miller indicated that the setbacks for Lots 1-38 would have a fifteen foot rear yard setback so there will be reasonable rear yards for those homes. He specified that the single family detached homes have a range of setbacks depending on how they interface with the street and the street design. The street meanders around the bend which has an impact on some of the setbacks.

Mr. Miller said another issue that was brought up by the Commission was regarding a fourteen foot setback. He recounted that his company researched some of the past Planning Commission decisions for DR Horton projects and discovered that setbacks were not an issue for the zone change for this property and the Planning Commission requested a fourteen foot setback for another project, known as Daybreak Subdivision which was a more standard residential density zone.

Mr. Miller talked about the hearing on June 10, 2014 where staff expressed concerns for the units fronting Meinecke Parkway. He said a document was submitted to the record as Draft CCR's (see Planning record, Exhibit O) and within those CCR's there was a provision requiring that garages be made available for parking and storage cannot be made to the detriment of the parking. Mr. Miller asserted that any homeowner who purchased property in the subdivision would know, up front, that this was a requirement that must be adhered and would be enforced by the HOA.

Mr. Miller stated that they were trying to set up a process that allowed them to build homes and get the trail done in a manner that recognizes an extensive permitting process with Clean Water Services because of the wetlands. He said it was a very time consuming process that could last up to a year depending on the issues that arise. He wanted to be allowed to build homes with the understanding that the trail will be addressed and taken care of prior to project completion. Mr. Miller said their preference was to bond for the trail and have the trail constructed prior to final occupancy of the last dwelling unit on the project. That would give

the ability to build and sell homes while working on the trail. Mr. Miller asked for a condition of approval that would allow DR Horton to sell homes and get the trail built prior to exiting the project. He stressed that by tying the trail construction to final occupancy of the last structure the City had a trigger to keep the developer on the hook before exiting the project.

Regarding the 80 foot lot depth, Mr. Miller said that all of the interior lots (54-65) would be less than 80 feet deep, but all of the other lots would meet the depth requirement. He said that was a result of shifting the road to get out of the wetland boundary and the lot widths were reduced in order to maintain the open space. Chair Simson asked about the lot that was removed. She indicated that it was one lot that did not meet standards and now that the lot is removed all of the lots became narrower. Mr. Miller responded that as the street was reduced the home on the lot adjacent to 54 could no longer fit and the lot was eliminated and all of the lots in that area got smaller; there was a smaller space as a result of the road shifting which had an impact on those lots. In response to Chair Simson's question, Mr. Miller said that the homes were 50 feet deep, had a rear setback of 20 feet with four feet to the front making them about seventy four feet deep.

Mr. Miller offered to answer questions from the Planning Commission. Chair Simson requested that the staff report be amended to reflect seventy four feet deep for lot 54-65. Michelle confirmed. Chair Simson asked for questions from the Commission for the applicant.

Commissioner Clifford asked about the turning radius and the removal of a parking space as designated in a letter by TVF&R (see Planning record, Exhibit F) and asked if the applicant had addressed it. Mr. Miller indicated that he thought the turning radius concern was for the alley and said the alley was made wider between lots 38 and 39. Commissioner Clifford clarified that it was regarding the "pork chop diversion" on Meinecke Parkway and A Street. Mr. Miller responded that the last parking space on A Street before entering onto Meinecke may be eliminated if it impedes movement and added that it did not put the project below the parking requirement.

Commissioner Clifford asked regarding page 42 of the June 24, 2014 packet under the CCR's Landscape section where it referenced the City of Hillsboro's approved street tree plan. Mr. Miller indicated that it was an error, which he would correct, but the intent was to show that there will be mechanisms in place to address front yard landscaping and the landscaping that the HOA would be required to maintain.

Chair Simson said there was an error in the last paragraph of page 8 which should read the parking as required by the "City of Sherwood" instead of the Planning Commission.

Mr. Miller suggested a condition of approval that the applicant work with staff to get a set of CCR's that is agreeable. Chair Simson asked that the final CCR's would be close to the draft provided. Mr. Miller agreed and added that the CCR's are recorded with the subdivision and they would be accurate. He said the intent of providing Draft CCR's was to show the Commission that all aspects of the project would be taken care of.

Vice Chair Copfer commented on the parking district information and asked about enforcement periods. Mr. Miller responded that they would work with the Police Department, but the police department indicated it was too soon. He said he believed it was a function of a condition of approval to set up a certain time frame of the project per the Commission's discretion. Chair Simson clarified that the parking district information was to inform the Commission that it was a process that needed to be completed and added to the CCR's by the HOA. Mr. Miller agreed.

Vice Chair Copfer explained that he was interested if the enforcement period has been decided; was it every day, all day or for certain hours. Mr. Miller responded that the Police Department had the expertise regarding what was not working in the area and they would work with the Police Department on the time frames. He supposed that it would be between 5 pm and up to 6 am each day. Mr. Miller offered to put language into the CCR's to indicate that there would be a parking district and homeowners would need to get permits from the Police Department. Chair Simson added that the district would have to be approved by the City Council.

Chair Simson asked what the minimum parking for the site was. She commented on the applicant's calculations for the parking with four spaces on some units, she expressed understanding that there are parking issues in the area, and acknowledged that the applicant could not be held responsible for those parking issues. Chair Simson commented that by counting the driveways (92 spaces) and off street parking (76 spaces) there were 168 available spaces. She said that a basic single family residence requires two spaces or about 130 spaces for a sixty five lot subdivision, plus 15% for visitors would require 150 spaces. Vice Chair Copfer stated that the applicant had enough parking. Mr. Miller commented that they had four spaces for all of the detached single family units and the interior units, but the units along A Street had two spaces counting the driveway and the garage.

Chair Simson replied that she wanted to put a reasonability test to the parking. Vice Chair Copfer commented that the parking in the area was very sensitive and he wanted it understood that the parking problems were existing and the Commission could not make the applicant responsible for addressing the parking problems beyond the parking required for the new application. He said the Commission would not have the applicant design the parking in such a way that it fixes existing problems.

Commissioner Clifford asked regarding the HOA being responsible to enforce the rules found in the CCR's once the project was built and the homes are sold.

Mr. Miller responded that enforcement would come from the homeowners with the help of the property management company. He said that the HOA often depends on the property management company to do the "heavy lifting" for enforcement to soften the impact from neighbor to neighbor. He added that it was DR Horton's goal to set up the project with all of the design elements to make it successful. Mr. Miller added that they are in the business of selling homes and would not be able sell homes if the project did not work. He specified that the developer stayed with the HOA until the project reached 80% or more of the homes sold, by that time there are neighbors who want to be involved with the HOA, and it has not been a problem with other projects to get the HOA transferred to the homeowners. Mr. Miller stated that during the time that DR Horton runs the HOA they conduct meetings, get the neighbors familiar with the property management company, CCR's, bylaws and how to run the program.

Commissioner Clifford said he was familiar with how an HOA runs as he paid HOA fees for services himself. He asked if the property management company would help maintain this subdivision. Mr. Miller confirmed, but said there are HOA's that choose to do it on their own. He commented that fees would be relative to open space maintenance and amenities and suggested that when the fees are too high people are not interested in maintaining the HOA.

Commissioner Clifford commented that without an outside management company it is difficult to get some homeowners to comply with certain rules and regulations. Mr. Miller agreed and added that the property management company relieves the burden of putting together a budget, and as a third party, there is more confidence in the members with regards to their money being safe.

Vice Chair Copfer asked if the HOA would have to vote out the property management company. Mr. Miller confirmed.

Commissioner Cooke asked if the builder had any control over if the management company was retained. She commented that HOA's often decide not to use professional management companies after turnover due to the cost.

Chris Crean added that in some cases HOA's cease to operate, in which case the care and maintenance of common elements becomes an issue. He gave that when the grasses become too high it becomes a fire danger and the City of Sisters has provisions in the CCR's that allow the City to go in and cut the grass. Mr. Crean gave an example that, in Multnomah County, when the HOA ceases to exist those common elements fall to the County through property tax foreclosure which is a different sort of problem. He related that staff had asked him to look into how to add provisions to the CCR's to allow the City to go in and at least mitigate maintenance issues and asses the cost against benefited properties. Mr. Crean said that if a HOA ceased to operate it could allow the City to maintain those common elements so weeds would not get too high and allow the trees too become dangerous. He allowed that there would be time to make those revisions before the CCR's were approved.

Mr. Miller said that their attorneys could work on that language with the city attorney. He said with open space there are not many another ways to address managing them besides some type of HOA and there has to be a balance between the objectives of a PUD and the open space. Mr. Miller stated they wanted CCR's that addressed the Commission's concerns and would work with staff to ensure that the language was worded correctly.

Commissioner Cooke expressed concerns that the development would become mostly rental units and advised that failed HOA's come from neighborhoods that are no longer owner occupied. She said she would feel more comfortable if the City had the ability to move in and do the required maintenance if the HOA fails.

Chair Simson commented that it was a condition of approval that the CCR's have to be approved by staff. Vice Copfer commented that he understood the concerns and said he thought CCR's had a purpose, but if the residents voted out the CCR's by majority vote they would be removed and there is no guarantee.

Chris Crean agreed that in the strictest sense CCR's would be a contract between the sixty five property owners, but if it was a condition of approval, removing an HOA would put all of the owners out of compliance with the land use approval. Then the City could enforce or require the property owners to adopt new CCR's. Commissioner Cooke related that she was more concerned about the HOA being abandoned/disbanded and that the CCR's not being enforced.

Mr. Miller commented that the CCR's can require an approval by the City to disband an HOA. Mr. Crean said that did not solve the problem, because no formal action takes place, but they stop having meetings or collecting the assessments. Chair Simson directed staff to work with the attorneys to ensure that the CCR's and the conditions of approval were clear as to what the goals and objectives were. Vice Copfer granted that HOA's fail, but in Sherwood there are successful HOA's and gave Woodhaven as an example.

Chair Simson called for public testimony and reminded those interested in testifying to turn a blue testimony form.

Robert Claus, Sherwood resident suggested that Mr. Crean read John Hanna's book on condominiums and said in his experience people did not walk away from HOA's, because they could not afford to and a chance of litigation.

Mr. Claus commented that DR Horton had been very solicitous and reasonable. He said that there is no planning in the United States in the urban renewal guidelines for fish and wildlife and pointed out that the U.S. Fish & Wildlife had built the refuge systems specifically for the fish and wildlife. Mr. Claus commented regarding concerns about feedersstreams and creeks going to the refuge being clean enough for a sustainable environment which was more sensitive. Mr. Claus gave a brief history of the site and said the property was originally owned by Howard Hadley who gave a buffer of Chicken Creek to then City Manager, Jim Rapp. He commented about the placement of the sewer line next to the creek assuming the sewage would flow because the creek did and the lack of mitigation. Mr. Claus expressed concern regarding the area that opens up on Cedar Creek for fish and wildlife and said he went to Barbara Roberts, because he did not want a path there. He said there were a number of endangered birds that will not nest near a path and a problem was that the U.S. Fish and Wildlife could not come in to plant, work with property owners, or send a specialist without an invitation from the City. Mr. Claus commented that DR Horton was capable of doing the work and they were willing to help. He said his family had spent a fortune in the vegetated corridor and that there was a beaver living there that was taking down trees, but he did not want it trapped. He asked the Planning Commission to direct staff to work with the U.S. Fish and Wildlife and said Handley Street is set too low, degrading the watershed. Mr. Claus commented on the need for a management plan and said there was plenty of water. He said if the City started planning for the fish and wildlife inside zoned areas it would be the first city in the United States do to so and it might mean stepping on some toes. Mr. Claus concluded that if the City did not initiate it, it would not happen.

Jennifer Harris, Sherwood resident asked what the option of adding in the CCR's a percentage cap on rental units and said she lived in a condominium community that had a cap on the rentals that the entire community had. She said she did not know if that was an option, but neighborhoods with more than 50% rentals tend to go a different direction.

Chair Simson thanked those who testified and acknowledged the written testimony from the Broadhursts and said the Commission addressed the comments, questions and concerns at the beginning of the hearing.

With no other public testimony, Chair Simson asked for rebuttal from the applicant.

Steve Miller from DR Horton came forward and stated that they had met with Mr. Claus to address some of his concerns and said something could be worked out regarding the number of rentals in the CCR's. He said that he would have to work out with the company president and the City to find out what the acceptable percentage was.

Chair Simson acknowledged the concerns that rental units become a potential opportunity for issues, questioned how the City could regulate someone's right to rent out their own property, and said she did not know how that could legally be done in the CCR's.

Chris Crean said the CCR's are a contract between the property owners. From the City's perspective, he would not be comfortable requiring that as a city mandate. He said the property owners could choose to add verbiage to the CCR's as a contract among themselves and enforce it however they choose, but the City would not require or enforce it. Chair Simson said she did not want to set that precedent.

Commissioner Clifford recognized that this was a large project smashed into a small space and asked if the storm water facility proposed was based on current documentation. He said it looked like a successful upgrade was feasible and another facility won't need to be constructed for storm water management.

Mr. Miller responded that if there was a need to go elsewhere, there was another storm water facility southwest of the roundabout on Cedar Brook Way. He said they did not want to use that facility because the larger facility made more sense. Mr. Miller said they could split the capacity but that would not be the preferred choice. Commissioner Clifford indicated that he did not want any of the people oriented open space tracts to be used for storm water management. Mr. Miller answered that there was no proposal to do that at this time.

Chair Simson asked the Commission if there were any issues that had not been adequately addressed and asked for clarification from staff regarding Conditions F.5 and G.5.; the pathways connecting to Wyndham Ridge. She summarized that the applicant was asking for final occupancy for sixty four of the sixty five lots before the amenities had to be completed and asked the applicant how long the applicant thought it would be to project completion. Mr. Miller responded that the project would take sixteen months obtaining building permits for four units per month. Chair Simson reminded Mr. Miller that he said it would take about a year to go through the permitting process for putting the trail in and asked if it would be unreasonable to condition the trail completion to be within a twelve month timeframe with a certain percentage of the lots being permitted. She expressed that she did not want sixty four lots built with final occupancy and have none of the amenities completed. She said if the developer worked on lots while going through the permitting process for the trail then at the time forty lots are done the City could expect work on the trail.

Mr. Miller responded that there was the permitting plus the building of the trail. He suggested tying the condition to the last multifamily unit. Chair Simson indicated she wanted it tied to something that protected the community's investment in the project. Mr. Miller commented on bonding the project so the funds are there to build the project. He said the trail would be the only amenity left during the build out of the project; all of the other open space areas amenities, road and infrastructure would be constructed at the same time as the houses. Mr. Miller said they wanted to work with the City regarding the trail due to the complexity of getting the permits and then getting it built. Chair Simson asked for and received confirmation that the parks and open space would be done much earlier than the trail. She recounted that the open space conditions would be met and the trail could be tied by condition to the last phase of development. Mr. Miller indicated that they wanted to be able to sell homes while trying to get the trail permitted. Discussion followed.

Mr. Miller commented that there had been questions from staff that had been resolved; the fencing along the east property boundary separating the apartment complex and fencing for the pedestrian access through the apartment complex.

Chair Simson closed the public hearing and asked for final comments from staff.

Michelle Miller, Senior Planner, responded that the only outstanding issue was concerning the bonding for the trail portion and deferred to Bob Galati. She said that Chair Simson had addressed concerns about timing and said that leaving a single unit for final occupancy might be held out for an extended period of time creating a challenge for the city to get the trail built.

Bob Galati said that the city was currently working with DR Horton on another development project and had opted to do two compliance agreements. The first compliance agreement related to the majority of the infrastructure which allowed DR Horton to begin construction, get the lots sold, and to receive occupancy

for a majority of the site. Bob said the City could use this option of two compliance agreements for the bonding of the trail with a condition that reserved occupancy for a certain number of units until the trail is completed. He did not indicate what that proportion should be and said it would be a balancing act between the cost of the trail being completed and the cost of the units reserved. The need to complete the trail would be driven by the desire to sell the units.

Chair Simson asked Commission members if they had a number to propose or suggested that staff create a cost comparison so the recommendation to City Council included an analysis of the proportionality. She said the Commission could make a recommendation for that final percentage or insert the number in the recommendation at the City Council hearing.

Brad Kilby, Planning Manager expressed concern regarding how proportionality was defined. He commented that if the Commission's concern was that the trail was constructed, then there needed to be some rationale behind the condition. Discussion followed.

Chair Simson offered all but thirteen units be allowed occupancy based on twelve months to permit the trail. Vice Chair Copfer suggested that if they intended to put four permits per month then occupancy for the last four units should be withheld. Brad pointed out that four units was a significant amount of money and DR Horton was not likely to walk away from that.

Brad added that the City does not enforce CCR's and the Commission can ask the applicant to add provisions to them, but from the City's point of view the public amenities have to be maintained through the CCR's. He commented that limiting the number of rental units in a subdivision may eliminate affordable housing options in the long term and said that not all renters are bad people. Brad remarked that our kids are not going to be able to afford a house at \$350,000 in Sherwood and the Commission should think about housing options for people that may not have assets available.

Commissioner Cooke commented that a neighborhood with rentals may not be a bad neighborhood, but in terms of an HOA, they become abandoned more often. Brad concurred and commented that the owners would fight on behalf of the HOA to protect against bad renters, that there are checks and balances, but the City cannot control it.

Chair Simson called for a recess at 8:34 pm and reconvened at 8:44 pm. She said she spoke with Bob Galati and Brad Kilby during the recess regarding the conditions so clear direction was provided for the staff report and the conditions that would be forwarded to City Council. Chair Simson reviewed the conditions that had been amended or added:

D.16 – Added to *provide plans that meet the design criteria so that the front façade of the townhome may not include more than forty percent of the garage door area and that the roofs for each attached townhome must be distinct from the other.*

F.5 – Discussed but no changes made

G.5 – Amended to read *Construct and install the pathway and other open space amenities described in the final development plan, excluding the trail connection conditioned in G.7*

G.7 – Added that the *Trail must be completed prior to the final occupancy permits issued to one of the following; one townhome building or three single family homes at the builder's discretion.*

The following motion was received.

Motion: From Vice Chair James Copfer to forward a recommendation of approval to the City Council for Cedar Brook Subdivision Planned Unit Development (PUD 14-01, SUB 14-01) based on the applicant testimony, public testimony received, and the analysis, findings and conditions in the staff report including the amendments discussed by Commissioner Simson. Seconded by Commissioner John Clifford.

Chair Simson asked for discussion from the Commission

Commissioner Beth Cooke commented that this had been a very difficult development for her to review. She thought that the current laws and zoning left few choices regarding approval of the application and when the land use laws were changed in the 1970's she did not think this was the kind of development that lawmakers thought a PUD would be. Commissioner Cooke expressed that even with the open spaces provided by the applicant it does not seem sufficient for families and she had serious concerns about the parking issues. She commented on removing a few homes from the development and said having a minimum of 65 homes for a development of this size seemed like cramming them in and she did not think this was the type of neighborhood that we should be looking at for the benefit of the city. Commissioner Cooke recognized that legally the Commission was in a difficult position.

Chair Simson acknowledged Commissioner Cooke's concerns and stated that the alternative was 65-90 apartment units. She argued that the benefit a PUD provided was the opportunity for more single family homeownership and she thought there was parking for their own, but would likely inherit the neighbor's parking problem.

Vice Chair Copfer commented that the applicant has a good parking plan and a way to mitigate the neighbors' issues. He said the applicant was providing more parking than anywhere in the Woodhaven Subdivision and remarked that if the alternative was a development exactly like the one on the neighboring property, he would prefer to see a nice neighborhood development for single family.

All present Planning Commissioners voted in favor (Commissioners Russell Griffin, Sally Robinson, and Lisa Walker were absent).

Chair Simson moved to the next item on the agenda.

8. New Business

a. Public Hearing – LA 14-01 Kelley House Addition Landmark Alteration (Brad Kilby)

Chair Simson read the public hearing statement and asked for any ex parte contact, bias, or conflicts of interest from Commission members.

Commissioner Cooke disclosed that her children went to the same school as the applicant's and she heard about the application from the applicant's wife before public notice had been made. She said the conversation regarded adding on to the house and she stopped it when she realized it would require action before the Planning Commission. Commissioner Cooke said it would have no bearing on her decision.

Chair Simson noted that everyone had driven past the site to reach City Hall and asked if any member of the audience wished to challenge any Planning Commission member's ability to participate. None were received.

Chair Simson asked for a staff report.

Planning Manager, Brad Kilby gave a presentation for LA 14-01 (see record, Exhibit 1) and said it was the blue house on the corner of First and Oak Street. He said the applicant was proposing a 1500 square foot addition to the home and because it was in the Old Town Overlay had to meet the design standards. Brad explained that the applicant's proposal was consistent with City design standards, but the setbacks were outside what would normally be allowed and non-conforming. He pointed out that it was a pre-existing condition, the house was built on a 50 x 100 site, and the addition would be built in the same plane as the house so the setback was not encroached upon further nor was it exacerbated. Brad said there was a street between the house and the next house over so he did not see a problem. Staff recommended approval of the proposed expansion.

There were no questions for staff. Chair Simson asked for applicant testimony.

Rob Kelley, 22455 SW Oak Street noted that the only change to the proposal was to put lap siding on the house with a seven inch reveal which is different than the existing eleven inch reveal. He said that what the Planning Commission had before them was what the applicant intended to do.

John Clifford asked regarding placing an overhang on the front door. Mr. Kelley responded that the existing overhang was six inches and a six inch of overhang over the front door would look odd. He said he would like to put a dormer over the door and may apply for a variance in the future unless the Planning Commission wanted to grant it. Chair Simson received confirmation from staff that a dormer would encroach in the setbacks and said because the applicant did not apply for the variance, nor was it noticed, the variance could not be granted.

Mr. Kelley clarified that the addition was just under 1500 square feet.

Chair Simson asked regarding the existing tree. Mr. Kelley indicated that the tree would be trimmed, but would remain. He asked if permission needed to be granted to cut the tree down. Mr. Kelley was informed that when a tree is not a street tree, the homeowner can remove up to five trees or 10% whichever is less with a requested 24 hours noticed.

Commissioner Clifford asked if the lap siding would allow for a "belly band". Mr. Kelley confirmed.

With no other questions for the applicant, Chair Simson asked for public testimony and indicated that the applicant had 28:44 for rebuttal.

(Note: Mr. Claus' testimony was difficult to hear from the audio/video recording. Below is a synopsis of what was said from what could be heard on the recording and the notes taken.)

Robert James Claus, Sherwood resident commented that he rebuilt the hotel, the Robin Hood Theater and two older houses in Sherwood. He said he was in favor of the application. He spoke of specification and performance codes and said the Uniform Building Code starts with performance and moves into specification. Mr. Claus said he hoped the Commission ensured that the house had the ability to go back and commented on a remodel compared to a restoration. He commented that older building materials cannot conform to today's standards because they do not meet specifications, and allowances should be made for performance values.

Mr. Claus spoke of buildings in London that were seven hundred years old that were exactly replicated with the only thing that had changed being superior materials. He commented that some buildings in Sherwood Old Town have been remodeled not restored, and that Sherwood had lost some architectural gems. Mr. Claus encouraged the Commission to visit the restored district in San Francisco. He discussed the elements in the Robin Hood Theater; perfect acoustical sound, acting stage, organ, crying room, restroom and theater

purchase area. Mr. Claus commented on the demolition of the theater and said the one in Newberg went down in an earthquake.

The applicant declined rebuttal testimony. Chair Simson asked for final comments from staff.

Brad Kilby responded that he looked through the historic preservation records for this house to see if it had been considered a historically significant home. He said that in the 1989 version of the city's historic survey there were specific houses and properties within Old Town that were referenced and this one was not. Brad said the property was a candidate a couple of years ago, the City does not have any properties designated as historically significant, but everything in Old Town is considered a landmark.

Motion: From Vice Chair James Copfer to approve the Kelley House Addition (LA 14-01) based on the applicant testimony, public testimony received, and the analysis, findings and conditions in the Staff Report. Seconded by Commissioner Beth Cooke. All present Planning Commissioners voted in favor (Commissioners Russell Griffin, Sally Robinson, and Lisa Walker were absent).

9. Planning Commissioner Announcements

There were no Planning Commissioner Announcements

10. Adjourn

Chair Simson adjourned the meeting at 9:07 pm.

Submitted by:

Kirsten Allen

Planning Department Program Coordinator

Approval Date: _____