

ORDINANCE NO. 698

AN ORDINANCE AMENDING THE ZONE MAP OF THE CITY OF CANBY (APPLICATION OF SHARON D. IMHOLT PROPERTY; R-2 (MEDIUM DENSITY RESIDENTIAL) TO C-2 (HIGHWAY COMMERCIAL) ZONE.

WHEREAS, an application was filed with the Canby City Recorder on January 18, 1981, by Sharon D. Imholt for the purpose of changing the classification of the zone in which the following described property is located from an R-2 (Medium Density Residential) to C-2 (Highway Commercial) Zone. The application fee was paid pursuant to Section 33 of Ordinance No. 659 (the City's Zoning Ordinance). Following is a description of the real property located in the City of Canby, County of Clackamas, State of Oregon, to-wit:

Tax Lot 5900, Section 33CC, T3S, R1E of the W. M.

WHEREAS, the Canby City Planning Commission before taking final action on said application and the proposed amendment scheduled and held a public hearing on the matter as required by the City's Zoning Ordinance, and the purpose of said hearing was duly and regularly given by notice, as required by Section 34 of the City's Zoning Ordinance No. 659. Furthermore, notice was published in the Canby Herald on February 4, 1981; and the newspaper's affidavit of publication is on file in the City Recorder's records and file of this zone change matter; and

WHEREAS, the Canby City Planning Commission at the time and place of the public hearing on such matter, i.e., February 11, 1981, heard and considered testimony regarding the proposed

zone change and upon conclusion of the public hearing by motion duly made, seconded and unanimously passed, recommended to the Canby City Council that the proposed zone change be approved; and

WHEREAS, the Canby City Council considered the matter and the recommendation of the Planning Commission at a public meeting/hearing which was duly and legally called and held on March 18, 1981, after proper notice thereof was first given in the manner and for the time required in Section 34 of said Zoning Ordinance; and said notice of said hearing before the Canby City Council was published in the Canby Herald on March 11, 1981. Proofs of said notice are on file in the office of the Canby City Recorder in the Canby City Hall and are a part of the records and file of this matter; and

WHEREAS, proponents and opponents were given an opportunity to be heard regarding the proposed zone change at said meeting/hearing but there were no opponents, no objections and no remonstrances. After due deliberation and consideration of the report and recommendations of the City Planning Commission as presented by the City Planner, the Canby City Council by motion duly made, seconded and unanimously carried, accepted the FINDINGS of the Planning Commission at its meeting on February 11, 1981, as the FINDINGS of the City Council, and determined that the requested zone change should be approved for the following reasons:

- 1) It conforms with the adopted City Plan.
- 2) There is a public need.
- 3) The change will serve the public need better than a similar change for other available property.
- 4) The health, safety and general welfare of the residents of the area will be preserved and protected.
- 5) There is compliance with the Statewide Planning Goals.

The Canby City Council made the aforesaid findings based upon the following facts:

- A) Conformance with the adopted City Plan and the plans of the other agencies:

Both the interim general plan and the proposed comprehensive plan had designated this property for general commercial development. No conflicts with either the adopted or proposed plan is expected to result.

- B) Public need for the zone change:

Public need for the proposed change is supported by the location of the property. The adjoining property to the east is zoned C-2 (Highway Commercial) and land to the northeast is zoned C-1 (General Commercial). This is a logical extension of needed land for commercial development.

- C) Whether the change will serve the public need better than a similar change for other available property:

The zone change will allow a logical extension of commercial development. There are no other comparable properties in the area which might be more appropriately rezoned instead of this site.

- D) Preservation and protection of the health, safety, and general welfare of the residents of the area:

The commercial zoning will not adversely affect residential neighborhoods. The property is already adjacent to previously zoned commercial areas. The proposed rezoning will not create any traffic problem.

Although the waterline size should be larger and hydrants better located, they should pose no threat to health and safety if special safeguards are taken. For example, the Fire Marshall may impose special conditions in terms of extinguisher locations and the applicant has expressed a willingness to waive any right to remonstrate against future waterline projects.

E) Compliance with the Statewide Planning Goals:

Most of the Statewide Planning Goals are not applicable to the proposed change of zoning from R-2 to C-2. Goals 1 and 2 are addressed through standard City processes. Goals 3 through 8 and 14 are not applicable. Goal 9 is met in a positive manner because a changing use from residential to commercial will improve the economy of the area, diversifies a variety, type and scale of commercial activities and provides jobs for the citizens of the City. There is no violation of Goal 10 since property is shown to be commercial on both the interim general plan and the proposed comprehensive plan. The character of the neighborhood has undergone a change from residential to commercial. Goal 11 is met because there appears to be satisfactory public facilities and services available to serve the site. Goals 12 and 13, transportation and energy conservation are met because it is within walking distance of the Tri-Met bus stop and adjacent to other commercial developments within the City. A finding of "compliance with the Statewide Planning Goals" is both reasonable and appropriate for this zone change.

Now therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: The zone boundaries of the C-2 (Highway Commercial) district shall now include the hereinabove described property and upon the passage of this ordinance said property shall thereupon be classified as C-2 (Highway Commercial) and not as R-2 (Medium Density Residential) zone.

Section 2: The zone change authorized by Section 1 of this ordinance is subject to the following conditions which

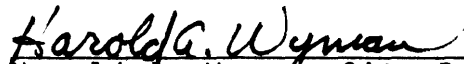
the applicant, Sharon D. Imholt and for her heirs, successors and assigns has consented to:

- 1) The applicant must prepare and record a waiver of the right to remonstrate against future public improvement projects benefiting the property. The waiver is to meet the requirements of the City Attorney.
- 2) Full sidewalk improvements are to be made prior to the change from residential to commercial use.


Section 3: The Mayor, attested by the City Recorder is hereby authorized and directed to made the appropriate changes on the City's zoning map in accordance with the dictates of Section 1 of this Ordinance.

Submitted to the Council and read the first time at a regular meeting of the council on the 1st day of April, 1981; ordered posted for a period of two full calendar weeks as provided by the City Charter and scheduled for second reading at a meeting of the City Council on the 6th day of May, 1981, commencing at the hour of 7:30 o'clock P.M. at the Council's regular meeting place in the Council Chambers next to the Canby City Hall.

This ordinance came up for second and final reading at a regular meeting of the council on May 6, 1981, as advertised. It was read by title only and during the course of discussion it developed that the applicant had not prepared and recorded a waiver of the right to remonstrate against future public improvement projects benefiting the property and which was condition number 1 of Section 2 above. On motion duly made, seconded and unanimously adopted, further action on the ordinance was tabled pending the applicants compliance with the said condition.


Harold A. Wyma, City Recorder

This ordinance was removed from the table, read again by title only and ENACTED by the Canby City Council at a regular meeting thereof on the 5th day of August, 1981, by the following vote: YEAS 6 NAYS 0



Robert A. Swayze, Mayor

ATTEST:



Harold A. Wyman, City Recorder

CONSENT TO LOCAL IMPROVEMENTS
AND WAIVER OF REMONSTRANCE

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I hereby consent to the future improvements of streets, sidewalk or utility improvements and the formation of a Local Improvement District by the Common Council in and for the City of Canby, County of Clackamas, State of Oregon, for the purpose of assessing the costs of such improvement project to the benefited properties, including any part of my property which may be lawfully included in the boundaries of such district, pursuant to applicable City ordinances or other laws.

Furthermore, and for the aforesaid consideration, I hereby expressly waive any and all rights which I may have to remonstrate against the formation of such improvement district, but I expressly reserve the right to protest or otherwise object to the costs of such project which are determined to be assessable to my property and/or the apportionment of such costs among the benefited properties.

This agreement is a covenant which shall run with my land described as:

Lot 5 and Lot 6, Block 5, CANBY ADDITION, County of Clackamas, State of Oregon;

and shall be binding on the undersigned, my heirs, successors, personal representatives and assigns.

IN WITNESS WHEREOF, I have caused these presents to be executed this 29th day of July, 1981.

Sharon D. Imholt
Sharon D. Imholt

STATE OF OREGON)
)ss.
County of Clackamas)

July 29, 1981.

The foregoing instrument was acknowledged before me this day and year as last appears hereinabove by Sharon D. Imholt.

Virginia J. Shirley
Notary Public for Oregon
My Commission Expires: June 5, 1983

APPROVED AS TO FORM by the Canby City Council for recording this 5th day of August, 1981.

Harold A. Wyman
Harold A. Wyman, City Recorder

Consent and Waiver