



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT



January 30, 2006

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Fairview Plan Amendment
DLCD File Number 002-05

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: February 8, 2006

This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.625 (1), 197.830 (2), and 197.830 (9) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS ADOPTED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAN IT WAS MAILED TO DLCD.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist
Meg Fernekees, DLCD Regional Representative
P. Elise Scolnick, City of Fairview

<paa> ya

FORM 2

DEPT OF

DLCD NOTICE OF ADOPTION JAN 27 2006

This form must be mailed to DLCD within 5 working days after the final decision
per ORS 197.610, OAR Chapter 660 - Division 18

LAND CONSERVATION
AND DEVELOPMENT

(See reverse side for submittal requirements)

Jurisdiction: City of Fairview Local File No.: 05-67 CPA/ZC
(If no number, use none)

Date of Adoption: January 18, 2006 Date Mailed: January 25, 2006
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: October 10, 2005

- Comprehensive Plan Text Amendment
 - Comprehensive Plan Map Amendment
 - Land Use Regulation Amendment
 - Zoning Map Amendment
 - New Land Use Regulation
 - Other: _____
- (Please Specify Type of Action)

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached."

- ① Change of Comprehensive Plan from Fairview Village/Village Apartment to Fairview Village/Village Mixed Use
- ② Zone change from VA-Village Apartment to VMU-Village Mixed Use

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Same

Plan Map Changed from: Fairview Village/Village Apartment to Fairview Village/Village Mixed Use

Zone Map Changed from: VA-Village Apartment to VMU-Village Mixed Use

Location: 1N3E 33AA - 05600 Acres Involved: 1

Specify Density: Previous: 30 du/ac New: 45 du/ac

Applicable Statewide Planning Goals: 2, 6, 10, 11

Was an Exception Adopted? Yes: No:

DLCD File No.: 002-05
(14730)

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: _____

Local Contact: P. Elise Scodnick, AICP Area Code + Phone Number (503) 674-6205

Address: 1300 NE Village St. PO Box 337 City: Fairview, OR

Zip Code+4: 97024 Email Address: scodnicke@ci.fairview.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO (2) Copies of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Mara.Ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

FAIRVIEW CITY COUNCIL AGENDA ITEM

Subject: PUBLIC HEARING
05-67 CPA/ZC 1510-1516 NE Market Drive

Date: January 18, 2006

Origin: Community Development

Reviewed By: DeRidder/Scolnick

Action Requested: Approval of a Comprehensive Plan map and zoning map amendment from Fairview Village/Village Apartment (VA) to Fairview Village/Village Mixed Use (VMU) as File No. 05-67 CPA/ZC, as submitted, based upon the facts, findings, and conclusions in the staff report and Planning Commission report to City Council.

Background: The applicant requested an amendment to the Comprehensive Plan map and zoning map from Fairview Village/Village Apartment to Fairview Village/Village Mixed Use. On December 13, 2006, at a duly advertised public hearing, the Planning Commission unanimously voted to recommend approval of the requested change to City Council.

The applicant also requested approval of a minor subdivision and site design review for four mixed use units on four lots. The Planning Commission voted unanimously to approve those two land use applications, contingent upon approval of the Comprehensive Plan and zoning map changes, as proposed, by City Council.

Exhibits:

1. Staff Report from the Planning Commission to City Council
2. Site map
3. Draft Planning Commission minutes of December 13, 2005 for public hearing on 05-67 CPA/ZC

Recommendation: Approval and adoption of the Comprehensive Plan map amendment from Fairview Village/Village Apartment to Fairview Village/Village Mixed Use and approval of a zone change from VA, Village Apartment to VMU, Village Mixed Use.

**RECOMMENDATION OF THE PLANNING COMMISSION TO
CITY COUNCIL**

TO: Fairview City Council

FROM: Fairview Planning Commission

PROJECT NUMBER: 05-67-CPA/ZC

SUBJECT: Comprehensive Plan Map Amendment from Fairview
Village/"Village Apartment" to "Village Mixed Use"
Zoning Map Amendment from "Village Apartment" (VA) to "Village
Mixed Use" (VMU)

DATE: January 18, 2006

LOCATION: 1510-1516 NE Market Drive

LEGAL DESCRIPTION: 1N 3E 33AA Tax Lot- 05600

SITE SIZE: Comp Plan Amendment and Zone Change Area = 17,725 square
feet (.40 acre)

PROPERTY OWNERS: Fairview Village Development Corporation
PO Box 1912
Fairview, OR 97024-1805

APPLICANT: Garth Everhart
Holt and Everhart
PO Box 1912
Fairview, OR 97024-1805

CURRENT ZONING: Village Apartment (VA)
PROPOSED ZONING: Village Mixed Use (VMU)

**CURRENT COMPREHENSIVE
PLAN DESIGNATION:** Fairview Village/Village Apartment
**PROPOSED COMPREHENSIVE
PLAN DESIGNATION:** Fairview Village/Village Mixed Use

- APPLICABLE CRITERIA:**
1. Citizen Involvement Comprehensive Plan and Zone Change Criteria [Comprehensive Plan, Chapt. 2, Section 7 (d) (1-4)]
 2. Amendments Criteria (19.205)
 3. Land Use District Map and Text Amendments Criteria (19.470)
 4. Type III-Quasi-Judicial Procedures (19.415)

- ATTACHED EXHIBITS:**
- A. Applicant's Comprehensive Plan/Zone Change Narrative
 - B. Fairview Village Land Use District Map
 - C. Proposed site plan
 - D. Proposed subdivision plat

PLANNING COMMISSION RECOMMENDATION:

- The Planning Commission recommends to City Council approval of a Comprehensive Plan map amendment and zone map amendment from Fairview Village/Village Apartment (VA) to Fairview Village/Village Mixed Use (VMU) as File No. 05-67 CPA/ZC, as submitted, based upon the facts, findings and conclusions in the staff report and Planning Commission report to City Council.

FINDINGS:

1. SITE AND VICINITY INFORMATION

The site is located northwest of the Chinook Way Apartments at the curve of NE Market Drive. The north 11 feet of the site is a slope which drops off approximately 6 feet. The buildable portion of the site includes a portion of the parking lot for the Chinook Way Apartments.

Adjacent development and zoning consists of the following:

- North: Vacant undeveloped Village Office (V0)-zoned parcel and on the northwest end, Village Mixed Use (VMU)
- East: Chinook Way Apartments, zoned Village Apartment (VA), and Town Center Commercial (TCC) at the northeast corner
- South: Chinook Way and Market Place Apartments, Holt and Everhart offices, zoned Village Apartment (VA)
- West: Vacant-Zoned Village Mixed Use (VMU) and Village Apartment (VA)

2. BACKGROUND INFORMATION

Previous Approvals

The site is located off of NE Market Drive and is known as Lot 109, Fairview Village. A Site Plan Review final decision dated November 8, 1996 for Chinook Way Apartments was approved that included part of Lot 109 as spaces of overflow parking for the apartments. A lot line adjustment, 05-23 LLA, was approved to move the south lot line of Lot 109 to keep Chinook Way Apartments parking spaces on their site. A common access easement was recorded (#2005-107697, recorded 6/14/05) to allow access to both Lot 109 and 182.

3. APPLICANT'S PROPOSAL

The applicant proposes a change to the Comprehensive Plan and zoning maps from Village Apartment to Village Mixed Use and VA to VMU in order to develop 4 mixed use row houses on a site of 17,725 square feet.

The applicant is also requesting a minor subdivision and site design review of the mixed use/row house project concurrently with the Comprehensive Plan and zone change request. Each of the four row houses will be approximately 3,000 square feet in size with a two car garage to the rear of the row house. The preliminary configuration is for approximately 1,000 square feet of retail/commercial on the ground floor and approximately 2,000 square feet of residential row house space above the ground floor. There will be no connection between the residential and ground floor space. The ground floor space is intended for uses similar to the uses found at the MarketPlace Mixed Use project across from the Post Office and allowed under the VMU code.

4. APPROVAL CRITERIA

The following criteria must be met for the Comprehensive Plan amendment, zoning map amendment, preliminary minor subdivision plat and design review approval.

A. COMPREHENSIVE PLAN AMENDMENT CRITERIA

Comprehensive Plan Amendment vs. Zone Change Only

The applicant raises an issue in their narrative regarding the necessity of a Comprehensive Plan amendment and zone change within Fairview Village. See Applicant's Narrative, Exhibit A.

The city has long held the interpretation that the Comprehensive Plan map and zoning maps for Fairview Village show the same land use designations but are two separate maps. Numerous land use actions have been processed accordingly. The most recent edition of the Comprehensive Plan, adopted in 2004 is not very clear in its terminology identifying both maps in Figure 3-A and Figure 3-D as being a two-page Comprehensive Plan map. Nonetheless, the precedent held by the city is that this two-page Comprehensive Plan map system has been in place since the creation of Fairview Village.

Comprehensive Plan and Zone Change criteria from the Comprehensive Plan, Citizen Involvement Section, Policy 7(D), Page 12:

The following criteria will be used to establish the justification of a proposed plan amendment or zone change.

(1) The change is in compliance with the policies and map designations of the Comprehensive Plan:

This proposed amendment implements the following City of Fairview Comprehensive Plan elements and policies:

a) Citizen Involvement Element requires the City to provide opportunities for active citizen involvement in all land use planning matters, and that the City inform the citizens and seek their input. The City is providing opportunity for citizen involvement and participation in this process, including public notification of the public hearings.

b) Urbanization Element requires the City to provide sufficient land to accommodate growth and provide for the orderly development of this land. The Urbanization element of the Plan provides that the land will "support a mix of residential, commercial, industrial and recreation/open space uses." This amendment provides for urban densities, but changes the density goal from a maximum of 30 dwelling units per acre. The proposed change in designation to Village Mixed Use allow up to 45 dwelling units per acre. No minimum density is identified in the zoning code for developments in the VMU designation.

e) Economic Element provides that the City will seek to diversify and improve the Fairview area economy. Key strategies include expanding opportunities for commercial development to serve local clientele and encouraging commercial development "commensurate with the retail sales and service needs of planning area residents and other residents of the local area." This goal will be met with the proposed amendment by allowing commercial development in conjunction with residential development.

f) Public Facilities and Services Element, requires the timely, orderly and efficient provision of public facilities and services based upon the consideration of the availability of public facilities and services in order to determine where and when development can best occur to conserve land, air, water, and energy resources. Plan policies require the coordination of public facility and service extension with planned land use development actions. The amendment will not change the impact future development will have on public facilities and services. Public facilities and services have been found to be adequate for future development and sized appropriately during the infrastructure improvement installation for Fairview Village.

g) Transportation Element includes policies that provide and encourage a safe, convenient, and economical transportation system. The concept of Fairview Village overall promote a safe, convenient and economical transportation system. The proposed change in land use designation to mixed use will serve to meet this element by allowing work/live spaces within the village core and encouraging alternative transportation modes such as walking and biking.

h) Energy Conservation Element provides that the City will use land use planning and land development controls to conserve energy. This amendment implements this Plan element by allowing a mix of commercial and residential development in close proximity to Fairview residents, thereby lessening the need for automobile use.

i) Housing Element Policy 9 (A-G) includes policies related to Fairview Village. The proposed amendment implements the policies related to providing for a mix of housing types at a range of densities up to 30 dwelling units per acre. Higher densities are encouraged in the core, which is the where the subject site is located. This is consistent with Policy 9 A-G.

Agricultural Land, Natural Hazard Areas, and Recreational Needs elements are not significantly impacted by the proposed amendment. Sufficient recreational facilities are located within the immediate area and the city to serve the density proposed.

(2) Demonstration of compliance with all applicable standards and criteria of the Fairview Development Code, and other applicable ordinances.

Subject to findings contained in the land division and site design review sections of the staff report for these land use reviews, the criteria are met.

(3) Evidence of change in the neighborhood or community...which is the subject of the application.

The Village has built out with a preponderance of residential units. The commercial and mixed use areas are slowly developing to serve the needs of the surrounding community. The large acreage designated for Village Office and Village Commercial have yet to develop. However, the areas designated for Village Mixed Use have been successful in attracting small businesses to the area. In an effort to attract more live/work spaces, a change of some of the apartment land to mixed use would aid in meeting the economic development and housing goals of the city.

Applicant's Statement:

"Two changes in the neighborhood and community have occurred which support this application.

(a). The City of Fairview has begun a push for more economic development to bring more jobs into Fairview to provide economic support for the city and to reduce traffic

out of Fairview. VMU sales of this type have recently brought four new businesses into the City of Fairview during the last year. Developing more of this fee-simple type development available would support this goal of providing more property for small businesses that want to locate in Fairview.

(b) The City's investigation of the VMU row houses on NE Village Street found that many owners had expanded their operations beyond the original home occupancy space limitations. The expansion of several of these businesses pointed out two key items. The first is that the demand for small shop space and professional offices was greater in Fairview than expected and this demand was not being met elsewhere in the City of Fairview. Secondly, the configuration of the NE Village VMU row houses did not accommodate some of these uses when the owners sought to expand existing businesses.

The last two sentences of the VMU description on page 26 of the Comprehensive Plan reads as follows:

"Mixed use buildings along Village Street are anticipated to be primarily residential, with limited commercial activities. It is anticipated that the commercial uses may grow to be more predominant over time, if developed in a manner consistent with land use and building regulations".

The commercial uses are growing as evidenced by some of the conversions that are occurring along NE Village Street. The design of lot 109 as VMU will allow a larger commercial use on the floor and prohibit the expansion of any commercial space into the upper floors. The development of VMU row houses on this property provides more fee-simple VMU units that are desirable for other business owners seeking to locate in Fairview.

(c) The applicant acknowledges the FV map designation for Fairview Village in the comprehensive plan. The second map in the comprehensive plan for this portion of Fairview is the actual Fairview Village zoning map. The applicant believes that the inclusion of the actual zoning map in the comprehensive plan is a mistake. The inclusion of a site specific zoning map in a comprehensive plan is atypical. The insertion of the specific property zoning map in the comprehensive plan is the sole reason for a comprehensive plan map change application."

Staff Comment: Staff concurs with the findings in (a) and (b) above. Please refer to the discussion in Section A, of this report for staff comment on (c), above.

(4) Demonstration of compliance with the Fairview Transportation System Plan.

The proposed amendment is in compliance with the Fairview Transportation Plan, which was considered as part of the Fairview Village Comprehensive Plan at the time of adoption. The proposed amendment will produce fewer trips due to the mixed use nature of the project, and therefore less impact on the NE Halsey St. corridor. This criterion is met.

E. AMENDMENTS (19.205)

FMC 19.205.020 Criteria.

Approval of an ordinance text or map amendment shall be based on finding that it complies with the following criteria:

- A. The amendment will not interfere with the livability, development or value of other land in the vicinity of site specific-proposals when weighed against the public interest in granting the proposed amendment.**

Staff Comment: As discussed above, this area is already planned and approved for higher density residential uses within Fairview Village. The proposed Plan Amendment more closely reflects the mixed residential/commercial uses that already surround the site. Impacts to adjacent uses were already analyzed and conditions imposed as part of the Fairview Village master plan, approved in 1995. The amendment will not interfere with the livability, development or value of adjacent land. This criterion is met.

- B. The amendment will not be detrimental to the general interests of the community.**

Staff Comment: As stated above, the amendment is meant to promote economic development and to provide housing choice within the City of Fairview, and within Fairview Village. A public need exists city-wide for economic development. The live/work environment provides an opportunity for small scale businesses to exist within a mixed use environment. This criterion is met.

- C. The amendment will not violate the land use designations established by the comprehensive land use plan and map or related text.**

Staff Comment: The proposed Comprehensive Plan change is consistent with the Fairview Village vision as embodied in the adopted Fairview Village Comprehensive Plan amendment text. This criterion is met.

- D. The amendment will place all property similarly situated in the area in the same zoning designation or in appropriate complementary designations without creating inappropriate "spot zoning". (Ord. 9-1990 § 5.062)**

Staff Comment: The proposed amendment will create an appropriate complementary Village Mixed Use designation adjacent to another area of Village Mixed Use (west & north). Village Apartment (VA) to the south, east and west) and Village Office (VO) to the north, surround the site. Chapter 3, Policy 6 of the Comprehensive Plan requires Village Mixed Use to link the Village Commercial to Village Office as a transitional zone. This criterion is met.

C. LAND USE DISTRICT MAP AND TEXT AMENDMENTS (19.470)

FMC 19.470.300 Quasi-Judicial Amendments

- B. Criteria for Quasi-Judicial Amendments. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall**

be based on all of the following criteria:

- 1. Demonstration of compliance with all applicable comprehensive plan policies and map designations. Where this criterion cannot be met, a comprehensive plan amendment shall be a prerequisite to approval;**
- 2. Demonstration of compliance with all applicable standards and criteria of this Code, and other applicable implementing ordinances;**
- 3. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property which is the subject of the application.**

These criteria are duplicative of those in Section "A", above. Refer to findings in that section. Based on the findings in Section A, staff concludes that the criteria in FMC 19.470.300 are met.

19.470.600 Transportation Planning Rule Compliance.

- A. When a development application includes a proposed comprehensive plan amendment or land use district change, the applicant shall provide an analysis of whether it significantly affects a transportation facility consistent with OAR 660-012-0060.**

Staff Comment: The three criteria above are duplicative of Section A(4), above. All are met, based upon findings contained herein.

The proposed amendment is in compliance with the Fairview Transportation Plan, which was considered as part of the Fairview Village Comprehensive Plan at the time of adoption. The proposed amendment will produce fewer trips due to the mixed use nature of the project, and therefore less impact on the NE Halsey St. corridor. This criterion is met.

- B. Amendments to the comprehensive plan and land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:**
- 1. Limiting allowed land uses to be consistent with the planned function of the transportation facility; or**
 - 2. Amending the Transportation System Plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the Transportation Planning Rule; or,**
 - 3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation.**

Applicant's Statement:

The proposed amendment is consistent with the City's Transportation System Plan. In the 1/27/03 Fairview Town Center Parking Study by DKS, an estimated Parking Demand for this property was at 19 stalls based on office usage or 3.7/1000 (Table 6: Conceptual Future Development). This study is important to the City of Fairview because it addressed current parking needs and future for the Village. The project plans include 8 stalls in garages; 8 off-street stalls and 3 on-street stalls for a total of 19 stalls which exceeds the required parking

by 3 stalls.

From these projections one can draw the conclusion that if a future use does not increase the amount of required parking that additional traffic is not being generated by the proposed project.

The traffic study previously submitted was reviewed and approved to show consistency with the function, capacity and level of service identified in the Transportation System Plan. This criterion is met.”

Staff Comment: Staff concurs with the applicant's statement. The criteria are met.

CONCLUSION: Based upon the findings, exhibits and conclusions of fact herein, the Planning Commission finds that the criteria for an amendment to the Comprehensive Plan and Land Use District map for Fairview Village from Fairview Village/Village Apartment to Fairview Village/Village Mixed Use is warranted.

Comprehensive Plan Map and Zoning Amendment

The Planning Commission recommends to City Council approval of the Comprehensive Plan map amendment and zone map amendment from Fairview Village/Village Apartment to Fairview Village/Village Mixed Use as File No. 05-67 CPA/ZC, as submitted, based upon the facts, findings and conclusions in the staff report and report to City Council.

Q:\Land Use Decisions\STAFF REPORTS & FINAL DECISIONS\2005\1510-1516 NE Market DrZC-CPA-DR-SUB\05-67-CPA-ZC05-88-DR-SUB PC to CC.DOC



PUBLIC NOTICE CITY COUNCIL HEARING
1510-1516 NE Market Drive (Lot 108, Fairview Village)
Comprehensive Plan and Zoning Map Amendment

05-67 CPA/ZC

NOTICE IS HEREBY GIVEN: that the City of Fairview City Council will hold a public hearing to review this Type III application at 7:30pm on **Wednesday, January 18, 2006**, in the Council Chambers of the Fairview City Hall, located at 1300 NE Village Street, Fairview, Oregon. At this time and place, interested persons may appear and be heard upon the matter of an amendment to the Comprehensive Plan and zoning map for Lot 108, Fairview Village from Village Apartment (VA) to Village Mixed Use (VMU) at 1510-1516 NE Market Drive, Map 7N 3E 33AA, Tax Lot 05500, Multnomah County, adjacent to Chipcoak Way Apartments. The site is currently designated Fairview Village/Village Apartment (VA) on the City's Comprehensive Plan maps. The Planning Commission reviewed this application on December 19, 2005 and is recommending to the City Council approval of both the Comprehensive Plan Amendment and Zone Change. The site contains 17,725 square feet in the City of Fairview, Oregon.

Project Description: The applicant proposes an amendment to both the 2004 adopted Fairview Comprehensive Plan Map and zoning map from Fairview Village/Village Apartment to Fairview Village/Village Mixed Use.

Decision Process: The quasi-judicial decision regarding the Type III review will be made at the public hearing before the City Council on January 18, 2006. The decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice. If you wish to appeal the request on a particular issue, that issue must be raised in writing prior to the hearing or verbally within the public hearing process held on this date. Issues must be raised with sufficient specificity to enable the decision-maker to respond to the issues. All evidence relied upon by the City Council to make this decision is in the public record, available for public review. A copy of the staff report will be available seven days before the hearing. Copies of this evidence and the staff report can be obtained at a reasonable cost from the City.

To Submit Comments or Obtain More Information: Written comments regarding the request must be submitted to the City of Fairview Community Development Department in Fairview City Hall, located at 1300 NE Village Street in Fairview, Oregon, by 1:00 PM on January 18, 2006. If you would like information regarding the request, please call P. Elise Scainick, AICP, Associate Planner, at (503) 674-6205 or email at scainick@ci.fairview.or.us.

OL 1205-23
12/31/05

ORDINANCE
(07-2006)

AN ORDINANCE AMENDING THE CITY OF FAIRVIEW COMPREHENSIVE PLAN and ZONING MAPS, 05-67 CPA-ZC, Everhart Lot 109

WHEREAS, the City of Fairview has previously adopted an acknowledged Comprehensive Plan in compliance with Statewide Planning Goals; and

WHEREAS, this Council continues to recognize that the City's present Comprehensive Plan is not a static document, but rather an essential part of an on-going process to develop land use Planning and land use based thereupon to the optimum degree possible to reflect the community's ever-changing needs and desires, while giving consideration to the needs and goals of adjoining areas and the concept of reasonable land use Planning coordination; and

WHEREAS, Policy 4 of Fairview's Comprehensive Plan provides opportunity to citizens of Fairview, affected governmental units, interested and affected persons, to initiate or propose Plan changes; and

WHEREAS, under date of September 27, 2005, an application filed by The Everhart Company, was deemed complete, for a request to amend the City of Fairview Comprehensive Plan Map and Zoning Map for a parcel of real property, at 1510-1516 NE Market Drive, Assessor's Map 1N 3E 33AA Tax Lot 05600, totaling approximately 17,725 square feet, as identified in said application; and

WHEREAS, thereafter, said application was then submitted to the City's Planning Commission and staff to make a full analysis, thereof, which was received and reviewed by the Planning Commission, which held a Public Hearing upon such application on December 13, 2005 after giving due notice in the manner required by law and prescribed in the Fairview Comprehensive Plan; and

WHEREAS, the Planning Commission thereafter found, based on its staff review and analysis and its own review and consideration thereof, that the criteria set forth in the City's Comprehensive Plan did justify the applicant's proposed amendment to the Comprehensive Plan Map from Fairview Village/ Village Apartment and Land Use District Map VA, Village Apartment to Fairview Village/Village Mixed Use, and Fairview Land Use District Map to VMU, Village Mixed Use. Said change was in compliance with applicable provisions and policies of the city's Comprehensive Plan, as well as applicable Statewide Planning Goals; and

WHEREAS, this Council has received from the Commission its recommendation

1

and adopted findings, together with the full staff reports and background material, and has fully reviewed and considered the same; and

WHEREAS, this Council has, pursuant to notice duly given in accordance with applicable Ordinance and statute, held an additional public hearing upon said application for Plan Map change on January 18, 2006, at which time all interested persons were again given opportunity to be heard thereupon, and upon the close of which this Council did take this matter under advisement; and

WHEREAS, based upon its review and analysis of the Planning Commission's recommendation and findings, its own review of the staff reports, public input received and consideration of all pertinent materials as submitted, this Council does make the following findings:

1. The City of Fairview presently has a Comprehensive Plan adopted and acknowledged for compliance with Statewide Land Use Goals.
2. Said Plan provides for the amendment thereof in accordance with the procedures set forth primarily in Chapter 2, Policy 7.D thereof, and within the above context proposal (application) has been presented and accepted for consideration by the City for the revision or amendment of the Fairview Comprehensive Plan, as amended to date, changing the land use designation of certain described property as hereinafter set forth from Fairview Village/Village Apartment to Fairview Village/Village Mixed Use, and amending the zoning map from Village Apartment (VA) to, Village Mixed Use (VMU).
3. The proposal for Plan amendment involves 17,725 square feet as designated in Exhibit "A" attached hereto.
4. The pertinent criteria in the Fairview Development Code and the appropriate policies of the Fairview Comprehensive Plan, have been met as reflected in the attached staff report.

NOW, THEREFORE, THE CITY OF FAIRVIEW ORDAINS AS FOLLOWS:

Section 1. The Comprehensive Plan Map is amended to redesignate the lands described in "Exhibit A" from the "Fairview Village/Village Apartment" to the "Fairview Village/Village Mixed Use" land use designation.

Section 2. The Zoning Map is amended to redesignate the lands described in Exhibit A from the "Village Apartment" (VA) to the "Village Mixed Use"

(VMU) zoning designation.

First Reading: January 18, 2006

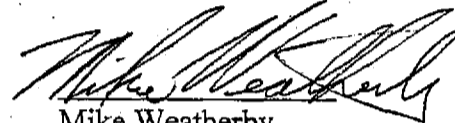
Second Reading and Adoption: January 18, 2006

Yes: 7

No: 0

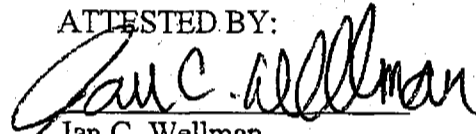
Absent: 0

CITY OF FAIRVIEW



Mike Weatherby
Mayor

ATTESTED BY:



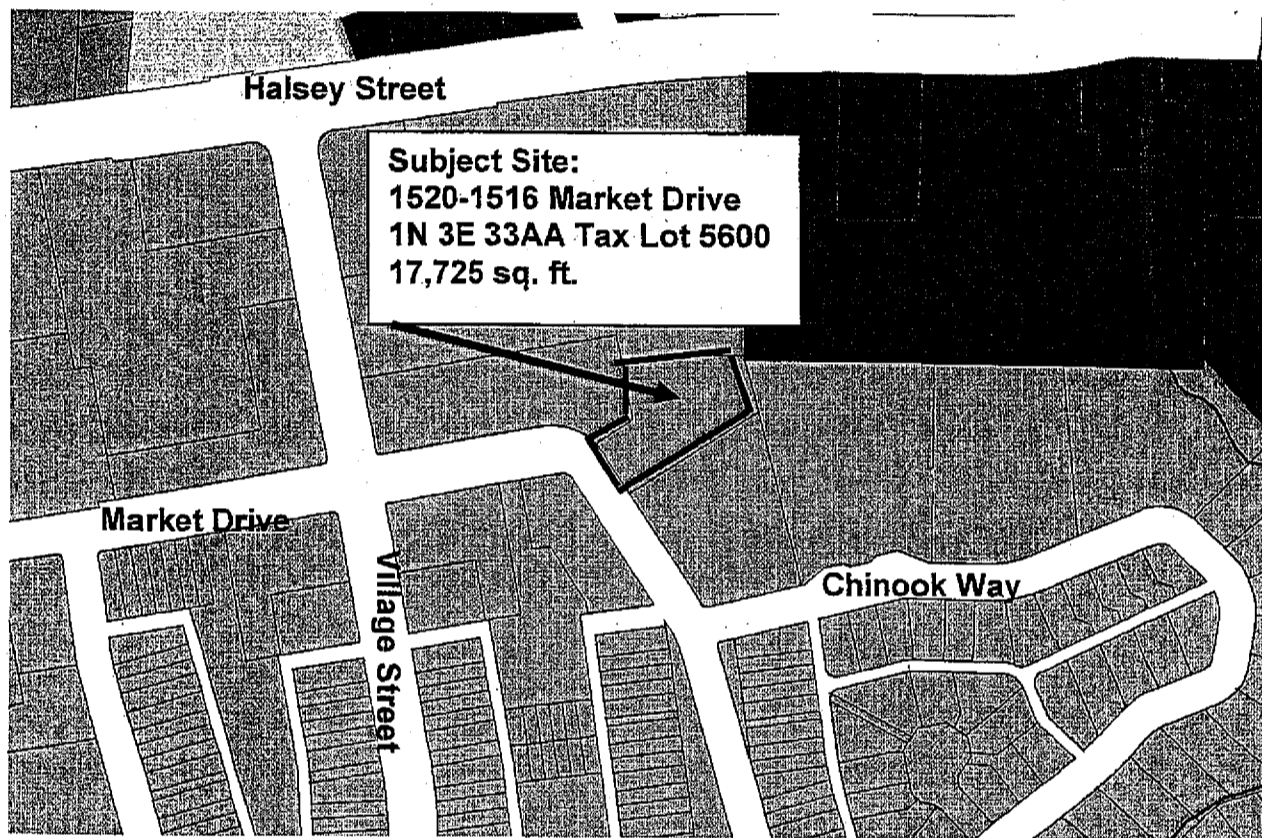
Jan C. Wellman
City Administrator/Recorder

SITE DESCRIPTION

Exhibit "A"

File: 05-67-CPA/ZC – Garth Everhartt

Comprehensive Plan:	<u>Existing</u> Fairview Village/ Village Apartment	<u>Proposed</u> Fairview Village/Village Mixed Use
Zoning Map:	Village Apartment (VA)	Village Mixed Use (VMU)



Owner: Fairview Village Development Corporation
PO Box 1912
Fairview, OR 97024-1805

Applicant: Garth Everhart
The Everhart Company
PO Box 1912
Fairview, OR 97024-1805

Lot 109 Comprehensive Plan Change Application
Lot 109 Rezone Application

NARRATIVE

Current Zoning: The comprehensive plan currently designates the property as FV (Fairview Village) with underlying zoning of Village Apartments (VA). We propose to develop four (4) mixed use rowhouses on the property. Mixed use rowhouses require VMU (Village Mixed Use) zoning.

Location: The property sits to the north and west of Chinook Way Apartments and to the south of Comm I (NE Halsey frontage). The Chinook Way property is zoned VA and the Comm I property is split between VO (Village office) and VMU. Lot 109 is contiguous to the VMU portion and VO portion of Comm I. The public street providing access to this lot is NE Market Drive.

To the west and south of lot 109 are the MarketPlace apartment project and the VMU core area at the intersection of NE Village and NE Market. MarketPlace Apartments is zoned VA with a conditional use for 2,000 square feet of commercial use. The balance of the undeveloped property to the west of Lot 109 is zoned VMU (Lot 243).

Development Outline: In light of the success of mixed use zoning at the MarketPlace VMU project across from the post office, the applicant proposes to develop four mixed use rowhouses at this property. As planned these four rowhouses will be 25 % smaller than the units built across from the post office. The proposed change in use also reflects public sentiment towards owner-occupied projects over standard apartment projects. Each of the four rowhouses will be approximately 3,000 square feet in size with a two car garage to the rear of the rowhouse. The preliminary configuration is for approximately 1,000 square feet of retail/commercial on the ground floor and approximately 2,000 square feet of residential rowhouse space above the ground floor. There will be no connection between the residential and ground floor space. The ground floor space is intended for uses similar to the uses found at the MarketPlace Mixed Use project across from the Post Office and allowed under the VMU code.

VA Development Option: The density allowed under existing VA zoning is 20-30 units per acre. Lot 109 is 17,725 square feet in size or .41 acres. Under the current zoning, eight (8) to twelve (12) apartments would be developed on this site. While it is unlikely that twelve (12) apartments could be developed on this site due to parking restrictions at least eight (8) apartments would be built to satisfy the minimum density requirements.

Impact Study: To assess the affects of the development on public facilities and services.

a-The existing roads, sewer, water and other utilities are in place with the exception of the sidewalks and street trees along this property frontage. The existing public services in this vicinity were based on the overall Fairview Village plan which includes an apartment complex at this location. The existing public facilities at this site are sized to accommodate an apartment complex and will adequately serve the proposed VMU project.

b-Under the existing VA zoning eight to twelve apartments could be developed on this property. The proposed VMU project is for four mixed rowhouses on the site in lieu of 8-10 apartments.

c-The traffic impact and utilities needs are very similar for these two alternatives and in both cases the existing roads, water, fire service, sanitary sewer, storm sewer, phone, electrical and CATV services are adequate for the proposed use. Since the proposed use is very similar to the use under the existing zoning, no additional impacts are known. The development will meet all public standards for connection to existing facilities and completion of a portion of the right-of-way.

Criteria for Quasi-Judicial Amendments - 19.470.300 B of FMC.

Criteria for Quasi-Judicial Amendments. A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

1. Demonstration of compliance with all applicable comprehensive plan policies and map designations. Where this criterion cannot be met, a comprehensive amendment shall be a prerequisite to approval;

A Comprehensive Plan Amendment is required as a prerequisite for approval. See the attached Comprehensive Plan Amendment discussion.

2. Demonstration of compliance with all applicable standards and criteria of this code and other applicable implementing ordinances.

The proposed application will comply with all applicable standards and criteria of the Fairview Municipal Code and Comprehensive Plan as discussed under the Comprehensive Plan and Fairview Village Development Code Headings.

3. Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property which is the subject of the application.

Two changes in the neighborhood and community have occurred which support this application.

(a). The City of Fairview has begun a push for more economic development to bring more jobs into Fairview to provide economic support for the city and to reduce traffic out of Fairview. VMU sales of this type have recently brought four new businesses into the City of Fairview during the last year. Developing more of this fee-simple type development available would support this goal of providing more property for small businesses that want to locate in Fairview.

(b) The City's investigation of the VMU rowhouses on NE Village Street found that many owners had expanded their operations beyond the original home occupancy space limitations. The expansion of several of these businesses pointed out two key items. The first is that the demand for small shop space and professional offices was greater in Fairview than expected and this demand was not being met elsewhere in the City of Fairview. Secondly, the configuration of the NE Village VMU rowhouses did not accommodate some of these uses when the owners sought to expand existing businesses.

The last two sentences of the VMU description on page 26 of the Comprehensive Plan reads as follows:

"Mixed use buildings along Village Street are anticipated to be primarily residential, with limited commercial activities. It is anticipated that the commercial uses may grow to be more predominant over time, if developed in a manner consistent with land use and building regulations".

The commercial uses are growing as evidenced by some of the conversions that are occurring along NE Village Street. The design of lot 109 as VMU will allow a larger commercial use on the floor and prohibit the expansion of any commercial space into the upper floors. The development of VMU rowhouses on this property provides more fee-simple VMU units that are desirable for other business owners seeking to locate in Fairview.

(c) The applicant acknowledges the FV map designation for Fairview Village in the comprehensive plan. The second map in the comprehensive plan for this portion of Fairview is the actual Fairview Village zoning map. The applicant believes that the inclusion of the actual zoning map in the comprehensive plan is a mistake. The inclusion of a site specific zoning map in a comprehensive plan is atypical. The insertion of the specific property zoning map in the comprehensive plan is the sole reason for a comprehensive plan map change application.

Criteria for Amendments - 19.205.020 of FMC

19.205.020 Criteria. Approval of an ordinance text or map amendment shall be based on finding that it complies with the following criteria:

A. The amendment will not interfere with the livability, development or value of the other land in the vicinity of the site-specific proposals when weighed against the public interest in granting the proposed amendment.

The projects to the east, south and west of this site are apartments and rowhouses (Chinook Way Apartments to the east and south; Langley rowhouses to the south and MarketPlace Apartments to the west). MarketPlace apartments are a fifteen-plex with a sixteenth space that is a commercial operation under a conditional use permit granted for this project. The actual use in this space is office which is compatible with the VMU zoning sought for the subject property. Beyond the MarketPlace apartment project further to the west is the pending MarketPlace project which is zoned VMU and will feature a mix of apartments and retail/office uses. Adjacent to this site to the north is Comm I which is zoned VMU along the same NE Market Drive frontage and Village Office (VO) between this property and NE Halsey. VMU zoning of this property will be consistent with surrounding uses and adjacent zoning.

B. The amendment will not be detrimental to the general interest of the community.

Small business operations at the MarketPlace VMU project and several conversions along NE Village Street demonstrate the demand by property owners and investors for mixed use space in the City of Fairview. The City supports the development of commercial enterprises within the City. The development of additional mixed-use space follows the city goals of supporting new and expanding commercial operations within the City. Further, additional small business opportunities will expand the services to nearby residents.

C. The amendment will not violate the land use designation established by the comprehensive land use plan and map or related text.

A Comprehensive Plan Map amendment is required for the proposed zone change. Once the Comprehensive Plan map is amended, the zoning map amendment will be consistent with the VMU designation.

D. The amendment will place all property similarly situated in the area in the same zoning designation or in appropriate complementary designations without creating inappropriate "spot zoning".

This property abuts VMU to the north and west along the same NE Market Drive frontage. To the north and west is a large parcel designated as Comm I. The portion of Comm I adjacent to this property along the same NE Market Drive frontage is zoned VMU. The balance of Comm I lies between this property and NE Halsey and is zoned VO. This property thereby abuts both VMU and VO zones. To the west across NE Market is VA abutting the "four corner" VMU center of Fairview Village. Thus VMU complements both VA and VO. The proposed zone change does not create "spot zoning" but in fact increases the VMU area within the core of the Village.

Comprehensive Plan Change

Per chapter 2 of the Comprehensive Plan, Section 7 (D) the applicant addresses the following:

D. The following criteria will be used to establish the justification of a proposed plan amendment or zone change.

(1) Demonstration of compliance with all applicable comprehensive plan policies and map designations. Where this criterion cannot be met, a comprehensive plan amendment shall be a requisite to approval.

The project plan is for four mixed use rowhouses which would be allowed under VMU zoning. VA zoning allows for conditional uses noted in the VTH (Village Townhouse) zone together with any attached single-family housing. Attached single-family housing is rowhouse development. The proposed project is rowhouse but staff has decided that a comprehensive plan and zone change are required because the rowhouses proposed will have a partial commercial component. The conditional uses allowed within VA are the same as within the VTH zone. These conditional uses are: Schools, churches, community centers, community parks and "similar" uses. None of the conditional uses within VTH and as allowed in VA match the development plan for lot 109 so the VA zone does not allow the proposed project. On this basis, a comprehensive plan change is required in addition to a zone change.

(2) Demonstration of compliance with all applicable standards and criteria of the Fairview Development code, and other applicable ordinances.

The "demonstration" test is somewhat vague in reference so the applicant refers to pages 24-32 of the Comprehensive Plan which covers Fairview Village.

Primary Land Use Designations and Design Features on page 24 refers to Table 3-E and suggests that the actual details will vary as long as the vision and architectural character of the pedestrian oriented development is followed.

In table 3-E, the Land Use Plan outlines VA and VMU goals. The VA goals include approximately 210 apartment units. To date, 201 apartments have been constructed. In addition, 24 apartments have been approved through the previous Design Review approval granted to South Market Square (D-005-98). This would bring the total of apartments to 225 within Fairview Village.

VMU- Village Mixed Use

Table 3-E also outlines VMU development for Fairview Village. The VMU goal is 6.45 acres and/or a total of 93 units. To date a total of 39 VMU units have been constructed. 22 VMU units have been built on NE Village, 12 VMU units were

built at Rose Walk, library is a VMU unit and recently four VMU units were built on NE Market Drive. In terms of goals as outlined in Table 3-E, there is an expectation of another 54 units.

Through the development of South Market Square (D-005-98) additional space will be developed under its VMU zoning but that space is not delineated into actual counts so it is difficult to analyze relative to the anticipated 93 units. Acreage within existing VMU zoning is a more accurate measure. Existing developed VMU acreage is 1.76 acres and future VMU development across lot 243, 243, portions of Comm I (Parcel 1) and Comm II (Parcel 7) total another 2.79 acres. If Lot 109's .41 acres is added to this the total acreage of VMU zoned area will be approximately 4.96 acres. These figures exclude Tract X and portions of Comm I and II because those portions are not developable for VMU buildings since they are parking lots.

The existing acreage combined with the acreage of lot 109 proposed to be rezoned is less than the projected 6.45 acres allocated for VMU in Table 3-E.

Parks and Open Spaces

The proposed amendments preserve the Fairview Village plan for parks and open spaces. No parks or conservation areas will be added or removed with this proposal. Also, the proposal will include a portion of the off-street pathway system outlined in Figure 3-E of the Comprehensive Plan.

Transportation

See discussion below under Fairview Transportation System Plan.

Policy 6 of Comprehensive Plan Chapter 3:

The Village Mixed Use designation shall link the Village Commercial district to the Village Office District. It will consist of small ancillary shops oriented towards the primary streets with residential units above or townhouses that may evolve into retail uses in the future. Parking and building codes shall be taken into consideration for all uses. Buildings located at the four corners of the Village Square (Village Street and Market Street Intersection. See Land Use Designations in Figure 3-D) shall be two stories or tall façade one-story buildings with the first floor restricted to commercial/office/retail use.

This property is not located at the four corners area of the Village but is located adjacent to other VMU property and VO property. Like the adjacent VMU property, this property will be linked to the VO property to the north. Parking and building codes will be satisfied by this development. The rowhouses to be constructed at this property will be oriented towards the primary street and will have residential space located over the ground floor commercial space. The height of the buildings is three stories which match the surrounding buildings.

Development Code

The proposed development will comply with the VMU development standards as outlined in the section of this application labeled "Compliance Fairview Village Development Code - 19.110 - 19.155."

(3) Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or land use district map regarding the property, which is the subject of the application.

Two changes in the neighborhood and community have occurred which support this application.

(a). The City of Fairview has begun a push for more economic development to bring more jobs into Fairview to provide economic support for the city and to reduce traffic out of Fairview. VMU sales of this type have recently brought four new businesses into the City of Fairview during the last year. Developing more of this fee-simple type development available would support this goal of providing more property for small businesses that want to be located in Fairview.

(b) The City's investigation of the VMU rowhouses on NE Village Street found that many owners had expanded their operations beyond the approved small home occupancy space limitations. The expansion of several of these businesses pointed out two key items. The first is that the demand for small shop space and professional offices was greater in the City of Fairview than expected and this demand was not being met elsewhere in the City of Fairview. In turn, the configuration of the NE Village VMU units would not accommodate some of these uses as they sought to expand their business.

The last two sentences of the VMU description on page 26 of the Comprehensive Plan reads as follows:

"Mixed use buildings along Village Street are anticipated to be primarily residential, with limited commercial activities. It is anticipated that the commercial uses may grow to be more predominant over time, if developed in a manner consistent with land use and building regulations".

The commercial uses are growing as evidenced by some of the conversions that are occurring along NE Village Street. The design of lot 109 as VMU will allow a larger commercial use on the floor and prohibit the expansion of any commercial space into the upper floors. The development of VMU rowhouses on this property provides more fee-simple VMU units that are desirable for other business owners seeking to locate in the City of Fairview.

(4) Demonstration of compliance with the Fairview Transportation System Plan.

There are two ways to look at compliance with the TSP that rely on existing information. The first is based on parking counts and the second is to look at vehicle generation through future parking demand studies conducted for the City of Fairview.

Parking-

The existing property is zoned VA. Under VA zoning the density of the project ranges from a minimum of 20 units per acre to a maximum of 30 units per acre. Applying the minimum ratio of 20 units per acre to the 17,725 square foot lot equals a minimum of eight (8) apartment units on this property. In turn, the maximum of 30 units per acres would limit this property to no more than twelve (12) units.

Lot 109 could support from eight (8) to twelve (12) apartments as it is presently zoned. Under 19.140.040 Minimum Required Off-Street Parking, the ratio is 1.5 stalls per attached dwelling units (more than four units). On this basis an apartment project would require 12 to 18 off-street stalls. Based on the street frontage and 19.140.040 (d) On-Street Parking, there are three on-street stalls that could satisfy part of this requirement.

As a VMU project of four (4) units total the development would include four residential rowhouse units above a total of 4,000 square feet (4 x 1,000) of commercial space. Under 19.140.040 (A) the four residential units would require 1.5 - 2.0 stalls per residential unit. The parking for the residential portion of the project would range from 6 to 8 stalls. The four VMU rowhouse units each will have a two car garage thereby satisfying the higher parking requirement. In terms of the commercial space, the parking requirement is one (1) space per 500 square foot of floor area. Based on 4,000 square feet of ground floor area, the commercial space would require eight (8) stalls. The project site plan depicts eight (8) off-street parking. While section 19.140.040 (D) of FMC allows the three (3) on-street stalls to apply towards satisfying this requirement, this project does not rely on on-street parking to satisfy its parking requirements.

Comparing the current VA zoning to proposed VMU zoning based on required parking indicates that the amount of parking for either use is roughly the same. The proposed plan will more than meet the minimum parking requirements especially when the off-street stalls are added to the count. Therefore since the VMU sought for this property does not require additional parking one can conclude that the proposed rezone will not lead to additional traffic. In fact, the opposite is true. Mixed use as discussed in the May 2003 Parking Management Plan for the Core Area of Fairview Village on page two clearly states the VMU type uses reduce VMT which satisfies both the state TPR and the City's own traffic management goals.

Parking Studies-

In the 1/27/03 Fairview Town Center Parking Study by DKS, DKS estimated Parking Demand for this property at 19 stalls based on office usage or 3.7/000 (Table 6: Conceptual Future Development). This study is important to the City of Fairview because it addressed current parking needs and future for the Village. From these projections one can draw the conclusion that if a future use does not increase the amount of required parking that additional traffic is not being generated by the proposed project.

The project plans include 8 stalls in garages; 8 off-street stalls and 3 on-street stalls for a total of 19 stalls which exceeds the required parking by 3 stalls.

While the parking provided by the VMU project is equal to the projection made by DKS, the DKS analysis does not include any credit for owner-occupied VMU units. There is a difference between mixed use and owner-occupied mixed use. The economies between mixed-use relies on residential parking at different parking times than commercial use. In the case of owner-occupied units, the residential units cover some of the commercial parking demand since the business owner parks in its private residential space and do not rely on the space for clients. This is both very efficient from the standpoint of parking stalls and also helps reduce the daily trip generation from the project since the business owner does not have to commute.

Fairview Transportation System Plan

In addition to the narrative above, it may be useful to look at policies 1- 9 of the Fairview Transportation System Plan that are applicable to this project.

Goal 1 - Livability: *Plan, design and construct transportation facilities in a manner that enhances the livability of Fairview in accordance with the following policies.*

1. Maintain the livability of Fairview through proper location and design of transportation facilities.

This project will rely on existing transportation facilities that are "built-out" in this area. Inherent in a mixed use design is the decrease reliance on transportation facilities because owner-occupied operations have less traffic since the owner works at the property and does not have to commute. VMU use will generate equal or less traffic than the current VA zoning. In addition, the VMU relies and serves the local residents. As a pedestrian based community many of the residents can be served without using their vehicles which increases the livability for the clients of these services through proximity and for the neighbors through a reduction in traffic.

2. Encourage pedestrian accessibility by providing safe, secure and desirable pedestrian routes.

This project lies along NE Market and is contiguous to the MarketSquare area at the intersection of NE Market and NE Village. In addition, the densest housing in Fairview Village abuts this project on two sides. The existing sidewalks along the east side of lot 182 (Chinook Way Apartments) will be extended along the project ROW. In addition, a private sidewalk will run from the public sidewalk along the NE Market Drive frontage to the rear two units thereby continuing good pedestrian accessibility to each of the units.

Figure V10 of 19.155 Village Trail System Plan depicts a pedestrian path along the north side of this property tying into the north area of the Chinook Way Apartments. The applicant is unaware of any trail system along the north side of Chinook Way Apartments but the alley and parking lots behind the apartments are open for vehicle, bicycle and pedestrian circulation. The applicant proposes to place a 5' wide sidewalk along the north property line that would tie in from the public walk to be constructed along NE Market to the rear parking lot that serves the property and is connected to the circulation areas behind Chinook Way Apartments. The location of this pedestrian access follows the proposed locations on the V10 exhibit.

3. Relate the design of street capacity and improvements to their intended usage.

This property was intended for apartment development with parking behind the building. As VMU, the parking will continue to be placed to the rear of the project and use an existing driveway for access. The project does not place any additional traffic burden on the streets than would have been experienced if apartments were built on this property because the density under the current zoning is more than under the proposed VMU zoning. Further, the placement of parking behind the buildings satisfies Village Development goals in terms of parking lot location and shared driveways.

Goal 2 - Balanced Transportation System: Provide a balanced transportation system, incorporating all modes of transportation (including motor vehicle, bicycle, pedestrian, transit and other modes).

1-Develop and implement public street standards that recognize the multi-purpose nature of the street right-of-way for utility, pedestrian, bicycle, transit, truck and auto use.

The streets abutting this project are completed with the exception of the sidewalks along the frontage of the property. The project improvements will include the extension of the public walks along NE Market Dr. Ultimately when the adjacent VMU property is developed on Comm I, these public walks will be extended to NE Village and to the NE Halsey where there are existing public transit improvements.

2-Coordinate with Tri-Met to improvement transit service.

See item #1 above. This project will support existing transit facilities.

3-Develop bicycle and pedestrian plans, which link to recreation trails.

The extension of the existing sidewalk along NE Market Drive along this frontage will provide a connection from this property to the pedestrian path system within Fairview Village. This system connects to the recreation trail at the main park in the Village. In terms of bicycle plans, the existing roadways and sidewalks in this area will support bicycle usage created by this project. In addition the extension of a walk from the public walk along NE Village street along the north side of the property will provide a pedestrian connection around the project to the circulation areas behind the adjacent Chinook Way Apartments.

4-Design local streets to encourage a reduction in trip length by providing connectivity and limiting out of direction travel. Provide connectivity to activity centers and destinations with a priority for bicycle and pedestrian connections.

The proximity of this site to the MarketPlace area and completion of sidewalks along this property's frontage provide strong connectivity to the various destinations for bicycles and pedestrians in Fairview Village. In term, the nature of mixed use facilities leads to a reduction in the number of trips and length of trips because services are closer to nearby residents. As owner-occupied VMU, the true benefit of mixed use in terms of reducing trips and trip length is experienced because owner-operators are not forced to commute by car to their work site.

5-Participate in vehicle trip reduction strategies developed regionally.

Fairview Village by the nature of its design and various zoning districts within the Village leads to trip reduction by the inhabitants and business owners. A VMU development that is owner-occupied further reduces trips because the owner does not have to commute to reach its place of employment.

Goal 3 - Safety: *Strive to achieve a safe transportation system by developing street standards, access management policies and speed controls when constructing streets and by making street maintenance a priority.*

1-Relate the design of streets to their intended use.

The existing roadway improvements are already completed for this project. The property was intended for apartment usage with parking to the rear of the project. This project has nearly the same parking requirements and the parking is to be located to the rear of the project and will share an existing driveway. There is no street design required of this project because the streets are already completed. The proposed use fits the existing use which relied on the existing street design.

2-Street maintenance shall be a priority to improve safety in Fairview.

This is not really an obligation of the property but developing the property might reduce the amount of dirt that reaches the street.

3-Design safe and secure pedestrian and bikeways between parks and other activity centers.

The sidewalks along the east side of NE Market Drive along this frontage will be completed. These sidewalks will provide a connection to the existing pedestrian routes along NE Market and provide connection to NE Village when the balance of lot 243 is developed. These various options provide good connection to existing activity centers and the park adjacent to City Hall. In addition the walk along the north side of the property will provide a connection from the public walk along NE Village to the circulation areas behind Chinook Way Apartments.

4-Designate safe and secure routes to schools.

Pedestrian access from this project to the elementary school will be via the walk ways to the City Park by the City Hall. The park has a very good connection to the elementary school through the nature trail.

Goal 4 - Performance Measures: *Provide a cost-effective transportation system wherein the public, land use development and users pay their respective share of the system's costs proportionate to their respective demands placed upon the multi-modal system.*

1-A minimum intersection level of service standard shall be set for the City of Fairview. All public facilities shall be designed to meet this standard.

The existing roadways were developed and constructed according to the City of Fairview standards for LOS. This project is similar in impact as the VA use assigned to this project. As such, there is no indication that an impact of the planned LOS would be created by this project.

2-Parking ratios shall be set to provide adequate parking, while providing an incentive to limit the use of the single occupant vehicle.

The existing parking ratios for VMU will be met for this project. In addition, there is also limited on-street parking that would also help to satisfy any parking demand. By its nature, VMU use reduces traffic. If traffic is reduced, one can assume that single occupant traffic is also reduced.

Goal 5 - Accessibility: *Develop transportation facilities shall be accessible to all members of the community and minimize out of direction travel.*

1-Transportation facilities shall meet the requirements of the Americans with Disabilities Act.

All sidewalks along the public walks and walkways within the project buildings shall meet ADA requirements.

2-Neighborhood and local connections shall provide adequate circulation in and out of the neighborhoods.

The roads within Fairview Village and to other parts of the community are already completed.

3-Coordinate with Multnomah County to develop an efficient arterial grid system that provides access within the City and serves through-City traffic.

The roads within Fairview Village and to other parts of the community are already completed.

Goal 6 - Goods movement: *Provide for efficient movement of goods and services.*

1-Arterial routes, highway access and adjacent land uses shall facilitate the efficient movement of goods and services.

The roads within Fairview Village and to other parts of the community are already completed. A VMU type project surrounded by apartments, rowhouses and other VMU rowhouses argues for a very efficient movement of goods and services within this trade area.

2-Require safe routing of hazardous materials consistent with federal and state guidelines.

The roads within Fairview Village and to other parts of the community are already completed. This project is not expected to create any hazardous materials and as such this policy may not be applicable unless standards change in the future.

Goal 7 - Coordination: *Implement the TSP in a coordinated manner.*

1-Coordinate and cooperate with adjacent agencies (including Multnomah County, Wood Village, Troutdale, Gresham, Metro and ODOT) when necessary to develop transportation projects which benefit the region as a whole in addition to the City of Fairview.

This is non-applicable since no transportation projects are being created by this project. On the whole, VMU development in lieu of VA development will reduce impacts on existing transportation facilities.

Goal 8 - Sandy Boulevard: Non-applicable

Goal 9 - Fairview Village Transportation: *Transportation improvements in Fairview Village shall be consistent with the goals of Fairview Village Plan and the following policies.*

1-Continue to provide the opportunity for jobs and services within the Village and Old Town to reduce trip lengths.

Developing this property as VMU in lieu of VA will provide the opportunity for more jobs in Fairview Village. The opportunity for more jobs in the City of

Fairview will reduce trip lengths for residents of Fairview and will also reduce the number of out of area trips. In addition, VMU also provides more opportunity for services than VA type development since there are businesses located on the property in lieu of apartments. Lastly, by its very nature, VMU provides a shared work-live opportunity which also reduces trip lengths.

2-Integrate land use and transportation to encourage transit, bicycle and pedestrian use.

The difference between VA and VMU development in terms of transportation is minimal with the exception that VMU type development reduces the use of transportation facilities through a reduction in vehicle trips while increasing access for pedestrian trips. This property both abuts VMU and VA property so that a VMU designation is consistent with the existing land use around this property.

3-Maintain a transportation network that emphasizes connections with Fairview Village and Old Town Fairview.

This project relies on the existing network within the Village and connections to Old Town. The addition of VMU development with its opportunity for goods and services will strengthen the ties between Old Town and Fairview Village because there will be more opportunity for goods and services locally instead of citizens having to go out of the area.

4-Transit facilities and service on NE Halsey shall continue to be integrated with the Fairview Village Commercial area, and transit service along Glisan Street will be advocated by the City.

This project is an infill type project in the sense that it is not making any public improvements except for the sidewalk along its NE Market Dr. frontage. In the sense of supporting the Fairview Village Commercial area, VMU development will bring additional business and residents to the Village which will both support and utilize the existing transit facilities along NE Halsey.

5-The Village Commercial is near the Village core and shall be easily accessible from the surrounding neighborhoods by walking, biking, transit or auto.

The VMU project proposed for lot 109 is contiguous to the Village core and is very accessible for walking and biking access to the core area.

6-Alleys shall continue to be allowed in all Fairview Village residential areas. Streets shall be kept as narrow as is practicably allowed by the state fire code.

The streets fronting the property are already constructed to City standards. Alleys are not applicable in this case but the project is sharing a driveway with Chinook Way apartments with parking behind the buildings which places the vehicles behind the structures in keeping with an "alley" type approach.

7. All pedestrian access ways and trails identified in the Fairview Village Plan shall either be within a dedicated right of way or easements granted to the City.

Not applicable to this project.

8. The City of Fairview shall be responsible for the ongoing maintenance of all pedestrian access ways and trails.

Not applicable to this project.

Goal 10 - The Lakes Transportation Improvements: Non-applicable.

Goal 11 - Old Town Transportation Improvements: Non-applicable.

**Compliance with Fairview Village Development Code
19.110 - 19.155**

Compliance with 19.110 - Village General Provisions.

19.110.010 Purpose:

In general this section of FDC outlines the basic goals of Fairview Village which include a mixture of housing, retail and commercial uses in a pedestrian friendly atmosphere with special attention to good connections between all the uses and spaces within the Plan. Changing the comprehensive plan and underlying zoning for this property to VMU meets those goals because it expands the amount of mixed use space which both provides housing and commercial opportunities in the appropriate area of the Village, its core area. In addition, the project will continue to extend the pedestrian connections that exist in this area and provide good circulation.

19.110.020 Village Concept:

This section of the FDC elaborates on the feel and texture of a mixed use community development. The proposed change in zoning fits these descriptions because the mixed use nature of this change satisfies the goal of a central core that satisfies daily needs of nearby residents while also providing a denser housing profile than found at the edges of the Village. This is a "bridging" property because it lies at the edge of the commercial core and the dense apartment and rowhouse areas. By its very nature as mixed use, it "bridges" between these two areas.

NOTE: The specific standards for the actual development will be detailed in depth during the later Subdivision and Design Review application process.

Compliance with 19.135 - Village Commercial (VC) and Mixed Use (VMU)

19.135.010 Permitted Uses:

The eventual users of the project proposed for this property will comply with the permitted uses and any uses determined by the planning director per 19.135.020 (C).

19.135.030 Development Standards - (2) Within the VMU Area:

The standards outlined in this section will be satisfied by the proposed project. The pending Design Review application will elaborate on the standards and how the proposed project meets these standards.

NOTE: For these standards and the remaining standards outlined in 19.135, the compliance with these standards will be demonstrated during the Subdivision and Design Review application process.

Compliance with 19.140 - Village General Standards

19.140.010 Pedestrian Ways and Trails:

The public walk along NE Village will provide a connection to/from this property to the adjacent shopping area and multi-family projects together with the surrounding phases within the Village. In addition, the pedestrian access along the north property line will provide connectivity to the circulation areas behind Chinook Way apartments.

19.140.030 Streets:

The existing streets will serve this property and the buildings abutting the right-of-way will not interfere with any vision clearance setbacks.

19.140.040 Minimum required off-street parking requirements:

The off-street parking requirements will be satisfied by the proposed project.

19.140.050 Street Trees:

The proposed project will install street trees along the NE Village Street frontage as required.

19.140.060 Erosion Control Standards:

The construction plans will satisfy erosion control standards prior to any permits being issued by the City of Fairview.

19.140.070 Landscape Standards:

The standards in this plan will be met by the project and demonstrated during the Design Review process.

19.140.080 - N/A

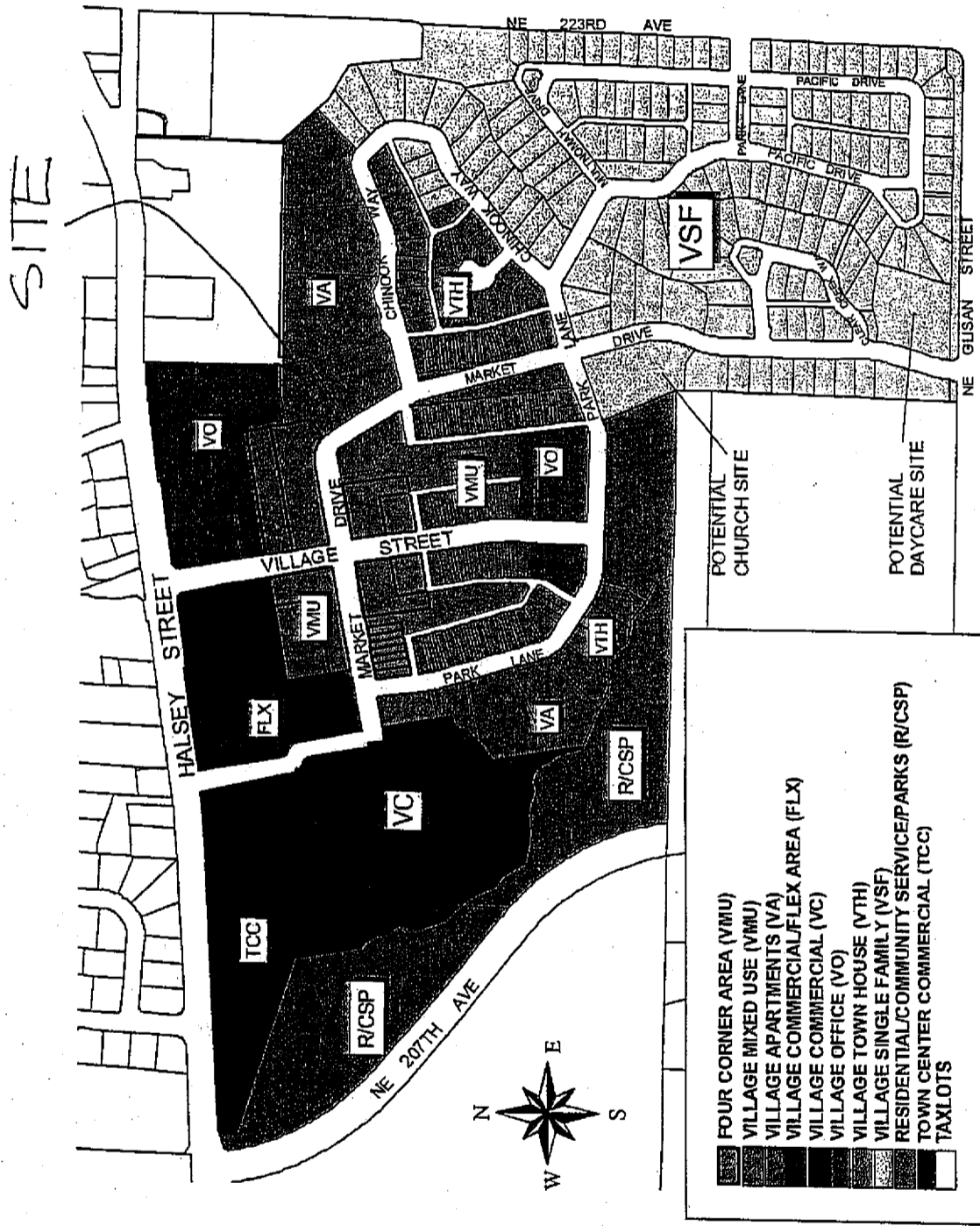
19.140.090 - N/A

19.140.100 Blank Wall Standard:

LOT 109 REZONE EXHIBIT



FIGURE 3-D.
 FAIRVIEW VILLAGE/TOWN CENTER
 LAND USE MAP



DRAFT MINUTES FROM HUGHSON ASSOCIATES, INC.

PLANNING COMMISSION HEARING

**TUESDAY, DECEMBER 13, 2005
FAIRVIEW CITY COUNCIL CHAMBERS
7:00 p.m.**

PUBLIC HEARINGS:

- B. Comprehensive Plan Map Amendment from Fairview Village/"Village Apartment" to "Village Mixed Use" Zone Map Amendment from "Village Apartment" (VA) to "Village Mixed Use" (VMU)**
Reviewer: P. Elise Scolnick, AICP, Associate Planner
Applicant: Garth Everhart, Holt and Everhart
Owner: Fairview Village Development Corporation
Project No: 05-67-CPA/ZC and 05-88-DR/SUB
Address: 1510 – 1516 NE Market Drive
Fairview, Oregon 97024
Tax Lot: 1N 3E 33AA Tax Lot 6500
Site Size: 17,725 square feet (.40 acre)

SUBJECT:

Comprehensive Plan Map Amendment from Fairview Village/Village Apartment to Village Mixed Use

Zone Map Amendment from Village Apartment (VA) to Village Mixed Use (VMU)

Minor Subdivision

Design Review

PLANNING COMMISSION:

Chairman Sam Asbury
Commissioner Ed Jones
Commissioner Jan Shearer
Commissioner Gary Stonewall
Commissioner Sam Asbury
Commissioner Brad Fudge
Commissioner Maureen Zehendner
Commissioner Steve Kaufman

STAFF:

Ms. Connie Hansen, Planning Secretary
Ms. P. Elise Scolnick, Associate Planner
Ms. Tamara DeRidder, Community Development Director

PROCEEDINGS

CHAIRMAN ASBURY: Next on the agenda, public hearing in the matter of Comprehensive Plan Map Amendment from Fairview Village/Village Apartment and Village Mixed Use, Zoning Map Amendment from Village Apartment to Village Mixed-Use. And we'll start with a land use hearing's opening statement. And every land use matter we have to read this statement, and it's kind of long so hang in there.

Are there any ex-parte or ex-parte contacts or conflicts of interest or personal bias issues from the Commission?

Hearing none, does anyone in the audience here tonight have a challenge of any Commissioner on the basis of conflict of interest or personal bias?

Hearing none, let's continue. If the Staff would like to start by giving the Staff report in this matter.

MS. SCOLNICK: This case is 05-67-CPA/CZ, Comp Plan Amendment and Zone Change; and 05-88, Design Review in the Minor Subdivision also known as 1510 to 1516 Northeast Market Drive. The case is a request for a comp plan amendment and zone change, minor subdivision, four lots, to be called Fairview Village Number 8 and design review of four mixed use units. The site is currently designated Fairview Village, Village Apartment on the Village Land Use Map and request is to be designated Fairview Village, Village Mixed Use. It's for lot 109, which is the starred site on the map.

The applicable criteria on page 2 of the Staff report are what is used to review this application. Our recommendation was to ask you to forward our recommendation for approval for the plan amendment and rezone from Fairview Village/Village Apartment to Fairview Village/Village Mixed Use, and approve minor subdivision, four lots, and the site plan review based on the attached findings and conditions. In the Staff report I left out the subdivision so just on that one paragraph, I want to correct that.

The location is adjacent to the Chinook Way Apartments, north of the Marketplace Apartments and south of the Village Office land, which is to the north. The parcel is directly west of an already designated Village Mixed Use site. You note on that aerial photograph that was put up, there was some slope to the site, a six-foot drop along the north edge of the property. There are some constraints to this site. The comprehensive Plan Request, the Staff has recommended approval on, it does meet all of the criteria as outlined in findings in your Staff report. Same with the zone change, it does not give spot zone as it's adjacent to the zone mixed use and is consistent with the surrounding land use designations.

There was an issue raised by the applicant whether a comp plan amendment was necessary or not or just a zone change, and we addressed this in the Staff report. The

City has held precedent that the two-page map system with the comp plan and land use district map for the Village only Constitutes a comprehensive plan, so based on that we believe it covers the plan map amendment and is appropriate and not just a zone change. Sorry, zones. In terms of the preliminary plat, the applicant has met criteria. We have a couple of issues that we have applied conditional approval to that includes cross easements of all lots. Only two of the units front on Market Drive and the other ones are -- two of them, which are 302 and the 301, front on Market. The other lots, 303 and 304, as proposed do not front on the public street.

There is a joint access easement that comes off of Market Drive to the Chinook Way right-of-way and that would be used for access to those lots that would require cross easements of all lots so that area access is both for vehicles and pedestrians. And that we also condition it that all pedestrian ways, public improvements should be shown on the final plat and the site plan for building permits as applicable.

The proposal works out to be about 10 to 12 units per acre on this 17,725 square foot site. We had a couple of issues. I've talked about two, the comprehensive plan issues and the cross easement. We also will, because of parking issues in the Village, we have limited the use as to general retail and office due to the parking situation. They are providing 16 spaces and only 14 will be required so there they do meet the parking requirement, but if more intense use were to go in, we would have to look at the parking issue. So we do ask that the applicant come back to at least a Type 2 process in order to satisfy uses beyond general retail and office. Also asking for when a parking space -- we are looking at a trail. The Fairview Village trail goes through the site. I'll show you. Where the circle is where the -- there is a trail designated on the Fairview plan, it's not clear whether it's on this particular property or on the property below which we've zoned Village Office. We would -- Because of the slope issue in this site it would not be ideal to have a path located, there's not enough room to have a 10-foot wide right-of-way through there, so we would ask that the applicant provide at least a public easement stairway down to the lower portion of the site, and that was not in the Staff report. We would ask you to -- we feel this is acceptable to meet that requirement, and then when the Village Office comes in, a trail would go along that lower portion of the site.

CHAIRMAN ASBURY: So what's the 10-foot right-of-way for --

MS. SCOLNICK: That's the requirement for the pedestrian easement. And, excuse me, pedestrian way like bicycle path and trail plan for the Village. It would be a 5-foot paved path within a 10-foot right of way.

CHAIRMAN ASBURY: And, okay, I'm confused. Would the paved path be on this applicant's property that we're looking at or would it be on the neighboring property that we're not looking at?

MS. SCOLNICK: Well, at this point we're saying that it should go on the property that we're not looking at to the north which is the Village Office. Not on this property because of the slope of this property being on the upper end of the slope.

CHAIRMAN ASBURY: So then why is the applicant providing --

MS. SCOLNICK: You had asked that there just be a stairway, an easement down the slope to access the trail from Market Drive.

CHAIRMAN ASBURY: Oh, I see. Okay, I get it.

COMMISSIONER SHEARER: Excuse me, Mr. Chairman, that's probably the steepest area. Why not have the access up closer to the corner where the grade isn't quite so steep? When you have the stairs down back that far east you'll need more stairs I would think.

MS. SCOLNICK: That's another option that we would like to see --

COMMISSIONER SHEARER: I agree that there needs to be some access, but if you look at that grade, it's not very steep there at the intersection, yet the further east you go, the steeper it gets.

MS. SCOLNICK: That's something that we'd be willing to look at.

COMMISSIONER SHEARER: Okay. I'm always willing to not do stairs if I don't have to.

MS. SCOLNICK: We'll do that. And then the only other issue that we really have was the facade height that was shown in the plans was shown at about 13 feet and the requirement's for an 18-foot high front facade. And those were the only major issues. Otherwise, based on the findings in the Staff report and the conditions imposed, we would recommend approval of both the subdivision and site design review.

CHAIRMAN ASBURY: Great. Questions?

COMMISSIONER SHEARER: I'll wait for somebody else.

CHAIRMAN ASBURY: Go ahead.

COMMISSIONER SHEARER: I noticed at least that in the uses -- probably can't put my hands on it right now, it was limited to office and retail. One of the goals of Fairview Village was to provide as many comprehensive services as possible and as realistic within the land use structure we have and I can understand not having restaurants and anything. Yet there are things that you've excluded them from having, a beauty shop. I can see a real value of having a single chair shop, you know, living above and being able to operate, and I don't know if there's a market for one but that's the kind of thing that one could walk to. It certainly isn't going to take any more parking than are some of the others, in fact I think we already have one of some sort over across from the Post Office.

MS. SCOLNICK: Yeah, we have a couple of salons in the Village. There's one on Village Street and one up Market Drive.

COMMISSIONER SHEARER: So why is it precluded at this site?

MS. SCOLNICK: Well, actually we took the conditions from the site across from the Post Office, and I think there might have been some concerns from the applicant, he can address that, but we were just looking at if the parking requirements exceed the parking that's provided, it would be something that we would be concerned about.

COMMISSIONER SHEARER: I can understand that, and it would cause a problem, it would rain on everybody, but there are ways to limit a good use that would be local in nature and there would be a service.

MS. SCOLNICK: I agree, and you can make more specific allowances if you choose.

COMMISSIONER SHEARER: If he has an opportunity to come to Staff and ask, and that's the option that you have is being able to recommend that or how does that --

MS. SCOLNICK: An option is a Type 2 Review, which means it can be administrative unless it's appealed by somebody. So --

COMMISSIONER SHEARER: But after the review and the permit is given, he's not able to change any of the conditions then or uses, is he able to come in and ask for another amendment on the --

MS. SCOLNICK: He can come in and ask for another Type 2 Review. That's our recommendation.

COMMISSIONER SHEARER: Well, I guess I would just like to see that beauty shop stricken out of the conditions. If in fact we've allowed it elsewhere and we're going to say no here, that doesn't seem appropriate. Not that there's going to be a market if there's already two but you never know. It would be something logical that one person would like to live and work in the same place. That's all, Mr. Chair.

CHAIRMAN ASBURY: Anything else for Staff? Does the applicant have a representative here to speak to the application?

MR. EVERHART: Chairman and Commissioners, my name is Garth Everhart, I'm actually the applicant through my company, the Everhart Company. As you know, the staff report notes Holt & Everhart as the applicant which is not correct. I'm doing this through my own company. I thank you for this opportunity --

CHAIRMAN ASBURY: I'm sorry, your address?

MR. EVERHART: Oh, 954 Northeast Clear Creek Way, Fairview, Oregon. Beside me I have Barry Smith, who's the architect, he's done a lot of the buildings in Fairview Village, and he's going to address some of the details in the building elevation issues and some of those things. I'm not quite sure how to proceed with this, we're actually handling a couple of applications today. We had some issues in a number of the conditions and I'd just like to start with a brief statement.

When Rick and I started doing Village Street some years ago we were concerned that the Village wouldn't support smaller businesses. We worked with a lot of them in Fairview and through the Village Street row house projects we found that a lot more commercial users came through that project than we thought. Subsequently there were issues with some of the people expanding the uses and the City has resolved that issue nicely. It pointed out that there was a demand in Fairview for small business space which is something that a lot of people don't acknowledge because most jurisdictions go after large employers. So we were pretty gratified because it actually went above and beyond what Village concept was in terms of small business and having live/work space. That led to the success of the Marketplace Mixed Use project by the Post Office and it was very successful for us in terms of it sold out very quickly.

We're very happy with the retailers and office people there, we've got some professional services there, insurance agents, chiropractors, another salon, and so we're pretty happy with that. The outcome of that was there were still people not satisfied and not enough inventory, so we decided to do another project. We recognized in going from Village Street for the use of about 3- to 400 square feet to Village Mixed-Use which was 1,200 square feet we still were missing a group in the middle. So we had looked at lot 109 and there was a desire noted in a couple City Council meetings about not having any more just pure apartment projects. We built our Marketplace Apartments, our project, we had a conditional use in there for more office spaces. We have been approached a number of times by people wanting that space. So all of this led us to lot 109 which is a transition property. Chinook Way is a large apartment project to the south, 124 units. And downsloping to the north is Village Office with Village Mixed Use to the north and to the west. And then of course to the south Market Square which is a combination of mixed use apartments and retail. It actually will have restaurants in there. Both buildings have allowances for 1,800 feet of food and beverage. So this was kind of one of these places where we had good things happen all around it.

There was a desire for more mixed use and there was a desire for a little more pure apartment buildings. So we looked at it and saw an awkward piece of property, 17,000 square feet. It is one of the weirdest shaped properties that has ever occurred in Fairview Village and I'm not quite sure why. I think that when they turned the corner, the surveyors and the people doing the platting left an in between, quote, piece. So we started working with Planning Staff back in I believe it was March or April and we've cleaned up some issues on Chinook Way because Chinook Way had encroached on lot 109. It had actually built more parking stalls than was required so we went through and documented that record with John Anderson, Elise and Tamara and showed where the

parking is. In fact part of the parking lot 109 should stay 109 and part of the parking lot on 109 should be moved to Chinook Way through a lot line adjustment.

So subsequently we did an adjustment and moved the property line. So instead of running down the center of the right-of-way we moved it to the north of the right-of-way so Chinook Way owned all of the parking it was required to have. So we went through all of that, established a final size of lot 109, roughly 17,000 square feet, and then looked at it. Elise made some good points. It is an irregularly shaped property, has some topography issues, and we're not able to build a building like we built across from the Post Office one block away. So we ended up with two buildings, both pointing to the west but one slightly staggered back. And in going through this we discovered that we have difference of opinion with the City, we submitted to you a comp plan change, a zone change, and then review. We believe that it will be another good project for Fairview Village, we hope to see it concluded in 2006, and we hope to bring in four new businesses to the City of Fairview. I'd like to have Barry address the site layout and elevations and some of those things. And we're kind of moving around here between subdivision, comp plan change, zone change, and design review, so we'll just go for it and we'll answer your questions. And then I actually have some comments to the Staff report. Barry Smith.

MR. SMITH: Hi, I'm Barry Smith, my address is 715 Southwest Morrison Street, Portland, 97205. We put a panel together for you all to look at that also shows some color and materials for the project. There -- Like Garth said, this is a very complicated site, and what we've come up with is a very simple solution which isn't always easy to do.

But you've got two buildings, each with two townhouses in them with commercial space on the ground floor facing the street, which was a nice result of our planning process. One of the problems that we ran into along the north side of the project was there is an existing rockery there and it's very steep, and it's kind of unfriendly. We were having problems with the proximity of the buildings to that thing, not only getting the buildings in but how safe to the pedestrian zone would it be. We were able to manipulate the siting of the buildings and the width of the buildings to get a pathway to the front doors of the retail spaces and then also to the doors that would be used for the side entrances for the residences above. And I think we make it work, but I'm concerned with one of the things in the Staff report about trying to have that as a larger public access way into the trail down below. I think it would not be the safest thing or the easiest thing in the world to do. Those boulders are huge. I don't know if you all remember when they were being placed. It was quite a mobilization. The contractor, the first one, broke his pick. You know, it takes very, very large equipment, and I'm not sure we can get them in there without disrupting Chinook Way Apartment tenants right now.

So what we did was we backed the buildings off and we're composing a landscape buffer to help stabilize that hillside. And then we wanted to face the building towards Market Street. It's always important even though the Staff wants them in the front end of the street but that they have some sort of a street presence, so what we did was

added a porch and a bay element that looks like a, you know, in older type of buildings what you would see typically out in front of them, and I think that's getting a little bit confusing about what a definition of a facade is. We think the facade is the whole front of the building. Look in the code and the definition and I think the little bays and porches don't detract from their facade. So I don't know if there's a variance that's necessary. I think that the definition in the code is fine, but again it's something that we felt was a higher level of design criteria to help break up the mass of the building and have some more three-dimensional definition. Then the last thing that we did, easy to do in the buildings in the Village, is banding, you know, changing types of materials. We're real happy with the difference between tight lap siding and wider faced lap siding these days and then helping break down those roof sizes by manipulating the mass of the building.

So it was a tough little site and there's been a couple of other proposals on this site but I think this one's going to be very popular. Like Garth said, the demand for this type of building project is great. Because of the experiments that we've been able to do here in the Village, we're now exploiting it all over the metropolitan area. We're reviewing some projects in Portland, and we've been proposing to do similar types of buildings in Sherwood, and it's just a wonderful thing that, like you said, somebody can live and work in the same spot as they get more and more career choices, and these buildings are going to be popping up all over the place.

CHAIRMAN ASBURY: Thanks. All right --

COMMISSIONER SHEARER: Could I ask a question just for clarity? Market Drive is the lower left-hand corner, the wide hill sidewalk, correct?

MR. SMITH: Yes, this is Market here.

COMMISSIONER SHEARER: Correct, okay. I'm driving by there and how do I see the facade or the front of the rear building? How do I know what's there?

MR. SMITH: Yeah, I actually think this is the facade of the back building. And I think what will happen is if you're driving down tonight there's a container, so I think that container sits right about here. So you will be looking right into the front of it.

COMMISSIONER SHEARER: If I'm coming from the west.

MR. SMITH: If you are coming from the west. But if you are coming down Market this way, you don't see this building. And we're trying to get the sides of the buildings to also have characteristics of the front of the buildings.

COMMISSIONER SHEARER: Okay, and the porches, is that where the triangles are located?

MR. SMITH: Yeah. So the porches are along here and along here.

MR. EVERHART: The bays.

MR. SMITH: Yeah, porch and bay.

COMMISSIONER SHEARER: Okay, and then the triangles, those are the peaks for the roof on the --

MR. SMITH: Yes. Yes, this shows that this is the gable in the back, and I think that picture over there has the back view where the garage doors are.

COMMISSIONER SHEARER: And so all of the parking comes in from the rear or the side?

MR. SMITH: Correct.

COMMISSIONER SHEARER: That's the retail parking as well?

MR. SMITH: Yes, correct. And then we can, without stairs, we manage to be able to get someone who's parking here to come up and be able to get --

COMMISSIONER SHEARER: They can walk around to the second level -- MR. SMITH: Right. And the concern that I have is trying to then take this system and then negotiate that hill. I mean we worked -- it was very difficult for us to make sure that there weren't stair systems in here because it wasn't a goal of ours. And we finally get it to work and then there's a question like can we get --

COMMISSIONER SHEARER: Well, my question --

MR. SMITH: Is it a safe place to do it.

COMMISSIONER SHEARER: Even more so, are you certain that the stability of that hill and those rocks are such that you can put a house on that and will it tolerate the weather?

MR. SMITH: Well, what we were able to do, I don't know if you can see this little dashed dotted line, this is the property line and that's where the boulders are. So what we were able to do is hold back the buildings. So we had a real hard time with this. This was pretty straightforward. We had a hard time --

COMMISSIONER SHEARER: There's a lot of fill that went in there.

MR. SMITH: And I have the same concern because I don't think that we want to place footings anywhere near that rockery. Well, what we're able to do, this is about a 10-foot buffer before we even get to the sidewalk. So we figured that we got far enough back

from there. And we'll have a soils engineer look at it. Those rocks aren't going anywhere. Those rocks are big.

COMMISSIONER SHEARER: Well, I know they aren't going anywhere except it doesn't take much of a movement to create problems.

MR. SMITH: I think they're pretty locked in. You know, they were placed, they weren't just dumped. So they were placed as a rockery. And again, like I said, we are going to have a soils engineer take a look at the proximity issues.

MR. EVERHART: Mr. Chair, if I could, the other issue is the property also is going to be cut from the street down towards the back of the property. So the building to the left is probably going to sit about two feet below the building at the sidewalk. So --

COMMISSIONER SHEARER: Okay, so they're not on the flat grade then, they are sloping along.

MR. SMITH: Right, but it's sloping where we built the stairs --

MR. EVERHART: This is the driveway that serves this property. The property line now runs right along here. From this point to this point back here there's about six feet of fall. So if you drive around there you'll see it goes down behind Chinook Way Apartments because they have access to all those underground parking garages. So this sits roughly about four to six inches above the street because we have a requirement for sloped sidewalks and things like that. And then this thing immediately starts sloping down. This is mainly our handicap area through here because there's a connection here for handicap, you know, that meets all the handicap code. There will be a small walkway here but it may not meet handicap code. But it's just important --

COMMISSIONER SHEARER: Where is your handicap parking?

MR. EVERHART: Handicap parking is right here. We're working on this, but there's also the walkway between the buildings. This is a pretty good pedestrian way for everybody. Remember, people that come to park here, they will be coming here as well. So I suspect people will use this more often because a lot of these people that come here will be repeat customers. I mean like the chiropractor over there by the Post Office, they get a lot of repeat customers; beauty salon, a lot of repeat customers; insurance agent, a lot of repeat customers. So people have a tendency to learn. Like anywhere we go, once we go there two or three times we learn where we want to park to get to a shop or a service or vendor. The fall from the property to the north property line is 8 feet. The overall fall is 10 feet. Part of that fall is on what's called Com 1. Com 1 is the property to the north. And I'd like to step back a second and talk a little bit about Com 1 because I actually did the rezone on that in 1997 for that to become office and mixed use.

You asked a good question about visibility through here. When we did the rezone for that there was a large stair tract coming down here, because the idea was to make a connection between retail and offices on Halsey. They have a connection coming up Village Street. We also wanted an intermediate connection. The intermediate connection was to come through here. Two reasons: You have to have setbacks from property lines. So any time you have setbacks on either side of the property, it's a good place to bring pedestrian ways through. Number two, this actually gives the most amount of horizontal distance to get from one grade to the other grade. Number three, when we did the rezone that property was going into separate ownership and was master planned to have a big pedestrian walkway through here. Can I -- Can we get that plot plan? You always have much better exhibits than we do.

This was originally going to be a grocery store site. We did the rezone to move the commercial site up to where Target is now. And at the time we put a large office complex in there, a hundred thousand foot building, because at the time we anticipated the LSI factory, they were going to build seven factories, and there was no Class A office space in the Gresham area to accommodate that. At that time we had a three-story mixed use building here, and in our plans for that we had a big pedestrian way right here, we were going to move this site down to this site. That property is in escrow right now. My partner hasn't owned it since about 1998. The person that bought it, I don't know if you've seen it but there was a sign "Sale Pending" on it, and the seller's name is Marvin Overstreet, Amberhill Properties. He tells me he's supposed to have a closing in January, a group out of San Jose that wants to develop this. I've never met them, I don't know what they are going to do. One of the beautiful things about Fairview Village code, we've platted it, and the City has some good assurance about what's going to be happening in the future. But this is to be the strong pedestrian connection because this adds horizontal distance coming through here.

I have approached Marvin Overstreet about an easement on his property, or an agreement where I can build a connection on the sidewalk on his property going here so somebody could connect it in the future. He was willing to do it but he couldn't do it because it was in escrow. He has to pass the recommendation on to the buyer. I don't know what will happen but I suspect that this buyer will be in front of you in the next six months because he'll be shelling down probably 7- or \$8 million to buy all that, everything on Halsey. And I think they've got good plans and they'll be in front of you and I hope that you can work with them in terms of making the pedestrian connection between what is called Com 1 and Market Street.

We take issue with the pedestrian requirement being placed on our property primarily because the land use decision for Chinook Way counted this alley as an access way for pedestrians. So we believed, and the map is not very clear as staff has discussed, about where exactly those things are. But in the land use final decision for Chinook Way it was documented that there was an access through this since it was ungated, it was open, that this alley through here, all the way around the project, together with passages through here, satisfied that map. That's the map V-10 of the Municipal Code.

What's interesting in that map is it shows a connection more east down here. That connection was not imposed on Chinook Way, in fact Chinook Way was required to put a fence down here. But that map, and I talked to Randy Jones about that map, and he says it was a pretty vague map. And we've lived with it all the way through the Village but the connection down here was not required. But everybody agrees that there should be some connection through here. And what I would propose, one of the issues I have in the recommendations is I don't think it should be an obligation on this property, I think that there would be a better connection made by a much larger project directly to this intersection right here.

COMMISSIONER SHEARER: And you would be agreeable to work with Overstreet then to make that connection.

MR. EVERHART: Well, I approached him about it a couple months ago and I said if I could put my sidewalk that serves my four businesses on your property, I can build a bigger sidewalk. Plus I can do more landscaping with the space I opened up. I wasn't going to make the building bigger, I just want to have landscape on it. But I also didn't want a situation where I build a sidewalk and then a year from now somebody builds a sidewalk two feet away, which is probably what would happen because a project of that scale to the north is going to want a full-blown 10-foot wide and, you know, there's handicap ramps because it's got quite a bit of grade, there would be a series of ramps back and forth, and I just didn't want to be in a position where we had two sidewalks kind of fighting for the same --

COMMISSIONER SHEARER: Space.

MR. EVERHART: Yeah. The other thing about it is I didn't want to grant a public easement across this property because Chinook Way and most of these other projects have trails too and haven't had to grant a public easement. We have never issued or granted an easement for lot owners and clients and things like that, we have CC and R's to take care of that. We have issues with that, but granting a public easement across the front of somebody's property is a different issue.

How would you like to proceed?

CHAIRMAN ASBURY: Well, why don't we go through the staff report, why don't you address the conditions and let us know which other conditions you disagree with so we can get right to the matters of disagreement here.

MR. EVERHART: They are not big. Page 12 of the staff report, item 6, section B, joint access easement and maintenance agreement to cover all pedestrian, parking, and common area pathways shall be required at the time of final plat review as a condition of approval. I'd like to ask the staff, do they mean a set of CC and R's that we're going to use? Is a set of CC and R's plus the notations on the plat map adequate to comply with --

MS. SCOLNICK: Yes.

MR. EVERHART: Is that what you are looking for?

MS. SCOLNICK: Yeah.

MR. EVERHART: Okay. I'd like to settle the issue of facade. In the Staff report it sounds like you maybe asked for variance but --

MS. SCOLNICK: It could just be it was off scale a little bit, so as long as it --

MR. EVERHART: The bay is 13 feet tall but in looking at the definition the facade is -- the front of the building is --

MR. SMITH: That's why we did the rendering so it kind of shows a little bit clearer. I think in the two-D black-and-white drawings it didn't show what the character of the space really was. And I think you can see it's more -- you know, from the sides that there's a porch and then there's two little bays in the middle.

MS. SCOLNICK: Well, between the grade and the floor separation it's supposed to be 18 feet so --

COMMISSIONER SHEARER: It should be similar to all the other buildings.

MR. EVERHART: That's actually not how facade is defined in the code definition.

COMMISSIONER SHEARER: We should measure some of the other facades and do the same thing.

MR. EVERHART: Well, the definition of facade doesn't relate to floors. The blank wall standard does but not the facade.

MS. SCOLNICK: Yeah.

CHAIRMAN ASBURY: Okay, what condition are we looking at here?

MR. EVERHART: We are looking at page 19. Halfway down the page you'll see where it says 19 point 140, Village General Standards, it's right below the Staff comment.

CHAIRMAN ASBURY: Okay.

MR. EVERHART: This one just surprises us, that's why I wanted to ask.

MS. SCOLNICK: It just wasn't clear so that's all I need. As long as you meet what the code has in it.

MR. EVERHART: Okay.

MS. SCOLNICK: That's all we were concerned with.

COMMISSIONER SHEARER: The code is consistent amongst all of the uses, isn't it, as far as the design --

MR. EVERHART: Well, that's what we believe. We've had bays, we've had porch measuring from the total -- the front elevation of the building, and this one surprised me because it was measuring the height of the bay -- or I guess measuring floor to floor and that's not the definition of the code, about what facade means. So that's -- maybe I'm misunderstanding something but... And I apologize, I haven't had a chance to read some of what the Staff has said. There's a couple of issues like this that need to meet variances and we didn't feel we needed to do those.

CHAIRMAN ASBURY: Based upon the applicant's presentation tonight, does Staff feel there's still a disagreement about this?

MS. SCOLNICK: No.

CHAIRMAN ASBURY: Okay, so is the variance required or not?

MS. SCOLNICK: Unless they can't meet it. All we're asking is that they meet that. And if they can't, then they would have to request a variance.

COMMISSIONER SHEARER: Do you agree they've been met in the previous designs of the buildings?

MS. SCOLNICK: I didn't check that. I'm just going by code.

COMMISSIONER SHEARER: I would suggest that, you know, the conclusions be made that we -- if they've measured and other designs have been met, this would meet the design standards.

MS. SCOLNICK: Well, if they met it in the past then that's fine.

MR. EVERHART: I've been purposely not taking that tact with Staff because I don't want to run that chain down the road this is how we do it here because nothing's for sure and I don't want to take that liberty, but I want to make sure that we're working with the same definition.

COMMISSIONER SHEARER: I understand.

MR. EVERHART: On the -- How do we reconcile the issue of the access way, the map V-10? What I've done is I've taken the liberty of coloring the maps. I have ten copies of this to give you, but this outlines the conditions of all the trails in the Village, and I don't know if that would help, but I'd like to settle that because I think it's something that is

warranted, we need to settle this because it goes through Chinook Way or comes to me or it goes to another lot number or something.

CHAIRMAN ASBURY: Sure.

MR. EVERHART: This is a map of the Fairview Municipal Code that relates to the Village trail system plan. The Village trail system plan is Chapter 19.155. The only relation that this exhibit has to that code is it represents where parks will be. Beyond that there's not much description about how accurate the trails were or are going to be. What we've done is, since we've built most of the trails, which ones are drivable, which ones are concrete, which ones are tracts, and which ones are alleys. You'll notice there's a lot of pedestrian use and when it was handed to us there was some question of volume coming down the alleys. All the alleys in the project are intended for bicycles and pedestrians. All the alleys in the project in Phase 1 met this requirement. And this map is kind of out of date, it doesn't show Target, it shows actually another complete street over there that was never built, but we take that as basically the pedestrian way through --behind Target along the creek, also behind Park Lane Apartments and behind and including where the bank is. The point being is that the City Planning Commission in the past has accepted alleys and we depend on alleys as pedestrian ways. And our proposal to you is that the pedestrian way, which was acknowledged in Chinook Way approval be the pedestrian way through here and that that condition not be posed on our project in terms of connecting to Corn 1 which is the large property to the north. Beyond that we have just a couple of minor ones and that's -- I've let those go because I think the big ones are the pedestrian ways and that. On the subdivision application this comes back, the only questions we had on there is the parking signs, there's a condition there --

COMMISSIONER SHEARER: Excuse me, Garth, I can't understand you.

MR. EVERHART: On the subdivision -- I'm sorry, I'm accused of yelling all the time so I try to be a little low key here. On the subdivision we were -- there's a requirement, a proposed requirement that there be signs showing where public parking is. And that is not something that's generally required. We don't mind mounting them at the back lot but I'm concerned that putting a public parking sign on the building pointing people down through Chinook Way parking lot to get to our parking lot and may be violating Chinook Way's tenant relationships. It was also not required of Chinook Way Apartments. They had parking on the street, they had parking behind, but looking at their land use decision they were never required to designate certain areas as public parking versus tenant parking. So I don't -- I'm not -- Like I say, people find parking lots if they want to visit.

COMMISSIONER SHEARER: Have you posted directional signs for any parking?

MR. EVERHART: Yes, we have. When the Village Street parking issue came up, John Anderson suggested we put parking signs on the side of the Post Office or on the side of the library and we did, because that's a public tract, that's a public parking lot out

there. And then we also put one there next to the coffee shop on that alley just to show people, educate them where the parking lot is.

COMMISSIONER SHEARER: That's right, they can go back there.

MR. EVERHART: That's right. And then we agreed that when it was going to be built, like the library, it was on our map. But we weren't required -- Chinook Way was not required to put a sign up, nor was Park Lane Apartments, nor was Village Street Mixed Use.

COMMISSIONER SHEARER: Nor was City Hall.

MR. EVERHART: Nor was City Hall. It's not a huge issue, it's just one of those things that I'd hate to be -- I don't want -- I have a brand-new neighbor to the south, which is Chinook Way, and I'm sure that they will be coming to the City if we start taking their tenant parking lots. There was a question I had on -- this will take me one second. Engineer -- On page 16, Engineer's Certification and As-Built Plans. Page 16, section F, Engineer's Certificate and As-Built Plans. That can't be done until after the buildings are built. There's a requirement that it be done prior to having it recorded. So there's a timing conflict.

MS. SCOLNICK: It says the final plat review and building permit review, as applicable. That's just standard code language.

MR. EVERHART: All right, I missed that, thank you. That's all I have.

You know, we work with the Staff closely, we were just surprised that that trail system was being laid on our doorstep.

CHAIRMAN ASBURY: So it sounds like there are two issues with the trail. There's a stairway going -- I think it's to the north but there's also the trail issue you mentioned that impacts Chinook Way.

MR. EVERHART: Well, that drawing, V-10, if you look at that drawing it just shows basically -- correct me if I'm wrong -- oh, there it is. It just shows this line.

COMMISSIONER SHEARER: Which line? Oh, the circle.

MR. EVERHART: This line right here.

COMMISSIONER SHEARER: And that's built already.

MR. EVERHART: Well, yeah, and the problem is the property's right here, and the Chinook Way issue, they took that line to go through here. But the line still exists on top of this property. Some of these things were laid down before the plots were done. MR.

SMITH: I think Staff's recommendation was that the east/west line is not on your property but that your property connects to that.

MS. SCOLNICK: Right.

MR. EVERHART: Well, but I think they also talked about coming down the north side and west side and having a connection. MR. SMITH: Right.

COMMISSIONER SHEARER: I thought that's what Staff proposed to --

MS. SCOLNICK: We can -- We just asked that there be some connection. If it's not feasible on your property, we just have to have that somewhere because that is -- so I know exact.

MR. SMITH: I think what's going to happen is, like Garth has discussed with the adjacent property owner, is that that connection, just as a straight line, is actually going to hit the head at Market Street on that corner of the properties. So that will be the connection point for this property also instead of having to do it in the back. And that makes sense. That connection still has to occur. But it does occur when the east/west portion gets done. There are two points on Chinook Way, one goes right through the middle of the project that's not gated, and then there's one on the north side that's along the storm line facility.

MR. EVERHART: Well, they accepted the auto.

MR. SMITH: Right, the auto was accepted. So I think the Staff report actually isn't clear on what their recommendation is, it was just brought up when she gave her report, but that there be some connection to this property from that system to the north. And what Garth is saying is, hey, it will when it hits Market Street, we shouldn't do it back along the north line.

MR. EVERHART: Well, placing the burden for this connection to here on my property which is here I think is not rational for a couple reasons: One, you have a much bigger project coming along who's also going to have setbacks. We would cooperate with them all day long but they are not where we are today. You know, otherwise we could wait until they got ready then we could have some kind of joint access. What we've done here is just a private access way here to give people access to the storefronts and to the rowhouses, but that's a totally different kind of access than a 10-foot sidewalk. And I think Staff's right, it should be a big walkway. And this has -- there's more space here so you could meander this with some ramps and get it down to the property. And so what I'm asking is that that condition be removed from this decision

MS. SCOLNICK: Staff has no objection to that. The east/west connection is satisfied by the Chinook Way alley. If it's in the Chinook Way approval, we have no problem with that. And we probably will take a look at the next development that comes along.

COMMISSIONER SHEARER: Where's the language for that in the Staff report?

MS. SCOLNICK: It's probably not in the Staff report but we can research that.

COMMISSIONER SHEARER: Okay.

MS. SCOLNICK: I assume that it's documented but I'll address that.

COMMISSIONER SHEARER: Good.

CHAIRMAN ASBURY: All right. So it sounds like you've resolved that issue. I have to admit, I'm still a little confused on the facade issue.

MS. SCOLNICK: Actually we looked it up again in the code and it may have been a misread by me. That it just has the minimum facade height has to be 18 feet and it is the whole front of the building, it's not the height requirements, which is a 45-foot limit, which they meet.

CHAIRMAN ASBURY: So they're okay?

MS. SCOLNICK: Yeah, so we're fine with that.

COMMISSIONER SHEARER: I was just going to say with the number of buildings we've done here, we better get that down before we get –

MS. SCOLNICK: It's my first Village Property so give me a little leeway. We'll get it down by the last building.

CHAIRMAN ASBURY: So the only remaining issue that you addressed is the public parking signs.

MR. EVERHART: I just brought that up because it was interesting to me.

MS. SCOLNICK: Well, we actually would like to see that. We think there's probably one -- City Hall does have a public parking sign where public parking is and we think that there might be some overlap in this with Chinook Way and the businesses that are going to be located in your development. So it's more for the protection of the people using your development to indicate that parking is there for them and not for the visitors to Chinook Way.

MR. SMITH: Does it say where the sign should go?

MS. SCOLNICK: No, but we just put it in the parking strip along the back there to indicate.

MR. EVERHART: It's not directional?

MS. SCOLNICK: No, doesn't have to be directional, just indicate where parking is for your development.

MR. SMITH: So they'll say, oh, that's where the parking lot is.

MS. SCOLNICK: Right.

MR. EVERHART: That's right. I just saw that.

MS. DE RIDDER: We just want your vendors to have clientele.

MR. EVERHART: Well, trust me, our tenants will take care of themselves.

CHAIRMAN ASBURY: So was there actually any language in the conditions as they were written that we need to change at all in all the discussions here tonight?

MR. SMITH: Just the variance requiring the facade. The pedestrian connection is not required.

MS. SCOLNICK: We can change the language on that because it is met. It does exceed the 18 feet.

MR. EVERHART: Are the conditions changed since this report I got? Because it has condition number 30, public access easement, condition number 30.

MS. SCOLNICK: Right, that would be stricken then.

MR. EVERHART: Okay, so 30 would be stricken. And number 42 would be stricken or not?

MS. SCOLNICK: 42 is stricken then too. It just says you should meet it. It doesn't matter one way or the other because you do meet it.

MS. DE RIDDER: What I would recommend is on 30, is just a double check on the Chinook Way Apartment public access way to make sure that it is there and –

MR. EVERHART: It is not a public access way, an easement. None of these access ways are easements except when they go through the parking lot like this.

MS. DE RIDDER: So it is an actual public right-of-way?

MR. EVERHART: I actually don't know how they define it, but I have the decision here for Chinook Way and they don't require a public easement. They just acknowledged it, there's no easement required, there's no legal document that says this is a public easement to the parking lot or to the right-of-way.

COMMISSIONER SHEARER: Initially there was a master plan that talked about pedestrian circulation and there was a layout of these things and they were all just for open pedestrian use, so it was assumed they were public as were the streets.

MR. EVERHART: It's like any alley behind a building, saying you can't go here, you can go here, those things.

COMMISSIONER SHEARER: Just walk through.

MR. EVERHART: Yeah, I don't know after the decision here but they've never required this to be recorded with some easement 10 feet from the alley.

COMMISSIONER SHEARER: It's the same as the walkways between the buildings, there's access ways through the large buildings out here and these --

MR. EVERHART: Those are actually tracts though. Some of those are tracts.

COMMISSIONER SHEARER: There are some of them that were also pedestrian walkways.

MR. SMITH: At Chinook Way the requirement wound up being no gate, so the traffic flow could always go through there, and this will have that same type of flow for the benefit of the residents.

COMMISSIONER JONES: One thing to keep in mind for ADA, regardless of whether you are calling it a private access way or a public access way, it's a public access way that has to be accessible due to standard. That means no gate. That means your rear entry way I'm seeing here at a couple places that was broken up, I was wondering if you are going to be able to get from the far building back around to the front sidewalk without using that back way.

MR. EVERHART: This is the major connection right here between the buildings. Because this area north of B is actually somebody's front door.

COMMISSIONER JONES: Right.

MR. EVERHART: And so we are going to strike -- we are going to try and strike a sidewalk through here. But this is the one because of grades may not meet ADA, but we're allowed to have two different access ways, not both of them necessarily to meet ADA. So we actually may not choose to make this connection.

COMMISSIONER JONES: Right, you need one that connects to the public walkway. The public walkway is none of those, it's down there.

MR. EVERHART: Well, this is the public sidewalk.

COMMISSIONER JONES: You need one that connects to both buildings the full travel length.

MR. SMITH: It does, it does. When you turn the 25 corner --

COMMISSIONER JONES: And that one does in the back, it actually does meet the slope 1:12 all the way. MR. EVERHART: Right. It's in here 1:12 and we have to go through each point to flatten it out. And also this, we're not doing anything to this. This is the existing alley.

COMMISSIONER JONES: That would just be considered existing alley, it can't be considered part of your ADA.

MR. EVERHART: Can or cannot?

COMMISSIONER JONES: Cannot. That's what I was asking you about --

MR. EVERHART: But it was when this was approved.

COMMISSIONER JONES: I'm talking about the building code.

MR. SMITH: We have two accesses. The idea is it's accessible. Both of them may not, you only have to have one of those.

COMMISSIONER JONES: So you have one in the back.

MR. SMITH: Yeah, as long as we can get to all of the front doors, an accessible route, then we can.

MR. EVERHART: Which there's one in the Chinook Apartments too so --

COMMISSIONER JONES: One of the things we're talking about that I want to strike out for reference is in here on the fire code. That first one we're talking about, it's talking about fire code accesses, it's actually incorrect. I think it was specifying UFC, Uniform Fire Code, and actually the current fire code is on its -- actually it's OFC. It's based on OFC but it's adopted by the State of Oregon as the fire code, so we might want to make reference to it.

MR. EVERHART: Number 18, is that what you are referring to?

COMMISSIONER JONES: I think it's in there two or three spots. UFC should be changed to Oregon Fire Code two or three places, so all of those should be switched.

MR. EVERHART: Trust me, the Gresham Fire Marshal, we would not get approval without their review.

COMMISSIONER JONES: They were at the conference last week and they're still trying to catch up.

COMMISSIONER SHEARER: We don't want to deal with fire marshals if we don't have to.

COMMISSIONER JONES: That's right.

MR. EVERHART: It's probably very frustrating, projects are midway through and things change, and it's been very frustrating. As an example, Marketplace by the Post Office, we concluded building and they came and did the tenant improvements, brand-new set of codes.

MR. SMITH: It's been a tough year.

MR. EVERHART: It's interesting that one of the jurisdictions I work in, it doesn't honor the same code all the way through. So that when people bought those, they had to do more upgrades to the bare shell and we argued and --

COMMISSIONER SHEARER: That's Gresham's definition as to when they --

MR. EVERHART: Really came from the Troutdale --

COMMISSIONER SHEARER: Troutdale?

MR. EVERHART: There's a lot of flex in the codes right now. We say wait a minute, we just finished a building, these people are applying for tenant improvements, they have to do what just to get back to the shell?

COMMISSIONER SHEARER: You can't change the rules halfway through.

COMMISSIONER FUDGE: Well, you need to tell them that.

MR. SMITH: Yeah, once the permit was --

COMMISSIONER SHEARER: Well, maybe we ought to tell them that.

COMMISSIONER FUDGE: They did it in Troutdale as well. I know it happens. It came from the fire marshal.

MR. EVERHART: I'll tell you one thing, it does make the City more friendly to business if the City chooses to maintain a code through the building of tenant space. But the City has to choose to do that and --

COMMISSIONER SHEARER: But is the City then in violation of the fire marshal's recommendation and could have a negative impact on --

MR. SMITH: It might be. It depends on the time frame too. We're having this problem in other jurisdictions because of, all right, well, when does that period stop, does it go ten years? And if you haven't finished the build out and if we're going back to make changes so --

MR. EVERHART: I just think there's an issue there, everyone should have that conversation because there hasn't been that much retail development. We can get a shell and then you get tenant improvements. He did the last group but there wasn't anything flexible. I've done large projects where we've had agreement with the City and the fire marshal for X number of years but this is based on codes. It's like he said, sprinklers off, all those kinds of things.

COMMISSIONER FUDGE: Well, the fire marshal's going by IBC, and because of that he knew prior that they were going to stay with that code, so I don't think it's going to be an issue going forward, it's just during this transition period --

MR. SMITH: Yeah, it's going to change again. They are going to change the IBC. You know, one of the things --

COMMISSIONER SHEARER: You read this one here.

COMMISSIONER FUDGE: I don't even want to hear that.

MR. SMITH: It's not really a Planning Commission item but some -- they are mastering the permits so that's not -- you keep a permit open all the time and it becomes sub permits, that way you've kept -- you've basically kept your status and your vesting with the original permit. And then they'll close it if you stop construction. And that's not what happened in this case. They were following right through the master, the first permit, and got hit with a change. Changes are coming. There are more changes coming.

COMMISSIONER SHEARER: Well, if it's not just -- if it's unique -- not unique to us but is happening other places, then it's a larger issue. If it's happening to us, we might be able to do something about it.

MR. SMITH: There are a lot of jurisdictions doing this.

COMMISSIONER FUDGE: What jurisdictions are mastering the permits?

MR. SMITH: Portland's doing it.

COMMISSIONER FUDGE: Portland is.

MR. SMITH: Yeah, what they do is they call it a mother permit and then they -- you actually have the same permit number but you'll allow somebody else to come in almost like you do a plumbing permit or an electrical permit under a building permit umbrella, they are allowing the tenant improvements to come in even though they are separate contractors and separate permitting documents, it might be a different architect, they allow them to stay under that just to keep that continuity going. But once you finalize that permit, State law says start a new permit. And that's building permits. Now the mechanical and electrical permits are different. I have had the criteria changed during the process of development where we actually pull the building permit and we went to get the County permit and the County permit had changed and we had to make different accommodations for the County. I didn't get any break on that one. So even under that umbrella it didn't work. So the fire marshals have a lot of flexibility. It's based on how strict they're getting. If there's a new permitting criteria that comes through and they feel it's important that this be maintained in the project, they pretty much have cart blanche to be able to do it, code says it.

COMMISSIONER JONES: That's correct. Fire department has different language. Can be waived entirely, the entire code book.

MR. SMITH: Right.

COMMISSIONER JONES: That's not the same case with the building code. Building codes are not waivable. So that would be very -- depends on the jurisdiction.

MR. EVERHART: I think it makes the City of Fairview more attractive for tenants coming in, not just for our project but the gentleman that's buying the project to the north of us, they're putting in retail clients. Or like the Townsend Farm project, they are putting a lot of warehouse space in with multiple users. I think it's one of those things where, I don't know, somebody in the City, if I was building this I would want to negotiate with the City and the fire marshal. I don't know, food for thought.

COMMISSIONER SHEARER: Have to have a fire marshal that wants to negotiate.

MR. EVERHART: Gresham's not bad. When there's no agreement at the outset of a project, then, you know, he doesn't have to be flexible.

COMMISSIONER SHEARER: No, but if you have a big disaster and a fire, who's on the, you know --

MR. EVERHART: I've never seen the fire department get sued.

COMMISSIONER SHEARER: No, I don't mean that, but he has to justify --

MR. EVERHART: Oh, yeah.

COMMISSIONER SHEARER: It's not an enviable position.

MS. DE RIDDER: You do bring up some good points because frankly I'm --

MR. EVERHART: Shell shocked.

MS. DE RIDDER: Yeah, shell shocked. I assume they came in for occupancy permits, basically the folks that need these shells, and all of a sudden unfortunately International Building Code had adopted as of January 1, 2005, and that was like new ordinance, slam shut, and anybody from that point forward had to do fire walls in the ceilings, on the walls, on all these different added --

MR. EVERHART: We had most everything done, and how do you think we felt when we just sold these four units, half a million a piece, hey, ready to go, all of a sudden they go down there, no, you got to add X thousand dollars of work.

MS. DE RIDDER: Luckily all of the tenants were able to go through variances and successfully enter minimal changes and they didn't have to go through the red tape which is not what we like to be known for.

MR. EVERHART: Well, those are the phone calls you hate to get. The fire marshal has been very appropriate, and Fairview Village has been working well, they've done pretty well.

COMMISSIONER SHEARER: I have a question, and this has nothing to do with this, but talking about the units across from the Post Office, have there been complaints on parking or is the in and out of the Post Office moving enough that customers can get into those mixed use units?

MR. EVERHART: It's interesting to me, the parking problem comment by Staff. You know what, the problem that never occurred is still there. I mean you look at these parking lots, they are still, because of public comments and from some City officials, there's still this feeling that there's a parking problem here. There's not. And I look at these parking lot problems at night and, you know, it's so funny because so many people want to be like Northwest 23rd but you've got to park four blocks away to get to a store but then when somebody parks in front of your store, you complain. So it's -- I don't know if this Fairview Village is ever going to be able to overcome that perception because the studies say there's more parking than we need, ample, it says things are open, you can find spots on the street, you can find spots in the parking lots. When they build out the property north, I think it's something like 200 stalls excess. It was totally amazing. And they still don't get credit for shared parking. I mean that's one of the things in this code, we're providing 16 stalls. There's absolutely no credit here for good work. Why are we providing 16 stalls for parking? It is as if you live over here and your business is over here so the whole point, they're shared.

COMMISSIONER SHEARER: Keep your car in the garage. I just want to say I go to the Post Office, drive over there every day, and I've been watching the Christmas holiday

stuff, and I've never not been able to park someplace on the street there, and the businesses have people coming in and out, and it's working, and there were those that said it wouldn't.

MR. SMITH: It's not just a capacity issue, it's also a timing issue. That's why they use parking meters, they keep people moving. And they proposed parking meters in Northwest 23rd in Northwest Portland and they thought that we were taking away civil rights.

COMMISSIONER SHEARER: To some you were.

MR. SMITH: Right. So some of the complaints about, you know, permitted parking in front of a coffee shop, which prevents someone from going in and running in to get a quick cup of coffee, they've got a meter, a 15-minute parking meter. It's not necessarily more parking, there's other traffic management tools.

MR. EVERHART: The other thing about the Post Office is it, being a federal project, it doesn't have to obey all the rules. So we set it up originally but they kept adding boxes because the Gresham Post Office can't expand. So in other words, hey, we just added 200 boxes, but that's 200 more cars a day coming through, at least every other day. And that's been a frustration to a lot of people.

COMMISSIONER SHEARER: But nobody stays longer than five minutes and they're gone.

MS. SCOLNICK: We want to address the public access way for the building on the north end, just -- not the trail but actually having a public easement or public access, because that lot does not front on the public street, and in the case of somebody being inside at one point, to block them off, also to assure that that particular walkway that goes that length of the two --

MR. EVERHART: The walkways, you know, will be joint use for the owners, the tenants, and their clients. That's different than public easement. And I disagree with public easement. I don't think it's required.

MR. SMITH: It's actually -- it actually can be a limited private easement that always allows property owners to have access back to Market Street through the other lots. But what Garth is saying is that once you go public, then everyone has the benefit of being able to use that, not just the people that have specific destination of that lot.

MR. EVERHART: There's a difference between a public sidewalk on public property. The liability is with the government that owns the right-of-way versus a public easement on a private property where, as a homeowner, I not only have to insure my property, I have to insure the public. And we could deal with, you know, not cutting that off, we have a -- let me go over here. The plat, as you stipulate, and as we've always agreed to, and the CC and R's will have all this to benefit all four lots. This is a public sidewalk

here. This sidewalk here and here will benefit all four lots. And nobody will be able to cut that off. But that's different than a public easement on private property.

COMMISSIONER SHEARER: How can you guarantee nobody can cut that off? By the designation of what that walkway is then?

MR. EVERHART: On the plat this sidewalk, this area, will be an easement for all four lot owners.

COMMISSIONER SHEARER: Okay, so it is an easement of sorts but not a public easement.

MR. SMITH: It's a private easement.

MS. SCOLNICK: So all four have equal access. CC and R's should cover that as well.

MR. EVERHART: Yeah, because the Association then insures those things. As the Association maintains this, even though there's four different ownerships on the parking lot, the Association maintains this. They also will maintain this walk and they also will pay the insurance for those areas open for common use. That's how our CC and R's work in rowhouses.

CHAIRMAN ASBURY: It sounds like that's adequate. Do you disagree?

MS. DE RIDDER: No, that meets the requirements.

CHAIRMAN ASBURY: Okay.

MS. DE RIDDER: It's just a consideration because there are two units that do not front on a public access and so that is just a consideration because wanting to have the public to have access.

COMMISSIONER SHEARER: You don't want somebody to be land locked.

MS. DE RIDDER: Right.

MR. EVERHART: The City of Fairview code and the County code do not require frontage on public right-of-ways.

CHAIRMAN ASBURY: Okay.

COMMISSIONER SHEARER: And we have a few of them in the City.

MR. EVERHART: I think it's a better deal because the private maintains it and is liable for it.

CHAIRMAN ASBURY: Good point. All right, any other questions of the applicant before we close the public portion of the hearing? Okay, it's closed unless there's any other comments from the applicant. All right. Public portion of the hearing is now closed. Oh, well, let me back up. I forgot to ask, is there anyone who wants to speak against the application? Anyone else here tonight who wants to speak about this application at all? Okay. Now the public portion is closed. At this point we can deliberate on this application. I think we've pretty much done that already but if there are any other comments and then I'll make my comments after everyone has spoken.

COMMISSIONER SHEARER: We're going to have four different votes on this, correct? I think we're required to have a vote on the comp plan, and a vote on the zone map, a vote on the subdivision, and a vote on the design review.

CHAIRMAN ASBURY: I think that's right.

COMMISSIONER SHEARER: Separate votes on all four of them?

MS. DE RIDDER: Well, actually if you want to do them in two groups you can.

MS. SCOLNICK: Zone change –

MS. DE RIDDER: Because one set is a recommendation to City Council.

COMMISSIONER SHEARER: The comp plan and the zone map. The recommendations on the subdivisions and the design review are --

MS. DE RIDDER: That's right.

COMMISSIONER SHEARER: Okay. I always thought that we had to have separate on comp and zone but that's... So what we're doing is deleting 30 and 42 and changing all references to the fire code, be IFC instead of -- OFC? Was there anything else?

CHAIRMAN ASBURY: Delete 30, and what was the other one?

COMMISSIONER SHEARER: 42.

COMMISSIONER JONES: 42, we're going to delete that. They are already in compliance?

COMMISSIONER STONEWALL: It says shall meet, which they are doing.

COMMISSIONER SHEARER: Okay.

COMMISSIONER STONEWALL: 30.

CHAIRMAN ASBURY: Okay, if there's no other discussion, we're ready for a motion I think. And so let's -- if we could have a motion on the comp plan, the comp plan and the zone change, comp plan amendment and the zone change. Did I get those right? Do those two go together?

MS. SCOLNICK: Affirmative response.

CHAIRMAN ASBURY: And so this motion would be to the effect that we recommend approval to the City Council. I mean that's the recommending approval, okay, so if someone wants to make that motion.

COMMISSIONER SHEARER: A question quickly, 30 and 42, those are conditions for the comp plan and the zone map both or is that just the 30 and 42 is just for the comp plan?

MS. SCOLNICK: That's -- The design review would be 42 and number 30 would be -- is also design review.

COMMISSIONER SHEARER: So those are design review and then all references to the fire code?

MS. DE RIDDER: Right, basically A on page 24, there's no conditions being placed by Staff on the zone change. All the conditions of approval are design recommendations underneath the remainder of the application.

COMMISSIONER SHEARER: Mr. Chairman, I'll make the first motion then. I move approval of the Comprehensive Plan Map Amendment from Fairview Village to Village Mixed Use and then also the Zone Map Amendment from Village Apartment (VA) to Village Mixed Use (VMU) as written in the staff report.

COMMISSIONER FUDGE: Second.

CHAIRMAN ASBURY: Okay, we have a second. Let's have a roll call.

MS. SCOLNICK: Ed Jones?

COMMISSIONER JONES: Yes. That's a yes.

MS. SCOLNICK: Jan?

COMMISSIONER SHEARER: Yes.

MS. SCOLNICK: Gary Stonewall?

COMMISSIONER STONEWALL: Yes.

MS. SCOLNICK: Brad Fudge?

COMMISSIONER FUDGE: Yes.

MS. SCOLNICK: Maureen Zehendner?

COMMISSIONER ZEHENDNER: Yes.

MS. SCOLNICK: Steve Kaufman?

COMMISSIONER KAUFMAN: Yes.

MS. SCOLNICK: And Chairman Asbury?

CHAIRMAN ASBURY: Yes.

And motion passes unanimously.

We're ready for another motion. So this will be on the minor subdivision and design review which should include the changes and language to the effect that we're adopting the Staff report recommendations and filings.

COMMISSIONER STONEWALL: Is that number 30?

CHAIRMAN ASBURY: Right, with those changes.

COMMISSIONER STONEWALL: I'll make a motion that we recommend passage of the minor subdivision and design review as per Staff's findings of fact except for exclude item number 30, pedestrian paths.

COMMISSIONER SHEARER: And changing fire code.

COMMISSIONER STONEWALL: And change the fire code to OFC.

CHAIRMAN ASBURY: Do I hear a second?

COMMISSIONER ZEHENDNER: Second.

MS. DE RIDDER: Clarification? Where are those notations at, Jan?

COMMISSIONER SHEARER: Fire code.

MS. DE RIDDER: On the fire code.

COMMISSIONER SHEARER: Oh, Ed here has them.

MS. DE RIDDER: Is it number 21?

COMMISSIONER JONES: That was one, yes.

MS. DE RIDDER: Changing FMC to --

COMMISSIONER JONES: OFC, Oregon Fire Code 2004.

MS. DE RIDDER: Okay. Any other amendment?

COMMISSIONER SHEARER: Page 11 it says Oregon Fire Code and it's supposed to say International Fire Code?

COMMISSIONER JONES: Oregon Fire Code.

MS. SCOLNICK: That's number 18.

MS. DE RIDDER: What Jan had stated was number 21 is --

COMMISSIONER SHEARER: Page 12 is the Uniform Fire Code. Is that the one that should be changed?

COMMISSIONER JONES: Yes.

COMMISSIONER SHEARER: So page 12, number 5.

MS. DE RIDDER: Okay. In some places where there might be FMC, that's Fairview Municipal Code.

COMMISSIONER SHEARER: Yeah, that's not to be changed.

MS. DE RIDDER: Okay, so Fairview Municipal Code --

COMMISSIONER JONES: There shouldn't be any references in here to UFC.

COMMISSIONER STONEWALL: Number 5 on page 12.

COMMISSIONER JONES: Yeah.

MS. SCOLNICK: That would just be in the findings, it's not in the conditions at all.

COMMISSIONER STONEWALL: Correct.

CHAIRMAN ASBURY: I think we're okay on the findings. On the conditions we want to make sure the language is --

MS. SCOLNICK: Right, and the conditions do have the Oregon Fire Code mentioned there, it's just in findings.

CHAIRMAN ASBURY: Okay, so we're good to go. We can correct administratively any problems and findings. All right, anything else?

COMMISSIONER SHEARER: Put Uniform Fire Code on search and every time it comes up, change it.

CHAIRMAN ASBURY: There you go. All right, so we have a motion, we have a second. Any discussion before we do another roll call? Let's do the roll call.

MS. HANSEN: Commissioner Jones?

COMMISSIONER JONES: Yes.

MS. HANSEN: Commissioner Shearer?

COMMISSIONER SHEARER: Yes.

MS. HANSEN: Commissioner Stonewall?

COMMISSIONER STONEWALL: Yes.

MS. HANSEN: Commissioner Fudge?

COMMISSIONER FUDGE: Yes.

MS. HANSEN: Commissioner Zehendner?

COMMISSIONER ZEHENDNER: Yes.

MS. HANSEN: Commissioner Kaufman?

COMMISSIONER KAUFMAN: Yes.

MS. HANSEN: Chairman Asbury?

CHAIRMAN ASBURY: Yes. Okay, motion passed. Congratulations and thank you, excellent presentation and very good discussions as part of the presentation, very edifying. Thank you very much.

COMMISSIONER KAUFMAN: Look forward to seeing it.

COMMISSIONER SHEARER: Got to get past City Council on a couple of them yet.

CHAIRMAN ASBURY: That's true.

MS. DE RIDDER: Public hearing for 2006 will take place on January 18th and we've got that scheduled.

(HEARING ADJOURNED)

