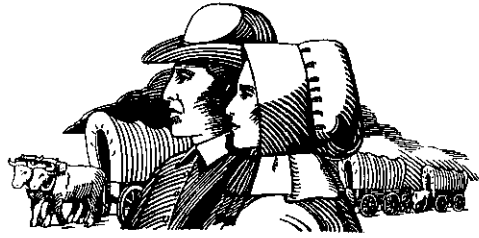


CITY OF OREGON CITY

PLANNING COMMISSION

320 WARNER MILNE ROAD
TEL. (503) 657-0891

OREGON CITY, OREGON 97045
FAX (503) 657-7892



AGENDA

City Commission Chambers - City Hall

April 8, 2003 at 7:00 P.M.

The 2003 Planning Commission Agendas/Minutes, including Staff Reports and Minutes, are available on the Oregon City Web Page (www.orcity.org) under PLANNING.

PLANNING COMMISSION MEETING

- 7:00 p.m. 1. **CALL TO ORDER**
- 7:01 p.m. 2. **PUBLIC COMMENT ON ITEMS NOT LISTED ON AGENDA**
- 7:02 p.m. 3. **APPROVAL OF MINUTES:** *None available*
- 7:05 p.m. 4. **HEARINGS:**

PZ 02-01 (*Quasi-Judicial Amendment to the Comprehensive Plan Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for an amendment to the Comprehensive Plan for 1.04 acres designated High Density Residential to Commercial for the properties identified as Map 3S-2E-5DB, Tax Lots 2400, 2500, 2600, and 2700.

PZ 02-02 (*Quasi-Judicial Amendment to the Comprehensive Plan Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for an amendment to the Comprehensive Plan for 0.92 acres designated Low Density Residential to Commercial for the properties identified as Map 3S-2E-5DB, Tax Lots 2800, 2900, 3000, and 3100.

ZC 02-01 (*Quasi-Judicial Zone Change Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Zone Change for 1.04 acres zoned RA-2: Multi-Family Dwelling to C: General Commercial for the properties identified as Map 3S-2E-5DB, Tax Lots 2400, 2500, 2600, and 2700.

ZC 02-02 (*Quasi-Judicial Zone Change Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Zone Change for 0.92 acres zoned R-10: Single-Family Dwelling to C: General Commercial for the properties identified as Map 3S-2E-5DB, Tax Lots 2800, 2900, 3000, and 3100.

SP 02-09 (*Quasi-Judicial Site Plan and Design Review Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for Site Plan and Design Review of approval of a one-story retail building and associated parking lot for the properties identified as Map 3S-2E-5DB, Tax Lots 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3201, 3300 and Map 3S-2E-5D, Tax Lot 500.

WR 02-12 (*Quasi-Judicial Water Resource Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Water Resource determination for the properties identified as Map 3S-2E-5DB, Tax Lots 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3201, 3300 and Map 3S-2E-5D, Tax Lot 500

7:40 p.m. 5. **NEW BUSINESS:**

7:45 p.m. 6. **ADJOURN**

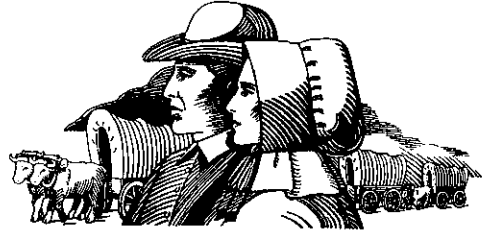
NOTE: HEARING TIMES AS NOTED ABOVE ARE TENTATIVE. FOR SPECIAL ASSISTANCE DUE TO DISABILITY, PLEASE CALL CITY HALL, 657-0891, 48 HOURS PRIOR TO MEETING DATE.

CITY OF OREGON CITY

PLANNING COMMISSION

320 WARNER MILNE ROAD
TEL (503) 657-0891

OREGON CITY, OREGON 97045
FAX (503) 657-7892



ATTENTION!!!!

The April 8, 2003 7:00PM Planning Commission Meeting has been delayed to 7:30PM because of Night Court

The Planning Commission will not be voting on the Wal-Mart application this evening. The meeting this evening will be devoted to legal and administrative procedures. Please contact City Hall tomorrow for the time and date of the final Planning Commission meeting for this application.



CITY OF OREGON CITY

P.O. Box 3040
320 Warner Milne Road
Oregon City, OR 97045
(503) 657-0891
Fax (503) 657-7892

MEMORANDUM

TO: Planning Commission

CC:

FROM: Christina Robertson-Gardiner, Associate Planner

DATE: April 10, 2003

SUBJECT: Supplemental Information: PZ 02-01, PZ 02-02, ZC 02-01, ZC 02-02, SP 02-09, WR 02-12

Dear Commissioners:

As you recall, the Planning Commission voted to close the Public Hearing but keep the record open to allow for written responses. Enclosed you will find the following exhibits pertaining to the above files. Exhibit 2 covers the first seven-day comment period. The second and third seven-day comment periods will begin after the end of the April 8, 2003 Planning Commission meeting. Future meeting dates will also be discussed and announced at the April 8, 2003 Planning Commission meeting.

Exhibit 1: Comments from March 10, 2003 Hearing Date (entered into record on March 10, 2003)

- I. Exhibit E: March 6, 2003 Letter from Jim Bean
- II. Exhibit F: March 10, 2003 Letter from Miller Nash
- III. Exhibit G: March 2003 Letter from Dan Holladay
- IV. Exhibit H: March 10, 2003 Letter from Hobson and Ferraini

Exhibit 2: Comments sent in from March 11, 2003- March 17, 2003 (7 days) to be entered into the record at the April 8, 2003 Planning Commission meeting.

- I. Exhibit A: Public comments submitted at March 10, 2003 hearing
- II. Exhibit B: March 17, 2003 Letter from Pacland
- III. Exhibit C: March 17, 2003 Letter from Miller Nash
- IV. Exhibit D: March 13, 2003 Letter from Jim Bean
- V. Exhibit E: March 17, 2003 Letter from Mark Holliday
- VI. Exhibit F: March 17, 2003 Letter from Greg Neidermeier
- VII. Exhibit G: Public Comments received from March 11-March 17, 2003
- VIII. Exhibit H: Table of Public Comment Breakdown Submitted by Applicant
(Originals are available for review at the Planning Division.)

**CITY OF OREGON CITY
PLANNING COMMISSION MINUTES
April 8, 2003**

COMMISSIONERS PRESENT

Chairperson Carter
Commissioner Lajoie
Commissioner Mengelberg
Commissioner Orzen
Commissioner Powell

STAFF PRESENT

Christina Robertson-Gardiner, Associate Planner
Dan Drentlaw, Planning Director
William Kabeiseman, City Attorney

COMMISSIONERS ABSENT

None

1. CALL TO ORDER

Chair Carter called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENT ON ITEMS NOT LISTED ON AGENDA

None.

2. APROVAL OF MINUTES

None.

4. HEARINGS:

PZ 02-01 (Quasi-Judicial Amendment to the Comprehensive Plan Hearing), PaLand: Scott Franklin (Owners are indicated on the Staff report); Request for an amendment to the Comprehensive Plan for 1.04 acres designated High Density Residential to Commercial for the properties identified as Map 3S-2 E-SDB, Tax lots 2400, 2500, 2600, and 2700. (cont'd. from 3/24/03).

PZ 02-02 (Quasi-Judicial Amendment to the Comprehensive Plan Hearing), PaLand: Scott Franklin (Owners are indicated on the Staff report); Request for an amendment to the Comprehensive Plan for 0.92 acres designated Low Density Residential to Commercial for the properties identified as Map 3S-2 E-SDB, Tax Lots 2800, 2900, 3000, and 3100. (cont'd. from 3/24/03).

ZC 02-01 (Quasi-Judicial Zone Change Hearing), PaLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Zone Change for 1.04 acres zoned RA-2: Multi-Family Dwelling to C: General Commercial for the properties identified as Map 3S-2 E-SDB, Tax Lots 2400, 2500, 2600, and 2700. (cont'd. from 3/24/03).

ZC 02-02 (Quasi-Judicial Zone Change Hearing), PaLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Zone Change for 0.92 acres zoned R-10: Single-Family Dwelling to C: General Commercial for the properties identified as Map 3S-2 E-SDB, Tax Lots 2800, 2900, 3000, and 3100. (cont'd. from 3/24/03).

Chair Carter reopened the hearing for the Comprehensive Plan Code amendment and zone change requests. City Attorney Kabeiseman noted the unusual Tuesday evening meeting and reminded everyone that there would be no public testimony this evening because the public hearing was closed previously although the public record remained open for a period for public submittal.

Christina Robertson-Gardiner said staff would like to enter into the record the new comments that were received since the March 10th hearing. She noted that attached to her memo of April 1, 2003 were (a) Exhibit 1, which included copies of Exhibits E, F, G, and H which were entered into the record on March 10th, and (b) Exhibit 2,

which included Exhibits A-H for inclusion into the record as of this evening (April 8, 2003). These include comments sent in from March 11, 2003 through March 17, 2003.

(Note: Full copies of the application, staff report and memos, and all related documents are available for review in the public record.)

When asked about the reference date of March 17, 2003 on the new Exhibit F (a letter from Greg Neidermeyer), **Robertson-Gardner** said it should read March 7, 2003. She noted that it was not available for the March 10th hearing but had subsequently been sent to the Planning Commission (PC) and was now being included in the comments to be added into the public record this evening.

Kabeiseman explained that at the end of the March 10th meeting things were a little unclear regarding what was or was not allowed, and he wished to clarify the process. He explained that generally under the statute, if the PC is going to leave the record open for any additional evidence, there must also be an additional opportunity to rebut that new evidence. He said what they should have done was only allow rebuttal evidence but they inadvertently allowed for any new evidence to come in. Therefore, they must now allow time for rebuttal. The end result was that he recommended that the PC now keep the record open for seven days only for public response to the material they had just received, after which the applicant would be given an additional seven days to submit written argument only. He clarified that with this recommendation only the applicant would be allowed a rebuttal period—there would be no further opportunity for public comment. He added that the PC could choose to allow for continuing rounds of rebuttal, but his recommendation was that they limit it to this one additional round in order to get to a decision.

Dan Drentlaw briefly reviewed the criteria for Comprehensive Plan amendments and rezone changes in preparation for deliberations. (These criteria have been posted during hearings and are available through the Planning staff.) He reminded them that if the PC and later the City Commission choose to approve these requests, there will then be a public hearing on the site plan.

Kabeiseman said there was some discussion of the possibility of bias by Powell at the March 10th meeting, and at least one person had requested to ask further about his position. **Kabeiseman** suggested this might be an appropriate time for such questions as bias, conflicts of interest, or ex parte contacts.

Greg Hathaway, attorney with Davis, Wright, Tremaine, 1300 SW 5th Ave., Portland, introduced himself as the attorney for the applicant in these proceedings. He referred to Mr. Holliday's comments and presentation of an article from *The Oregonian* (dated March 14, 2002) at the last meeting regarding statements Powell had made stating his opposition to large retail "big box" development on Hilltop. **Hathaway** reminded the PC that he had not seen that article before and had asked for time to review it to determine if he needed to ask questions of Powell regarding those statements as well as asking for an opportunity to see if there was other information that might be helpful in his examination of either Powell or other commissioners on the PC.

He said since that time they have discovered two other *Oregonian*-type articles, one written by Sarah Huntsberger on Feb. 28, 2002 in *The Oregonian* where Chair Carter was quoted talking about proposed large-box development on Hilltop and the other being another letter written by Powell on Nov. 14, 2002 specifically objecting to the Wal-Mart development.

Hathaway asked permission to question both of them about these letters or comments, and was granted such by the Chair. He then distributed copies of the three articles to the PC and staff on which he had marked the appropriate places for discussion.

Kabeiseman noted that these were being accepted into the record not as evidence towards any particular criteria but as a possible procedural issue and he cautioned both the PC and Hathaway to stay away from discussion of any of the criteria during this questioning. All parties concerned agreed.

Regarding Powell's March 14, 2002 letter, **Hathaway** asked if it was correct to assume that Powell actually wrote the letter and why he wrote the letter. **Powell** confirmed he had written it and said he thought he had written it in response to a question from Sarah Huntsberger asking for his opinion on the matter.

When **Hathaway** asked if Huntsberger's question was related specifically to a Wal-Mart proposal, **Powell** said it was not. He said there was a rumor that a big-box store was coming to the Hilltop area and she asked what he thought. He confirmed that he was unaware that Wal-Mart had filed an application or was even intending to file an application.

Referring to Powell's Nov. 14, 2002, letter, **Hathaway** asked if Powell wrote it, and **Powell** confirmed that it was basically a resubmittal of the previous letter.

Hathaway asked if Powell was aware at the time he wrote the Nov. 14th letter that Wal-Mart had actually filed an application asking for the ability to develop on Hilltop. **Powell** said he thought the rumor was that it was a Wal-Mart proposal, but he didn't believe he had seen any legal documents about it at that time.

Hathaway said he was asking for clarification because in Powell's March 14th letter he said he was opposed to any large retail development on Hilltop but there is no mention of Wal-Mart, yet in the Nov. 14th letter he specifically referred to Wal-Mart and his opposition to Wal-Mart. **Powell** said he had heard the rumor that Wal-Mart had or would be filing an application but he didn't know if they had actually filed it at that time.

Hathaway then reviewed the Nov. 14th letter, noting the statement that said, "I think that allowing Wal-Mart to build on the hilltop would be a mistake." He asked if that was still Powell's opinion, to which **Powell** said no. He said at this point he has much more information than he had at the beginning and he is giving Wal-Mart and the applicant the opportunity to prove that this is the best application for that property.

When asked why he originally thought it would be a mistake, **Powell** said he is concerned about traffic and general impacts to the community with all applications, whether residential or commercial. Given the little he knew at the time, he said it seemed like this would be an impact to the community and he was responding to that kind of response.

Hathaway said Powell had indicated at the two previous hearings that he would be able to render a fair and impartial hearing and said he hoped Powell could understand why the applicant would be concerned about such, given the statements in his letters. He said he appreciated the fact that Powell was indicating a change of opinion and asked if there was something he could share regarding his change of opinion.

Powell reiterated that he now has much more information than he had at the time he wrote those letters, so he felt he would be able to make a much more intelligent decision now than when he had no facts.

Hathaway read from the same letter, "The land would be better used for industrial, light industrial, and office space because retail traditionally has a reputation for creating a large percentage of part-time jobs instead of family-wage jobs and Wal-Mart specifically has a poor performance on employee creation and stability...." He then asked if this is still Powell's opinion today.

Powell said his opinion at the time was based on an article in *The Oregonian* that talked about issues in the courts about this, but he really doesn't have an opinion about it at the moment because he has heard comments both for and against this.

When **Hathaway** asked if it is still Powell's opinion that the site would be better suited for industrial, light industrial, and office space, **Powell** said he thinks there could be a lot of different uses that might fit in that area, and that office space, retail, and residential are all possibilities. Therefore, his goal is try and understand what makes the best sense for Oregon City.

Hathaway said Powell had a strong opinion on Nov. 14th that industrial, light industrial, and office space was the preferred use and asked if he had a basis for that opinion at that time.

Powell said he thought he was working on the Comprehensive Plan at that time and he thought related discussion included the rezoning of many different areas at the time, including discussion about enhancing the whole 7th Avenue/Hilltop area with some light industrial, residential, and, in fact, retail.

Hathaway read from the Nov. 14th letter, "I believe it is important to show loyalty to the retailers who are already committed to Oregon City. Danielson's, Fred Meyer, and Bi-Mart are continually involved in community programs. Oregon City residents ought to support these retailers as well as other small retailers who are trying to make a living in our city. A Wal-Mart will only drive out these businesses." He asked if Powell still held this opinion.

Powell replied that he thinks we should absolutely support our retailers. Regarding whether he thinks Wal-Mart would drive those out, he said he has no basis for that determination right now except for what he has read, so it is basically an opinion. He reiterated that he now has much more information and his current decision is about the zone change request, not who the retailer might be. Therefore, he wasn't sure his personal opinion about Wal-Mart's choice or methods of operation is important at the moment.

Hathaway said he asked the question because on the face it appears that Powell opposes Wal-Mart and would in return support those businesses named in the letter. (He noted that Danielson's opposes the Wal-Mart applications and has hired the Miller, Nash law firm to represent them.) Thus, he has some concern about Powell's position since it would appear from these statements that, given a choice between a new Wal-Mart store and Danielson's, Powell would support Danielson's. Therefore, **Hathaway** said he needs to be comfortable that Powell would be fair and impartial based on the evidence that comes into this record.

Powell said he could understand that and explained that those stores came to mind as the ones that are on the hilltop. He said he didn't specify any one for any particular reason. He reiterated that he would give this application a fair and impartial consideration, as he would any application for the Hilltop area. He said he has no allegiance to any of the stores that are listed or to any that are not listed.

Hathaway asked why Powell would state what he did on Nov. 14th and then today say he is willing to listen to all the facts? Specifically, is it because he is now on the PC?

Powell said yes, and, in fact, he said he needs to listen to all the facts fairly and impartially, much as a judge in a case of law. He reiterated that he truly thinks he can do so. He cited his experience on the City Commission, saying that there were many largely publicized land use cases wherein he thought he had made his decision based on the staff report and then, after listening to the applicants and all the testimony, he had changed his mind. He would expect to be able to listen fairly to all the evidence in the Wal-Mart applications as well with an open mind.

Although the Nov. 14th letter was written before he was on the PC, **Hathaway** noted that Powell made the very strong statement, "I urge the Planning Commission to deny any type of zone change," and he asked again if this is still Powell's opinion.

Powell said no. He was expressing an opinion as a citizen at that time, and he said his opinion today is different than when he wrote the letter because now he has much more information than he had then, and he now has much more experience with land use planning and zone changes than he had then.

Hathaway asked about Powell's statement at the end of the letter that says, "Don't let Wal-Mart bring blight to another small town in Oregon," and again he asked if that is still Powell's opinion.

Powell said he doesn't have enough information to have a strong opinion on that. Again, he said he was responding to what he had read, and he admitted that he still has some concerns about organizations of any type coming into a town and drawing away business. However, he said he is not suggesting that Wal-Mart will or will not do it. He is more than willing to listen to discussion about that from both sides, and he has not made a decision about that.

Moving from the letter of Nov. 14th to some questions about Powell's role as co-chair of the McLoughlin Neighborhood Association (N.A.), **Hathaway** said at the last hearing Powell indicated he was still co-chair and he asked what Powell's current status is.

Powell said he still holds that position.

Hathaway said he asked that question because it is his understanding that the McLoughlin N.A. is opposed to these applications. So, he asked, are Powell's positions as co-chair of the N.A. and his seat on the PC in conflict. He asked if Powell has participated in any discussion at the N.A. sub-committee meeting or full meeting regarding the proposed Wal-Mart applications.

Powell said yes. He was responsible as the co-chair to put together a land use committee meeting to discuss the procedures and the policies around the PC and what they would be hearing, and what folks could and could not respond to. He said when the general membership voted, he did not vote—he actually left the room because at that time he had already made his application to serve on the PC. He could not recall ever having a discussion with the membership in a meeting situation regarding the merits of the Wal-Mart application.

Powell noted that he submitted the letter as a personal opinion and the reference to himself as co-chairman of the N.A. was inserted by the newspaper.

Hathaway said he had noticed that there was a reference to "I" rather than "we" in the letter, so he had made that assumption himself.

Hathaway then asked Chair Carter some questions about the Feb. 28th article by Sarah Huntsberger. First, he asked if she recalled being interviewed by Huntsberger for this article, to which **Chair Carter** replied, "Vaguely." She said she has lots of conversations and correspondence to and with the people from *The Oregonian*.

Hathaway referred to Chair Carter's comment (marked in yellow), "I would prefer to have offices mixed with smaller retail rather than the proposed large retail detail." He asked if she was aware on approximately Feb. 28, 2002 that Wal-Mart intended to or had already filed the applications currently being reviewed.

Chair Carter said she has no idea what the dates were when Wal-Mart initially came to file the application or have their pre-application meetings because it was not stated at that time who the applicant was, so she couldn't say if it was before or after Feb. 28, 2002.

Hathaway asked if it was a fair assumption, because the article discusses the potential of a Wal-Mart development on Hilltop, that when she made her statement, she was probably referring to Wal-Mart.

Chair Carter said probably, because that was the rumor at the time.

When **Hathaway** asked if that is still her opinion today, **Chair Carter** said her personal opinion must be set aside in order to do a functional job as a planning commissioner. She said she also wrote an article dated March 14th, which no one had referenced, that brought out a lot of the issues—both pro and con—in which she tried to give a balanced opinion about them to try and stimulate the populace to think in terms of both the pros and cons. She said she thinks this speaks clearly to her lack of bias to be able to give judgment on this application.

Hathaway asked about the line that read, "'None of us are very fond of this idea' [referring to the proposed large retail development], Carter said, speaking of the Planning Commission."

Chair Carter said she cannot speak for the PC, so she didn't know if this was a misquote or how it got in there.

Hathaway asked if she recalled why she would have said, "None of us are very fond of this idea."

Chair Carter said it was probably because of a lot of feedback/opinions from customers in her salon. She noted that all of these people had had the opportunity to attend the hearings and state their opinions for themselves.

When **Hathaway** asked if this is still her opinion today, **Chair Carter** reiterated that if she is going to be a planning commissioner and do justice to what is in the best interests of the City, she must be able to put aside her personal opinion, whatever that opinion might be. She agreed with Powell's comment that it occurs regularly that, although the members of the Commission might have a preconceived idea of how they think things will go, when they hear the evidence and the facts and especially the public testimony, which this City is very open to, they are swayed by

what is presented in their consideration of the criteria, how the application fits the criteria, and what the public opinion is.

When **Hathaway** asked if she recalled talking to any members of the PC who would have been in office at that time (in Feb., 2002) about a proposed Wal-Mart store, **Chair Carter** said she couldn't say she recalled such.

Hathaway said his question came from the way her statement, "None of us are very fond of this idea," was stated in reference to discussions she may have had with members of the PC. He noted that this wasn't a quote from her but was something Huntsberger would have added, but he needed to ask if she recalled any discussions she may have had with members of the PC at that time.

Chair Carter said no again, because this PC does not discuss things like that, and she reiterated that this PC is comprised of five members who vote independently.

Hathaway thanked the Chair and the Commissioners for the time allotted to ask his questions because he knew that in some ways that could have been very uncomfortable and he appreciated their candor in the responses to his questions.

Chair Carter said they would postpone deliberations with a continuation to a future hearing. After some discussion about the time needed for additional written testimony, rebuttal, turnaround of comments to the PC, acknowledgement of the applicant's attorneys' schedule, and the PC schedule in April and May, **Chair Carter** continued this hearing to a date certain of Monday, May 12, 2002, at 6:00 p.m. It was noted that there is already a fairly full agenda that night which has already been noticed to begin at 7:00 p.m., but the preference was to notice the Wal-Mart portion to begin earlier rather than adding it to the end of the agenda and staying so late at night.

SP 02-09 (Quasi-Judicial Site Plan and Design Review Hearing), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Site Plan and Design Review of approval of a one-story retail building and associated parking lot for the properties identified as Map 3S-2 E-5DB for Tax Lots 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3201, 3300 and Map 3S-2 E-5D, Tax Lot 500.

WR 02-12 (Quasi-Judicial Water Resource Hearing), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Water Resource determination for the properties identified as Map 3S-2 E-5DB for Tax Lots 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3201, 3300 and Map 3S-2 E-5D, Tax Lot 500.

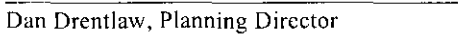
5. NEW BUSINESS

Orzen said that she and Powell had taken a trip to Centralia, Washington on the Amtrak earlier this day to see what they have done in revitalizing their downtown area. She said they got a wonderful reception and a lot of great ideas that might be put to use in Oregon City.

6. ADJOURN

With no other business at hand, the meeting was adjourned at 7:45 p.m.


Linda Carter, Planning Commission
Chairperson


Dan Drentlaw, Planning Director

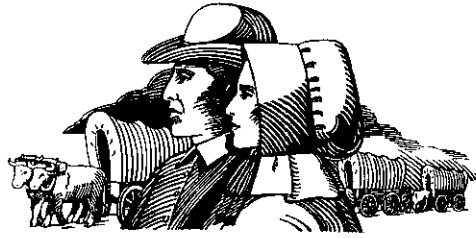

Jay Kell, Assoc. Planner

CITY OF OREGON CITY

PLANNING COMMISSION

320 WARNER MILNE ROAD
TEL. (503) 657-0891

OREGON CITY, OREGON 97045
FAX (503) 657-7892



AGENDA

City Commission Chambers - City Hall

April 8, 2003 at 7:00 P.M.

The 2003 Planning Commission Agendas/Minutes, including Staff Reports and Minutes, are available on the Oregon City Web Page (www.orcity.org) under PLANNING.

PLANNING COMMISSION MEETING

- 7:00 p.m. 1. **CALL TO ORDER**
- 7:01 p.m. 2. **PUBLIC COMMENT ON ITEMS NOT LISTED ON AGENDA**
- 7:02 p.m. 3. **APPROVAL OF MINUTES:** *None available*
- 7:05 p.m. 4. **HEARINGS:**

PZ 02-01 (*Quasi-Judicial Amendment to the Comprehensive Plan Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for an amendment to the Comprehensive Plan for 1.04 acres designated High Density Residential to Commercial for the properties identified as Map 3S-2E-5DB, Tax Lots 2400, 2500, 2600, and 2700.

PZ 02-02 (*Quasi-Judicial Amendment to the Comprehensive Plan Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for an amendment to the Comprehensive Plan for 0.92 acres designated Low Density Residential to Commercial for the properties identified as Map 3S-2E-5DB, Tax Lots 2800, 2900, 3000, and 3100.

ZC 02-01 (*Quasi-Judicial Zone Change Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Zone Change for 1.04 acres zoned RA-2: Multi-Family Dwelling to C: General Commercial for the properties identified as Map 3S-2E-5DB, Tax Lots 2400, 2500, 2600, and 2700.

ZC 02-02 (*Quasi-Judicial Zone Change Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Zone Change for 0.92 acres zoned R-10: Single-Family Dwelling to C: General Commercial for the properties identified as Map 3S-2E-5DB, Tax Lots 2800, 2900, 3000, and 3100.

SP 02-09 (*Quasi-Judicial Site Plan and Design Review Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for Site Plan and Design Review of approval of a one-story retail building and associated parking lot for the properties identified as Map 3S-2E-5DB, Tax Lots 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3201, 3300 and Map 3S-2E-5D, Tax Lot 500.

WR 02-12 (*Quasi-Judicial Water Resource Hearing*), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Water Resource determination for the properties identified as Map 3S-2E-5DB, Tax Lots 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3201, 3300 and Map 3S-2E-5D, Tax Lot 500

7:40 p.m. 5. **NEW BUSINESS:**

7:45 p.m. 6. **ADJOURN**

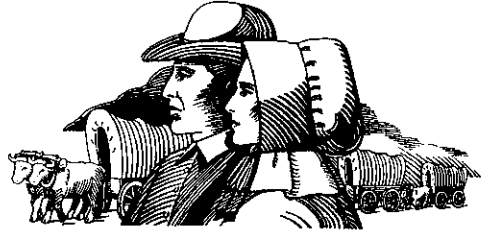
NOTE: HEARING TIMES AS NOTED ABOVE ARE TENTATIVE. FOR SPECIAL ASSISTANCE DUE TO DISABILITY, PLEASE CALL CITY HALL, 657-0891, 48 HOURS PRIOR TO MEETING DATE.

CITY OF OREGON CITY

PLANNING COMMISSION

320 WARNER MILNE ROAD
TEL (503) 657-0891

OREGON CITY, OREGON 97045
FAX (503) 657-7892



ATTENTION!!!!

The April 8, 2003 7:00PM Planning Commission Meeting has been delayed to 7:30PM because of Night Court

The Planning Commission will not be voting on the Wal-Mart application this evening. The meeting this evening will be devoted to legal and administrative procedures. Please contact City Hall tomorrow for the time and date of the final Planning Commission meeting for this application.



CITY OF OREGON CITY

P.O. Box 3040
320 Warner Milne Road
Oregon City, OR 97045
(503) 657-0891
Fax (503) 657-7892

MEMORANDUM

TO: Planning Commission

CC:

FROM: Christina Robertson-Gardiner, Associate Planner

DATE: April 10, 2003

SUBJECT: Supplemental Information: PZ 02-01, PZ 02-02, ZC 02-01, ZC 02-02, SP 02-09, WR 02-12

Dear Commissioners:

As you recall, the Planning Commission voted to close the Public Hearing but keep the record open to allow for written responses. Enclosed you will find the following exhibits pertaining to the above files. Exhibit 2 covers the first seven-day comment period. The second and third seven-day comment periods will begin after the end of the April 8, 2003 Planning Commission meeting. Future meeting dates will also be discussed and announced at the April 8, 2003 Planning Commission meeting.

Exhibit 1: Comments from March 10, 2003 Hearing Date (entered into record on March 10, 2003)

- I. Exhibit E: March 6, 2003 Letter from Jim Bean
- II. Exhibit F: March 10, 2003 Letter from Miller Nash
- III. Exhibit G: March 2003 Letter from Dan Holladay
- IV. Exhibit H: March 10, 2003 Letter from Hobson and Ferraini

Exhibit 2: Comments sent in from March 11, 2003- March 17, 2003 (7 days) to be entered into the record at the April 8, 2003 Planning Commission meeting.

- I. Exhibit A: Public comments submitted at March 10, 2003 hearing
- II. Exhibit B: March 17, 2003 Letter from Pacland
- III. Exhibit C: March 17, 2003 Letter from Miller Nash
- IV. Exhibit D: March 13, 2003 Letter from Jim Bean
- V. Exhibit E: March 17, 2003 Letter from Mark Holliday
- VI. Exhibit F: March 17, 2003 Letter from Greg Neidermeier
- VII. Exhibit G: Public Comments received from March 11-March 17, 2003
- VIII. Exhibit H: Table of Public Comment Breakdown Submitted by Applicant
(Originals are available for review at the Planning Division.)

**CITY OF OREGON CITY
PLANNING COMMISSION MINUTES
April 8, 2003**

COMMISSIONERS PRESENT

Chairperson Carter
Commissioner Lajoie
Commissioner Mengelberg
Commissioner Orzen
Commissioner Powell

STAFF PRESENT

Christina Robertson-Gardiner, Associate Planner
Dan Drentlaw, Planning Director
William Kabeiseman, City Attorney

COMMISSIONERS ABSENT

None

1. CALL TO ORDER

Chair Carter called the meeting to order at 7:00 p.m.

2. PUBLIC COMMENT ON ITEMS NOT LISTED ON AGENDA

None.

2. APROVAL OF MINUTES

None.

4. HEARINGS:

PZ 02-01 (Quasi-Judicial Amendment to the Comprehensive Plan Hearing), PaLand: Scott Franklin (Owners are indicated on the Staff report); Request for an amendment to the Comprehensive Plan for 1.04 acres designated High Density Residential to Commercial for the properties identified as Map 3S-2 E-SDB, Tax lots 2400, 2500, 2600, and 2700. (cont'd. from 3/24/03).

PZ 02-02 (Quasi-Judicial Amendment to the Comprehensive Plan Hearing), PaLand: Scott Franklin (Owners are indicated on the Staff report); Request for an amendment to the Comprehensive Plan for 0.92 acres designated Low Density Residential to Commercial for the properties identified as Map 3S-2 E-SDB, Tax Lots 2800, 2900, 3000, and 3100. (cont'd. from 3/24/03).

ZC 02-01 (Quasi-Judicial Zone Change Hearing), PaLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Zone Change for 1.04 acres zoned RA-2: Multi-Family Dwelling to C: General Commercial for the properties identified as Map 3S-2 E-SDB, Tax Lots 2400, 2500, 2600, and 2700. (cont'd. from 3/24/03).

ZC 02-02 (Quasi-Judicial Zone Change Hearing), PaLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Zone Change for 0.92 acres zoned R-10: Single-Family Dwelling to C: General Commercial for the properties identified as Map 3S-2 E-SDB, Tax Lots 2800, 2900, 3000, and 3100. (cont'd. from 3/24/03).

Chair Carter reopened the hearing for the Comprehensive Plan Code amendment and zone change requests. City Attorney Kabeiseman noted the unusual Tuesday evening meeting and reminded everyone that there would be no public testimony this evening because the public hearing was closed previously although the public record remained open for a period for public submittal.

Christina Robertson-Gardiner said staff would like to enter into the record the new comments that were received since the March 10th hearing. She noted that attached to her memo of April 1, 2003 were (a) Exhibit 1, which included copies of Exhibits E, F, G, and H which were entered into the record on March 10th, and (b) Exhibit 2,

which included Exhibits A-H for inclusion into the record as of this evening (April 8, 2003). These include comments sent in from March 11, 2003 through March 17, 2003.

(Note: Full copies of the application, staff report and memos, and all related documents are available for review in the public record.)

When asked about the reference date of March 17, 2003 on the new Exhibit F (a letter from Greg Neidermeyer), **Robertson-Gardner** said it should read March 7, 2003. She noted that it was not available for the March 10th hearing but had subsequently been sent to the Planning Commission (PC) and was now being included in the comments to be added into the public record this evening.

Kabeiseman explained that at the end of the March 10th meeting things were a little unclear regarding what was or was not allowed, and he wished to clarify the process. He explained that generally under the statute, if the PC is going to leave the record open for any additional evidence, there must also be an additional opportunity to rebut that new evidence. He said what they should have done was only allow rebuttal evidence but they inadvertently allowed for any new evidence to come in. Therefore, they must now allow time for rebuttal. The end result was that he recommended that the PC now keep the record open for seven days only for public response to the material they had just received, after which the applicant would be given an additional seven days to submit written argument only. He clarified that with this recommendation only the applicant would be allowed a rebuttal period—there would be no further opportunity for public comment. He added that the PC could choose to allow for continuing rounds of rebuttal, but his recommendation was that they limit it to this one additional round in order to get to a decision.

Dan Drentlaw briefly reviewed the criteria for Comprehensive Plan amendments and rezone changes in preparation for deliberations. (These criteria have been posted during hearings and are available through the Planning staff.) He reminded them that if the PC and later the City Commission choose to approve these requests, there will then be a public hearing on the site plan.

Kabeiseman said there was some discussion of the possibility of bias by Powell at the March 10th meeting, and at least one person had requested to ask further about his position. **Kabeiseman** suggested this might be an appropriate time for such questions as bias, conflicts of interest, or ex parte contacts.

Greg Hathaway, attorney with Davis, Wright, Tremaine, 1300 SW 5th Ave., Portland, introduced himself as the attorney for the applicant in these proceedings. He referred to Mr. Holliday's comments and presentation of an article from *The Oregonian* (dated March 14, 2002) at the last meeting regarding statements Powell had made stating his opposition to large retail "big box" development on Hilltop. **Hathaway** reminded the PC that he had not seen that article before and had asked for time to review it to determine if he needed to ask questions of Powell regarding those statements as well as asking for an opportunity to see if there was other information that might be helpful in his examination of either Powell or other commissioners on the PC.

He said since that time they have discovered two other *Oregonian*-type articles, one written by Sarah Huntsberger on Feb. 28, 2002 in *The Oregonian* where Chair Carter was quoted talking about proposed large-box development on Hilltop and the other being another letter written by Powell on Nov. 14, 2002 specifically objecting to the Wal-Mart development.

Hathaway asked permission to question both of them about these letters or comments, and was granted such by the Chair. He then distributed copies of the three articles to the PC and staff on which he had marked the appropriate places for discussion.

Kabeiseman noted that these were being accepted into the record not as evidence towards any particular criteria but as a possible procedural issue and he cautioned both the PC and Hathaway to stay away from discussion of any of the criteria during this questioning. All parties concerned agreed.

Regarding Powell's March 14, 2002 letter, **Hathaway** asked if it was correct to assume that Powell actually wrote the letter and why he wrote the letter. **Powell** confirmed he had written it and said he thought he had written it in response to a question from Sarah Huntsberger asking for his opinion on the matter.

When **Hathaway** asked if Huntsberger's question was related specifically to a Wal-Mart proposal, **Powell** said it was not. He said there was a rumor that a big-box store was coming to the Hilltop area and she asked what he thought. He confirmed that he was unaware that Wal-Mart had filed an application or was even intending to file an application.

Referring to Powell's Nov. 14, 2002, letter, **Hathaway** asked if Powell wrote it, and **Powell** confirmed that it was basically a resubmittal of the previous letter.

Hathaway asked if Powell was aware at the time he wrote the Nov. 14th letter that Wal-Mart had actually filed an application asking for the ability to develop on Hilltop. **Powell** said he thought the rumor was that it was a Wal-Mart proposal, but he didn't believe he had seen any legal documents about it at that time.

Hathaway said he was asking for clarification because in Powell's March 14th letter he said he was opposed to any large retail development on Hilltop but there is no mention of Wal-Mart, yet in the Nov. 14th letter he specifically referred to Wal-Mart and his opposition to Wal-Mart. **Powell** said he had heard the rumor that Wal-Mart had or would be filing an application but he didn't know if they had actually filed it at that time.

Hathaway then reviewed the Nov. 14th letter, noting the statement that said, "I think that allowing Wal-Mart to build on the hilltop would be a mistake." He asked if that was still Powell's opinion, to which **Powell** said no. He said at this point he has much more information than he had at the beginning and he is giving Wal-Mart and the applicant the opportunity to prove that this is the best application for that property.

When asked why he originally thought it would be a mistake, **Powell** said he is concerned about traffic and general impacts to the community with all applications, whether residential or commercial. Given the little he knew at the time, he said it seemed like this would be an impact to the community and he was responding to that kind of response.

Hathaway said Powell had indicated at the two previous hearings that he would be able to render a fair and impartial hearing and said he hoped Powell could understand why the applicant would be concerned about such, given the statements in his letters. He said he appreciated the fact that Powell was indicating a change of opinion and asked if there was something he could share regarding his change of opinion.

Powell reiterated that he now has much more information than he had at the time he wrote those letters, so he felt he would be able to make a much more intelligent decision now than when he had no facts.

Hathaway read from the same letter, "The land would be better used for industrial, light industrial, and office space because retail traditionally has a reputation for creating a large percentage of part-time jobs instead of family-wage jobs and Wal-Mart specifically has a poor performance on employee creation and stability...." He then asked if this is still Powell's opinion today.

Powell said his opinion at the time was based on an article in *The Oregonian* that talked about issues in the courts about this, but he really doesn't have an opinion about it at the moment because he has heard comments both for and against this.

When **Hathaway** asked if it is still Powell's opinion that the site would be better suited for industrial, light industrial, and office space, **Powell** said he thinks there could be a lot of different uses that might fit in that area, and that office space, retail, and residential are all possibilities. Therefore, his goal is try and understand what makes the best sense for Oregon City.

Hathaway said Powell had a strong opinion on Nov. 14th that industrial, light industrial, and office space was the preferred use and asked if he had a basis for that opinion at that time.

Powell said he thought he was working on the Comprehensive Plan at that time and he thought related discussion included the rezoning of many different areas at the time, including discussion about enhancing the whole 7th Avenue/Hilltop area with some light industrial, residential, and, in fact, retail.

Hathaway read from the Nov. 14th letter, "I believe it is important to show loyalty to the retailers who are already committed to Oregon City. Danielson's, Fred Meyer, and Bi-Mart are continually involved in community programs. Oregon City residents ought to support these retailers as well as other small retailers who are trying to make a living in our city. A Wal-Mart will only drive out these businesses." He asked if Powell still held this opinion.

Powell replied that he thinks we should absolutely support our retailers. Regarding whether he thinks Wal-Mart would drive those out, he said he has no basis for that determination right now except for what he has read, so it is basically an opinion. He reiterated that he now has much more information and his current decision is about the zone change request, not who the retailer might be. Therefore, he wasn't sure his personal opinion about Wal-Mart's choice or methods of operation is important at the moment.

Hathaway said he asked the question because on the face it appears that Powell opposes Wal-Mart and would in return support those businesses named in the letter. (He noted that Danielson's opposes the Wal-Mart applications and has hired the Miller, Nash law firm to represent them.) Thus, he has some concern about Powell's position since it would appear from these statements that, given a choice between a new Wal-Mart store and Danielson's, Powell would support Danielson's. Therefore, **Hathaway** said he needs to be comfortable that Powell would be fair and impartial based on the evidence that comes into this record.

Powell said he could understand that and explained that those stores came to mind as the ones that are on the hilltop. He said he didn't specify any one for any particular reason. He reiterated that he would give this application a fair and impartial consideration, as he would any application for the Hilltop area. He said he has no allegiance to any of the stores that are listed or to any that are not listed.

Hathaway asked why Powell would state what he did on Nov. 14th and then today say he is willing to listen to all the facts? Specifically, is it because he is now on the PC?

Powell said yes, and, in fact, he said he needs to listen to all the facts fairly and impartially, much as a judge in a case of law. He reiterated that he truly thinks he can do so. He cited his experience on the City Commission, saying that there were many largely publicized land use cases wherein he thought he had made his decision based on the staff report and then, after listening to the applicants and all the testimony, he had changed his mind. He would expect to be able to listen fairly to all the evidence in the Wal-Mart applications as well with an open mind.

Although the Nov. 14th letter was written before he was on the PC, **Hathaway** noted that Powell made the very strong statement, "I urge the Planning Commission to deny any type of zone change," and he asked again if this is still Powell's opinion.

Powell said no. He was expressing an opinion as a citizen at that time, and he said his opinion today is different than when he wrote the letter because now he has much more information than he had then, and he now has much more experience with land use planning and zone changes than he had then.

Hathaway asked about Powell's statement at the end of the letter that says, "Don't let Wal-Mart bring blight to another small town in Oregon," and again he asked if that is still Powell's opinion.

Powell said he doesn't have enough information to have a strong opinion on that. Again, he said he was responding to what he had read, and he admitted that he still has some concerns about organizations of any type coming into a town and drawing away business. However, he said he is not suggesting that Wal-Mart will or will not do it. He is more than willing to listen to discussion about that from both sides, and he has not made a decision about that.

Moving from the letter of Nov. 14th to some questions about Powell's role as co-chair of the McLoughlin Neighborhood Association (N.A.), **Hathaway** said at the last hearing Powell indicated he was still co-chair and he asked what Powell's current status is.

Powell said he still holds that position.

Hathaway said he asked that question because it is his understanding that the McLoughlin N.A. is opposed to these applications. So, he asked, are Powell's positions as co-chair of the N.A. and his seat on the PC in conflict. He asked if Powell has participated in any discussion at the N.A. sub-committee meeting or full meeting regarding the proposed Wal-Mart applications.

Powell said yes. He was responsible as the co-chair to put together a land use committee meeting to discuss the procedures and the policies around the PC and what they would be hearing, and what folks could and could not respond to. He said when the general membership voted, he did not vote—he actually left the room because at that time he had already made his application to serve on the PC. He could not recall ever having a discussion with the membership in a meeting situation regarding the merits of the Wal-Mart application.

Powell noted that he submitted the letter as a personal opinion and the reference to himself as co-chairman of the N.A. was inserted by the newspaper.

Hathaway said he had noticed that there was a reference to "I" rather than "we" in the letter, so he had made that assumption himself.

Hathaway then asked Chair Carter some questions about the Feb. 28th article by Sarah Huntsberger. First, he asked if she recalled being interviewed by Huntsberger for this article, to which **Chair Carter** replied, "Vaguely." She said she has lots of conversations and correspondence to and with the people from *The Oregonian*.

Hathaway referred to Chair Carter's comment (marked in yellow), "I would prefer to have offices mixed with smaller retail rather than the proposed large retail detail." He asked if she was aware on approximately Feb. 28, 2002 that Wal-Mart intended to or had already filed the applications currently being reviewed.

Chair Carter said she has no idea what the dates were when Wal-Mart initially came to file the application or have their pre-application meetings because it was not stated at that time who the applicant was, so she couldn't say if it was before or after Feb. 28, 2002.

Hathaway asked if it was a fair assumption, because the article discusses the potential of a Wal-Mart development on Hilltop, that when she made her statement, she was probably referring to Wal-Mart.

Chair Carter said probably, because that was the rumor at the time.

When **Hathaway** asked if that is still her opinion today, **Chair Carter** said her personal opinion must be set aside in order to do a functional job as a planning commissioner. She said she also wrote an article dated March 14th, which no one had referenced, that brought out a lot of the issues—both pro and con—in which she tried to give a balanced opinion about them to try and stimulate the populace to think in terms of both the pros and cons. She said she thinks this speaks clearly to her lack of bias to be able to give judgment on this application.

Hathaway asked about the line that read, "'None of us are very fond of this idea' [referring to the proposed large retail development], Carter said, speaking of the Planning Commission."

Chair Carter said she cannot speak for the PC, so she didn't know if this was a misquote or how it got in there.

Hathaway asked if she recalled why she would have said, "None of us are very fond of this idea."

Chair Carter said it was probably because of a lot of feedback/opinions from customers in her salon. She noted that all of these people had had the opportunity to attend the hearings and state their opinions for themselves.

When **Hathaway** asked if this is still her opinion today, **Chair Carter** reiterated that if she is going to be a planning commissioner and do justice to what is in the best interests of the City, she must be able to put aside her personal opinion, whatever that opinion might be. She agreed with Powell's comment that it occurs regularly that, although the members of the Commission might have a preconceived idea of how they think things will go, when they hear the evidence and the facts and especially the public testimony, which this City is very open to, they are swayed by

what is presented in their consideration of the criteria, how the application fits the criteria, and what the public opinion is.

When **Hathaway** asked if she recalled talking to any members of the PC who would have been in office at that time (in Feb., 2002) about a proposed Wal-Mart store, **Chair Carter** said she couldn't say she recalled such.

Hathaway said his question came from the way her statement, "None of us are very fond of this idea," was stated in reference to discussions she may have had with members of the PC. He noted that this wasn't a quote from her but was something Huntsberger would have added, but he needed to ask if she recalled any discussions she may have had with members of the PC at that time.

Chair Carter said no again, because this PC does not discuss things like that, and she reiterated that this PC is comprised of five members who vote independently.

Hathaway thanked the Chair and the Commissioners for the time allotted to ask his questions because he knew that in some ways that could have been very uncomfortable and he appreciated their candor in the responses to his questions.

Chair Carter said they would postpone deliberations with a continuation to a future hearing. After some discussion about the time needed for additional written testimony, rebuttal, turnaround of comments to the PC, acknowledgement of the applicant's attorneys' schedule, and the PC schedule in April and May, **Chair Carter** continued this hearing to a date certain of Monday, May 12, 2002, at 6:00 p.m. It was noted that there is already a fairly full agenda that night which has already been noticed to begin at 7:00 p.m., but the preference was to notice the Wal-Mart portion to begin earlier rather than adding it to the end of the agenda and staying so late at night.

SP 02-09 (Quasi-Judicial Site Plan and Design Review Hearing), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Site Plan and Design Review of approval of a one-story retail building and associated parking lot for the properties identified as Map 3S-2 E-5DB for Tax Lots 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3201, 3300 and Map 3S-2 E-5D, Tax Lot 500.

WR 02-12 (Quasi-Judicial Water Resource Hearing), PacLand: Scott Franklin (Owners are indicated on the Staff report); Request for a Water Resource determination for the properties identified as Map 3S-2 E-5DB for Tax Lots 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3201, 3300 and Map 3S-2 E-5D, Tax Lot 500.

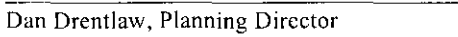
5. NEW BUSINESS

Orzen said that she and Powell had taken a trip to Centralia, Washington on the Amtrak earlier this day to see what they have done in revitalizing their downtown area. She said they got a wonderful reception and a lot of great ideas that might be put to use in Oregon City.

6. ADJOURN

With no other business at hand, the meeting was adjourned at 7:45 p.m.


Linda Carter, Planning Commission
Chairperson


Dan Drentlaw, Planning Director


Jay Kell, Assoc. Planner