
City of Sherwood, Oregon
Planning Commission Minutes
August 28, 2012

Commission Members Present:

Chair Allen
Commissioner Copfer
Commissioner Griffin
Commissioner Cary (via phone)
Commissioner Clifford (via phone)

Staff:

Julia Hajduk, Planning Manager
Brad Kilby, Senior Planner
Tom Pessemier, Community Development Director
Bob Galati, City Engineer

Commission Members Absent:

Vice Chair Albert
Commissioner Walker

Council Liaison: Councilor Clark

Legal Counsel: Chris Crean

1. Call to Order/Roll Call

Chair Allen called the meeting to order and Julia Hajduk called the roll and stated that Commissioners Cary and Clifford would vote via conference call when needed for a quorum.

2. Agenda Review

Chair Allen stated he would dispense with the consent agenda, and move directly to Council Liaison comments, staff announcements, and community comments, then get Commissioners Cary and/or Clifford on the phone for the business before the commission and finish with the consent agenda.

3. Council Liaison Comments

Councilor Clark commented that the City Council passed a resolution certifying the explanatory statement for the Tonquin Employment Area Annexation to accompany the ballot title previously passed by Council which will go on the November 2012 ballot. Council also passed a resolution declaring the need to acquire property and establish agreements for the connection of SW Langer Farms Parkway to Hwy 99.

4. Staff Announcements

Planning Manager Julia Hajduk reminded the Commission of the Sherwood Town Center Open House on October 3, 2012, commented regarding the sign code amendments that have been adopted by Council and a brochure that Senior Planner Brad Kilby is distributing, and solicited attendees for Planning Commissioner training being offered by the Oregon City Planning Director's Association to be held September 27, 2012.

5. Community Comments

Robert James Claus, 22211 SW Pacific Hwy, Sherwood. Mr. Claus commented regarding the rules of the Oregon Commission of Ethics, economic interest, and conflicts of interest. Mr. Claus commented regarding the value of land and zoning, transparency of City processes and the

boundaries of volunteering for public office. Mr. Claus cited law cases concerning bad tendencies and political speech and commented on first amendment rights in Oregon.

Julia Hajduk connected Commissioner Cary via conference call.

6. Old Business

a. Public Hearing- Sentinel Self Storage Annex (SP 12-03) Continued from 8/14/12 Planning Commission meeting.

Chair Allen conferred with Julia Hajduk regarding the wording for the Public Hearing statement and stated that because the public hearing had been held at the previous meeting he needed only to ask for any ex parte contact, bias or conflicts of interest. Commissioner Cary disclosed that he had ex parte contact with Wes Freadman regarding the project and that it did not have any bias on his decision.

Brad Kilby, Senior Planner stated that the hearing had been continued from August 14 to August 28 for additional public testimony. Brad showed a presentation (see record, Exhibit 1) and reminded the commission that the subject property was approximately 55 acres that was bound by Langer Farms Parkway, a railroad, Oregon Street, and farmland to the south of the site. Brad added that the property was a portion of Lot 5 from the approved Langer Farms Subdivision that was on appeal later in the evening. Brad commented that the proposal was to construct 430 storage units on approximately 6.9 acres and stated he will speak to issues from the previous hearing.

Showing the Site Plan, Brad stated there was a secondary fire access included in his memo. Brad added that a secondary access is always recommended by Tualatin Valley Fire and Rescue (TVF&R) and Deputy Fire Marshall John Wolffe stated that with this case the secondary access was not required. Regarding ownership Brad commented that the code requires the property owner to sign the application so they are aware that an application has been filed for land use on their property. Brad stated the manager Erin at the Tualatin River Wildlife Refuge was the liaison for the U.S. Fish and Wildlife Service who indicated that the area is not in their acquisition area, even though it might be a tributary to Rock Creek and they would not have any comments over and above Clean Water Services for storm water and resource protection. Brad stated that Sherwood Building Official, Scott McKie, had indicated that a 6' x 6' bathroom was probably too small for ADA Access as the occupant needs to have a turning radius inside the stall and sink area, but the area may not need to be too much larger, possibly 7' x 7'. Brad said the applicant's representative, Chris Goodell, confirmed that the fuel would be diesel and propane as indicated in the testimony at the previous meeting and the fuel would require permits from TVF&R, but not the Department of Environmental Quality (DEQ). Brad explained that the DEQ is concerned about underground tanks and air quality. DEQ's local representative confirmed that gasoline requires permits, but not diesel and propane. Brad commented that he further questioned the applicant regarding who would use the fuel and was told it would not be open to the public but to renters in the facility who will have to prearrange a time to fill up with an attendant. Brad expounded on the TVF&R permits for the fuel stating that the seismic loads, stability of the structure, emergency shut off and spillage issues will be reviewed prior to permitting. With respect to a turn around, the applicant has proposed additional signage and a permanent land line to call the office to provide access through the gate, but TVF&R will not require a turn around. Brad added that video surveillance is not required by the code, but the applicant has maintained

that it is a common practice in the industry and they will have video surveillance of various components of the storage facility.

Brad stated that staff continues to recommend approval with conditions and suggested that if the Commission is not comfortable with the language they could add a condition requiring that the fuel access be limited to patrons who have rented space in the facility, require an ADA bathroom, even though the Building Official will require it. Brad added that the RV wash has to be designed so that the storm and sewer do not mix per Clean Water Services, water from washing vehicles is put in the sewer system, and it cannot be open above because rain mixes with the sewer.

Chair Allen stated the record was left open for testimony and asked Brad for written testimony. Brad entered and read Exhibit K, a letter from Jim Haynes; Exhibit L, a letter from Scott Haynes; Exhibit M, an email from Casey Overcamp supporting the project, and Exhibit N, a letter from Jim Claus. As Mr. Claus was present the five page letter was not read. Julia added that a letter from the Chamber was received (see record, Exhibit O), but as they were also present to testify the letter was not read. Chair Allen opened the hearing for public testimony.

Robert James Claus, 22211 SW Pacific Hwy, Sherwood. Mr. Claus expressed his astonishment at the testimony and commented regarding the 1995 code and gas stations being prohibited as an accessory, incidental, or main use. Mr. Claus commented regarding the application getting an exception and if permits are issued they are revocable. Mr. Claus commented regarding a mini warehouse becoming a ministorage, a lumber yard becoming Home Depot, and the annex being an extension of a non-conforming use which, he stated, the code bars you from doing. Mr. Claus commented regarding clarifying language in the code before Council and disqualifying the PUD, and stated it would be administering variances for self-imposed hardships because of the parceling. Mr. Claus commented on the rush to get revenues, overlooking the 95 code, and previous City Manager, Jim Rapp's dislike for mini storage, self-service, and car lots. Mr. Claus commented on the last facility of this type that came before the Commission that was "refused because it did not meet the design standards" but had the same application in a general commercial zone that staff said it conformed to the code. Mr. Claus stated there were two laws in Sherwood; laws for people that curry political favor particularly within the urban renewal boundaries, and laws for the rest of us outside of it. Mr. Claus commented that the code, fire problems, and drainage problems were being ignored and the PUD was given in order to ignore the zoning. Mr. Claus stated he would appeal the decision and he would try his best to terminate this PUD, even if it takes a lawsuit.

Leanna Knutson, 17052 SW Cobble Court, Sherwood. Ms. Knutson stated she was President of the Sherwood Chamber of Commerce and was present to give support for the Sentinel Self-Storage expansion project on behalf of the hundreds of members the Chamber represents. Ms. Knutson commented on the mission of the Chamber and stated that business development and expansion creates jobs, fuels the City's tax base, and promotes the standard of living that we love about Sherwood. Ms. Knutson commented that the Chamber supports the expansion because it supports local opportunities. Ms. Knutson commented regarding the Residences at Cannery Square stating that the Chamber wanted to offer its support for that project and like the Sentinel Self-Storage expansion the apartment complex harmonizes the economic aspirations of our community.

Chair Allen commented that the public testimony has been closed for the Capstone project and the commission cannot take that part of her testimony into consideration.

Gary Langer, 17384 SW Timber Crossing Lane, Sherwood. Mr. Langer asked if there were enough commissioners to make a decision. Chair Allen affirmed that there was a fourth Commissioner participating by phone. Mr. Langer commented that there has been a lot of research for the development of this project, it will be a state of the art facility, and he wanted to share some of the positive aspects of the project. Mr. Langer commented that there was a lot of community support, where he lives you cannot have boats, cars and RV's out, and this facility works really well for the city of Sherwood. Mr. Langer commented on the design and planning for the project and facilities in Tigard, Tualatin, Wilsonville, and the new one on Cipole Road adding that RV repair can be done on site. Mr. Langer stated he wanted to address some objections raised by previous testimony. Mr. Langer commented regarding Home Depot and Sentinel being illegally built and stated the projects were done over ten years ago and done by code and he was unsure why the issue keeps reoccurring. Regarding sewer spillage into the water, Mr. Langer stated that the facility will have a safe dump station because of design, grading and structure. Mr. Langer commented that Sentinel has been in business since 1997, has a lot of repeat customers, and is at capacity much of the time. Mr. Langer commented that there was no water stored in the farm field and there was not a well near the site that it was set up for drainage and the wetland area. Mr. Langer commented on the landscaping ordinance not being met because of the use of the term annex and stated that the application meets all of the code requirements which have been approved by staff. Mr. Langer commented that 90% of the RVs will be covered and the site will be clean as he lives in Sherwood, too.

Sandford Rome, 14645 SW Willamette Street, Sherwood. Mr. Rome commented on the term *standing* and testimony received from residents outside of Sherwood. Mr. Rome commented that he would like to see this project go forward with the added conditions for approval. Mr. Rome commented regarding long term residents, standing, and the things he has seen in this town over the years. Mr. Rome commented regarding having to pay additional taxes for repairs or changes in the City and long term residents who have also had to pay. Mr. Rome commented regarding building a state of the art facility and not having it come back to the citizens and asked how the Commission might correct the problems that arise and said the City should have an addressable procedure for fixing any unforeseen problems immediately. Mr. Rome referenced streets that were not completed properly in the past. Mr. Rome commented on the standing of the Langer family and their rights to develop their property. Mr. Rome commented on the Cannery square and standards that were not met. Mr. Rome repeated his comments regarding problems being solved and stated if it is the City's dollar it is his dollar.

Chris Goodell, representing the applicant, Langer Family LLC, from AKS Engineering, 13910 SW Galbreath Drive, Ste. 100 Sherwood. Mr. Goodell stated he prepared a memo regarding the questions from the Commission at the last hearing that was included in the packet which included business operations. Mr. Goodell commented that the fuel in question will be diesel and not gas. Mr. Goodell stated there were project engineers, and the owner/ operator and applicant, were present to answer any questions. Mr. Goodell asked for the Commission's approval.

Wes Freadman, 21315 SW Baler Way, Sherwood. Mr. Freadman stated he was a supporter of the project and commented that all of the problems have been addressed. Mr. Freadman commented that Sentinel was at maximum capacity and if Sherwood residents did not want a storage facility it

would be empty. Mr. Freadman commented that the facility will be a good neighbor, good use of the land and tax revenue and he thought it should be approved.

With no one else signed up to testify, Chair Allen closed the public testimony and asked for any questions from the Commission.

Chair Allen asked regarding the code that applies to the project and referenced the Permitted Uses in the General Commercial Zone which states it “includes wholesale trade, warehousing, commercial storage, and mini warehousing”. Mr. Allen commented that he would have thought commercial storage as a “business that sells storage” and asked if he was reading it correctly and in the correct version of the appropriate code. Brad confirmed and stated he wanted to clarify that under the Langer PUD, the applicant is allowed to construct in phases 6, 7, and 8, uses that were permitted in 1995, as well as uses that would be permitted under today’s code. Brad stated this was his understanding of what council agreed to and was the intent in the 2007 minor modification. Brad stated that in the Staff Report it says that mini storage is a permitted use at the time that the PUD was approved and staff believes it is an allowed use in this zone.

Brad continued by commenting on the issue raised regarding Home Depot and the Sentinel Storage being illegal uses and stated that Home Depot was approved by the courts through a writ of mandamus and Sentinel Storage was approved through another action, that people had the opportunity to appeal, but those uses are allowed and in affect today.

Chair Allen commented on the issue of *standing* and stated that from a legal standpoint his understanding was standing was the ability to come and testify and if you do not like the decision to go appeal it. Chair Allen added that Land Use in Oregon is broad and everyone the Commission has heard from, has standing to be able to come and testify and carry their arguments. Attorney Chris Crean confirmed and stated that under Oregon law, at this level, any person may participate in a local land use proceeding and anyone who participates then has *standing* to appeal that decision. Chair Allen commented that the point being made regarding standing was more broad in that, irrespective of legal standing, some opinions may be entitled to different weight than others and his opinion was that any time someone comes to the Planning Commission he does not think of it as standing, but considers what their interests are. Chair Allen commented regarding a previous storage decision brought up in earlier testimony and stated his recollection differs from the testimony that was heard as the only one he could recall was the one that was built. Chair Allen stated the Planning Commission was rebuked by members of SURPAC for allowing it.

Chair Allen commented that he did not think additional conditions were necessary as they were adequately dealt with in other regulation. Chair Allen asked if other Commissioners had comments or questions. None were provided.

Motion: From Commissioner James Copfer for the Planning Commission to approve the application for the Sentinel Self-Storage Annex (SP 12-03), based on the applicant testimony, public testimony received, and the analysis, findings, and conditions in the Staff Report; seconded by Commissioner Griffin. All Commission members present voted in favor. (Commissioner Cary voted yes by phone, Vice Chair Albert and Commissioners Clifford and Walker were absent.)

Chair Allen called a five minute recess and the call with Commissioner Cary was terminated.

b. Public Hearing Residences at Cannery Square (SP 12-04 Continued from 8/14/12 Planning Commission meeting.

Chair Allen reconvened the public hearing for SP 12-04 and stated that public testimony had been closed. Chair Allen asked the Commissioners regarding any ex parte contact, bias, and potential or actual conflicts of interest.

Julia added that Commissioner Clifford was on the phone via conference call and there was still a quorum with a different commissioner.

Commissioner Griffin declared that he had a short conversation with Jeff Sacket from Capstone regarding the look of the buildings following the previous meeting that would not affect his vote.

Chair Allen stated that the public testimony had been closed, but there was written testimony that was received in a timely manner but was not in the record. Chair Allen stated they would enter the letter verbally into the record and re-open the testimony for anyone who wished to testify on any issues raised by that comment. Chair Allen stated he would give latitude to the responses, but asked that no new information be entered into the record because they should not be considered by the commission and will complicate matters.

Brad Kilby read the letter from John and Jackie Bolton, 22515 SW Lincoln Street, Sherwood (see SP 12-04, Exhibit J) which commented on raising their family in a historic house on Lincoln Street, the unofficial collaboration between the developer and the City, and changes in zoning laws over the years that allow an apartment building in the middle of a neighborhood. The Boltons stated that they were adamantly opposed to the building and questioned having a three level apartment building in the middle of one of the oldest neighborhoods in the city, adding that it will change the dynamics of Old Town Sherwood in a negative way. The Boltons commented on congestion in downtown Sherwood, traffic on Willamette street from the Old Town Field House and that an apartment complex will worsen the problem. The Boltons commented on the concern for safety the of children in the neighborhood who walk to school and the effect of a hundred more cars on the road. The Boltons commented on changing Old Town area with a structure that does not fit in and asked for consideration of the negative impacts to the families that live in the neighborhood. The Boltons commented that just because zoning codes allow it to be built, does not mean it is a good thing to be built and residents in the area most affected should be taken into consideration when making the decision. The Boltons commented that the complex will not keep Sherwood and old town going in a positive direction and commented on voting for ballot measures and council members that help Sherwood be great and fair to citizens.

Chair Allen opened public testimony for the limited purpose of hearing testimony in response to the issues raised in the letter.

Sandford Rome, 14645 SW Willamette Street, Sherwood. Mr. Rome commented regarding the project being harmonious with the neighborhood stating he has been working with Brad Kilby regarding language to be forthcoming. Mr. Rome commented that there was no way to build a four story building in a two story neighborhood and keep it harmonious. Mr. Rome commented on the number of cars in the neighborhood and suggested that with one hundred units there will be more than one hundred additional cars. Mr. Rome commented that the traffic study was provided by Capstone and if you study any apartment complex in town by the number of trips in

and out for seven days you would see that a 54 unit apartment, such as the Murdock Apartments, does something over 300 trips a day. Mr. Rome challenged the credibility that the traffic study was objective in studying apartment complexes in the city. Mr. Rome commented regarding pictures that he had submitted at a previous Planning Commission meeting regarding Lincoln Street improvements and remaining road problems and lack of sidewalks. Mr. Rome commented regarding putting drivers onto Tualatin Sherwood Road or Oregon Street and taking the most direct route, which is provided by Lincoln Street. Mr. Rome commented that it was difficult to drive by Willamette Street as the road ends at Murdock with a round-about. Mr. Rome commented that the project was like two army barracks with car parking underneath and the city has tried for two years to make it a viable project, disregarding comments and design standards. Mr. Rome commented on how the project was being financed and stated it was a dormitory type structure, with 51 units in each building, on roughly an acre. Mr. Rome commented on the need to provide for the neighborhood to make it harmonious and suggested two stories with fewer units or another building on the property. Mr. Rome asked how the city was going to pay property owners back for the damages done when the project is finally finished and opponents were right again.

Chair Allen closed the public testimony. Planning Manager, Julia Hajduk inquired regarding procedure to receive the applicant's final testimony. Chris Crean stated the applicant should have testified during the public testimony. Chair Allen reopened the public testimony in case there was any lack of clarity to receive the applicant's testimony with a five minute time limit.

Jeff Sacket, Capstone Partners, 1015 NW 11th Ave, Ste. 243, Portland. Mr. Sacket commented that he disagreed with regards to the project being incompatible with the neighborhood and stated the project has conformed with every regulation whether it was from the Code, the Planning Commission, or the Architectural Planning Book approved by the Planning Commission and City Council. Mr. Sacket commented that the project was handsome and he expects the project to be a welcome addition to Old Town and Sherwood as a whole. Mr. Sacket commented regarding the traffic engineer's analysis and stated DKS is a reputable local and regional traffic engineer that is beyond reproach adding that Capstone hired them to evaluate the traffic situation as they saw fit as well as respond to the City Engineer's requests. Mr. Sacket commented that Capstone is not traffic experts, but hire traffic experts and do as they advise.

Chair Allen closed the public testimony and stated there were updated staff comments.

Brad Kilby commented on the reputation of DKS and the number of traffic studies they perform and stated that the traffic studies were based on the 8th edition of the International Traffic Engineers Manual which is the accepted manual used by cities, counties and traffic engineers in determining traffic counts. Brad showed a presentation with the conditions of approval (see record, Exhibit 2) and commented that they were provided in the Planning Commission packet, with the exception of two conditions in the presentation. Brad stated that the first conditions of approval added are prior to final site plan approval which included in C.3 the verbiage "or evergreen screen" to the condition, from the last hearing, that required the applicant to install a 6-foot tall fence, wall *or evergreen screen* along the east property line of the east residential building, and the west property line of the west residential building. Brad explained that another condition was C.4 which contained language discussed regarding meeting Clean Water Services (CWS) requirements within the City in the event that the regional storm water quality facility came online and is to obtain construction plan approval for those facilities prior to final site plan approval or in the event that they were not required to do that a compliance agreement had to be

put into place to eliminate the water quality facility. Brad read the condition for the benefit of Commissioner Clifford who was on the phone: *Obtain construction plan approval from the Engineering Department for all public improvements including the on-site water quality facility if an alternative has not been agreed upon at time of final site plan review. If the applicant, City and CWS reach an acceptable agreement to use the regional water quality facility, the applicant may submit revised plans showing how the areas for the on-site water quality facility will be otherwise landscaped or utilized consistent with the approved development plans and the engineering compliance agreement modified accordingly to eliminate the on-site water quality facility.*

Brad commented that the next set of conditions were to be completed prior to building permits but they appeared to be the same as prior to final site plan approval and he moved on to conditions of approval prior to final occupancy. Brad read the condition E.6 which read *On-site or a regional storm water treatment system that complies with City of Sherwood and CWS standards shall be either in place, operational and any necessary connection fees paid or an agreement and assurances acceptable to both the City of Sherwood and CWS shall be in place.*

Chair Allen asked Brad to read the conditions of approval prior to building Permits from the revised staff report. Brad read D.1 *Prior to issuance of building permits for the east and west residential buildings, the applicant shall submit revised drawings that illustrate an enhanced decorative treatment of the southeast portion of the building and/or sites facing SW Willamette Street. Such architectural revisions shall involve variations of texture, materials, patterns, and color which are distinct yet complementary to the building, or shall include brick or stone elements which serve to add visual interest to the portion of the project visible from SW Willamette street* and stated that this language was requested by the commission. Brad read D.8 which states *Provide a set of plans that clearly demonstrates compliance with the pitch of the roof as permitted by the approved architectural pattern book* and commented that this was opposed to what the code called for.

Brad concluded and stated staff would recommend approval as amended.

Chair Allen commented on being harmonious with the neighborhood and said he was considering this issue. Chair Allen commented regarding what the neighborhood is, what it is to be harmonized with, and what is the aim to have it be. Chair Allen commented that the area was a transitional area; it was not Old Town or the lower density residential area nearby. Chair Allen commented that this area has been on track for years and was included in the Old Town Overlay five or six years ago. Chair Allen commented that we had the Cannery PUD a couple of years ago and now have this site plan, adding that the Commission is considering an area that is at least a transitional area between the existing residential and Old Town and at most an extension of Old Town proper in relation to Cannery Square and the Community Center. Chair Allen commented that the applicant has done a good job in trying to address that issue and make it harmonious in that transitional way. Chair Allen commented regarding traffic and street improvement issues and stated his opinions about those issues are on the record from the Commission's previous recommendation to Council regarding the PUD. Chair Allen commented that the narrower question is if this plan is consistent with that approved PUD and he believed it did and the revisions to the conditions strengthened that.

Commissioner Copfer stated he agreed with Chair Allen and wanted Sanford Rome to know that the Commission did hear regarding Lincoln Street, however it is the Commission's responsibility to look at if the application meets the PUD and it does.

Commissioner Griffin commented regarding the changes to the southeast side of the building and that he thought the comments from citizens were heard. Mr. Griffin commented regarding the traffic study being done by request from concerned citizens and the retention of a reputable company to perform the study. Mr. Griffin commented that the application was solid and it will add traffic to Old Town that may spark some activity in the area perhaps for Saturday Market or in new restaurants.

Commissioner Clifford commented (via phone) that he agreed as far as the application meeting the code and that he had looked over the plans and accompanying documents. Mr. Clifford commented on his concern regarding parking and the amount provided. Mr. Clifford commented regarding the application being a good project to bring together people using fewer vehicles, walking more, using public transportation, and utilizing the Old Town area. Mr. Clifford commented regarding the trash area in the interior of the building being an asset to keeping the project clean and orderly and on the enhancement of the southern portion of the buildings with more architectural detail.

Motion: From Commissioner James Copfer for the Planning Commission to approve the application for Residences at Cannery Square (SP 12-04) based on the applicant testimony, public testimony received, the analysis, finding, and conditions as revised in the Staff Report, seconded by Commissioner Russell Griffin. All Commission members present voted in favor. (Commissioner Clifford voted yes by phone, Vice Chair Albert and Commissioners Cary and Walker were absent.)

Chair Allen called a brief recess; the call with Commissioner Clifford was not terminated.

7. New Business

a. Public Hearing- Langer Farms Subdivision Appeal (SUB 12-02)

Chair Allen opened the public hearing on the appeal on the Planning Manager's decision of SUB 12-02 by reading the public hearing statement which stated the appeal was filed by Jim Claus. Chair Allen asked for the disclosure of any ex parte contact, bias or conflicts of interest. Chair Allen stated as it was legislative, ex parte did not strictly apply, but disclosed a conversation with Jim Claus the previous Friday regarding a courtesy advisory that he (Mr. Claus) was sending an email with a number of issues raised that did not pertain to the Langer Farms Subdivision Appeal.

Legal Counsel, Chris Crean clarified that the hearing was quasi-judicial, not legislative.

Commissioner Griffin disclosed that he had contact with the Clauses through piano lessons and church but it would not affect his ability to make a decision.

Chair Allen asked for the Staff Report.

Brad Kilby gave a presentation (see record, Exhibit 3) explained that the hearing was for the appeal of SUB 12-02 the Langer Farms Subdivision, he would summarize the application, and

then go through his understanding of the appellant's assignments of error. Brad stated that the Planning Commission packet contained the all of Mr. Claus's testimony and Staff's responses.

Brad stated that on June 21, 2012 a decision to approve a subdivision of five lots and two tracks for a 55.09 acre site known as the Langer property was issued and the Sentinel Storage application approved earlier in the evening was a 6.93 acre portion of lot 5 of the subdivision. Brad stated that the decision was appealed in a timely manner by Jim Claus on July 5, 2012. Brad commented that the staff decision and associated attachments were in the Planning Commission packet as Exhibit 1, the appeal materials provided by Mr. Claus were Exhibit 2, and a letter from the applicant's attorney, Seth King of Perkins Coie, was Exhibit 3.

Brad commented on the assignments of error and began by stating that Mr. Claus believed there was a *Flawed original Notice of Decision containing conflicting information that staff cites as scrivener's error*. Brad explained that the Scrivener's error included language that stated "*this approval is valid for a period of one (2) years from the date of the decision notice, per Section 16.120.050.*" Brad commented that 16.120.050 states that if the final plat is not approved within two years, the preliminary plat approval shall expire and a new plat must be submitted. Brad commented that this was a harmless Scrivener's error and it did not constitute a material error in the decision.

Brad commented that the second assignment of error was that *Improper Public Notice was given by staff and staff has relied on INFILL standards for proposed Lot 5 to grant waivers for the access without properly notifying the PUBLIC per Sherwood Zoning Code Chapter 16.68.060*. Brad stated that 16.68.060 applies to infill development standards which only apply to residential properties and not to light industrial or general commercial. Brad commented that Mr. Claus contends that staff relied on this section to allow the proposed lot to achieve the access standard when in fact the definition of a lot allowed staff to make that call adding that a lot *is a parcel of land of at least sufficient size to meet the minimum zoning requirements of this code and with frontage on the public or easement approved by the City*. Brad commented that there is precedence within the City for allowing lots to be accessed via an access easement and staff believes that the finding remains accurate. Brad added that there was a reference to 16.68 in the staff analysis but it was not relied upon for making the finding that the applicant could propose to access the site through an easement. Brad commented that Mr. Claus added that the City cannot allow such a long access and stated that the proposed access is a driveway and utility easement, not a street so it is not subject to the TSP.

Brad commented that the third assignment of error was that the application was a *Violation of the PUD – a Major Change to the Final Development Plan dated August of 1995. Staff is requiring a change in the use of the land and requiring dedication of land in this subdivision application for public roadway and right-of-way. The land was specifically proscribed from that use in the original Langer PUD. The Langer PUD must be treated as having a Major Change and thus go through the PUD approval process noted in Sherwood Code Chapter 16.40*. Brad stated staff disagrees and commented that Mr. Claus is contending that by extending and requiring the right-of-way dedication for the continuation of SW Century Boulevard that staff has changed the use of the land. Brad commented that utilizing that logic the City would never be able to plan for future street extensions, explaining that SW Century Drive came subsequently after the PUD and was added to the TSP as a connecting street. Brad commented that the dedication and future construction was agreed to in a modification of the PUD

and the Developer's Agreement in 2010. Brad commented that the PUD approval is an overlay zone that is applied to a property and in order to constitute a major change a threshold had to be met. Brad explained that the boundaries of the PUD are not changing by requiring the road; the applicant is not asking for a major change that would be inconsistent with prior approvals; the prior approvals did not identify which land was devoted to a specific use; and the final development plan is only a phasing plan with some proposed accesses for this portion of the site off of what was North Adams Ave at the time, which is now SW Langer Farms Parkway. Brad added that there is not an increase in density because it is not a residential development and therefore does not constitute a modification in the Planned Unit Development.

Brad commented that the next assignment of error was *Staff's decision is flawed. Staff is treating the PUD as if it is outside of PUD constraints for part of the logic used to grant approval to a 5-lot subdivision of the PUD. Also, staff neglected to submit pertinent information to the record as part of this application which would have direct bearing on the original staff decision – which occurred after staff closed the comment period. As such I have included some of that missing information as it is directly pertinent to this appeal. See also Exhibit 8, copy from the 1995 code Section 3.4040 for appeals showing that parties may present old evidence or any additional evidence.* Brad stated that the subdivision is not subject to 3.4040 but subject to standards in the code today as it was not filed at the same time that the PUD was processed in 1995, therefore it was not required to be processed at the same time as the PUD was approved. Brad stated that according to the City Attorney's office "a PUD decision under 16.40 is a separate and distinct decision from a subdivision decision under 16.120." Brad referred to language in 16.40.020.B.5 which states "If the PUD involves the subdivision of land ..." and pointed out that *if* was the key word. Brad stated that this PUD did not involve the subdivision when it was approved in 1995 and [per the attorney] "this affirms the interpretation that they are separate decisions, albeit when they are proposed concurrently, they need to be processed concurrently." Brad stated that if we were to work under this assumption that you could not ever come back and subdivide your property then businesses or large commercial complexes like Albertsons would not be able to go in and subdivide their property because it was not considered at that time; or Safeway would not be able to take off the small commercial portion where Starbucks and those businesses are. Brad stated that this is a common practice in commercial development to divide the land for the purposes of financing and selling the property and, as long as they meet the standards, then staff would review any subdivision application under today's regulations. Brad added that a subdivision application for four to ten lots will follow a Type II process and Mr. Claus maintains that staff did not have the ability to review this application and it should have been reviewed at a higher level and staff disagrees.

Brad stated that the next assignment of error was a *Violation of Sherwood code Section 16.40.040(A)(2): Failure to Complete. The Planning Commission must meet to decide if the PUD is still in the public's interest* and staff disagreed. Brad commented that the actual language for 16.40.040(A)(2) states, "*When substantial construction or development of a PUD, or any approved phase of a PUD, has not taken place within one (1) year from the date of approval of a Final Development Plan, the Commission shall determine whether or not the PUD's continuation, in whole or in part, is in the public interest.*" Brad commented that this PUD has been under construction since 1995 with subsequent modifications to the PUD and City Council has reviewed and approved changes and modifications to developer agreements since 1995. Brad commented that staff believes that the City Council made the decision that was in the public's

interest when it approved the modifications in 2007 and agreed to negotiate the developer's agreement in 2010 by the Sherwood City Council.

Brad stated that the next assignment of error was a *Violation of the intent of the PUD – staff is attempting to incorrectly administratively apply Subdivision Standards to the Langer PUD Phases 6, 7, 8, which is beyond their scope and authority. The Phases are to have Site Plan Reviews with the Planning Commission/City Council. Staff essentially has made up a new process for the PUD by incorrectly trying to grant subdivision and land division approval through a Type II procedure.* Brad commented that staff believes the appellant is wrong because this application is a distinct application and not a PUD, but a subdivision of the PUD. Brad commented that the applicant is still required to come in and file for site plan review on each one of these lots as they come in to develop. Brad added that per the language referenced earlier 16.120.030.1.a which says that subdivision of land for four to ten lots is administratively processed meaning that it gets decided by the Planning Manager.

Brad stated that staff recommends denial of the appeal and an affirmation of the staff decision.

Chair Allen asked for questions of staff, seeing none Chair Allen called for applicant testimony from Seth King. Julia Hajduk set the timer for 30 minutes to time the applicant.

Seth King, Land Use Attorney at Perkins Coie, 1120 SW Couch Street, Portland. Mr. King stated he was present on behalf of the applicant, Langer Family LLC, with members of the development team including Matt Grady from Gramor Development, Alex Hurley project engineer, Keith Jones the project planner, and several members of the Langer family. Mr. King stated that the applicant believes there is substantial evidence in the whole record to support the conclusion that this subdivision application satisfies all of the applicable criteria and therefore should be approved. Mr. King referred the Commission to the letter dated July 17, 2012 which is part of the packet. Mr. King offered to answer any questions and asked to reserve the remainder of the time for rebuttal.

Chair Allen asked for any questions from the Commission. Having none, Chair Allen asked for public testimony for or against other than the appellant. Seeing none, Chair Allen asked for testimony from the appellant, Jim Claus.

Mr. Claus inquired about having 30 minutes to testify. Chair Allen confirmed.

Robert James Claus, 22211 SW Pacific Hwy, Sherwood. Mr. Claus stated he would add to the record items containing the ordinance where Mr. Langer, as a City Councilman, voted on the ordinance that allowed this subdivision occur and the City contract with Beery, Elsner, and Hammond (see record, Exhibit 4). Mr. Claus commented that he would give an overview of what he saw wrong with this process and spoke of his years teaching at the University of British Columbia where he was asked to debate against a man named Eric Todd; one of those rare people who had a doctorate in law from Harvard. Mr. Claus commented that Mr. Todd would turn about how the American Constitution protected Americans better than the Canadian system and said that Mr. Claus would see the complete corruption of Oregon's Land Use Planning because there is no 14th amendment requirements and protections to any real degree. Mr. Claus commented regarding British Columbia using the British North American Act that has specific language that says "we loath to give government officials discretionary power for fear we will corrupt them" and Mr. Todd's guarantee of corruption of the system in Oregon because there is no sales tax and will

not be driven by good land use decisions but political decisions. Mr. Claus commented that there was a PUD on Langer's farm ground in order to borrow tax money to support staff and that he believes the parceling to be the worst denegation he has seen in this town. Mr. Claus commented regarding the tax base, excess, and new taxes going to the City. Mr. Claus commented on when he worked in San Francisco on Urban Renewal Plans where the Mayor used eminent domain to take property where the money was to be paid back in ten years so that everything then goes back on the tax roll. Mr. Claus added that the money was paid back in nine and a half years due to his math. Mr. Claus commented that the farm ground is being taken and the excess value is used to borrow bonds to run this city. Mr. Claus referred to the statements from Mr. Todd regarding corruption and staff eventually becoming an entity in and of themselves and alluded it wasn't just the union he worked for which manipulated elections.

Mr. Claus commented that the government workers had become an entity in and of themselves and are concerned as a stakeholder. Mr. Claus commented regarding the subject property and people like Wal-Mart being told where to build because they originally wanted to build on Broadhurst's and Shannon's property. Mr. Claus commented regarding the Broadhurst and Shannon property being a superior location at a lower price and the Mayor not wanting Wal-Mart or Opus there, adding that it would have been a lifestyle mall. Mr. Claus commented on the zoning being driven by financial needs not the enabling statute and was no longer promoting or protecting health, safety, and welfare, and aesthetics, but financing for the staff. Mr. Claus commented that City Hall stands as a monument to waste, fraud and abuse and stated it was where much of the urban renewal money went. Mr. Claus commented on the plaza and regarding old town being the only classic central business district left in Oregon until it was turned into the Spanish Plaza model that it is now. Mr. Claus commented that it was centered on government and he maintained that the Cannery Square park was built so the staff would have a place to have lunch and suggested it was not built for children because it was without a bathroom. Mr. Claus commented that we have seen this system easily corrupted in Sherwood because we have a strong City Manager form of government. Mr. Claus commented regarding council person's stating "we have a good staff" and the City Manager having a group of staff that works for him adding that if a City Councilor talks to staff their job is threatened, and they can be called upon to resign. Mr. Claus commented on the City having a contract attorney that represents the City Manager, the Council, and the Mayor and commented regarding no attorney representing the interests of the City although the charter calls for it. Mr. Claus commented regarding getting rid of the City Attorney and staff operating ultra vires-ly and beyond the scope of their authority. Mr. Claus commented that code never intended to allow staff to make the discretionary interpretations they are making in a PUD. Mr. Claus commented on the location of Home Depot and a former City Manager calling it a lumber yard, deeming the application complete, the City Council finding out about it 120 days after, the subsequent lawsuit, and commented that it was the first shift from our plan to moving our retail on to light industrial. Mr. Claus added that the land across the street from Home Depot is light industrial and the buildings were not supposed to be there. Mr. Claus commented that we have drifted down that road to discretionary power for salaried government officials that is only constrained by the 14th Amendment and federal court, not constrained in Oregon. Mr. Claus commented regarding having four minutes to testify at meetings, but if you ask for answers and do not leave, you will be escorted out. Mr. Claus commented that this is being done because the only way that staff can move to that money is to be given discretionary power.

Mr. Claus commented regarding the commission not reading the 95 Code and that most do not have a copy and he does. Mr. Claus stated that the request on a PUD to make variances is not permitted in that code or in the latest edition, yet if you look at these subdivisions you have variances. Mr. Claus referred to Ambler Realty vs. The Village of Euclid and commented regarding the fifth amendment being set aside, a substantial benefit and value left in the property then referred to Nectow vs. Cambridge regarding having an exception in a code. Mr. Claus commented that the PUD was written so you could not have exceptions because you have already given away half of the world in the zoning. Mr. Claus commented regarding the code not allowing fueling and mini-storage because staff made discretionary decisions to finance this town. Mr. Claus commented regarding appealing to LUBA and it not being able to stop it.

Mr. Claus commented on a man named Jim Roberts from Madison who said the world spins because of dumb and if we don't have enough dumb we will all fall off of it and not stopping dumb but creating a record. Mr. Claus referred to Kelo vs. Newhaven where the Institute for Justice fought the suit because a big pharmaceutical company wanted the land and the city wanted money to increase the tax base, so kicked everybody out of an area that was not blighted. Mr. Claus commented that the pharmaceutical company waited until they won the case and never built. Mr. Claus commented that the case went to the supreme court, and this is a case study of urban renewal destroying zoning. Mr. Claus commented regarding the same litigation in Norwood and his involvement with the Small Business Administration's concern for taking people's property and the city paying the true price of what that property was worth, adding that the Ohio supreme Court said the enabling statute does not allow that kind of taking. Mr. Claus commented that Sherwood is moving toward a staff with a vested interest to keep the money coming in, having discretionary power to make decision, and freezing the rest of us out of business. Mr. Claus commented that the zoning has to be run by the staff so they can build the Downtown Center after destroying the Robin Hood Theater which was a better gift and there was no reason to destroy it as it represented historic buildings. Mr. Claus commented regarding the City needing money to build in Old Town .

Mr. Claus commented that the subject property was no longer a PUD but a catch as catch can subdivision and put forward that a mass merchandizer will come in and get staff to say it meets all of the requirements turning 13 Acres into Wal-Mart just like it did in Corvallis. Mr. Claus commented that the citizens will live with it because it generates lots of tax dollars but that it was a zero sum tax game except it puts money into our staff and into politician's hands and cheats school children. Mr. Claus repeated that Wal-Mart and Opus wanted to go on the highway, and Fred Meyer will go on the highway and stated that once they go there you won't build another one. Mr. Claus commented that the City is putting its value over there and using it up and explained that retail is the classic zero sum game; meaning somebody gains and somebody loses. Mr. Claus called Wal-Mart the merchant of death because they come into a trade area and they take the business from everybody else. Mr. Claus commented that there was \$475 billion on groceries and supermarket sale and once you put in Wal-Mart and Fred Meyer on urban renewal you are going to kill Safeway and Albertsons, thus killing your own tax base. Mr. Claus added that this means you are not going to have enough money to pay the school children back in twenty years, because you have denigrated your own tax base. Mr. Claus stated he did not believe this was a PUD for a number of reasons which staff outlined and he believed the Langer's have the political influence which they did for Sherwood Plaza. Mr. Claus stated this was simply a mission in getting people to see what is going on and to say to institute of justice they need not worry about New Haven, Oregon has them beat cold. Mr. Claus asked if the Commission understood

that what has been done is taken something that was originally Fred Meyer, which Metro stopped, and turned it into RV parking, Wal-Mart, and a Target, and swinging business over there. Mr. Claus commented that the next step is part of a conspiracy to restrain trade and his conversation with Chair Allen regarding Cedar Brook Way.

Mr. Claus commented regarding the property near Cedar Brook Way being class A as it has everything it needs, including visibility, accessibility, and parking which are the location, location, location of retail. Mr. Claus stated that if they don't stop they will never build this area out and commented regarding a road through his property that cannot be built on because of the size of parcel and what can be put there. Mr. Claus commented about the eight hour American Bar and Appraisal classes and people talking for eight hours. Mr. Claus commented regarding LUBA seeing the non-disclosure and of people thinking their financial interests don't impact their elected members and their family. Mr. Claus commented regarding LUBA looking at this as stealing from school children or saying the application is not a PUD. Mr. Claus commented that it was a clever way to combine sick eminent domain proceedings with police power proceedings and turning the zoning of general commercial and retail over to the staff and certain elected officials. Mr. Claus commented that it was the end of market driven zoning as we know it, because there is no competition when staff tells buyers and retailers where to go. Mr. Claus commented regarding sovereign immunity, not being able to sue, and that a citizen only gets the rare privilege of pure political speech in front of the Commission. Mr. Claus commented that the staff has the privilege all of the time and it is called sovereign immunity. Mr. Claus commented that what is going to happen is it will lead to a suit and depositions will be taken. Mr. Claus commented regarding being able to build on Columbia because of the footprint and the new owner being able to build after he sold the property for a giveaway price. Mr. Claus commented regarding having urban renewal of all of the zoning in this town and reiterated that the subject property was not a Planned Unit Development. Mr. Claus commented regarding the cannery, the contract attorney signing a contract with Capstone LLC, the layout of the site and the public not knowing and the inability to appeal. Mr. Claus commented that citizens cannot complain regarding the work the attorneys do for the Mayor or the City Manager, but a City attorney would have had to report it. Mr. Claus commented that this will be a wonderful case study about how a town converted farm ground into a major industrial retail commercial center, shut down more competitive property, and had the staff determine where you will build. Mr. Claus commented that there are all of the technical reasons in the code to not approve the application but it was comical to see what has been done with it. Mr. Claus commented regarding every family owning land in the town that has tried to develop and being put out of business by the process. Mr. Claus commented regarding Metro running a pathway on his property and the rash people will get. Mr. Claus commented regarding the property on Columbia that was sold and the McFall subdivision watershed. Mr. Claus stated that nobody can live with that and in the end the City is putting money out there to dump 20% of it to staff. Mr. Claus stated he will appeal the decision even though he won't win and something will have to turn around. Mr. Claus commented regarding being insulted, using police and said the City must have something to hide.

Chair Allen asked if any commission members had questions. Seeing none, Chair Allen thanked Mr. Claus and asked how much time the applicant had remaining for rebuttal. Julia Hajduk replied that the applicant had 28 minutes and 41 seconds.

Seth King, on behalf of the applicant, Land Use Attorney at Perkins Coie, 1120 SW Couch Street, Portland. Mr. King commented that the appellant spoke for approximately 28 minutes without

addressing a single approval criterion applicable to preliminary subdivision plat or carrying the burden on any of his appeal issues. Mr. King commented that Mr. Claus did not present any substantial evidence that undermined the substantial evidence that is already in support of approval of the application. Mr. King stated there was no request for a continuance or that the record be held open. Mr. King commented that on the basis of those items the appellant has not carried its burden to present any reason to deny the application. Mr. King stated that conversely, based on the applicant's materials, staff presentation, and the letter from Perkins Coie dated July 17, 2012, there is substantial evidence in the record to support approval of the application subject to the conditions included in the original staff decision. Mr. King stated that because there was no request for a continuance or that the record be held open, the Planning Commission would be able to reach a decision tonight. Mr. King commented on Mr. Claus's concern that financial needs were driving land use decisions in the City and stated that there was no evidence of this being the case for this application. Mr. King commented regarding Mr. Claus's references that there was no right to request variances in the 1995 Code and stated that the 1995 Code is not at issue in this application and the code that was in effect at the time the application was submitted is applicable. Mr. King commented regarding Mr. Claus's attacks on the potential uses and end users of the property and stated this application does not concern the particular uses or end users and there is no evidence relating to what uses or end users there might be therefore it is not relevant to the decision. Mr. King commented regarding the issues Mr. Claus raised regarding the Planned Unit Development and its processes and stated that this application does not concern the Planned Unit Development as it is a subdivision application independent of the PUD. Mr. King concluded his rebuttal testimony by requesting that the Commission deny the appeal and affirm the staff decision.

Chair Allen asked for questions of Mr. King. Mr. Claus asked for rebuttal to Mr. King's testimony. Chris Crean noted that there was no provision for appellant rebuttal and explained that the ordinance requirements for an appeal hearing allow the applicant to split his time between presentation and rebuttal, but there is no provision for appellant rebuttal which is reserved exclusively for the applicant.

Chair Allen closed the public testimony and moved to final staff comments. There were no final staff comments.

Mr. Claus stated (from the back of the room) that Susan Claus would like to testify (inaudible). Chair Allen stated he called earlier for testimony for and against and no one came forward to testify.

Chair Allen called for a discussion on the appeal and remarked on a comment that the Commission does not have or has not read the 1995 Code and observed that the 1995 Code was courteously provided by the appellant, it is part of the record of this decision, and the Commission has had access to it for a number of weeks. Chair Allen stated he had looked through the relevant portions of the 1995 Code in considering his decision.

Chair Allen commented regarding the wide range of issues addressed in the testimony, whether staff had the authority to divide a big lot into smaller lots, if the correct code was followed, and whether staff made the correct decision under that code adding that he did not find anything persuasive in the written materials or in the testimony. Chair Allen commented that the correct

code was followed and it was a subdivision decision, not a PUD decision, and he could not find a basis to overturn the staff decision.

Commissioner Copfer added he would agree and stated he had read the 95 code and materials provided several times, that staff has completed the work, and he sees nothing to stop the subdivision.

Commissioner Clifford stated that he has reviewed the submittal documents, studied the plans provided, and read the letters and appeal documents. Mr. Clifford commented that staff's responses to the appeal were clear and the application did meet code requirements.

Commissioner Griffin commented that staff has done an adequate job in researching and making sure that what they do on behalf of the City is correct and legal. Mr. Griffin commented on the using the advice of an attorney and the path used to reach a decision. Mr. Griffin commented that the decision could be appealed to a higher board and he did not have anything at this level to say no to this application and perhaps City Council would feel differently.

Chair Allen inquired regarding if the proper method was to approve the application or to deny the appeal. Julia Hajduk deferred to legal regarding the proper method and clarified that the next level of appeal would be to the Land Use Board of Appeals (LUBA).

Chris Crean commented that the motion would be two parts: to uphold the appeal and reject the staff recommendation or, conversely, to deny the appeal and affirm the staff recommendation.

Motion: From Commissioner James Copfer for the Planning Commission To Deny The Appeal Of Langer Farms Subdivision (SUB 12-02) And Uphold The Staff's Findings, The Staff Decision To Move The Subdivision Forward, seconded by Commissioner Russell Griffin. All Commission members present voted in favor. (Commissioner Clifford voted yes by phone, Vice Chair Albert and Commissioners Cary and Walker were absent.)

8. Consent Agenda

The consent agenda consisted of various minutes from March 13, March 27, April 24, May 22, and July 10, 2012.

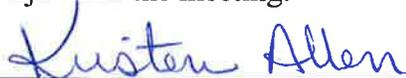
Motion: From Commissioner James Copfer for the Planning Commission To Adopt the Consent Agenda as Written, seconded by Commissioner Russell Griffin. All Commission members present voted in favor. (Commissioner Clifford voted yes by phone, Vice Chair Albert and Commissioners Cary and Walker were absent.)

Chair Allen commented that the next meeting was September 11, 2012 which include the Cedar Brook Way TSP. Julia confirmed and added that it also included the Langer Phase 7 commercial development project.

9. Adjourn

Chair Allen adjourned the meeting.

Submitted by



Kirsten Allen, Department Program Coordinator