

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

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**November 19, 2003 -- 7:00pm**

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

Mayor Weatherby called the meeting to order at 7:04pm.

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  
Melissa Slotemaker, Associate Planner  
Caren Huson, City Recorder

Mayor Weatherby announced that Fairview City Councilor Len Edwards had passed away. Mayor Weatherby stated that he had known Councilor Edwards for several years, having previously served with him on the Council in the past; he respected the man, a man who was not always articulate, but spoke from his heart. One could depend on him; he was an honest man, and he was his friend. Mayor Weatherby declared Council Position #3 as vacant, and stated that applications would be accepted until 5:00pm on December 24, 2003. Councilor Lillard asked that no one in the audience request a favor of the Council for the vacancy.

**II. CITIZEN  
COMMUNICATIONS**

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

**III. COMMITTEE REPORTS**

Steve Kaufman, Chairman of the Planning Commission, reported that the Commission had met numerous times to discuss the parking issue. Since it was a very controversial issue, the Planning Commission would like to take sufficient time in making a recommendation to Council, and it was their intent to further consider the parking issue on December 2, 2003 and then provide a recommendation to the

Council for their December 17<sup>th</sup> meeting.

Councilor Owen commented that he appreciated the hard work the Planning Commission was doing on the parking issue, and that he felt the Commission was respecting the public and the testimony they provide.

Councilor Cornelius questioned when the Planning Commission would be making their final decision on the parking issue. Chairman Kaufman responded that their final decision would take place on December 2<sup>nd</sup>.

Mayor Weatherby mentioned that he had viewed part of the past four Planning Commission meetings and stated that they were doing an incredible job.

Councilor Raze commented that parking was an important decision and that he was glad the Planning Commission was taking their time in making the right decision.

#### **IV. CONSENT AGENDA**

Councilor Raze moved and Councilor Owen seconded the motion to approve the Consent Agenda, consisting of the Minutes of September 17 and November 5, 2003.

AYES: 6  
NOES: 0  
ABSTAINED: 0

#### **V. COUNCIL BUSINESS**

##### **A. Planning Commission Appointment**

Mayor Weatherby reported that the City had advertised for a vacancy on the Planning Commission for six weeks. Two applications were received: one from Dave McCausland and a re-appointment request from Maureen Zehendner whose term was expiring. Earlier this week, Mr. McCausland had withdrawn his application for Planning Commission, leaving the City with only the re-appointment request from Maureen Zehendner who had served the City very well. Mayor Weatherby stated that, at this point, he would consider a motion to re-appoint Maureen Zehendner to the Planning Commission for a four-year term.

Councilor Raze moved and Councilor Lillard seconded the motion to re-appoint Maureen Zehendner for a four-year term on the Fairview Planning Commission.

AYES: 6  
NOES: 0  
ABSTAINED: 0

**B. RESOLUTION 25-2003  
207<sup>th</sup> Avenue Rename**

Mary Jo Briggs, City Administrator, stated that Resolution 25-2003 was being pulled from the agenda by staff for further consideration; the subject would be brought back to Council during the next budget process.

**VI. PUBLIC HEARING**

**A. CONTINUED  
Appeal of Site Design  
Review Approval -  
Market Street Mixed  
Use Building**

Mayor Weatherby read the requirements for this hearing into the record and which is attached hereto to these minutes. Councilor Trees recused himself from this item and stepped down from the dais.

Melissa Slotemaker, Associate Planner, reported that the applicant, Holt & Everhart, has proposed a three-story mixed-use building, across four parcels on Market Drive in Fairview Village. The anticipated uses are retail stores or businesses on the ground floor with residential dwellings above and Accessory Dwelling Units over each garage. The proposal includes nine on-street parking and four off-street parking spaces in the adjacent shared parking lot, Tract "X".

A public hearing was held on August 5, 2003 before the Planning Commission. The Planning Commission continued the hearing to September 2<sup>nd</sup>. Numerous issues were raised by the applicant and the general public at both hearings. The primary issue was the sufficiency of parking for the proposed project and the vicinity. The Planning Commission recommended approval of the application, subject to 17 conditions of approval. The subject of this appeal is Condition #1.

Planner Slotemaker stated that on November 5, 2003 the applicant, Holt & Everhart, requested that the City Council continue the public hearing in order to develop revised wording to Condition #1 and then withdraw the appeal. The City Council approved the continuance. Since November 5<sup>th</sup>, the applicant, City Attorney, and staff had several discussions about the revisions. The City Attorney determined that the proposed revisions have the potential to change the Planning Commission's decision and, therefore, the appeal must proceed as originally planned and a public hearing must be held.

Planner Slotemaker commented that, at this point, the appellant has indicated that if the Council approves the revised language that is provided in the staff report, that they will not appeal the decision further. Focus was placed on Condition #1 and Finding 3; the Planning Commission came to their decision after much deliberation and input from the applicant and the public. The intent of Condition 1 is to ensure appropriate review by the City in the event of a different use that would require more parking than is allocated by this application. Condition 1 requires the project to undergo modification to the original decision when a use does require more parking. The

Condition states that the application for modification may be processed as a Type II administrative process; however, depending on the nature of the application and whether the use of discretion is required, it may be processed as a Type III public hearing process. The appellant has argued that the condition is unreasonable, exceeds the City's authority, that it is not supported by substantial evidence, and that it is unnecessary. Staff responded to the appellant's arguments in the staff report under "a" thru "e". Planner Slotemaker reported that there has been several discussions about revised language to Condition 1, and the appellant has stated that if the Council affirms the concept of Condition 1 that a modification is required for a change in use that triggers a change of parking requirements, then the language of the Condition should be modified to follow the Type II administrative process rather than allow the possibility of a Type III public hearing process. Staff has proposed revised language that would meet the applicants need while affirming the appropriate review. Staff has revised the last two sentences in Condition 1 and the proposed language states clearly that a modification would be a Type II process, and we would like to point out that every Type II process may be appealed to the Planning Commission which would be in a public hearing. Planner Slotemaker read the revised language to Condition 1: "Any modification involving a use requiring additional parking spaces shall be processed through a Type II process as provided by code. The Type II process shall be limited to a determination of whether adequate parking spaces are available as stated in FMC 19.140.040."

Planner Slotemaker stated that the second piece that is subject to appeal is Finding 3 which is a response to public hearing comments received on August 5, 2003, which states that the four spaces in Tract "X" reserved for use by this project will not be charged for their use. The appellant states that the finding is contrary to property rights which allows the Declarant to charge a reasonable fee for the public or any other person's use of the property. The appellant does agree that the public should not be charged for parking available for this use. Revised Finding 3 is meant to clarify that understanding, and the last two sentences would be revised to state, "the code requires 12 parking spaces be available for this proposed use. The 4 parking spaces allocated to this use in Tract "X" are considered available for use by the general public where the applicant does not charge the public for such use and the parking spaces are not reserved or dedicated to other uses."

In conclusion, Planner Slotemaker commented that there were several options before the Council, and that staff recommended that Council adopt a revised Decision 03-22-DR-A.

Councilor Owen stated that, in regards to Finding 3, it appears that

language is really just clarifying the fact that there will be 12 parking spaces for public use, but asked how that relates to whether or not they can charge for that use. Pam Beery, City Attorney, responded that they worked hard on the language to clarify the intent; the wording is such that the project will provide 12 parking spaces available to the public and that a fee could not be charged to the public for those spaces. Attorney Beery added that this has been an on-going controversy; in order to be accessible, the parking spaces can not be charged a fee for their use.

Councilor Cornelius commented that it seems as though there was a significant shift being made; when we say "public", we are saying the general public who comes to shop. The Planning Commission was saying that the developer is not to charge anyone for the off-street parking spaces and that the developer could not use them for any other purpose than the four commercial units. Councilor Cornelius questioned if that is what the revised language was saying. Attorney Beery responded that the revised language is different; the applicants believe the CC&Rs reserve their right to charge a fee for the parking spaces; CC&Rs are separate from the City. The applicants can not charge a fee to the public for parking in those spaces the City is counting on specifically for public use. Councilor Cornelius asked if the revised language was accepted by Council, could the developer sell, charge, or lease the spaces to anyone. Attorney Beery responded that the developer could charge tenants or persons who enter into a real property arrangement with them for the use of these spaces, but they could not charge the public for the use of the spaces. Discussion ensued regarding a purchaser of a unit who could purchase a parking space from the developer, yet it could be marked "parking for this shop only" meaning it would still be free to the public to use.

Councilor Raze stated that the owner of the property could not charge the public a fee to park in the parking space, but indirectly it would be charged to customers who frequent the shops or offices. Attorney Beery responded that staff's position is that there are enough total parking spaces; the idea is that a member of the public should be allowed to drive into Tract "X" and park without the restriction of having to pay for it. Councilor Raze commented that he was puzzled why 4 parking spaces couldn't just be public parking without any strings attached; in the future, Council will be back here talking about the same problem again. Attorney Beery stated that the 4 parking spaces were dedicated for the mixed-use building of four units.

Councilor Cornelius stated, in regards to Condition 1, that the original staff report stated a Type III decision; the Planning Commission came

back with it being a Type II with the potential of being a Type III. From staff's standpoint, either would be acceptable. If the Planning Commission decided to allow the possibility of a Type III, why was staff then proposing to change their decision tonight to a Type II. Planner Slotemaker responded that staff's original recommendation was for a Type II process.

Michael Robinson, speaking on behalf of the applicant, stated that he appreciated Council continuing the hearing, and that the continuance was not something they requested lightly. The extent of the appeal is Condition 1 and Finding 3. Mr. Robinson added that he knew the Planning Commission had a difficult task and he knows that parking in the Village is an important issue. The applicant believes that Condition 1 was a process consistent with the City's code and that staff could determine uses without discretion. The Planning Commission wanted public testimony on that, which is why they allowed the option of a Type III process. Mr. Robinson commented that if there is an appealable issue, the public has a right to appeal staff's decision to the Planning Commission. They are not opposed to public participation, but the longer it takes to get to a final decision, many times a tenant will disappear. Mr. Robinson stated that he believed the first staff recommendation did not state Type II or III, and that the applicant encouraged the Planning Commission to go with a Type II process only. Mr. Robinson added that the applicant is comfortable with the wording of Condition 1 as modified; the public is always notified and are invited to come in and talk to staff; if they are still not satisfied, they could appeal to a public body. Mr. Robinson stated that the Type II process was adequate and that it provides some certainty to Holt & Everhart with their project timeline. Regarding Finding 3, Mr. Robinson read from the Declaration of Parking Covenants and Restrictions the following: "funds for the maintenance, repair, and improvement of the property will be provided through assessments against such persons as Declarant grants rights to use the property." Mr. Robinson explained that that statement does not allow the property owner to charge a fee to the public for parking; the four spaces will be available free of charge to the public. In addition, it was not the applicant's intent to place a "parking only for a particular business" sign as there is no mention in the City's Code that that is even allowed. Mr. Robinson concluded by stating that the applicant was comfortable with the revised finding and condition language.

Councilor Owen asked if the 12 parking spaces that would be made available could be leased or rented to the property owner. Garth Everhart, applicant, responded yes. Councilor Owen questioned if the four parking spaces were part of that 12. Mr. Everhart responded yes, adding that they have never marked any of the commercial parking spaces as "reserved".

Councilor Cornelius stated that there are a number of parking spaces that are marked "reserved" in Tract "U". Mr. Everhart responded that those parking spaces are for residential use, not commercial. Mayor Weatherby commented that if there was a concern that a potential exists for signed spaces, that the Council could add language that says the four spaces for the commercial buildings could not be signed.

Councilor Lillard asked to reserve her right to ask the appellant questions in this matter at a later time in the meeting.

Helen Maguire, Fairview, stated that it appears as if the City has created a conundrum for themselves in trying to determine what adequate parking is; on one hand, we have shared parking, and on the other hand the City requires the developer to point to specific parking spaces to ensure they are meeting Code requirements. These were self-contradicting conditions that the City was imposing both on developers and businesses.

Jim Trees, Fairview, stated that if there was an appeal to a Type II decision, the person appealing would need to pay for the cost of the appeal; if it was a Type III decision, a person would not have the burden of cost. Mr. Trees added that he has not heard a clear definition of "public", and the problem he sees is for the tenants who live above the businesses not having enough spaces in the parking lot and will need to park on the street and use those public parking spaces.

Councilor Owen commented that there appeared to be some discrepancy on the original staff recommendation of a Type II or a Type III process. Planner Slotemaker responded that staff's recommendation was for the Planning Commission to make the decision; staff had always felt confident in just recommending a Type II process. Councilor Owen asked under what condition a project could potentially move to a Type III process. Planner Slotemaker responded that if a restaurant wished to locate in one of the units and they would require 20 parking spaces, knowing the impact that would have, staff would require a Type III process. However, if it was a deli or something smaller and the applicant could show that one additional space was required, staff would feel comfortable requiring a Type II process. Councilor Owen questioned if there would ever be enough parking spaces for a proposal that required a Type III process. John Andersen, Community Development Director, responded, theoretically, yes; there should be enough spaces to accommodate a small food service. It is a scale issue; how big do you get and what is the character of the restaurant involved. If there is a small amount of people coming and going, there is not a lot of

impact. But if you end up having a few spaces for people who are there for a longer period of time, you have a bigger impact to parking utilized because it is not available for a longer period. There are differences between the various Tracts and the availability of spaces in those Tracts. There are standards in the Code and it is legitimate for staff to say this is the proposed use and the required parking spaces and it doesn't require a lot of discretion. That may not be the answer the neighbors or applicant want, and that is when the appeal process comes in. An appeal for a modification of a condition would cost \$125 which would take the appeal to the Planning Commission (Type II appeal).

Councilor Cornelius stated that in a Type II process, the burden of proof is on the applicant, and if a Type II is appealed to a Type III, the burden shifts to the person appealing. Attorney Beery commented that that was incorrect; the burden always rests with the applicant. Planner Slotemaker added that a major modification, such as a change in land use or reconfiguring something on-site, would be a Type III decision outright.

Councilor Lillard commented that when looking at Lots 275-278 in Fairview Village, the Code says that the minimum required off-street parking requirement is 1 space for 500 square feet of the retail use, and 1.5 spaces per dwelling unit. Therefore the total demand is 6 off-street spaces in addition to each ADU which requires one private parking stall and she was wondering if the proposal meets the Code. Planner Slotemaker responded that the proposal actually exceeds the minimum parking requirements; the residential units are separate from the first floor commercial uses, and the commercial use can not expand to the second floor. Mayor Weatherby stated that no one appealed the actual parking requirements.

Attorney Beery suggested that additional language be added to Condition 1, stating that the four parking spaces in Tract "X" will not be marked or obstructed in way as to limit their availability to the general public except for reasonable time restrictions.

Mr. Everhart stated that this appeal is not about Holt & Everhart; it is about Type II on these 4 units which is binding into perpetuity; that is our chief argument for the Type II process. Attorney Beery asked the applicant if they were comfortable in not having the additional 7 days for any rebuttal with the Council deciding this evening. Mr. Robinson responded that if they don't hear anything else that constitutes new evidence, then yes.

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

Councilor Raze commented that Type II was a sufficient process and he was in favor of moving along with this appeal with the additional language for Condition 1.

Councilor Cornelius stated that it troubled him that the City has a Planning Commission which spent two evenings on this project in order to be very thorough; he has heard nothing tonight that tells him what the Planning Commission did was contrary to the law. Council appointed the members of the Planning Commission to do a particular job; unless there is a legal reason why their decision was totally out of line, he feels the Council should support them and their decisions.

The Planning Commission wanted to keep the public as a part of the process; also, they wanted to monitor and have some oversight on the parking. Councilor Cornelius stated that he was opposed to changing the Planning Commission decision. In terms of Finding 3, he was having trouble believing that someone leasing a parking space does not consider it to be their spaces whether it is marked or not. The Planning Commission came up with the appropriate solution when they stated that no fee of any nature would be charged to anyone. Councilor Cornelius concluded by stating that he supported the Planning Commission on both elements of the appeal.

Councilor Lillard commented that the Planning Commission did put a lot of time into their decision, but when an applicant is trying to get their project going and they come to the Council with an appeal, it is Council's job to take the facts given them and to say whether they have shown us, based on that appeal, that we should grant that appeal. Councilor Lillard was in favor of granting the appeal based on the recommendations by staff and recommendations of the applicant themselves because it sounds like some work has been done on coming up with some good, solid verbiage that should not subjugate the process of law we have and would allow the applicants to get what they need to be done. She would not want to second guess the Planning Commission, but it has come to this point so it is up to the Council to make a decision. Based on her own evaluation of the appeal, and her questions being satisfied on total parking that will be allocated, she was in favor of granting the appeal with the provisions as written.

Councilor Owen mentioned that a Type II decision still gives the public the chance to voice their issues and concerns; he believed the Type II process was adequate. However, he was not discounting the work of the Planning Commission on this project; they made their decisions based on the information they had before them and they should feel good about that.

Councilor Owen moved and Councilor Raze seconded the motion to

affirm the Planning Commission decision in part but accept the proposal to modify Condition 1, including the additional language as stated by the City Attorney, and revise Finding 3 based on the understanding that the appellant will not appeal the revised decision.

Mayor Weatherby stated that he concurred with Councilor Owen that the Planning Commission had spent a lot of time reviewing the project and he applauded the appellant and City staff for working out something that was accommodating for both.

AYES: 4  
NOES: 1 (Cornelius)  
ABSTAINED: 0

Councilor Trees returned to the dais. At 8:50pm, the Council took a ten minute break.

## **VII. STAFF REPORTS**

### **A. Police**

Gilbert Jackson, Chief of Police, reported that staff had submitted a document to the District Attorney which listed nine criminal counts regarding a case they were working. The Police Department spent the \$1,000 that Target had given them to purchase digital cameras for the department; the old Polaroid cameras would be surplus.

### **B. Public Works**

Bob Cochran, Public Works Director, reported that the department had surplused an old tractor and then purchased a new landscape tractor. Bids were opened for Standpipe No. 3 with the low bid coming in at \$1.7 million which is about \$.5 less than the engineer's estimate. Staff had developed a link to the City's web page which contains a water quality survey.

### **C. Community Development**

Director Andersen reported that \$2.7 million in permits was received by the City due to apartment construction. Staff was pushing very strongly for an economic development program and are in the process of making the contacts to make it happen; staff feels very good as to where that program is going. Staff is also focusing on their relationship with regional government in terms of regional industrial lands.

### **D. Finance**

Laura Zentner, Finance Director, reported that the City's books were closed for fiscal year 2002/2003; the audit has been completed and will be ready for printing soon. Staff was preparing for a Budget Committee workshop scheduled for December 3<sup>rd</sup>. In addition, the City received word from Multnomah County that the City Hall parking lease agreement is tax exempt through the year 2008.

**E. City Administrator**

Mary Jo Briggs, City Administrator, stated that she would dearly miss Chief Jackson when he retires at the end of the year. The new Police Chief, Ken Johnson, will be on board with the City on December 22<sup>nd</sup>, with an official swearing in on January 7, 2004. Administrator Briggs announced that the latest results received from the census was that as of July 1, 2003, the population of Fairview was 8,590.

**F. City Attorney**

Attorney Beery stated that her written report was before the Council, and that the bulk of their assistance to staff had been in the Community Development area. Also, from now on, a City Attorney will attend Fairview Planning Commission meetings.

**VIII. MAYOR/COMMITTEE REPORTS AND COUNCIL CONCERNS**

Councilor Lillard reported that she had attended the League of Oregon Cities Conference in Eugene the previous week and would be passing information along to her fellow Councilors. Councilor Lillard stated that she was very saddened at the death of Councilor Edwards and that it was hard to sit at Council tonight and look at his empty chair.

Councilor Trees reported that volunteers were needed for the Anti-Vandalism Committee and that anyone interested should contact him or the Police Department.

Councilor Raze reported that the footings for the Heslin House porch had been poured, and that the Heslin House Committee was desperately in need of donated materials. Councilor Raze stated that Art Israelson had attended the Parks Committee meeting and had volunteered to construct a permanent restroom facility at Salish Ponds.

Councilors Cornelius and Owen had no reports or concerns.

Mayor Weatherby stated that the four East County Mayors had testified at Metro regarding industrial lands, and that he had been very pleased at the questions Council had asked of the Port of Portland earlier in the evening. He appreciated the fact that the Council was not making a decision until all questions were answered.

**IX. ADJOURNMENT**

Councilor Lillard moved and Councilor Raze seconded the motion to adjourn. Mayor Weatherby adjourned the meeting at 9:19pm.

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