
City of Sherwood, Oregon
Planning Commission Meeting
April 12, 2016

Planning Commissioners Present:

Chair Jean Simson
Vice Chair Russell Griffin
Commissioner Chris Flores
Commissioner Michael Meyer
Commissioner Alan Pearson
Commissioner Rob Rettig

Staff Present:

Tom Pessemier, Assistant City Manager
Julia Hajduk, Community Development Director
Brad Kilby, Planning Manager
Bob Galati, City Engineer
Kirsten Allen, Planning Dept. Program Coordinator

Planning Commission Members Absent:

Commissioner Lisa Walker

Council Members Present:

None

1. Call to Order/Roll Call

Chair Jean Simson convened the meeting at 7:00 pm.

She moved to the consent agenda and asked for a motion to approve.

2. Consent Agenda

- a. February 23, 2016 Planning Commission Minutes approval
- b. March 10, 2016 Planning Commission Minutes approval

Motion: From Commissioner Alan Pearson to approve the Consent Agenda, Seconded by Vice Chair Russell Griffin. All present Planning Commissioners voted in favor (Commissioner Lisa Walker was absent).

3. Council Liaison Announcements

None.

4. Staff Announcements

Brad Kilby, Planning Manager, reminded the Commission that legislation to regulate marijuana facilities was being crafted to be put in place after the November election and said there would be another work session on April 26, 2016. If a ban is imposed the regulations would go away. The police advisory board was invited to the work session.

Mr. Kilby reported that expedited land divisions and flood plain legislation would come before the commission in the near future. Expedited land divisions are a division of land on a residentially zoned property that cannot go to a public hearing unless it was appealed; if appealed it would go to a hearings body. He said they have been around for a while, but the Home Builders Association wanted to ensure developers know it was available in the cities. Mr. Kilby explained that the Federal Emergency Management Agency (FEMA) was adopting new FEMA maps and the city would have to adopt them along with any regulations our code does not cover under their new proposed legislation. An audit of the code has been done. Maps have been promised since 2007.

Mr. Kilby asked for a report on the city's Arbor Day celebration. Ms. Allen stated that volunteer coordinator Tammy Steffens invited the 1st and 3rd grade classes from the Charter School who partnered with the

Sherwood High School Green Team. Commissioner Rettig attended the event and AKS Engineering and Forestry held a demonstration on how to plant trees and why they were important.

5. Community Comments

None were received

6. New business

a. Public Hearing – PA 16-02 Public or Commercial Parking with in the Old Town Overlay

Chair Simson began the public hearing by reading the public hearing statement and stated as it was a legislative action; ex parte contact, [bias or conflicts of interest] did not apply. She said the Planning Commission would make a recommendation to the City Council, who would be the final hearing authority unless appealed to the Land Use Board of Appeals (LUBA). She turned the time over to staff.

Bard Kilby said the Urban Renewal Agency (URA) was requesting to amend the Sherwood Zoning and Development Code and gave a presentation (see record, Exhibit 1). He said the city hears from businesses and residents in Old Town that there is not enough parking. He pointed out properties owned by the URA; the property known as the Robin Hood lot on the corner of 1st and Pine Street (actually two lots) and two adjacent properties located off of 1st Street. Mr. Kilby said the URA had decided that the two lots on the corner of 1st and Pine were more valuable developed as a commercial use, because they were close to downtown, and they would like to replace it with a parking lot on 1st street. He said the URA wanted to ensure there was parking available in Old Town if the Robin Hood lot was sold or redeveloped. Mr. Kilby commented that the City was not actively seeking properties to purchase and develop with parking, but under this amendment, it could happen, even though that was not the purpose behind the amendment.

Mr. Kilby clarified that the proposal before the Commission was from the URA to amend the Sherwood Zoning and Community Development Code specifically within the Old Town to allow non-accessory public and commercial parking lots within residential zones in the Old Town Overlay as a conditional use provided they were adjacent to a collector or arterial street. He said the parking lots would only be permitted as Conditional Uses and would only be allowed when next to an arterial or collector street; streets with greater traffic than a local street. He showed a map of affected streets in Old Town and explained that those properties could be developed with parking, even though it was highly unlikely. He added that because it was a conditional use there would be more oversight and control. He repeated that the City was not looking to purchase any property to tear down for a parking lot, but in the extreme, it could happen.

Mr. Kilby specified that Conditional uses in Old Town were always subject to a public hearing before the Planning Commission and there were six general criteria that applied to conditional uses wherever they occurred.

1. All public services to the proposed use had to be available to the site.
2. The proposed use conformed to other standards of the applicable zone such as landscaping, lighting, storm water quality, parking dimensions, and internal circulation.
3. The proposal would provide a facility that met the overall need of the community.
4. The hearings body (Planning Commission in this case) could impose conditions on the use to mitigate any adverse impacts to surrounding properties; for example the lighting might be required to be shut down and the lots be closed at 10 pm so as not to impact surrounding neighborhoods.
5. The proposed use and development must be conscientious of the shape, location, topography and natural features of the lot.
6. The use as proposed protects sensitive wildlife species and the natural environment.

Mr. Kilby stated that in order to amend the Comprehensive Plan text there were two criteria required to be met. The text amendment had to be based on a need for the amendment as identified by the Council or the Commission. He said the URA Board was made up of council members and they had established that there was a need. He added that the text amendment had to be consistent with the intent of the Comprehensive Plan as well as statewide goals and Metro policies that were applicable. Mr. Kilby disclosed that the Department of Land Conservation and Development (DLCD) and Metro were both notified of the proposed amendment and neither agency chose to submit comments, but indicated the amendment would not conflict their proposed or existing legislation. Mr. Kilby reported that the second item in order to approve a text amendment was that it had to be consistent with the Transportation Planning Rule. This rule says an amendment was allowed to occur when it was not going to change the functional classification of a designated right away or negatively affect a state facility. In this case the proposed amendment would not affect any existing functional classifications in the Transportation System Plan (TSP). He commented it was rare to find a use that would as they would be uses on a really large scale like a school or a similar use that would add a lot of additional traffic.

Mr. Kilby noted that a public comment letter was received from Mike Versteegh (see planning record, exhibit B). Mr. Versteegh commented that he was opposed to the proposal and it did not make sense to purchase and demolish homes in Old Town to replace them with parking.

Mr. Kilby said the staff recommendation was based on the above finding of fact for the two criteria; that there was a need and that the amendment would not affect the Transportation Planning Rule. Based on those and on the applicable criteria staff recommended approval of PA 16-02. He asked for questions from the Commission and informed that the applicants representing the URA were Tom Pessemier, Assistant City Manager, and Bob Galati, City Engineer, representing the City. Commission members directed questions to Mr. Kilby.

Commissioner Pearson received confirmation that there were no houses on the suggested properties and asked if a high rise parking structure was considered. He said there was a need for parking in Old Town especially when there were festivals and events. He asked if the Code would permit a multi-story parking garage as a more efficient use of the land. Commissioner Pearson said he assumed there was a height limit in Old Town, Sherwood clearly needed parking, and a multi-story parking facility would do a lot to take the pressure off. Mr. Kilby responded that it was a condition of economics that structured parking was not typically seen in the suburbs, but it was not prohibited, and if the URA decided to fund the structure they could go through the process. Commissioner Pearson argued that it was the heart of Old Town and if the City was trying to build up commercially it would need as much accessible parking as possible. Chair Simson commented that the Commission could not determine what the applicant was going to build only if they could. Mr. Kilby said the current code would allow for someone to bring in an application for a multi-story parking structure.

Commissioner Flores asked what land in Old Town was available under the current rules. Ms. Hajduk responded that stand-alone parking was allowed on commercially zoned properties, but not allowed on residential properties. This proposal would allow stand-alone parking on residential properties through the Conditional Use process. Mr. Kilby added that commercially zoned properties could have stand-alone parking. He gave examples of the parking lot behind the American Legion, at the old Robin Hood Theater site and next to Center for the Arts.

Chair Simson asked for applicant testimony.

Tom Pessemier, Assistant City Manager representing the Urban Renewal Agency (URA) came forward and said over the last eleven years working for the City he had heard concerns about parking in Old Town. The proposal was intended to address that issue for today and future availability of parking for the long term. He thought there were a lot of different opinions about how much parking there was in Old Town, but the whole

reason for the URA, was to promote business growth in Old Town and the reality was that as Old Town became stronger economically, parking would become more of a challenge. He said the URA wanted to ensure that there was a parking lot that met code requirements in the same general location when the Robin Hood lot was redeveloped; and the URA had purchased the two vacant lots in a good market. He said the URA had thought about structured parking, but the URA did not have the funds. Mr. Pessemier noted the property could have been rezoned to commercial, but the URA recognized that someday there may be additional need. He reported that the City was not considering buying properties or doing anything else at this time; the purpose was to prevent a situation where parking became a problem because more parking could not be added, structured or unstructured. He clarified they were trying to solve a long term problem by doing a text amendment rather than just solving one problem with a zone change on the property.

Stephanie Slyman, senior land use planner with Harper Hough Peterson Righellis in Portland representing the URA, thanked staff for the positive staff report that recapped the proposal. She reiterated that there were only two approval criteria for a text amendment that staff indicated had been met; there was a need; the proposal was consistent with the City's plans and goals and there were no transportation impacts that resulted from the text amendment. Ms. Slyman highlighted that the text amendment on the surface affected many properties and was a conservative approach by adding offsite public or commercial parking lots to the list of conditional uses for residential properties. Ms. Slyman said the Planning Commission would retain control over future uses and have full review of those offsite impacts to ensure that parking facilities were both compatible and the impacts mitigated. She added that the properties were within the Old Town Overlay which had another series of site plan requirements to contain how the site developed. She said Old Town Overlay applications would come to the Planning Commission as a Type IV hearing with public notice and opportunities for the public to comment.

Chair Simson asked for questions from the Commission for the applicant.

Vice Chair Griffin stated the parking lot was listed for public and business uses and asked if the City had plans for putting up signage that would restrict usage to staff only. Mr. Pessemier responded that there were no plans to put up restrictions and said the parking lot was meant to be a public parking lot just like the one it would replace.

Vice Chair Griffin asked if the new parking lot was intended to be used similar to the Robin Hood lot for festivals, tents, or as needed. Mr. Pessemier replied that when a festival was held, the City tried to open up as much area as possible and be accommodating for every event. He said the nice part was the new lot would be paved, safe and secure. Mr. Pessemier was confident the City would work to make sure space was available to suit organizer's needs.

Ms. Slyman repeated that the parking lot was not part of the request before the Commission, but the approval was for the ability of the URA to come forward with conditional use application in the future.

Vice Chair Griffin said he was not confused about the application, but as a citizen he wanted to make sure that if the City was going to build a parking lot it would be a true replacement for the Robin Hood parking lot and the citizens and businesses could use it.

Chair Simson stated she would like to hear the citizen's concerns before asking her questions.

Edward Schiele and **Pam Meissinger**, Sherwood residents who lived in Old Town came forward together. Mr. Schiele stated he agreed with the written testimony in opposition. He commented that he was vehemently opposed to any amendment that would allow the City or any other body to come in and take away his house from the early 1920's and would be 100 years old in another four years. He said it was the house his wife lived in for 66 years and raised five children in until she had to go into a memory care facility and he would not allow anyone to take it away, especially for fair market value. He thought it ought to go to the highest bidder that wants to buy the house and he would not want it knocked down for a parking lot. Mr. Schiele

said there was property around, including the vacant lot on 3rd Street where the old school used to be located that could have been turned into a parking lot years ago.

Ms. Meissinger added that she had lived in Sherwood for almost 54 years was very opposed to the application. She commented that she could not foresee the home that she grew up in, sold to strangers to be knocked down for a parking lot. She said her dad bought the house for her mom on their wedding day and her dad died when she was ten. Ms. Meissinger said she did not know all the political reasons behind the proposal, but anybody that knew her was aware of how passionate she was about the old Sherwood. She told the Commission they could not take the heart of what made old Sherwood the amazing place that it was, that Sherwood had grown so much. She advised not to take the homes away from people and commented about the memories that would be lost. Ms. Meissinger commented that she grew up a Cochran and had tried to save the family farm where her dad and his siblings grew up, but her family could not afford to save it at the time, located where Meissinger Place is. Ms. Meissinger said she had a friend who worked at the city who was heartbroken at how hard it was to see a livable farmhouse knocked to the ground.

Ms. Meissinger said Sherwood was about compassion and even though she hated public speaking, she had promised her mom to stand up for what she was passionate about. She said her mom gave her courage to speak out and though she did not know the laws and rules she could not find herself allowing anybody to do this. She said she was speaking for herself and so many people who felt the same way who were not present because they felt like their testimonies were heard for the night, but later forgotten. Ms. Meissinger said that was not how to run a city and not to take people's homes. She said she knew others who were worried about losing their homes and memories. She was fighting for her house, for old Sherwood and taking the old homes out meant taking the heart out of Sherwood. Ms. Meissinger commented that there were so many vacant lots like the old school house lot which was supposed to have a replica built. She said her mom went to the school. She said parking was insane around town, but advised not take what made Sherwood, Sherwood, to honor and respect those that know the history of Sherwood. She said Sherwood had welcomed all the new people and she loved everything here and all that was going on. Her mom was the very first Maid Marian and she was very proud of her and was speaking for her mom who gave her courage to speak. Ms. Meissinger said growing up in Sherwood was amazing. She asked the Commission not to take people's homes from downtown.

Jeffrey McColm, Sherwood resident, said his mother had owned a home in Old Town for the past 30 years and his family has been in Sherwood since 1897. He was concerned with all the commercial property in Old Town shown in the staff presentation and said there had been several homes taken down within the Old Town Overlay in the last seven to ten years. He did not know why vacant lots were not being considered. Mr. McColm noted the old school house property that Ms. Meissinger's mother and his own father and grandparents attended. He said there was so much land in Old Town that has lost homes or buildings and his concern was for the homes that could be affected. He commented that he did not see the reason to even consider properties with homes in Old Town Sherwood and it was because of the residents from the last seventy to hundred years that built businesses and made Old Town what it was today. Mr. McColm did not think there was any need to take the homes and assumed Sherwood would have to grow a lot more in Old Town to need more parking. He asked that the Planning Commission look at the application with consideration for the homes that remained as well as if it was something the URA needed at this time. He commented that there was not a need because there were too many other empty lots. Mr. McColm commented that the parking lot at Stella Olsen Park used to be a treatment center on Washington Street and was converted to a parking lot for the Woodhaven Church's use. He said parishioners park along the street and only about a half dozen cars parked in the lot of 75-90 spaces. He asked the Commission to preserve the residential part of Old Town as there was enough commercial area still in the Old Town that could be used for parking.

Chair Simson asked if, as a resident of Old Town, Mr. McColm felt there was a need for a parking lot. Mr. McColm confirmed there was a shortage and when the church was constructed they counted parking in front of homes. He said Sherwood was constructed as the Smock House in the late 1800's/ early 1900's and the streets were not wide enough. He said there have been sewer issues throughout the years, but the properties were never deemed for a commercial business. He said residents love what is going on with Clancy's, who just had a big Saint Patrick's Day celebration where parking was short and residents did not mind a few days of festival parking in front of their homes, but the daily parking would be an issue. In his opinion there was a day to day parking issue in front of the businesses, but it was a lot worse for the festival event days. He said residents were not complaining about a half dozen days a year.

Tim Voorhies, Sherwood resident and business owner said he had a different perspective. He commented that the parking problem in downtown was created by staff; the apartment complex nearby and City Hall did not have enough parking spots and the parks do not have enough parking to handle the festivals. He said he could not go to the bank during a festival, had to park four or five blocks away and would go through the road block and booths to double park in front of the bank. Mr. Voorhies said he saw it as a knee jerk reaction by the City to fix a problem they had created. He commented that the city should have waited on the water line and given the water system over to Tualatin Valley Water like Walt Hitchcock wanted and there would not have been a big debt with the water system with another 2% increase. Mr. Voorhies said the citizens told city officials there was not enough parking for some of these things and then he heard people talk about their houses being torn down. He commented he has had incidences with this City and everything ends up with an attorney with the old regime. He said Sherwood was a good town, but the staff he did not know about, because they never look far enough in the future. He commented on congestion on Tualatin Sherwood Road and said he had told staff they needed four lanes all the way out, but the traffic engineer guaranteed there would not be a traffic problem. Mr. Voorhies suggested listening to the citizens.

Chair Simson asked for any other testimony. Having none, she asked for applicant rebuttal.

Mr. Pessemier and Ms. Slyman came forward. Mr. Pessemier responded that Mr. Voorhies had made a point and that the City was trying to avoid a knee jerk reaction and could have asked for a zone change to solve the issue once. He pointed out that they were looking at the long term, that there were no plans to take any houses down, or even to build additional parking lots past this one. He said the future parking needs for Sherwood were unknown and confirmed that retail commercial properties in the Old Town could be parking lots. The URA was trying to look down the road and expand the possibilities of where parking lots could be in the future should there be a need Mr. Pessemier added that parking lots were expensive to build so there would have to be a need and a desire to build one at that time.

Ms. Slyman acknowledged there was a lot of emotion around the issue and pointed out that from a land use perspective the properties in question were zoned Medium Density Residential Low which already allowed for conditional uses that were not residential in nature. She gave the example that raising animals other than household pets and said civic buildings and public use buildings were allowed as conditional uses so parking lots were in addition to that list, but not out of character with what the zone already allowed.

Chair Simson said she had questions and concerns when she first read the application. She expressed concern that the City was opening up a door without enough information and referred to the staff report that indicated the need for a parking study to determine need in the area. She suggested it was putting the cart before the horse and if the application had been submitted by anybody other than City Council, the Planning Commission would have asked for a study. Chair Simson spoke of attending a meeting in Old Town on March 16th in the nine square blocks and was surprised by the big tent where she thought she would park. She said all of the twenty to thirty people found parking within two to three blocks of the meeting. Chair Simson commented that when the 503 Uncorked restaurant had a wine event, parking would have to be found a couple blocks away and during Robin Hood Festival or Cruisin' there is no parking anywhere. She

acknowledged that Old Town merchants have said there was not enough parking, but that meant there was not parking in front of their places of business. She said that parking would likely be available a block or two away. She added that without a valid parking study her concern was that the City was creating something that was not necessary; there was a lot of commercial land that had the opportunity for parking.

Chair Simson suggested that a zone change would have made the citizens in the surrounding area feel less threatened, because they would not think their houses were next on the list. She said it was a lot of change to put in one parking lot, she did not know why the Old School was not being used as a parking lot, but guessed it was because it was three city blocks away and everyone would complain that the only parking lot was far away.

Chair Simson said she did not know why the parking study was not done nor what the sense of urgency was for redevelopment of the Robin Hood theater site, but the Planning Commission could only review the two criteria and the Commission could not make a political or emotional decision, rather an objective decision of whether the criteria were met. She explained that the Commission would make a recommendation to City Council and they would make the decision. Chair Simson suggested a sunset clause on the conditions of approval would enable an application to come through and further information would allow the Planning Commission to either enforce the sunset clause or let it expire. She said there was not enough information to prove need and wanted the parking study to be completed. She expressed that she did not like losing the Robin Hood Theater or the Old School House and she did not want to see the flavor of Sherwood change again. She hoped the citizen's understood that the Planning Commission did not have the ability to make a political opinion, and that citizens needed to take emotional concerns to Council.

Mr. Pessemier responded that the City was trying to solve a problem and make the parking situation better. He said a parking study would have a fifty year time horizon and it was impossible to determine the need long term. Mr. Pessemier did not know the benefit of a sunset clause over such a long period of time from a parking study.

Chair Simson reasoned it would enable a proposal to come through for an application that was ready to go, not allow future applications to occur without more information, and provided hope in protecting other properties from being changed into parking lots.

Vice Chair Griffin asked if the City was trying to fill a need and remedy a perceived need caused by the sale of the Robin Hood lot. He commented on pushing a big change that would affect all of downtown instead of asking for a zone change.

Mr. Pessemier reiterated that the URA was trying to prepare for the future, to ensure there were options as Old Town developed, because the URA was going away and this was one of the last projects.

Vice Chair Griffin asked regarding City Council's vision for Old Town; do they anticipate more businesses that need parking lots or will there be more infill with residential that won't need parking lots. He said he was trying to get a sense for why the City Council thought it was a good idea now.

Mr. Pessemier responded the proposal was trying to open doors for the future to ensure that as Old Town becomes successful there were options to consider relative to the parking issue.

Commissioner Meyer said he thought there was a parking issue downtown that needed to be solved, but the commission saw different issues and had received oppositional testimony. He commented that the Old Town Overlay had a small population and this was the highest percentage of any community issue the Planning Commission has had come up. To him the issue really meant something to the people that lived there. He said there was a definite parking issue that needed addressed, but was not sure if this was it.

With no other questions for the applicant, Chair Simson closed the public testimony and asked for additional comments from staff. She asked for a clarification of the Planning Commission's role; the criteria and options available.

Mr. Kilby responded that the Planning Commission would make a recommendation to the City Council to approve as proposed, to modify the amendment, or to recommend denial. He stated the Planning Commission was an advisory body to the City Council and ultimately the City Council would make the decision. Mr. Kilby stated that staff wanted to do a Comprehensive Plan over the next couple of years that would include planning for Old Town and reminded that there is some definition of what Old Town might look like from the Town Center Plan. He said the Commission needed to be open to the idea that there would be parking issues that needed to be addressed over time, but it was up to Commission to decide whether they felt it was right to make the change now or in twenty years when there was more of a problem. Mr. Kilby acknowledged there was a cloudy vision for Old Town so we would need to rely on what the people that live and do business in Old Town perceived every day.

Commissioner Pearson stated the proposal came before the Planning Commission because the URA board and the City Council envisioned losing two lots used for parking and wanted to plan ahead to replace those lots should a better use come along for the existing. The proposal has asked the Commission to give flexibility today for something that may be needed ten years from now. He said it was a good approach and had nothing to disagree with about it saying it gave the City the maximum flexibility to allow them to building other parking lots without having to go through this process again. Commissioner Pearson said he agreed with planning for the future for flexibility, but he was against tearing down other property. He commented that Old Town's character was the heart of Sherwood and nobody wanted to lose that. He noted that it would be a political decision made by the City Council who would have to face the voters. He said he was going to have to vote for the proposal to maximize flexibility, rather than have to go through the process again.

Commissioner Flores said his perspective concerned the need for parking. He thought that it was needed, but noted there was available land elsewhere without having to make any changes. He said if there was not any other available land he could see that as a greater, imminent need, but it seemed to him that there was still a number of other options before hitting any of the residential areas

Chair Simson commented that, if it was not clear, the purpose for the sunset clause was to enable someone with an application to put in the parking lot if it happened within the year. It was understood the City had an application ready for the construction of the parking lot. She said a parking study would either affirm the decision and make it viable to remain in the code or the parking study would say there were other opportunities and the text amendment should be allowed to expire after the immediate need was resolved. She asked if the Commission had any interest in entertaining a modification to the recommendation. None were received. She asked for a motion.

Vice Chair Griffin said as he had considered the testimony from the public, the applicant, as well as Commissioner Pearson's comments. He agreed that the City Council had to make the political decision and the Planning Commission needed to base their recommendation on a couple points of criteria. He commented that if the Robin Hood Theater parking lot was gone it would be nice to have a lot that was fairly adjacent to where the other one was. He said if the lot on 3rd street was two blocks closer it would be an ideal situation and his hesitation was opening up a door which would allow something happen in Old Town that we don't want. He observed that we need to have faith in our elected officials, express our opinions by coming to the City Council meetings and being part of the process and making our opinions and concerns known.

Commissioner Flores asked for another explanation of the criteria. Mr. Kilby placed the text amendment criteria on the screen for the Commission to review.

Motion from Vice Chair Russell Griffin for the Planning Commission to forward a recommendation of approval to the City Council for PA 16-02 Code Update based on the applicant testimony, public testimony received, and the analysis, findings and conditions in the staff report. Seconded by Commissioner Alan Pearson.

Vice Chair Griffin, Commissioners Pearson and Rettig voted in favor. Chair Simson and Commissioners Flores and Myer voted against (Commissioner Walker was absent).

Chair Simson stated her vote was against based on the fact that need was quantified by the applicant without a parking study; the need for parking was a perception. She said with the loss of the Robin Hood Theater parking lot there may be a need, but the Planning Commission needed to have the study or a sunset clause that enabled the parking study to occur before any further applications were received. Due to the tied vote, she asked staff how to proceed. Staff asked for a recess to evaluate.

Chair Simson called for a recess at 8:16 pm and reconvened at 8:20 pm.

Chair Simson disclosed that staff advised that a tie would become a non-recommendation to Council and would go before City Council on May 3, 2016 with no recommendation from the Commission. She asked for one more vote to allow commissioner to affirm their votes. The vote stood as a 3-3 tie and a non-recommendation would be forwarded to Council. She thanked those who provided testimony.

7. New business

a. Public Hearing – PA 16-04 Industrial Uses Code Amendment

Chair Simson read the public hearing statement and said this was a legislative decision and the Planning Commission would be forwarding a recommendation to the City Council who would make the final decision unless appealed to the Land Use Board of Appeals (LUBA).

Chair Simson disclosed that she received a call from Stu Peterson, of Macadam Forbes, after one of the multiple work sessions on the topic. She said the discussion related to industrial services not being a retail use, but supportive of the industrial marketplace. She related that he expressed concern about the size limitation which has been restated in his written testimony and he gave examples of businesses located in Tualatin at about 140,000-180,000 square feet. She noted his comment that the heavier, denser employment was in the larger buildings and that the only fifty acre parcels were Nike, Intel, and Mentor Graphics. Chair Simson stated the conversation would not impair her but made her a little smarter to understand the content of his letters.

Chair Simson asked for the staff report.

Julia Hajduk, Community Development Director gave a presentation and some background information (see record, Exhibit 2). The Tonquin Employment Area was brought into the UGB in 2002, a concept plan was adopted in 2010 where preferred industry targets. Target industries were made permitted uses and anything that would not be necessarily compatible with the area were conditional uses.

Ms. Hajduk reported that when the Code update was completed in 2012 and the Industrial Uses (Light Industrial, General Industrial and Employment Industrial) were merged to streamline the use categories the unintentional consequence resulted in very few industrial use types being permitted or conditional in the Employment Industrial (EI) zone. She explained that as the Tonquin Employment Area (TEA) started to be looked at for development by brokers and developers they came to staff with complaints that the permitted uses were too restrictive. Ms. Hajduk noted that staff presented this to the Planning Commission on October 27, 2015 and received support to proceed with the code update process. She described work sessions held on December 8, 2015, January 12, and February 9, 2016 when staff was directed do a public notice for a hearing. She said notice was provided to the Department of Land Conservation and Development (DLCD), public

notice was published in The Times and the Gazette, a public notice was mailed to all industrially zones properties, emailed to interested parties, posted in five locations around the city and placed on the website.

Ms. Hajduk pointed out the packet contained the staff report, a clean copy of the proposed changes, track changes copy, and a summary of the proposed changes with reasoning for the change. She said staff received comments from Pride Disposal regarding clarification of what other solid waste transfer facilities were and recommended a modification that general purpose solid waste landfills, incinerators, and other solid waste facilities be added as not otherwise permitted; there is another section in the code that addresses solid waste transfer stations with definitions. She said Pride Disposal was comfortable with the proposed changes and noted that the modification clarified a potential issue if the business wanted to expand.

Ms. Hajduk noted letters from Rhys Konrad from Macadam Forbes and Bill Bach from Trammell Crow (see planning record, Exhibits 5 & 8) saying the letters recommended either no size limit on stand-alone warehousing or raising the limit to 150,000-200,000 square feet. A letter from Willamette Water Supply was also received making sure the public infrastructure specifically permitted a water treatment facility; it was a permitted use (see planning record, Exhibit 6).

Chair Simson asked for more information about the letter from the Willamette Water Supply. Ms. Hajduk confirmed that public or private structures, including but not limited to water treatment plants, were permitted in all three industrial zones.

Ms. Hajduk reported there was a letter received from David Stiller who was concerned that quarry operations would not be permitted in the EI zone should his property was annexed into the city. She indicated those activities would not be permitted the proposed language. She had discussed with Mr. Stiller that the property could stay outside of the city if that was an activity he wanted to do.

Julia said Mr. Bach's letter from Trammell Crow also recommended removing the limitation on outside odor and noise that could be perceived offsite. There were two sections in the proposed language with the idea that the less intensive and more appropriate levels for Light Industrial could be permitted outright. She directed the Commission to the track changes page 58 of the packet which showed the two options and said the intent was to permit the less intensive uses outright in all of the zones and to have a Conditional Use in the Light Industrial and Employment Industrial and permitted outright in the General Industrial zone for the more intense uses that were not otherwise prohibited elsewhere in the code provided other offsite impacts were compliant with local state and federal regulations. Staff's recommendation was to have two different categories of different intensities.

Ms. Hajduk said that Tim Voorhies had submitted written testimony in February, before the public notice, that centered on protecting the impact on the neighbors by requiring neighbors to sign a waiver stating they would not complain about the industrial uses rather than prohibiting those uses. She said it was something to think about.

Ms. Hajduk reviewed the criteria for a text amendment saying approval was based on the need, the amendment needed to be consistent with the intent of comprehensive plan, other provision of the code and applicable state or city regulations. She noted that the applicable plan policies were in Chapter 4 of the Comprehensive Plan Sections H, Economic Development and Section K Industrial Planning Designations and Metro Title 4 Standards. Metro had provided an email asking for more information and was provided with the table and staff report resulting in no concern with the proposed changes. Ms. Hajduk stated that the amendment also needed to comply with the Transportation Planning Rule which was not affected by this text amendment.

Chair Simson commented that Metro Title 4 defined broad restrictions that communities must protect industrial land and put limitations on retail. For example a New Seasons Market could not be put in industrially zoned land.

Staff recommended the Planning Commission forward a recommendation to the City Council. The first reading before City Council would be May 3, 2016 and the second was scheduled for June 7, 2016.

Chair Simson called for a recess at 8:42 pm and reconvened at 8:46 pm. She said the commission received the letter from David Stiller dated April 12, 2016 (see record, Exhibit 7). After confirming commission members had read the letter she asked for questions for staff. None were received so she asked for public testimony.

Bill Bach, Trammell Crow stated the Commission had his letter and he wanted to clarify his comment on the noise and odor issue was about the absolute “no” as a standard, because of perception. He said it was impossible to open a door without making noise and he had encountered the issue on other projects. He said that door opening or truck traffic could be perceived as noise that could lead to a violation. Mr. Bach noted that the occupants of industrial buildings were sophisticated about the issue and suggested a more reasonable standard based on the noise and nuisance codes.

Mr. Bach said there were industrial buildings in the 200,000 square foot range and he thought the industry could live with that limit on stand-alone warehouses. He said he could not speak to the employment densities and said they would vary from user to user. Typically warehousing use has fewer employees than manufacturing, but on the other hand once the space was in place they were convertible from one use to the other. He commented that as companies change their business model they may do some value additions and he did not think the city would want to shut out the user based on size alone. He cited in the letter dealings with wineshipping.com and said the project would not have happened without a larger warehouse.

Chair Simson thanked him for the clarification on his noise comment and suggested the code could be amended to include a measurable amount of noise instead of no noise. Mr. Bach commented on the impact of complaints and law suits for industrial buildings located near residential areas or neighboring businesses that took a dislike to the noise generated.

Commissioner Pearson asked about regulations regarding noise. Ms. Hajduk explained that the noise ordinance was in the Municipal Code. In the development code Section 16.152 it said “all otherwise permitted commercial and industrial and institutional uses shall incorporate the best practical design and operating measures so that odors produced by the use are not discernable at any point beyond the boundary of the development site”. She commented that an applicant would submit a narrative explaining the odor produced by the use and the City would consider the density, the characteristics of surrounding populations and uses, the duration of the emission and any relevant factor to abate any odor issues.

Stu Peterson, Macadam Forbes, said Ms. Hajduk’s characterization of the text amendment was correct and the construction of SW 124th Avenue had made the area viable from a development standpoint. He said he was involved as the listing agents for the Orr property and disclosed it was a 96 acre, keystone piece at 124th Avenue and Tualatin Sherwood Road. He reported after they read the zoning ordinance and met with prospective developers they realized a problem and conferred with City staff. He said if the property could be made a viable resource and overcome some of the physical issues it could become a member of Sherwood’s tax roll. Mr. Peterson stated that one issue holding development back was the size limitation for warehousing. He said warehousing was part of the economic ecosystem of industrial uses and about 16% of the workforce in Tualatin was employed in warehousing industries. He said industrial services that were now allowed in the text amendment were critical and many of those businesses provide services to other business. Nobody that develops a site wants to see a retail use.

Mr. Peterson commented that developers and investors that would turn this property into income from the standpoint of property taxes have a huge interest in building large buildings, because it cuts the cost of construction, allows more employment density overall, and makes it more economically viable. There are dozens of uses that were part of the agricultural industry that were important to the area, like the wine distribution. He said the building he and Mr. Bach were involved with was a free standing 150,000 square

foot building; the employment density was not tremendous, neither was it negligible. Mr. Peterson said he would love to see the building size limit go up to 200,000 square feet, but 150,000 would be more palatable than 100,000. He commented that about 75% of the buildings built around here in the last ten years were 100,000 square feet or greater.

Chair Simson asked for a size reference based on the buildings being built just inside Tualatin from Sherwood. Mr. Peterson said they were 50,000, 75,000 and 200,000 respectively. The 200,000 square foot building was the one in the back and the developer was a prospective builder for the property in the Tonquin Employment Area.

Vice Chair Griffin asked about the size of the Walmart building and was informed it was about 145,000 square feet with all the buildings on the site totaling approximately 190,000 square feet. Mr. Pessemier added that the new industrial buildings on Century Drive behind Walmart were 30,000 and 70,000 square feet.

Mr. Peterson commented that Sherwood was not a distribution area where 300,000-500,000 square foot buildings would be built, because distributors would not want to be tied up on Tualatin Sherwood Road and 124th Avenue would not be big enough to support any major distribution company, but agricultural products businesses nearby needed the warehousing and there were businesses that support the manufacturing industries via their warehouses. He gave the LAM Research site in Tualatin as an example with a 150,000 square foot building with offices and nearby warehouses that supported it.

Earhart Steinborn, Sherwood resident and industrial property owner said he owned two commercial buildings on Pacific Hwy and a three acre lot that was zoned Light Industrial. His concern was that the LI property be utilized as the best and highest use. He did not think an industrial building would do justice to the property or the city.

David Stiller, owner of property in the Tonquin Employment Area expressed concern if his property was annexed into the city and subject to the EI zoning rules. He said the property was owned by a family trust and his uncle's family. It was an operating rock quarry in 1984 as the Compton Stiller Quarry with no action by the operator the last fifteen years. The trust maintained a Department of Geology and Mineral Industries (DOGAMI) permit. He said Macadam Forbes was trying to market the property and his concern was to keep the option of selling the property to a rock pit developer. If a buyer came along and wanted to develop differently they would quit paying the DOGAMI permit.

Tim Voorhies, Sherwood industrial property owner commented that the code amendment had come a long way and he thought it was going well. His concern was for conditional uses in the code that should be outright permitted, like hospitals or a fire department. He commented on a waiver for people moving in next to industrial properties and said it would keep a lot of headaches off of the city. He said the people in the apartment complex were complaining about the public works yard starting too early and there would not be any issues if they had signed a waiver. Mr. Voorhies commented that there were a lot of things that go on in the planning process and the industrial codes that he did not understand. He cited the definition for a rock quarry or mining as confusing. He suggested that limits not be created to give the people or the environmentalists a leg to stand on.

With no other testimonies, Chair Simson turned the time to the applicant for rebuttal. Ms. Hajduk stated she did not have anything to add unless the Commission had questions as she thought the issues raised were policy items. She gave Mr. Pessemier an opportunity to respond to some of the comments received.

Mr. Pessemier stated his involvement was to ensure that the code encouraged economic vitality in industrial areas and under the previous code that was a challenge. He said great information and feedback had been received through this process and it was down to the size of the distribution and warehouse section. From his perspective the proposed code language was much better and he would rather fight the battle for employment on the incentive side instead of dictating it in the code. He noted that Walmart at roughly 150,000 square feet

looked massive, but a warehouse distribution center of the same size looked small. He pointed out that the goal was to have the area develop, but he was a little concerned some of the larger parcels could be taken up with activities that did not produce jobs with a 200,000 square foot warehouse.

Commissioner Pearson expressed concern for a 200,000 square foot warehouse that employed three people, but he had heard some good arguments that times change and the activity could change to manufacturing.

Ms. Hajduk said she had some recommended language if the commission wanted to amend the proposed language regarding odor. She suggested that on page 58 “*no exterior odor, noise or unscreened*” be changed to “*exterior odor and noise is consistent with Municipal Code standards and there is no unscreened storage*”. Chair Simson asked if then the second section on noise would be in compliance with the code. Ms. Hajduk responded it would have to be in compliance with the code and DEQ standards.

Chair Simson closed the public hearing and gave scrivener errors to staff. She asked about the use of acids, paints and dyes in the industrial area and whether or not it included heavy metals. She commented that the City Portland was having issues with glass manufacturing and said Sherwood was utilizing DEQ regulations to help regulate. She asked if the code meant that heavy metals would not be allowed unless it was a conditional use in General Industrial and if it was a concern.

Commissioner Myer commented that the heavy metals were used in the manufacturing process so that would be attempting to regulate the manufacturing process of a potential industry and it would fall under DEQ. He noted the code was regulating what could be manufactured not the process of the manufacturing. He asked if the city wanted to regulate the process of a potential tenant. Commissioner Pearson suggested the City not have the bureaucracy to regulate process because it was the purview of the state or federal government. Discussion followed no language was amended.

Chair Simson asked for clarification for footnote 9 that discussed stand-alone warehousing and distribution associated with another approved use. Ms. Hajduk explained that the limitation on the size of a warehouse was if they were only doing a warehouse. If they were manufacturing a product and have huge warehouse associated with it the size of the warehouse was not limited. The only restriction being carried forward from the Tonquin Employment Area (TEA) was no warehousing distribution because the intent was to have jobs and manufacturing and not just a storage facility. As long as you are having those manufacturing, processing components to it, then staff was not recommending that the size of the warehouse be limited. Discussion followed with staff being directed to clarify the language.

Commissioner Pearson asked if the quarry would be grandfathered in. Ms. Hajduk replied that if the quarry was operating it would be, but as it was not, her advice could be not to annex into the city, because they would be subject to the industrial zone standards.

Chair Simson clarified that annexation for the TEA was already approved by Sherwood residents and property owners could ask to be annexed. She commented that the Light Industrial property across from Home Depot was a zone change concern and noted that the waiver suggested by Mr. Voorhies was a process outside of a code amendment. Ms. Hajduk responded that the waiver had potential in the Brookman Road area regarding farming operations and there were situations where it might be beneficial for new development between incompatible zones, but she did not think it should be codified.

Motion: From Commissioner Pearson to increase the warehouse size from 100,000 square feet to 200,000 square feet, Seconded by Commissioner Meyer.

Discussion followed. Commissioner Pearson commented that input received was compelling enough to consider. His concern was that Sherwood had a finite amount of land and the need to maximize that in terms of jobs. He said warehouses could be converted to manufacturing over time and he did not want to deny

developers who wanted to develop warehouses at 200,000 square feet. He commented that it was pulling a number out of the air, but that the Commission had received input as to why 200,000 made more sense than 100,000.

Commissioners Pearson, Meyer, and Flores voted in favor. Chair Simson, Vice Chair Griffin and Commissioner Rettig voted against. Motion did not pass.

Motion: From Commissioner Pearson to increase the warehouse size from 100,000 square feet to 150,000 square feet, Seconded by Vice Chair Griffin. All present Planning Commissioners voted in favor (Commissioner Lisa Walker was absent).

Chair Simson asked for any other comments.

Motion: From Commissioner Pearson to incorporate all the previously mentioned changes. Seconded by Commissioner Meyer. All present Planning Commissioners voted in favor (Commissioner Lisa Walker was absent).

The following motion was received.

Motion: From Vice Chair Griffin to forward a recommendation of approval to the city council for PA 16-04 Industrial Uses Code Amendment, based on the applicant testimony, public testimony received, and the analysis, findings, and conditions in the staff report with the afore mentioned modifications. Seconded by Commissioner Pearson. All present Planning Commissioners voted in favor.

Chair Simson commented on the amount of effort over the past five months and expressed appreciation to input from the public, industrial property owners, and their representatives in helping educate Commission members.

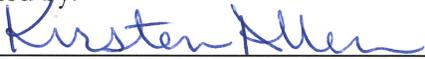
8. Planning Commissioner Announcements

Vice Chair Griffin announced the summer musical in the park would be My Fair Lady.

9. Adjourn

Chair Simson adjourned the meeting at 9:40 pm.

Submitted by:



Kirsten Allen, Planning Department Program Coordinator

Approval Date: May 24, 2016