

**MINUTES  
FAIRVIEW CITY COUNCIL REGULAR MEETING  
FAIRVIEW CITY HALL  
1300 NE VILLAGE STREET  
FAIRVIEW, OREGON 97024**

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**December 17, 2003 -- 7:00pm**

**I. CALL TO ORDER/  
ROLL CALL**

Mayor Weatherby called the meeting to order at 7:00pm.

PRESENT: Mayor Mike Weatherby  
Councilor Darrell Cornelius  
Councilor Sherry Lillard  
Councilor Steve Owen  
Councilor James Raze  
Councilor Jim Trees

STAFF PRESENT: Mary Jo Briggs, City Administrator  
Gilbert Jackson, Chief of Police  
Bob Cochran, Public Works Director  
Laura Zentner, Finance Director  
John Andersen, Community Development  
Director  
Caren Huson, City Recorder

Councilor Owen stated that as long as he has been on the Council, they have used a process developed by a former City Attorney regarding written ballots. The Council has used written ballots during Council meetings whenever they voted for appointments to Boards and Commissions. The votes were then immediately tallied by the City Recorder who then announced the results of the vote. The ballots were always available after the meeting for public view. This process was recently repeated on November 5, 2003, when Council was asked to vote for members of the Budget Committee; however, this time a scoring process was used for the candidates. In response to citizen concern regarding the announcement of those candidates, tonight the City Recorder would read each Councilor's ballot into the record and again announce who was appointed to the Budget Committee.

Caren Huson, City Recorder, commented that Council had decided to use a scoring process when choosing members of the Budget Committee. Each Councilor was asked to score each candidate numerically from 1 to 7, with 1 being their first choice. The total scores would then be tallied, and the six candidates with the lowest

score would be appointed to the Budget Committee. Once the 6 candidates were chosen, the names were then drawn from a hat to determine their term of office.

Recorder Huson read the following results of the Budget Committee vote into the record:

Councilor Cornelius: (1) Helen Maguire; (2) Cara Phillips; (3) Michael Howell; (4) Larry Cooper; (5) Carl Malone; (6) Robb Pierson; (7) Todd Johnsen.

Mayor Weatherby: (1) Cara Phillips; (2) Todd Johnsen; (3) Michael Howell; (4) Carl Malone; (5) Larry Cooper; (6) Robb Pierson; (7) Helen Maguire.

Councilor Raze: (1) Larry Cooper; (2) Carl Malone; (3) Robb Pierson; (4) Michael Howell; (5) Todd Johnsen; (6) Cara Phillips; (7) Helen Maguire.

Councilor Trees: (1) Helen Maguire; (2) Carl Malone; (3) Cara Phillips; (4) Larry Cooper; (5) Michael Howell; (6) Todd Johnsen; (7) Robb Pierson.

Councilor Owen: (1) Larry Cooper; (2) Todd Johnsen; (3) Michael Howell; (4) Robb Pierson; (5) Cara Phillips; (6) Carl Malone; (7) Helen Maguire.

Councilor Lillard: (1) Robb Pierson; (2) Todd Johnsen; (3) Larry Cooper; (4) Carl Malone; (5) Cara Phillips; (6) Michael Howell; (7) Helen Maguire.

Recorder Huson announced that the total scores were as follows: (18) Larry Cooper; (22) Cara Phillips; (23) Carl Malone; (24) Todd Johnsen; (24) Michael Howell; (27) Robb Pierson; (30) Helen Maguire. As Ms. Maguire received the most points, she was not appointed to the Budget Committee. The terms of office for each candidate were:

Carl Malone 1 year; Todd Johnsen and Cara Phillips 2 years; Larry Cooper, Robb Pierson and Michael Howell 3 years.

## **II. CITIZEN COMMUNICATIONS**

Mayor Weatherby called for persons wishing to speak on non-agenda items. As there was no response, the session continued.

Peter Tuomala, Portland, stated that he would like to plant a seed with the Council. He is a Community Support Agriculturalist and suggested that Fairview open a Community Garden and Farmers Market. Fairview is a tight community and people could walk to the event. Councilor Owen commented that Fairview citizen Mike Howell had also been interested in a community garden. Mary Jo Briggs,

City Administrator, , mentioned that a Community Garden was in the process for next year and that she also thought it would be a wonderful attribute; also, she felt a Farmers Market would be a good thing for Fairview.

Shawn Stanfill, Fairview, stated that he had a copy of an article from the Gresham Outlook regarding the fact that there were no current parking problems in Fairview Village. Mr. Stanfill commented that he was proud of the City Administration and the direction they are moving and commended the Council for listening to citizen needs

### **III. CONSENT AGENDA**

Councilor Owen moved and Councilor Raze seconded the motion to approve the Consent Agenda, consisting of Liquor License Applications for Sandy Boulevard Shell and Bumpers Grill and Bar, and a Revised Agreement and Lease for the Heslin House.

AYES: 6  
NOES: 0  
ABSTAINED: 0

### **IV. PUBLIC HEARING**

#### **A. Village Street Parking**

Mayor Weatherby stated that this item was a public hearing and asked staff to present their report.

John Andersen, Community Development Director, reported that before the Council were recommendations from the Planning Commission regarding the issues associated with parking in Fairview Village. The Planning Commission had held two public hearings on proposed Ordinance 7-2003, and held an additional two meetings to discuss the Village Street parking area.

Councilor Raze declared ex parte with many of the merchants and development staff; however, he could be impartial and fair when it came time to vote. Councilor Owen commented that he had had numerous conversations with residents in Fairview on the parking issue as a whole, and that he and Councilors Trees and Cornelius had met and walked the Village area and discussed parking, but he would be able to make a fair decision tonight. Mayor Weatherby, Councilor Cornelius, and Councilor Lillard all stated that they had heard of the parking issue for two years but would remain fair in their decisions. Councilor Trees reported that he would recuse himself from the vote as he was an affected property owner; however, he felt he was part of a class of merchants, but to keep the record clean, he

would step down from the dais and not vote.

Director Andersen reported that the Planning Commission had developed eight recommendations that they were making to the City Council. The eight recommendations were contained in the Council's packet.

Tom Sponsler, City Attorney, stated that on behalf of Councilor Trees, he wished to clarify an issue. The last time Council heard a public hearing on the parking issue was for a land use decision. What is before the Council tonight is not a quasi-judicial decision; they were not sitting as a legislature, and there was no legal requirement in recusing yourself. Attorney Sponsler added that he had advised Councilor Trees that there is no legal reason to recuse himself and with that Councilor Trees resumed his seat at the dais.

Steve Kaufman, Chairman of the Fairview Planning Commission, stated that he was present to answer any questions the Council might have.

Councilor Cornelius reported that he had attended the December 6, 2003 Planning Commission hearing and asked Chairman Kaufman to review the Commission's eight recommendations. Chairman Kaufman explained the following:

- Recommendation No. 1: recommended that Ordinance 7-2003 be tabled for six months while other options were considered and tried. With all of the other parking issues being brought forward, it was necessary for the Planning Commission to have more time to review everything.
- Recommendation No. 2: recommends that Resolution 11-2003 be repealed as the Commission found it redundant and unnecessary to the application of the Development Code. Director Andersen added that different interpretations were being made in regards to Resolution 11-2003 as to whether or not it only applied to current buildings. Councilor Cornelius stated that his understanding was that the Resolution pertains only to new construction and not to existing row houses, and that three other Councilors also believed as he did
- Recommendation No. 3: recommends that property owners and/or merchants on Village Street that are using more of the mixed use buildings for commercial activity than approved in the original approvals should be required to inventory their properties use by obtaining a Type I Code Interpretation for their property. This will give accurate numbers of the amount

of commercial activity now occurring. This process will provide assurances to existing merchants about their businesses and their ability to market their properties to others. There is no fee for this application and no changes to existing uses or approvals are anticipated. Compliance would be required by February 1, 2004. Chairman Kaufman added that this recommendation would provide an accurate way to determine parking needed and being used.

- Recommendation No. 4: recommends that any further expansion or change beyond that identified in the inventory process will require a Type II Modification of Condition process, as was required recently for the approval of the Market Street Mixed Use Building. Chairman Kaufman commented that the Planning Commission wants the public to have some input and they wanted the applicant to be able to come and appeal to the Planning Commission after a staff decision. Councilor Cornelius questioned if the Planning Commission looked at a recent use being a deli, would this recommendation freeze that use as a deli, or if the property owner wanted to expand the business, would they have to go to Planning staff for another permit as the new use could potentially require additional parking. Chairman Kaufman responded yes, the applicant would need to receive a new permit, but the recommendation would allow the applicant to appeal any staff decision to the Planning Commission and expedite the process. Councilor Cornelius asked what would happen if a residential use wanted to change to a commercial use. Director Andersen responded that if a unit was completely residential, that there was a condition in the original design approval that states a certain portion of the unit could be used as commercial, and that that was important for current businesses which have gone beyond the original design approval and have expanded their commercial area. Director Andersen added that approval of this recommendation would provide City staff with an inventory of what percentage of units were currently being used commercially and that any changes to a unit, after the inventory was received, would have to go through a Type II process with a determination made whether additional parking was required. Councilor Cornelius stated that, in his review of the Paragon rowhouses, that they were all built for residential use only but some have commercial in them now, yet they were not required by the Planning Commission to provide additional commercial parking. Councilor Cornelius added that he saw inequity in recommendations 3 and 4 as they restrict the use of properties. Director Andersen responded that the Paragon rowhouses had an addendum

stating that those units could have commercial to some extent as they do have two garage spaces and one parking space outside. Councilor Cornelius stated that the Rosewalk rowhouses were landlocked with a one space garage and one space in the parking lot and that they had no commercial parking requirements placed on them, but they can be used as commercial. Councilor Trees asked if Director Andersen was planning on using the Type II process for enforcement, as initial buyers on Village Street were able to use 100% of their unit for commercial uses and never had to go through a Type II process. Director Andersen responded that the Type I process would provide the inventory and the Type II process would make sure there was adequate parking, adding that parking requirements have always been in place.

Director Andersen commented that the Commission was not proposing to change any of the parking requirements and that parking requirements have always been stated in the Code. Councilor Lillard questioned if parking requirements were part of any application. Director Andersen yes. Councilor Trees asked what Director Andersen thought would cause a parking problem on Village Street. Director Andersen responded that the concern was that additional expansion beyond what was originally anticipated could cause a parking problem.

- Recommendation No. 5: recommends that the developer is to be assured that the City will continue to honor the original Village Plan and that sufficient parking exists to allow the approval of the buildings contained in that plan, as long as the developer complies with the City's development standards. Chairman Kaufman added that the Planning Commission decided that they liked the original Fairview Village plan and wished to have it remain as approved. Councilor Cornelius asked Chairman Kaufman if he had reviewed the original Village Plan himself. Chairman Kaufman responded yes, and that the Commission had discussed it extensively. Councilor Cornelius stated that the Village Plan states that the Village and old town would be able to do everything without a vehicle; that there is supposed to be a bakery, meat market, barber shop, etc., which are not here so that was not sticking to the original plan, and that by restricting the use of the rowhouses, it appears that the Commission was not following the original plan. In addition, the original plan depicted a church where there is now 7 residential homes, a Target store instead of the promised grocery store, and no professional offices as promised. Chairman Kaufman responded that all of those uses which Councilor Cornelius mentioned were not

significant changes to the plan; the market makes it impossible to promise certain commercial uses.

- Recommendation No. 6: recommends that the City should initiate the proposed amendments to the Development Code regarding clarifying permitted uses and parking requirements for the Village Commercial and Village Mixed Use districts; final determination of whether to adopt those changes will be made after hearing all public testimony. Chairman Kaufman added that the Planning Commission concern was that the way the Code was written has created some of the issues we are addressing today, and this recommendation would eliminate any vagueness.
- Recommendation No. 7: recommends that information should be produced by the planning staff to help property owners understand parking demand management and how that technique can benefit the use of their property.
- Recommendation No. 8: recommends that the City should commit to assisting the merchants, developer, property owners and pertinent applicants to develop an interim parking lot should one be needed if the parking congestion condition described in the staff report was achieved; this is not to be a City parking lot; the City's only duties will be to help the responsible parties work together and to assure that the overall community's interests are safeguarded.

Mayor Weatherby opened the public hearing.

Peggy Trees, 1505 NE Village Street, Fairview, asked if parking requirements were required of a developer when they submit an application. Director Andersen responded yes, and that the City imposes regulations at the time a change in use is occurring; if a property owner was going to change a use, then parking requirements would apply at that time as well. Ms. Trees stated that Recommendation No. 6 refers to proposed amendments to the Development Code and asked what those were. Director Andersen responded that the proposed amendments were contained in Exhibit F of the staff report. Ms. Trees stated that in Exhibit F, under Development Standards A.2.a. it states that a VMU area shall be occupied by townhomes and retail uses utilizing 10,000 square feet or less of gross floor area, and then in parenthesis was inserted "project footprint" which she thought was changing the original use of 100% commercial and asked if the change of a project footprint would change the value of her property. Director Andersen responded that "project footprint" refers to the amount of area that can be used for retail uses and the language currently contained in

Exhibit F was proposed by the developer during the meetings that the Planning Commission held on the parking issue; it has been made clear to staff that the Planning Commission is not willing to accept this proposal as it is currently written and that is why the proposal in the recommendations this evening talks about recognizing existing uses rather than going back to the original project footprint. Ms. Trees clarified that Exhibit F was just a proposal made to the Planning Commission and that it will not be exactly what comes before the Commission for a hearing. Director Andersen responded that that was correct; when the Planning Commission first debated this proposal, they were not comfortable with just allowing the project footprint and original design approval to be the end of it, nor were they comfortable in restricting commercial uses just to the ground floor of a unit, so he was sure that if the Council directs staff to go forward with Recommendation 6, that changes would be made to the proposal before it is presented to the Planning Commission for approval. Ms. Trees stated that she would like to be able to sell her property the way she bought it, and that she would like to be able to change the commercial use without going through a Type II process as she would not be making any land use changes. Ms. Trees added that she could not physically construct a parking space, and that she would like to see the parking spaces behind her unit be used for public parking.

Marcus Fullard-Leo, 1465 NE Village Street, Fairview, reported that his business would be affected by the proposals the Council was considering and that he commended staff and Council on all their efforts regarding Village parking. Mr. Fullard-Leo stated that in his view, all of the staff recommendations being proposed seemed like spot-zoning of each residential unit on Village Street. The proposed action would administratively eliminate the mixed use zoning and affect the mixed use designation. If you encumber the real property rights with unnecessary legislation, you would be taking away property value. Mr. Fullard-Leo added that not all alternatives and proposals suggested by all parties have been considered by staff, and that staff has indicated publicly that other alternatives and opinions made to them would take too much City time to explore. Mr. Fullard-Leo commented that Council was dealing with individual property owners and their property rights. Mr. Fullard-Leo commended Councilor Cornelius for his in depth questioning and appreciated his perspective. Mr. Fullard-Leo stressed that all alternatives need to be fully explored before a drastic legislative decision is made and asked Council to instruct staff to further investigate all alternatives before making a decision. Councilor Cornelius asked if Mr. Fullard-Leo had a proposed solution. Mr. Fullard-Leo responded that he did not think one person could make that decision; all the Homeowner Associations should be asked for their input. Many of the property owners on the southern end of

Village Street were not invited to a private staff meeting to discuss solutions and he thought all affected parties should be listened to, not just some.

Councilor Owen commented that Mr. Fullard-Leo made reference to Homeowner Associations that have not been involved, but it was his understanding that the Planning Commission has been wrestling with the parking issue for a long time and that public notices have been sent to all residents in Fairview Village, so he was disappointed that Mr. Fullard-Leo felt there were people who had not been involved in the process. Mr. Fullard-Leo responded that he understood that meetings had been held by Council members only for select groups and that some property owners on Village Street were not invited to that private meeting which was held in City Hall. In fact, Ms. Trees was expressly asked not to attend the private meeting, he and his partner were also not invited to attend, and neither were residential owners. Councilor Raze stated that the meeting he held was not a City meeting; as a private citizen, he was trying to bring all factions together. It started out that a few individuals came to him and asked questions and he organized a private meeting of those individuals. Mr. Fullard-Leo stated that he understood a statement was made in that meeting that it would take too much of the City's time and money to review all the issues and he did not feel that was a good response to property owners in the City. Councilor Owen commented that the Planning Commission had put in an incredible amount of time on the parking issue and it was discouraging to hear that citizens did not receive notification. Mayor Weatherby asked if Mr. Fullard-Leo had attended any of the Planning Commission meetings and read the proposal tonight. Mr. Fullard-Leo responded that he had viewed the meeting on tape and read the proposal. Mayor Weatherby questioned Mr. Fullard-Leo why he thought no one came to the Planning Commission meetings even after receiving notice. Mr. Fullard-Leo responded that he did not know.

Chuck James, 1425 NE Village Street, Fairview, stated that he purchased his rowhouse unit in 2001 as an investment for his retirement and that he believes in the Village concept. He applauds the staff and Planning Commission for trying to resolve the issue, but he was concerned about Recommendations 3,4 and part of 6. The City provided him with a list of permitted uses and a square footage maximum for commercial uses; he was told his use would be permitted and that parking was adequate. Mr. James wishes to use his accessory dwelling unit as a gallery, and he received a Fairview Business License. Mr. James also heard of the private meeting at City Hall and he does not believe that it falls within the "open meeting" law. Staff should meet with VMU residents in an open forum so that all alternatives may be considered. Mr. James stated that with a Council member holding a private meeting at City Hall that it appears that decisions were being made in a smoke-filled room

without public input. Director Andersen stated that he would be happy to meet with Mr. James and discuss with him how the recommendations might affect his property. Mayor Weatherby stated that the "private meeting" being referred to was not secretive. Director Andersen added that Councilor Raze had asked him several questions about the parking issue and no recommendations had been placed in writing; he was invited to the meeting and asked to answer questions posed by those in attendance and that only a candid, frank discussion occurred. Mayor Weatherby stated that everything before the Council tonight was part of a public process and not based upon anything from the private meeting. Councilor Raze commented that the questions being asked of him by business owners were serious enough that he held a meeting for them; he disclosed to everyone at the meeting that he was not representing anyone or the City and that he just wanted to get factual information on the table. No decisions were made in the meeting and he had excluded some people from attending. Councilor Cornelius commented that he had read the Planning Commission decision in relation to Mr. James' property, and the application was made by the developer for residential only with no requirements being made for commercial parking.

At 8:40pm, Council took a ten minute break.

Craig Jorgensen, 1455 NE Village Street, Fairview, thanked the Planning Commission for their hard work and commended Councilors Trees and Cornelius tonight for their comments. Mr. Jorgensen indicated that he owned the Angel's Attic on Village Street and that he would be happy with any plan that would allow flexibility. The Village is a unique community and it should be allowed to remain so with flexibility allowed. Mr. Jorgensen asked the Council to allow things to happen in the Village, that it is a mixed use community, and not everyone can be allowed to park in front of their house. Mr. Jorgensen asked the Council to keep it simple.

Garth Everhart, Fairview, commended the Planning Commission and staff for their work on the parking issue and reminded everyone that the recommendations that Council is being asked to consider came from the Planning Commission and not the staff. Mr. Everhart indicated that his plan was to continue to build the Village according to the Plan and that it is his goal to finish the project as quickly as possible. He supports the recommendations presented to Council tonight for several reasons: in the past, there had been talk of a parking problem and they need to know what has transpired since the beginning construction of the Village. He feels the inventory process is important as it will provide a starting point to then move forward. He believes there should be a process for future use changes and he agrees with the general consensus that has been growing that there

is not currently a parking problem. The proposed recommendations will ensure that there is no parking problem. Mr. Everhart thanked Councilor Raze for inviting him to his meeting. Councilor Raze commented that he had invited Mr. Everhart because some of the questions only he could answer. Mr. Everhart added that Paragon had inserted a letter in their application materials noting that certain units were VMU; the understanding was that if people did elect to use space as commercial in their units, if parking needs were not met, the property owner would be required to provide those additional spaces. Councilor Trees questioned if Mr. Everhart thought the Type II process should have been done prior to selling the properties to the current owners. Mr. Everhart responded that the developer would not have known who the users would have been prior to selling the properties and that, at this time, if a property owner wanted to change a use, that he would support a Type II process. Councilor Trees asked if Mr. Everhart was aware that the initial units on Village Street were being sold as 100% commercial. Mr. Everhart responded no. Councilor Trees questioned if Mr. Everhart's unit was 100% commercial. Mr. Everhart responded yes, and that he had provided adequate parking when he submitted his application. Councilor Owen asked, as far as the original Village Plan was concerned, what mixed use areas have not been developed and could they be approved for less than 100% commercial. Director Andersen responded Market Street South would be the only mixed use left. Councilor Owen asked what percentage of those uses would be commercial. Mr. Everhart responded that the ground floor would be commercial and the upstairs would be residential. Councilor Owen commented that everyone is talking about honoring the original Village Plan, but it sounds that we would only honor the Village Plan for anything new, yet change the original Plan for the existing mixed use units. Director Andersen responded that the existing approvals were for small commercial areas, not the large commercial areas evolving over time; the change that that brings is additional parking activity. When the Planning Commission reviewed this proposal, they felt the City has a commitment through the approval of the original Village Plan for the development of the vacant parcels that currently exist. Councilor Owen stated that in the Council packet there were numerous flyers for the rowhouses and they show it is commercially zoned for a certain amount of square footage, so how did we get to where we are today was based on a number of things; if someone had looked at the flyer and it stated 391 square feet, but they came into the City and asked what the allowable use was for the rowhouse, wouldn't staff had said up to 10,000 square feet? Director Andersen responded that staff would have cited the Code which he believed stated 10,000 square feet; they would not have addressed parking then as it was not an issue; after adoption of Resolution 11-2003, staff began taking a process to review parking requirements.

Councilor Lillard asked Director Andersen to explain the Type II process. Director Andersen responded that a property owner would apply to staff, staff gives notice to public for comments on the application, staff renders a decision and the property owner would have the right to appeal that decision to the Planning Commission.

Helen Maguire, 760 NE Pacific Drive, Fairview, stated that she had attended each work session that the Planning Commission held on the parking issue and that she had read through the entire Council packet and all supporting material. Ms. Maguire commented that she was a little sad that the recommendations do not reflect all of the suggestions that were made by those in attendance at the meetings. Ms. Maguire urged the Council to not repeal Resolution 11-2003 as the Council passed that Resolution with the intent that it pertain to future construction only and not apply to current units. Ms. Maguire added that the proposal for VMU/VC public hearings to be held was something that should be done, but those discussions will probably be as heated as tonight's discussion. Ms. Maguire commented that Chairman Kaufman had mentioned that the Planning Commission really wants to retain the original Village vision; however, that original Plan has already been modified due to market conditions. Ms. Maguire asked if anyone really understood what shared parking means, because she doesn't. If she wanted to open a business and came to the City and was told that she needed four parking spaces for a commercial use, she might respond that there was a shared parking lot and that she would use four of those spaces that are also available for the other businesses. When we reach the 95% congestion number that is stated in the staff report, maybe we do monitor the parking; maybe we use a 75% congestion figure and begin thinking about the interim parking lot. Ms. Maguire thought it was appropriate to impose the proposed parking requirements during the construction phase, because the original developer has to be responsible to provide enough parking; but to ask the business owners and residents that are already there to meet the requirements is not possible because they can not create additional parking spaces. Director Andersen stated that there is a definition for shared parking in the City's Code. Councilor Raze stated that shared parking allows for a 30% reduction in the number of spaces required; it is a benefit. The parking spaces are allocated; they are not marked. Director Andersen read from the Development Code that shared parking, "required parking facilities for two or more uses, structures, or parcels of land may be satisfied by the same parking facilities used jointly, to the extent that the owners or operators show that the need for parking facilities does not materially overlap (daytime versus nighttime primary uses)." Councilor Lillard explained that it was similar to going to the mall; the mall has a certain number of businesses, but you can't expand your business in a mall unless you expand parking along with it because the developer

planned parking for the uses he was building.

Councilor Trees commented that when he purchased his rowhouse unit, there was a shared parking lot behind his unit and all businesses had equal rights to that parking lot and there would be no signed spaces available for certain businesses.

At 9:30pm, Councilor Raze moved and Councilor Owen seconded the motion to extend the meeting to 10:30pm.

AYES: 6  
NOES: 0  
ABSTAINED: 0

Michelle Class, 1430 NE Village Street, Fairview, stated that when she first purchased her rowhouse, she was told she could use 100% of the unit for commercial use yet was never told she had to supply a certain number of parking spaces. She now feels she is being penalized for mistakes that were not her fault. In her case, she did not develop the entire unit as commercial at once, and she should not be penalized for now having to provide adequate parking if she wants to expand her use. Councilor Owen commented that it seems like some of Ms. Class' issues might be with whoever sold the unit to her and that she did not realize the parking lot was privately owned.

Receiving no further testimony, Mayor Weatherby closed the public hearing.

Councilor Owen questioned if new construction occurred which was mixed use and it states that 390 square feet of the unit would be allowed for commercial, could a potential buyer come in to the City and request a Type II decision to increase the square footage commercial area if they can show they will have adequate parking. Director Andersen responded yes, that is what Council required the developer to do for the Market Drive mixed use building. Councilor Owen asked if all things would be considered the same for the property owners on Village Street. Director Andersen responded yes.

Councilor Trees commented that he thought it was important that we have shared parking areas where all units have equal rights to the parking area and that there is no difference for what Market Square is entitled to, or Ms. Class, or anyone else. Director Andersen stated that he believed shared parking was important to the solution. Councilor Cornelius asked when Council approved the recent Market Street appeal, that 1,000 square feet of commercial use was approved for the ground floor, with two residential areas on the second and third floors, if a business owner wanted to expand one of those units commercially, would they have to go through the Type II

process. Director Andersen responded that in the case of the appeal, there was an actual requirement placed on the project that commercial use could not expand to the second or third stories; the actual issue of the appeal was whether there could be a change of use, such as a beauty salon to a restaurant which would require more parking. Councilor Cornelius clarified that in respect to the Type II process, the business owners of the rowhouses on Village Street who expanded their businesses since they originally opened did not have a requirement for a Type II process. Director Andersen responded that that was correct, but that they probably should have spoken to staff about any expansion; an issue has never been raised on the expansions and staff has not taken any enforcement action on the issue.

Councilor Trees stated that he was actually using less space than he originally intended to use for his business. He continues to hear that the commercial area is growing, yet only 30% of the rowhouses on Village Street even have commercial uses. Councilor Trees added that the rowhouses on Village Street were not using more space than they were supposed to and that shared parking lots were a must.

Councilor Owen asked what the process would be for starting a shop on Village Street. Director Andersen responded that an owner would apply for certain permits. Councilor Owen asked if they would have to inform staff of the actual square footage they would be using. Director Andersen responded not normally. Councilor Owen commented that it sounds like there is nothing we are doing as a City to watch the growth of commercial uses which could affect parking. Recommendation No. 3 states that a Type I interpretation would be done, but he was uncertain how this interpretation was going to work as staff would be relying on property owners to tell them the exact square footage to determine a baseline, but if everyone says they will be using 100% of the square footage as commercial, what would the City do. Director Andersen responded that he did not think that was likely to happen and that the Planning Commission was willing to trust the business owners to be honest in their statements to the City. Director Andersen added that the City could perhaps perform an inspection, but at this point did not think that was necessary. Councilor Owen asked if once the baseline was established, if any time a business owner wanted to increase the size of their business, would they have to go through the Type II process. Director Andersen responded yes. Councilor Owen questioned what the cost was for the Type II process. Director Andersen responded that the cost was \$250.00 which was basically the cost of providing notices to residents in the area. Councilor Raze added that there was no benefit for a business owner to overstate their commercial usage as it would only increase their parking requirements. Recommendation No. 3 only provides for an inventory; it will provide a baseline for the

City to work from. In addition, Councilor Raze stated that it was reasonable to require a Type II process as an individual would want a right to appeal a staff decision. Councilor Raze asked Mr. Everhart what the cost of leasing a parking space was. Mr. Everhart responded that they only seek to recover the cost for maintenance of the parking lots and that they currently charge \$10.00 a month per parking space.

Mayor Weatherby commented that he views the recommendations before the Council from the Planning Commission as being commendable; it was the culmination of many months of contentious debate and there is very little that has not been discussed extensively. Mayor Weatherby added that he supports the Planning Commission recommendations and asked Council to also support them.

Councilor Lillard questioned what would happen if a business owner wanted to downsize their business on Village Street. Director Andersen responded that it would not be necessary for the business owner to prove that they needed less parking. Councilor Raze commented that if a business downsizes, that it should be a no-fee situation as it provides extra parking for others.

Councilor Cornelius stated that the Planning Commission had done a lot of hard work, but he did not think the recommendations presented to Council was the right result. He spent additional time going through Planning Department records, and his conclusion was that Council was looking at the parking issue from the wrong perspective. The question is what was right for Fairview and what was right for Old Town and the Village. Councilor Cornelius suggested the following: 1) allow the City to develop in any manner consistent with the building code; 2) no further parking required for Rosewalk and Village Street merchants; 3) all future construction must meet off-street parking requirements; 4) keep Resolution 11-2003 in effect; 5) move proposed Ordinance 7-2003 forward to Council as directed with no credit being allowed developers for on-street parking to count towards off-street parking spaces; 6) all permits are not automatically renewed and the Planning Commission will review any permit request for adequate parking; 7) original Village Plan has changed significantly and he does not think the City should give assurances to the developer that we will follow the Plan when they themselves have deviated from it.

Councilor Trees requested that from now on, when ordinances and resolutions come to Council that they be very clear on what they imply and the actual intention. Councilor Owen stated that it was Council's responsibility to clarify resolutions and ordinances and hoped Councilor Trees was not addressing his comments to staff.

Councilor Owen commented that Recommendation No. 5 bothered him; he understands that many comments were made about the commitments given by the developer, but that those were really just ideas. Recommendation No. 5 actually makes a statement that the City will continue to honor the original Village Plan, but the Plan has changed and continues to change. He did not know if the City would be able to honor the original Village Plan as modifications will have to be made along the way. Councilor Owen recommended that if Council decides to act on the Recommendations this evening, that they vote item by item. Councilor Cornelius concurred.

Councilor Lillard stated that this was a very important issue, and that it was not too late to have what was originally envisioned for the Village; she encouraged the Council to remember the original vision.

Councilor Raze moved and Councilor Owen seconded the motion that each proposed Recommendation from the Planning Commission be voted on individually.

AYES: 6  
NOES: 0  
ABSTAINED: 0

Councilor Owen moved and Councilor Lillard seconded the motion to table Ordinance 7-2003 for six months.

AYES: 4  
NOES: 2 (Cornelius, Trees)  
ABSTAINED: 0

Councilor Owen moved and Councilor Cornelius seconded the motion directing staff to bring Resolution 11-2003 back to the Council with a clarification that it pertained to new construction only.

AYES: 5  
NOES: 1 (Weatherby)  
ABSTAINED: 0

Councilor Owen moved and Councilor Raze seconded the motion that the Council accept Planning Commission Recommendation No. 3 as written. Councilor Cornelius stated that it was inequitable to penalize those who have only partially used their rowhouse for commercial purposes as opposed to others who have used 100% of their rowhouses for commercial. It was not fair to carve out limited uses now as it will affect property values. Councilor Trees stated that there were no original approvals as stated in the Recommendation No. 3 language.

Councilor Lillard moved and Councilor Raze seconded the motion to amend the language of Recommendation No. 3 as follows:

Recommendation No. 3: recommends that property owners and/or merchants on Village Street ~~that are using more of the mixed use buildings for commercial activity than approved in the original approvals~~ should be required to inventory their properties use by obtaining a Type I Code Interpretation for their property. This will give accurate numbers of the amount of commercial activity now occurring. This process will provide assurances to existing merchants about their businesses and their ability to market their properties to others. There is no fee for this application and no changes to existing uses or approvals are anticipated. Compliance would be required by February 1, 2004.

AYES: 6  
NOES: 0  
ABSTAINED: 0

Mayor Weatherby called for the vote on the main motion.

AYES: 4  
NOES: 2 (Cornelius, Trees)  
ABSTAINED: 0

At 10:30pm, Councilor Raze moved and Councilor Owen seconded the motion to extend the meeting to 11:30pm.

AYES: 6  
NOES: 0  
ABSTAINED: 0

Councilor Raze moved and Councilor Owen seconded the motion to approve Planning Commission Recommendation No. 4. Councilor Trees questioned if a business was approved for 100% commercial, how it could be expanded. Councilor Cornelius stated that this was unfair and was absolutely the wrong approach. Councilor Lillard commented that the reason for the Type II process was to ensure that there is adequate parking.

AYES: 4  
NOES: 2 (Cornelius/Trees).  
ABSTAINED: 0

Councilor Lillard moved and Councilor Raze seconded the motion to approve Planning Commission Recommendation No. 5. Councilor Cornelius stated that the original Village Plan had been changed so

many times that it no longer exists and asked why the City would make assurances to a developer who has consistently changed the original Plan themselves. Councilor Owen concurred, stating that the original Plan has changed per the developers, not the City

AYES: 3  
NOES: 3 (Cornelius, Trees, Owen)  
ABSTAINED: 0

Motion failed.

Councilor Owen moved and Councilor Raze seconded the motion to approve Planning Commission Recommendation No. 6. Councilor Trees asked who would prepare the actual language. Director Andersen responded that would be himself or the City Attorney.

AYES: 4  
NOES: 2 (Cornelius, Trees)  
ABSTAINED: 0

Councilor Owen moved and Councilor Raze seconded the motion to approve Planning Commission Recommendation No. 7.

AYES: 6  
NOES: 0  
ABSTAINED: 0

Councilor Owen moved and Councilor Raze seconded the motion to approve Planning Commission Recommendation No. 8.

AYES: 6  
NOES: 0  
ABSTAINED: 0

**VI. ADJOURNMENT**

Councilor Cornelius moved and Councilor Lillard seconded the motion to adjourn. Mayor Weatherby adjourned the meeting at 11:10pm.

AYES: 6  
NOES: 0  
ABSTAINED: 0

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Mayor Mike Weatherby

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Dated:

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Caren C. Huson Quiniones  
City Recorder