CITY OF BANKS, OREGON
Planning Commission Meeting
November 25, 2014
Banks City Hall, Banks, OR

Chairperson Gene Stout called the meeting to order at 6:30 PM. The proceedings were recorded in digital format.

ROLL CALL
Present were: Chairperson Gene Stout, Ray Deeth, Michael Lyda, Rodney Jacobs, Sam Van Dyke, Lisa McAllister, and Rachel Nelson.

Attending: Jolynn Becker, City Manager; Angie Lanter, City Recorder; Dan Kearns, City Attorney; Stacey Goldstein, City Planner.

APPROVAL OF MINUTES

1. Approval of minutes from the August 26, 2014 meeting.
   Ray Deeth moved to approve the Planning Commission minutes of August 26, 2014 as corrected. Rodney Jacobs seconded the motion, which passed unanimously.

CITY COUNCIL REPORT

2. Verbal Report. Chair Stout briefly reviewed the agenda items addressed at the November 11, 2014 City Council work session and regular meeting. He congratulated Ray Deeth for receiving the Jim Hough Banks Citizenship Award.
3. Planning Liaison Assignment. Chair Stout and Ray Deeth agreed to be the Planning Commission Liaisons for the December 9, 2014 City Council meeting.

PUBLIC COMMENT – There was none.

WORK SESSION – (None)

PUBLIC HEARINGS –

4. MOD1-14 and MOD2-14
   Modification of PUD 6-96 and PA/ZC 8-96; Request to eliminate Condition 9 from the two (2) land use approvals which requires a secondary access to the southeast corner of Arbor Village to be constructed when Phase 9 is developed.

   Chair Stout called the public hearing to order at 6:31 pm and read the conduct of hearing format. Sam Van Dyke declared that his family had an interest in the proceedings and was going to take a position at this hearing; therefore, he recused himself from the public hearing and stepped down from the dais. No other Commissioners however, declared a conflict of interest, ex parte contact, or bias, and no Commissioner's participation was challenged by any member of the audience.

   Stacey Goldstein, City Planner, noted the applicable Code criteria listed in the Staff report. She corrected the file number to state, "PUD ~~6-96~~ ***9-96***" in the first part of the Staff report, adding that it would be changed for the record. She presented the Staff report, describing the three options studied by the Applicant to comply with Condition 9 and the issues that prohibited each option from being constructed. Staff could find no substantial evidence in the record from 1996 and 1998, when the initial Arbor Village

application was reviewed, showing whether Condition 9 could be achieved or if the condition was reasonably related to the impacts of Arbor Village. A memo from CH2M Hill (Appendix 2) noted the 2010 Transportation System Plan (TSP) recommended that Oak Way, the Arbor Village option, was not preferred for the east-west crossing. Sunset Ave would serve as a better connection, as it was wider and classified as a collector, making it capable of handing the anticipated through traffic. While Oak Way was listed as a collector, it was not built to a collector standard and could not handle that volume of traffic. She noted the short memorandum distributed to the Commission was an updated memo from Kittleson & Associates that needed to be included in the packet. The memo did not change the analysis or Staff's recommendation.

Chair Stout confirmed there were no questions of Staff and called for the Applicant's presentation.

Michael Robinson, Land Use Attorney, representing the Applicant, said he appreciated Staff's report and their assistance in getting documents to the Applicant. He presented four exhibits on display boards before the Commission with these comments:

- Exhibit 1: Arbor Village Site Plan. He noted key features of the surrounding area and the development, namely Phase 9 in the southeast corner, which has not been developed because the Applicant could not comply with Condition 9. The proposed location of subject east-west crossing by the Applicant where three railroad tracks were located.
- Exhibit 2: City Map. He indicated the location of Sunset Ave in relation to Phase 9, the Van Dyke Family Land, LLC, and Quail Valley Golf Course, and noted the current zoning in the area.
- Exhibit 3: Proposed Crossing/Phase 9 Map. The Applicant would need to be outside of the existing wetland. If going east, the subject east-west crossing would have to connect to Rose Ave, which connects to Aerts Rd, and that was in the same area as the three railroad tracks, making it more problematic for ODOT Rail to allow.
- He noted the application did not involve the subdivision, zoning, or development of the property, but he displayed examples of the homes Arbor was building in other subdivisions. If the Applicant got approval to remove Condition 9, they would return to request a zone change from Industrial to Residential, as well as a land division approval.

- The Applicant agreed with the Staff report and conclusion, and explained that the Applicant was not able to comply with Condition 9 for two reasons:
  - Legally, the Oregon and US Supreme Courts have held that if a local government wants to impose a condition on a property owner for dedication of real property and improvements like that proposed, they must generally show that the condition was related to the impacts of the application. The Staff report stated that when approved in 1996, there simply was no basis for the condition, namely because no application existed for Phase 9 in 1996. There was no analysis, evidence, or traffic study, as stated in the Staff report, so no justification or link was made between a development proposal from West Hills for Phase 9 and that condition.
    - In addition, as a residential development, Phase 9 would accommodate about 30 to 35 single-family dwellings, similar to homes currently in Arbor Village. Kittleson & Associates studied the traffic generation from Phase 9, and concluded that the access points on Highway 47 would adequately serve the

traffic that might be generated by that property, even if developed with the most intense type of development that could occur under the current industrial zoning.

- The City acknowledged that the 2010 TSP showed that the need for the crossing was based on the UGB expansion area to the east. He distributed copies of six pages from the City's TSP to the Commission and had extra copies for anyone interested.
    - He emphasized that the TSP acknowledged the connection across the railroad would become a cut through; meaning traffic from the east would use Oak Way to reach Highway 47 and the rest of Banks, adding the map on Page 47 of the TSP described that option as a cut through route. Although classified a collector, Oak Way was not constructed as such. Oak Way has a lot of kids on the street, cars parked on the street, basketball hoops, etc. and the TSP did not intend Oak Way to be a road to get traffic from one area of the city to another.
    - He agreed with Staff that the TSP supported the idea that the east-west crossing was really a community wide need, not a requirement due to the impacts of Phase 9, which went back to the basic legal concept that local governments could not impose a condition on a property owner that did not result from the impacts of their development. The crossing was instead intended to benefit the community as a whole, and that was the fundamental legal problem with Condition 9.

- From a practical standpoint, West Hills and South Banks Joint Venture could not achieve Condition 9. As mentioned, the Applicant looked at three different ways that a secondary access might be provided in the southeast corner. Although crossing the railroad was really the only option that mattered, the Applicant also considered accesses to Highway 6 and Wilkesboro Road. Highway 6 could not be accessed due to the very high grade, and ODOT, which controlled access to the highway, would not allow another highway access point. Going under Highway 6 parallel to the railroad to access Wilkesboro Road involved clearance problems and he was uncertain such an access was intended by the City.
    - Crossing the railroad was not an option because applications to ODOT Rail must be done by the City or ODOT Rail. Generally, if the rail operator does not approve the crossing, neither would ODOT Rail. The Applicant believed the rail operator would object to a location for a crossing at the point, for a couple reasons. One, the railroad right-of-way was only 25-ft wide, which was not sufficient to actually construct a full width street. The Applicant could not force the railroad to sell or give them the right-of-way, and could not compel ODOT Rail to approve the permit.
    - Even without all those hurdles, a rail crossing would likely interfere with the operation of the rail operator, which could be avoided by an overcrossing. However, the TSP recognized overcrossings cost millions of dollars, and an enormous amount of land would be needed for the landings.
- The Applicant would have constructed the east-west crossing if a reasonable way had been found, and it would have been better than asking the City to remove Condition 9. His client was a home builder and did not want to spend time and money to fight a condition; however it just was not practical to construct the crossing.

- If the Planning Commission, or ultimately City Council, approved this application, the Applicant was committed to doing three things:
    - Dedicate and work with the neighbors to the east to dedicate sufficient easements

or right-of-way through the subdivision should an east-west crossing be built in the proposed location connecting to Oak Way. He did not believe all that traffic should be put onto a central local street as Sunset Ave was the better option.
    - Request that the property be rezoned from Industrial to Residential, which would also involve a change to the Comprehensive Plan Map designation. The City had not relied on the subject acreage to comply with Goal 9, so the rezoning would not put the City's compliance with Goal 9 at risk.
    - Limit the type of development to single-family homes on 30 to 35 single-family lots to respect the Clean Water Services (CWS) pond and wetlands. The Applicant sought to partner with the City and not be an adversary.
- In wanting to be a good neighbor, the Applicant also entered into an agreement with Van Dyke Family Land LLC and Quail Valley Golf Course to share the costs of hiring a consultant to study and determine the best option and location for the railroad crossing, and how to get ODOT Rail approval. Although all of Phase 9's traffic could go west, West Hills wanted to work with the property owners and show good faith in working to find a good solution.
- He emphasized the application was not about development, but focused on the condition of approval. The Applicant was prepared to discuss additional traffic, but testimony regarding development impacts was better to defer to another application.
- He reiterated that while the crossing was important to the city, it was not the responsibility of a single applicant, but was caused by the need to develop the property to the east, as noted in the TSP, and that was a community issue. The Applicant was willing to work with the City, but believed it was fair to remove the condition as the sole burden of Arbor Homes. He concluded that the Applicant was happy to respond to questions.

Chair Stout called for public testimony in favor, opposed and neutral to the application.

Sam Van Dyke, 40926 NW Verboort Rd, Forest Grove, OR, 97116, stated the Van Dyke family supported the application by West Hills to remove the condition on Phase 9. West Hills agreed to help fund a study to find the right solution for a railroad crossing that best benefits the City of Banks, as well as the entire east Banks UGB and its property owners.

Doug Hixon, Quail Valley Golf Course, 1824 22nd Ave, Forest Grove, OR, stated that Quail Valley supported the removal of Condition 9 and asked that the Planning Commission do so. They did not agree with the findings that only a $20 million above grade crossing was feasible, or that the mill was the best site for the crossing. While they could turn out to be true, the findings were not based on sufficient data that would convince Quail Valley. Therefore, Quail Valley, Arbor Homes and the Van Dykes were discussing a study to provide data to answer those questions. Quail Valley's position to remove Condition 9 was based on the following:

- If a $20 million overpass was the only answer, then the crossing would only be built using federal or state grant funding, in which case Arbor Homes should be allowed to build homes in Phase 9.
- If a lower cost crossing solution was the ultimate outcome of the study, then no harm would come from Arbor Homes starting to build homes as the crossing would be ultimately built by benefitting, interested parties.

Ken Smith, 12325 NW Groveshire Ave, Banks, stated he was in favor of the application because growth was a good thing and he hoped people would consider that.

Robert Whitcomb, 42811 NW Cedar Canyon Rd, Banks, said he was neutral to the application, noting that he wanted both sides to educate themselves on what happened in 1996. One lawsuit involved the terms to do the subdivision regarding that an east access was required for safety reasons and many other things. It was reviewed in great depth, and nothing had really changed since West Hills took the subdivision. He urged the Commission to pay attention to what was done in 1996, and do this correctly.

James Wakeman 41656 NW Buckshire St, Banks, testified in opposition, noting he lived right next to the only entrance and exit into the Phase 9 area. He understood Arbor Village was in business to build homes, but he was very concerned about the safety of the 30 to 40 kids, including his, who played and rode bikes on Buckshire St because they had no other place to go.

- At the original information meeting held a month or so ago, the Applicant said there would be a minimal amount of traffic, 300 trips per day, which he found a bit short. With parking on one side of the street, Buckshire St was not big enough to handle an additional 400 to 500 trips per day. Ashton Dr was the only way in or out of the area and drivers would come down Buckshire St because Oak Way was even smaller than Buckshire St. That was a lot of traffic to put down one street. He realized the Applicant had the right to develop the land, but he would have to worry about his child with an extra 300 or 400 cars traveling in front of his house each day.

Mike Lyda confirmed with Staff that the Commission was only considering the request to eliminate Condition 9, not a zone change or development submission.

Katie Murdock, 41989 NW Broadshire Ln, Banks, noted she had served on the Planning commission from 2001 to 2003, and City Council from 2003 to 2007. She lived on a cul-de-sac, so the development would not necessarily impact her.

- She read in the newspaper that the City of Banks had not necessarily acted in the best interest of Arbor Village when the provision was added. She noted this was not the Applicant's first rodeo; they were very smart. They signed the agreement; nobody twisted their arm. The Applicant did two-thirds of the work and sat on the final piece, and then came back and asked the City to remove the condition and the City did not.
- No one knew what was going to go back there; while currently zoned Industrial, it could become Residential. The zoning would impact the amount of traffic. If it was Industrial, there would be heavy trucks; if Residential, there could be small lots and townhomes; it was uncertain.
- One thing she learned serving on the Planning Commission and City Council was that anybody could tell you anything, so get everything in writing. Right now, she was hearing promises. She believed the Applicant had every right to build, but they were builders. She always believed her job was to look out for the City, so everything was in writing, thinking the Applicant would come back and request a change, and that was exactly what had happened several times.
- The Planning Commission and City Council did a lot of work on that subdivision and knew what they were signing and giving the Applicant, who also knew what they were getting, and now they were whining about it. She urged the Commission to get everything in writing.

Jodi Cain, 42023 NW Broadshire Ln, said she moved to Banks recently and had watched massive things coming through her neighborhood, from theft to traffic, that was just not sustainable, even without any development coming in so close. She has posted signs and screamed to try to get people to slow down and stop. The idea of 400, or even 40, more

cars coming down her road, which was a cul-de-sac, at such high speeds was unimaginable. Her neighbor walks with a cane and could barely get across the street with normal traffic. She could not bear to think what her 7-, 12- and 16-year old kids would experience on their bikes, scooters, etc., as well as the 30 to 40 kids mentioned a block over. The kids go up and down the middle of a residential road not intended to cater to any business or more houses. There was no space for the cars. The Applicant should be able to develop, but perhaps storage for the RVs, boats, etc. of the current residents should be considered to help keep the community safer; not more development that would bring in an influx of cars where there was no room already.

Bonita Francis, 42047 NW Broadshire Ln, Banks, stated she was one of the original owners and agreed an influx of cars were speeding down her road daily. The Applicant promised an RV Park in Arbor Village Phase 9 when they moved in and they would keep turning down housing in that area whenever possible. She said she was speaking on behalf of most people in her area.

Katherine C. Smith, 42026 NW Broadshire Ln, Banks, said she was also an original homeowner and that the whole neighborhood was very concerned about new homes. She certainly appreciated Mr. Van Dyke and his family wanting to build different homes, but the neighborhood was trying to say they could not have a lot of traffic coming through as there were too many kids and families in the housing area.

Chair Stout confirmed there was no further testimony and called for the Applicant's rebuttal.

Mr. Robinson distributed copies of the subdivision map to the Commission and staff, and asked if anyone had any questions of the Applicant's traffic consultant, Chris Brehmer.

R. Jacobs asked why the Applicant assumed traffic from Phase 9 would go out Ashton Dr to Oak Way. Mr. Robinson replied there were two ways in and out of Phase 9, Ashton Dr and the lot retained by West Hills to provide access. He guessed people would use Oak Way because it was a signalized access as it was difficult making a left turn from Trellis Way with a lot of traffic. Given the school's location, drivers might circulate up through the subdivision, but he believed most people would use either Buckshire St or Oak Way to get out of the subdivision and reach Oak Way. As mentioned, Kittleson & Associates studied the Oak Way and Highway 47 intersection, talked to ODOT, and confirmed that intersection would accommodate additional traffic from up to 35 single-family homes or from the most intense industrial development allowed. He noted people parking on fairly narrow streets actually reduced traffic speeds. He did not doubt that people were speeding, but that was a matter of enforcement. If the Applicant got to subdivision stage, they would be happy to talk with the neighbors and the City, as done in a number of communities, to see what could be done to make traffic better. Perhaps some educational measures could be done working with the City, police department, and neighbors, to reduce speeding.

L.McAllister asked if the Applicant would consider funding well placed speed bumps, but understood that was not one of the approval criteria using tonight. Mr. Robinson replied he did not want to say yes or no, because he wanted to talk with the neighbors, City and police department to determine what solution made sense; sometimes speed bumps worked, sometimes a combination of speed bumps and signage worked, or simply enforcement. Chris Brehmer and DKS & Associates, the City's consulting firm, might

have some ideas as well. He noted the Applicant would commit to meeting with any interested parties before submitting a subdivision and zoning map application to determine what was feasible.

R. Deeth said he was on the City Council when the initial application was approved and when reviewing the development of Arbor Village, they believed the area would be good for industrial due to all the boats and extra cars on the street, which cause problems for fire protection. He asked if the Applicant had considered storage for that piece of land, so some people could store things there to open up the streets for fire protection because a fire vehicle could not make it through some of the streets. Mr. Robinson noted the record showed no justification that the connection was needed because of fire safety. However, how people parked was another problem they could work on together. While RV storage was allowed in the industrial zone, his client was not an RV storage developer; they wanted to build homes. He believed West Hills probably regretted accepting the condition and wished they had appealed it in 1996, but they wanted to see what could be done and did not want to be offensive to the City. He understood a lot of history was involved leading up to tonight's request, and the property owner prior to West Hills did not get along with the City, but West Hills wanted to be a good neighbor and accepted the condition. Now, 18 years later, they were asking it to be removed. They had paid taxes on the land for 18 years, donated land for the park and wanted to build homes that they believed would improve the value of the neighborhood.

R. Deeth reiterated his concern about fire safety with parking occurring on both sides of the street, noting that Code addressed that and needed to be enforced. While there was a problem crossing the railroad, he still believed Phase 9 should be industrial because Banks did not have industrial.

Chair Stout noted the industrial discussion was not relevant to the conditions before the Commission, but could be discussed if the Applicant returned regarding the development in the future.

Mr. Robinson indicated lands shown in blue on a land use map of Banks that were designated Industrial. The City's Goal 9 inventory did not include the subject property for industrial development. He noted at the neighborhood meeting held in August, most people did not want the industrial development the property was zoned for, but the Applicant could not do anything with a condition they could not implement. After 18 years of paid taxes, it seemed only fair to figure out how to develop it, so they were asking that something be done. With regard to fire safety, he believed the Applicant could something work out with the City and fire department on parking. He noted Trellis and Oak Way provided two ways out of the development and fires services would come from that side as well so a railroad crossing would not help, unless someone was trapped.

Chris Brehmer, Kittleson & Associates, 610 SW Alder Suite 700, Portland, OR, 97205, addressed Mr. Jacobs question, stating that from a pure vehicle capacity perspective, the local streets were adequate to accommodate the anticipated magnitude of the vehicle trips discussed. The other aspect regarded the livability issues mentioned, like speeding, children using the roadway, the appropriate character of the roadway, etc. These issues could be considered as part of a future land use application and addressed in a way that served the community as part of a site plan application. He noted the east-west connection could very well funnel more traffic into the neighborhood, above and beyond the levels being discussed. It was important to keep pieces distinct.

Mr. Robinson made the following additional comments for his rebuttal. He emphasized that the Applicant does care about the safety of kids, noting it did developers no good if a child was injured or killed. Developers want traffic to work, not only because of the safety of children, but it made people angry. The Applicant could not solve everything, but were committed to working with neighbors and cities to find solutions. He added they often do install speed bumps.

- The subdivision showed 34 lots, which was about the maximum, that would generate about 340 average daily trips with 10% in the morning peak and 10% in the evening peak, and as Mr. Brehmer stated, the system could handle it. Page 47 of the TSP stated the railroad crossing was not just for trips from this subdivision, but also from the east side of Banks, so making that connection should not be this property owner's sole responsibility, regardless of where the crossing was ultimately located. The Applicant could not afford it, and it was not legally justified.
- He agreed with getting things in writing. If the Commission approved tonight's request and the Applicant returned for a zoning or land division application, he asked that the Commission impose conditions to limit the subdivision to a certain number of single-family lots and dwellings, with no townhomes or apartments, and that the Applicant facilitate the east-west connection/crossing, either through a right-of-way or easement, as shown in gray on the subdivision map, if that was determined as the location for the crossing.
- Theft and traffic were not synonymous with new development, and he did not believe the Applicant's future proposal would result in theft. The new residents would be the same kind of people currently living in Arbor Village, a place where people could raise their families, play in a park, and go to good schools. Subdivisions in Banks were so attractive because a family could get into a house for less than in Portland. People still want to live in homes, no matter what Metro said.
- The issue before the Commission tonight was fairly narrow. Was there a legal justification for Condition 9? The Staff report said there was not, nor was there one in 1996. Keeping the condition simply to prohibit development would not be right. The Applicant was asking the Commission to remove the condition so that as property owners, the Applicant would have a chance to develop their property. They could not fulfill Condition 9 as an individual property owner, but would work with neighbors to the east to find the right place for a crossing if the condition was removed. The Applicant would then return to request a zone change to Residential, propose the subdivision, and work with the neighbors and the City to develop a plan to address traffic. He asked that the Commission follow Staff's recommendation and approve the application.

R. Deeth spoke about the crossing at Sunset Avenue.

M. Lyda asked if selling the property as-is was an option for the Applicant. Mr. Robinson doubted anyone would buy it with Condition 9, but he did not believe the partnership was interested in selling. He noted that Former City Attorney Jim Lucas had indicated that the City was not interested in the property. He clarified Condition 9 was tied to Phase 9, the remaining phase to be developed of Arbor Village. He had talked with the ownership about using the two other local streets that stubbed to the railroad, but the Applicant believed the same at-grade railroad crossing issues would exist; and since they were closer to the lumber mill, there could be more problems with the operator. Condition 9 expressly referred to a crossing in the southeast corner where some right-of-way existed on the railroad and accessed a street on the east side. The center stubbed street did not

access a street. The northern most stubbed street accessed a road, but it did not connect to Aerts Rd. He believed neither stubbed street was as preferable as Sunset Ave or the current location.

R. Nelson stated that as information has unfolded, the condition seemed more about controlling growth than the east-west access. She asked what means the Commission had as far as restricting the number of houses or extent of development on the parcel if they found traffic was an issue. The condition seemed to be more about allowing more access in and out of the subdivision to reduce traffic on the neighborhood streets, not necessarily about access east to west. Mr. Robinson replied that when Condition 9 was added in 1996, he did not believe the Planning Commission or City Council at that time could have anticipated that connection serving urban development to the east. The connection would have provided a connection east for Arbor Village, but also a connection to the west, which he believed was a new consideration. He agreed the condition probably was about controlling development, which was not how the condition should be used. City Code provided the Commission the ability to ensure the Applicant was meeting their burden of proof to provide adequate street service when reviewing the Applicant's zone change and land division applications. The Applicant must comply with the Transportation Planning Rule (TPR), which requires a full traffic study to demonstrate that the vehicle trips from the 34 lots in the Peak Hour would not cause any intersections on Highway 47 to fail.

- He clarified that the TPR would be concerned mainly about the operation of the two intersections with the State highway, but the Code provisions regarding land division would be additionally concerned about the operation of the local streets. From his experience, local streets, even narrow streets with on-street parking, could typically accommodate 1,500 to 2,000 trips per day; above that required a collector or arterial classification.

R. Jacobs asked if the Applicant had asked the railroad about the crossing or if a letter denying access was received. Mr. Robinson replied nothing had been received in writing, but the Applicant talked with the railroad during the last application, in 2006 or 2008, and the railroad operator was not thrilled with another crossing. ODOT Rail's policy was to have fewer at-grade crossings, not more, but they would not say anything unless an application was made. He confirmed that he was aware of the new switching facilities recently constructed south of Wilkesboro Rd, which was paid for by Arbor Homes when they obtained a railroad crossing in Hillsboro. He knew the rail operator would drive a hard bargain.

L. McAllister reminded that the hearing only regarded the removal of Condition 9, and that the Commission must only consider the applicable approval criteria listed in the Staff report. As a resident of Arbor Village, she understood the concerns, but noted that no study about the rail crossing or overpass, etc. was done when the condition was made, so although well intended, it was not legally supported. The developer was not responsible for providing an east-west connection for the City of Banks because they were not the cause of the entire east to west impact. The Commission's job was not to restrict growth, but to allow it in a responsible fashion. The criteria, which Applicant had apparently met, must be followed. The Commission was not approving any application for building the subdivision, which would be submitted in the future and include a traffic study. The Applicant was willing to work with the City and had been waiting for 18 years. The commission could not make up new laws to achieve personal wants and desires.

Mr. Robinson stated the Applicant would waive their right to final written argument at the Planning Commission level. He thanked the Commission for their time and questions.

Chair Stout closed public testimony and confirmed there were no further comments by Staff. He closed the public hearing at 8:00 pm and called for Commissioner deliberation.

R. Deeth said he was probably convinced.

M. Lyda said he was torn because he knew there was a lot of history and heartburn about the entire development, including the existing issues with traffic, speeding, etc., which got into a whole bunch of different issues. He did not care about the connection to Highway 6 or Aerts Rd, as stated in Condition 9, but was concerned about east-west connectivity, which was important. He did not agree with just removing the condition and letting Arbor Village totally off the hook. Other options existed, such as having a one-way street out of Arbor Village. Right now, the issue was to consider removing the condition on this one parcel, but he believed West Hills should still participate in a crossing, whether on Parcel 9 or elsewhere. East-west connectivity affects everyone in Arbor Village and the future growth of the entire town. While the TSP supported a crossing at Sunset Ave, it would shift the burden from Arbor to the lumber mill and pellet mill, which would prompt other issues, like mixing cars with log trucks. He suggested adding a condition, if Condition 9 was removed.

L. McAllister reiterated that no legal criteria existed to force the developer to build the east-west connector.

City Attorney Kearns said that Mr. Lyda's comments were similar to what Staff considered when the application was submitted; however, the discussion and response would be different if the election turned out differently. The TSP discussed the need for an east-west connection, which was driven by growth and development on the east side. That land needed to be rezoned to develop and would have to go through the planning process to determine where and how to do the crossing. City Planner Goldstein confirmed that the TSP stated that the need for an east-west connection was driven from the future development on the east side of town in the UGB lands.

M. Lyda said he understood, adding that he represented the city as a whole, not West Hills, the Van Dykes, or Quail Valley. It did have an impact. He asked if there was a way to remove Condition 9, but keep West Hills' interest in the crossing, no matter its location, rather than losing the condition totally because the condition had been there since 1996. He questioned the validity of the agreement between West Hills, the Van Dykes and the golf course.

City Attorney Kearns noted the connection would involve a public process due to the expansion or alteration of City rights-of-way, but would be driven by the developers of the land just annexed into the City. Developers would not fix the problem in their own way; the City would have an interest and facilitate the process; however, there was no way the City could make that condition.

L. McAllister suggested including the Applicant's promise to supply the easement should Parcel 9 be determined as the appropriate location.

R. Deeth noted that all these issues were discussed when Condition 9 was added.

Everyone said the east west crossing was at Sunset Ave, but emotions were running high, and Condition 9 was added, but now more facts were available regarding the connection.

R. Nelson reiterated her concern about the street capacity within the neighborhood to sustain further development, which was also expressed during public comment. It was not just the east-west issue. People were not opposed to growth, but were concerned about the impact that growth would have given the existing streets' design, such as Oak Way not being constructed as a collector street. Perhaps Condition 9 was a roundabout way to condition that another exit was needed out of that particular neighborhood zone since throughput on existing streets was limited. She would be more comfortable if the impacts on the neighborhood were studied, and asked if the City or developer would conduct that study. City Planner Goldstein explained that the Code requires the developer to supply traffic impact analyses, which would address things like trip generation, how the traffic flows through the neighborhood, and impacts to various intersections. Tonight's hearing regarding Condition 9 was a narrow issue in terms of review.

R. Nelson agreed the condition could not be supported and should be removed, but asked if some assurance could be built in in writing to keep the livability factor in check and keep the Applicant committed to being part of the solution. City Attorney Kearns answered no. The expressed concerns related to future development, and the development impacts and many of the livability issues would be addressed during the development review process for Parcel 9. The anticipated Comprehensive Plan amendment and zone change would trigger the Goal 12 TPR, which involved a complicated, detailed transportation impact analysis, circulation model and demonstration that the transportation system was adequate for the traffic being generated, worst case scenario, under the zone being proposed. If not, mitigation would be required of the developer to make it adequate, such as requiring a stub to the property line as the Applicant proposed in the shadow plat they submitted. The City could not require participation in some east-west crossing farther north. The east-west connection was a citywide issue and would be addressed when lands to the east come in for development. Other developers would create the need for the actual connection and so those development reviews would address those specific connections.

L. McAllister clarified that Condition 10, which provided for connectivity, shared paths, and additional play areas, was removed in 1998, and noted that was an issue to discuss when the development application was reviewed.

Chair Stout believed the Commission only had one decision, to approve the application.

M. Lyda confirmed with City Attorney Kearns that Condition 9 was a legal condition.

R. Nelson noted that no denial had been received regarding the crossing; approval just seemed unlikely. Mr. Lyda added that was also for an at-grade crossing. A crossing was not totally prohibited; other options were available that involved higher costs and different issues. It was not accurate to say that a crossing would cost $20 million.

L. McAllister noted if Condition 9 was retained, traffic would go both ways, traveling off Highway 6 and through the development to get across town, rather than using the regular exit, which would not be good.

M. Lyda wanted to condition West Hills to require some participation, such as providing

land or right-of-way, to accommodate the east-west connection. Mr. Robinson stated he had the signed agreement in his car in which West Hills was committed to participating in at least two ways: by contributing up to $20,000 for the traffic study, and providing a right-of-way dedication or easement to ensure the availability of an at-grade crossing. The Applicant would accept those two items as conditions. He noted the Applicant still believed there would be no need for traffic to go east from Parcel 9, but West Hills wanted to be part of the solution and a good neighbor. He clarified that no rights-of-way existed across the railroad at the other two street stubs in Arbor Village, and indicated the partial right-of-way across the railroad adjacent to Parcel 9.

L. McAllister asked if the Applicant would consider reinserting Condition 10. Mr. Robinson suggested addressing that condition at the zoning and subdivision stage, noting the Applicant would figure out how to do those things.

M. Lyda noted the east-west connection was an issue, but the condition should not be punitive either. He supported the developers.

City Attorney Kearns noted five issues had been discussed, changing the zone to residential; limiting development to detached, single-family homes; allowing a maximum of 34 units; contributing $20,000 toward some kind of traffic study for the east-west connection; and stubbing public right-of-way to the property line of Parcel 9.

Unknown from the audience asked to make a comment, but City Attorney Kearns noted the record had been closed.

L. McAllister noted some of the items seemed more applicable to a development application and asked if reinserting Condition 10 could be considered. , which provided continuity as far as aesthetics. Staff advised that Condition 10 would be better addressed at development review stage.

The Commission and Staff discussed what items to include as a condition of tonight's approval and what to address at the development review level.

Ray Deeth moved to remove Condition 9 for Phase 9 and require the Applicant to change the zone to residential; limit development to single-family detached homes; allow a maximum of 34 units; contribute $20,000 toward some kind of traffic study for the east-west connection; and stub public right-of-way to the property line of Parcel 9. Lisa McAllister seconded the motion.

R. Nelson reviewed why the zone change was included in the conditions, stating the benefits were that the Applicant would have to pursue residential and more review would be required, because less review would be required if Parcel 9 remained industrial. City Attorney Kearns clarified that conditioning the zone change would commit the parcel to residential, in which RV storage was not an allowed use.

Ray Deeth amended his motion, and moved to remove Condition 9 for Phase 9 and require the Applicant to apply for a zone change to residential; limit development to only single-family detached homes with a maximum of 34 units; contribute $20,000 to a transportation study for the east-west connection; and stub a public right-of-way to the eastern property line of Parcel 9, and provide a land easement or dedicate the related public right-of-way. Lisa McAllister seconded the amendment to the motion, which passed unanimously.

City Attorney Kearns discouraged referencing the shadow plat map in the motion because many different configurations were possible for the right-of-way.

The Planning Commission's regularly scheduled meeting of December 30th was rescheduled to December 16th due to the holidays. Staff would return with findings for consideration and adoption by the Commission on December 16, 2014.

BUILDING PERMIT REVIEWS – INFORMATION ONLY (None)

VERBAL STAFF REPORTS AND UPDATES

City Manager Becker noted a joint work session would be held with City Council in January, which would include a short training on ethics given the new people on the commissions. She invited the Commissioners to consider adding topics to the agenda and provide that feedback on December 16th.

OTHER BUSINESS

ADJOURN: The Planning Commission meeting adjourned at 8:40 pm.

Submitted by: _____.
Stacey Goldstein, City Planner