



AGENDA

CANBY CITY COUNCIL MEETING

January 3, 2018

7:30 PM

Council Chambers

222 NE 2nd Avenue, 1st Floor

Mayor Brian Hodson

Council President Tim Dale

Councilor Tracie Heidt

Councilor Traci Hensley

Councilor Greg Parker

Councilor Tyler Smith

Councilor Sarah Spoon

CITY COUNCIL MEETING – 7:30 PM

1. CALL TO ORDER

- A. Invocation
- B. Pledge of Allegiance

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

(This is an opportunity for audience members to address the City Council on items not on the agenda. Each person will be given 3 minutes to speak. You are first required to fill out a testimony/comment card prior to speaking and hand it to the City Recorder. These forms are available by the sign-in podium. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. For Agenda items, please fill out a testimony/comment card and give to the City Recorder noting which item you wish to speak on.)

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may be discussed if it is pulled from the consent agenda to New Business.)

- A. Approval of Minutes of the December 6, 2017 City Council Regular Meeting

7. PUBLIC HEARING

- A. TA 17-01 - Changing Name of the Historic Review Board to the Heritage and Landmark Commission and Adding a Non-Voting Membership Position of a Canby High School Student Pg. 22

8. RESOLUTIONS & ORDINANCES

- A. Res. 1279, Approving a Lease and Sale Agreement with T5 Equities LLC for the Former Library Building Located at 292 N Holly Street Pg. 1
- B. Ord. 1469, Amending Canby Municipal Code Chapter 16.110 By Changing the Name of the Historic Review Board to the Heritage and Landmark Commission and Adding a Non-Voting Membership Position of a Canby High School Student Pg. 27

9. NEW BUSINESS

- A. Findings, Conclusion & Final Order APP 17-01, Appeal of Planning Commission's Decision on ZC 17-02/CUP 17-05/ SUB 17-04 S Ivy Park Rezone, Conditional Use Permit and Subdivision at 533, 553 and 583 S Ivy Street Pg. 47

10. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

11. CITIZEN INPUT

12. ACTION REVIEW

13. EXECUTIVE SESSION: ORS 192.660(2)(h) Litigation

14. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer at 503.266.0733. A copy of this Agenda can be found on the City's web page at www.canbyoregon.gov. City Council and Planning Commission Meetings are broadcast live and can be viewed on CTV Channel 5. For a schedule of the playback times, please call 503.263.6287.

MEMORANDUM



TO: *Honorable Mayor Hodson and City Council*
FROM: *Renate Mengelberg, Economic Development Director*
THROUGH: *Rick Robinson, City Administrator*
DATE: *January 3, 2018*

Issue: Lease and purchase agreement with T5 Equities for the former City Library property at 292 N. Holly Street

Synopsis:

The 10,961 square foot former City Library has been vacant since October, 2016. The City Council wishes to return the property to the tax rolls, attract new businesses to downtown, and revitalize the building with new uses that generate jobs, investment and attract shoppers and visitors.

After extensive outreach to attract buyers or tenants, the council reviewed three proposals and selected T5 Equities at their October 4, 2017 Executive Session. On December 6, 2017 the City Council held a public hearing and adopted a resolution to declare the property not needed for public use. Also, the T5 Equities leaders and City staff negotiated acceptable terms to lease and then purchase the building.

Agreement highlights include:

- T-5 Equities will invest at least \$500,000 in extensive interior and exterior renovations and will purchase the building for \$1,050,000 within 4 years.
- They will convert the east side of the building into creative offices, meeting areas and workspaces and shared office services. The west side of the building will offer market stalls for small retail or restaurant businesses. Renovations could begin this spring.
- The lease will be \$1 a year for 2 years, and increase to \$12 per square foot or \$131,760 a year for an additional 2 years. This arrangement allows reasonable time for the developer to complete extensive renovations and attract tenants.
- The City will contribute up to \$30,000 to cover potential expenses such as roof or foundation repairs, hazardous materials abatement, seismic upgrades, or systems development charges.

A detailed agreement between T-5 Equities and the City is attached for council review.

Recommendation: Adopt Resolution 1279 which approves the contract with T5 Equities, and direct the City Administrator to sign it and facilitate the transfer of the property to T5 Equities.

Recommended Motion: *I move to adopt Resolution 1279, A RESOLUTION OF THE CANBY CITY COUNCIL APPROVING A LEASE AND SALE AGREEMENT WITH T5 EQUITIES LLC FOR THE FORMER LIBRARY BUILDING LOCATED AT 292 N HOLLY STREET.*

Attachments

- Resolution 1279
- Lease and Purchase Agreement

RESOLUTION NO. 1279

A RESOLUTION OF THE CANBY CITY COUNCIL APPROVING A LEASE AND SALE AGREEMENT WITH T5 EQUITIES LLC FOR THE FORMER LIBRARY BUILDING LOCATED AT 292 N HOLLY STREET.

WHEREAS, the City of Canby owns the vacant 10,961 square foot former library building and wants it back on the tax rolls, attracting new businesses, shoppers and visitors downtown; and

WHEREAS, on December 6, 2017, the Canby City Council held a public hearing and declared this real property, described as 292 N. Holly, Tax Map 3S-1E-33CA, Tax Lot Number 7800, no longer needed for public use and authorized the transfer of the City's fee simple interest in the real property; and

WHEREAS, City Council wishes to enter into a contract with the development firm T-5 Equities to lease, retrofit and ultimately purchase the building from the City within four years for \$1,050,000; and

WHEREAS, the developer commits to investing at least \$500,000 in extensive renovations to the interior and exterior of the building to create creative office space and retail/restaurant space.

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby, as follows:

1. The City approves the lease and sale agreement with T5 Equities, attached hereto as Exhibit "A", and authorizes the City Administrator to sign it on behalf of the City and take any and all actions necessary to facilitate the transfer from the city to this private developer.

This resolution will take effect on January 3, 2018.

ADOPTED this 3rd day of January 2018 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

**CITY OF CANBY, OREGON
AND
T5 EQUITIES LLC**

COMMERCIAL LEASE

This Lease is made and entered into on January ____, 2018 (the "Commencement Date"), by and between the City of Canby, an Oregon Municipal Corporation ("Landlord"), and T5 Equities LLC, an Oregon Limited Liability Company ("Tenant").

This Lease is made pursuant to ORS 271.310, which authorizes units of local government to enter into lease agreements for real property not needed for public use, or when the public interest may be furthered by entering into such a lease agreement.

RECITALS

A. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the real property and improvements described and depicted in the attached Exhibit A, consisting of an approximately 10,961 square foot commercial building (the "Building") and 0.26 acre lot (the "Lot") located at 292 North Holly Street, Canby, Oregon (collectively, the "Premises"), together with any and all rights, privileges, easements, access privileges, and appurtenances necessary to design, construct and sublease approximately eight (8) to ten (10) office spaces with shared common areas and additional retail units along the Building's street frontages restaurants, pubs and other compatible retail business endeavors.

B. Tenant intends to undertake improvements to the Premises and related site improvements as generally depicted on the conceptual site plan attached hereto as Exhibit B (collectively, the "Tenant Improvements"). The Tenant Improvements and any future alterations, additions, replacements, or modifications to the Premises during the Initial Term (defined in Section 2.1) or any subsequent Extended Term (defined in Section 2.2) of this Lease are collectively referred to in this Lease as the "Improvements."

C. The Parties enter into this Lease under assurances that Tenant commits to invest no less than \$500,000.00 of its own in funds in the development of the Project during the Initial Term, including costs related to design, planning, permitting, demolition, contractors, materials and marketing.

D. The Parties enter into this Lease with assurances that Tenant has the right to purchases the Premises at any time during the term of this Lease, including both the twenty-four (24) month Initial Term and either applicable twelve (12) month Extended Term, unless this Lease is first terminated by either Party. The Parties agree and acknowledge that Tenant has reasonably relied upon such assurances.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

ARTICLE 1

Premises

Premises Lease. Landlord does hereby lease to Tenant, and Tenant does hereby take and lease from Landlord, the Premises for the term and on the rents, conditions, and provisions herein.

ARTICLE 2

Lease Term

2.1 Commencement Date and Initial Term.

2.1.1 Commencement Date. The Commencement Date shall be the date this Lease is signed by both Parties.

2.1.2. Initial Term. The initial term of this Lease (the “Initial Term”) shall begin twenty four (24) hours after the Commencement Date. The Initial Term shall end twenty four (24) months after the Commencement Date.

2.2 Extended Terms.

2.2.1. Automatic Extension of Initial Term into the First Extended Term. This Lease shall automatically renew at the end of the twenty-four month Initial Term for an additional term of one (1) year on the terms and conditions as provided herein (the “First Extended Term”), unless Tenant provides written notice to Landlord of its intent not to renew at least six (6) months prior to the expiration of the Initial Term.

2.2.2. Automatic Extension of First Extended Term into Second Extended Term. This Lease shall automatically renew at the end of the First Initial Term for a second additional term of one (1) year on the terms and conditions as provided herein (the “Second Extended Term”), unless Tenant provides written notice to Landlord of its intent not to renew at least six (6) months prior to the expiration of the First Extended Period.

2.3 Early Termination. Notwithstanding anything in this Lease to the contrary, Tenant has the right to terminate this Lease within the time periods and for the reasons set forth below:

2.3.1 Inspection and Approval Period. From the Commencement Date through the ninetieth (90th) day after the Commencement Date (the “Inspection and Approval Period”), Tenant, at its sole cost and expense, may: (i) obtain surveys, economic and physical feasibility studies, environmental assessments and any other appraisals, inspections, tests, studies, surveys or assurances to show to the satisfaction of Tenant that the Premises is usable by Tenant for the purpose of constructing and operating the Tenant Improvements, including but not limited to whether the Tenant Improvements can be constructed and operated at a cost and expense acceptable to Tenant; and (ii) obtain the valid and irrevocable grant of all necessary plan

approvals, building permits, licenses, variances, and other approvals necessary for Tenant to construct and operate the Tenant Improvements (collectively, the “Approvals”). Landlord agrees to fully cooperate with Tenant’s efforts to submit for and to obtain the Approvals. If Tenant is not satisfied with any of the items or matters set forth under clause (i) above, Tenant may terminate this Lease during the Inspection and Approval Period by providing written notice to Landlord. If requested by Landlord, Tenant shall provide Landlord with all surveys, studies, analyses, reports, studies and all other documents generated pursuant to clause (i), above.

2.3.2 Title Review Period. From the Commencement Date through the thirtieth (30th) day after the Commencement Date (the “Title Review Period”), Tenant, at its sole cost and expense, may obtain (i) a preliminary title report covering the Premises and copies of all special exceptions referenced therein (collectively, the “Title Report”) from a title insurance company selected by Tenant (the “Title Company”) and (ii) a survey of the Premises (the “Survey”), if desired by Tenant, and shall notify Landlord in writing of any objectionable matters or defects appearing in the Title Report or on the Survey which adversely affects the use of the Premises for the Project (individually and collectively, the “Objectionable Matters”). Tenant shall share a copy of the Title Report and Survey with Landlord. If one or more of the Objectionable Matters cannot or will not be cured by Landlord within twenty (20) days of such notice, then Tenant has the right to terminate this Lease during the Title Review Period by providing written notice thereof to Landlord.

2.3.3 Leasehold Title Insurance Policy. Within twenty (20) days after expiration or waiver of the Title Review Period or the Inspection and Approval Period, whichever is later (the “Title Insurance Policy Period”), Landlord shall cause the Title Company to issue to Tenant, at Tenant’s cost and expense, a leasehold owner’s policy of title insurance pursuant to the Title Report with an insured amount determined by Tenant, containing no exceptions other than the standard preprinted exceptions and any other exceptions agreed to and accepted by Tenant (“Non-objectionable Matters”), and with those endorsements determined by Tenant (the “Title Policy”). If the Title Company does not issue the Title Policy to Tenant by the expiration of the Title Insurance Policy Period through no fault of Tenant, Tenant has the right to: (a) waive the requirement for a Title Policy; (b) seek title insurance from another title insurance company; or to (c) terminate this Lease by providing written notice to Landlord.

2.4 Mutual Agreement to Terminate for Public Interest. This Lease may be terminated by the mutual written consent of both Parties for any reason deemed in the public interest. Upon reaching such mutual written consent, Tenant shall provide fourteen (14) days’ written notice to Landlord of Tenant’s intent to vacate the Premises.

ARTICLE 3

Rent

3.1 Rent During Initial Period. The annual rent during the Initial Term shall be One and no/100 Dollars (\$1.00).

3.1.1 Payment of Rent During Initial Term. Rent is due and payable in one lump sum for the Initial Term, the receipt of which is hereby acknowledged.

3.2 Rent During Extended Terms. Unless this Lease is not extended beyond the twenty-four (24) month Initial Term as provided above, annual rent for both the First Extended Term and the Second Extended Term, as applicable, shall increase to \$131,760.00 per year.

3.2.1 Payment of Rent During Extended Terms. Rent during both the First Extended Term and Second Extended Term, as applicable, is payable in advance in monthly payments of \$10,980.00, commencing on the first day of the First Extended Term and before the first day of each month thereafter throughout the remainder of this Lease, without notice or demand and without abatement, deduction or setoff except as otherwise provided in this Lease. Rent and all other amounts payable to Landlord under the terms of this Lease must be delivered to Landlord at the following address: City of Canby, PO Box 930, Canby, Oregon 97013, or at another place that Landlord may designate by notice to Tenant, in lawful money of the United States.

ARTICLE 4

Use and Compliance with Legal Requirements

4.1 Permitted Use. Tenant will use and, once constructed and completed, shall occupy the Premises during the Construction Period, Initial Term and any Extended Terms, as applicable, in compliance with all applicable local, state and federal laws.

4.2 No Waste. Tenant will not cause or permit any waste, damage, disfigurement, or injury to the Premises or the Improvements, but Tenant will have the right to demolish and remove any and all the Improvements on the Premises pursuant to and in accordance with the terms of Article 5, below.

ARTICLE 5

Improvements

5.1 Tenant Commitment to Invest in Improvements. Tenant agrees to invest no less than \$500,000.00 of its own in funds in the development of the Tenant Improvements during the Initial Term, including costs related to design, planning, permitting, demolition, contractors, materials and marketing. All such investments in the Premises shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld. Landlord will notify Tenant of any disapproval within fifteen (15) days of receiving any submission for approval. Landlord's failure to disapprove any proposed investment within this fifteen (15) day period will constitute approval of the proposed investment. Tenant shall develop the building into storefront retail spaces and professional/creative office spaces, which will be built to the high-end quality and finish level of other Tenant projects. Landlord agrees to provide assistance to Tenant in marketing the office space and retail spaces by: listing the property on Landlord's "Available Properties" website; partnering with Tenant to host a Grand Opening ceremony; providing market and promotional materials that share the benefits of relocation to Canby; providing assistance to Tenant in Canby Main Street promotional activities; and consulting with and assisting Tenant in Tenant's pursuit of redevelopment, rehabilitation and/or adaptive re-use grant funds from organizations and agencies outside of the City of Canby.

5.2. Records Retention. Tenant shall retain and provide to Landlord invoices, receipts and other such documentation sufficient to support the level of financial investment in the Premises claimed by Tenant as provided in this Article 5. The cost of regular upkeep, maintenance and management of the Premises shall not be attributable to Tenant's \$500,000.00 commitment to invest in the Improvements.

5.3 Landlord Access to Improvements Records. Tenant shall establish and maintain a reasonable accounting system that enables Landlord to readily identify Tenant assets, expenses, investment in the Premises and use of funds. Landlord and its authorized representatives shall, upon fourteen (14) days prior written notice to Tenant and twice per calendar year, have the right to examine and make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Lease kept by or under the control of Tenant, including, but not limited to those kept by Tenant's employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Landlord shall maintain the confidentiality of and shall not disclose any such information Tenant is required to provide under in this section except to the extent required by law.

5.4 Length of Improvements Records Retention. Tenant shall, at all times during the term of this Lease and for a period of ten (10) years after the expiration or earlier termination of this Lease, maintain such records, together with such supporting or underlying documents and materials. Tenant shall at any time requested by Landlord, whether during or after the expiration or earlier termination of this Lease, and at Tenant's own expense, make such records available for inspection and audit (including copies and extracts of records as required) by Landlord. Such records shall be made available to Landlord during the entirety of this period at normal business hours at Tenant's principal place of business and subject to a fourteen (14) day written notice.

5.5 Records Access. Tenant shall ensure that Landlord has the same access rights with Tenant's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between Tenant and any subcontractors by Tenant to the extent that those subcontracts or agreements relate to fulfillment of any of Tenant's obligations under the terms of this Lease.

5.6 Construction, Modification, and Demolition of Improvements. Tenant has the right, at any time during the Initial Term and any Extended Terms, as applicable, at its sole cost and expense (including all building permit fees, system development charges and any and all other associated construction costs), and after consulting with Landlord and receiving Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, to construct, modify, demolish and rebuild Improvements on the Premises, and as follows:

- (a) If Tenant desires to demolish any portion of the Building, Tenant shall obtain

Landlord's written pre-approval for such demolition, which shall not be unreasonably withheld. Tenant shall replace the demolished portion thereof with improvements having a value at least as great as the portion demolished, and shall provide written documentation establishing, satisfactory to Landlord in Landlord's sole discretion, the equivalent or increased value of the new improvements; and

(b) Upon completion of any improvements for which the services of an architect or engineer were used, Tenant will provide Landlord with as-built plans for the completed work.

For any approval required by Landlord under this section, Landlord will notify Tenant of any disapproval within fifteen (15) days of receiving any submission for approval. Landlord's failure to disapprove any submission hereunder within this fifteen (15) day period will constitute approval of the proposed investment.

5.7 Title to Improvements. Title to all Improvements constructed by Tenant will be and will remain in Landlord during the Initial Term and any applicable Extended Terms of this Lease. Such Improvements may be demolished, changed, altered, or removed by Tenant as provided in Section 5.5 above. As further provided in Section 21, upon Tenant's purchase of the Premises, title and all ownership of the Improvements shall pass to, vest in, and belong to Tenant without further action on the part of either party and without any additional cost or charge to Landlord.

5.8 Construction of Improvements. Tenant agrees to notify Landlord in writing of Tenant's intention to commence construction of an Improvement at least thirty (30) days before commencement of any such work. Landlord agrees to cooperate with Tenant in all respects in connection with Tenant's construction of any Improvements.

ARTICLE 6

Taxes and Utilities

6.1 Payment of Taxes. Tenant shall be solely responsible for payment of any applicable local property taxes during the term of this Lease. If Tenant exercises its right to purchase the Premises under Article 21 of this Lease, below, no deed or bill of sale shall be executed by Landlord until all applicable local property taxes and related charges are fully paid by Tenant.

6.2 Utilities and Services. Tenant will pay, directly to the appropriate supplier, for all water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, and all other utilities and services used by Tenant on the Premises as they become due, from and after the Commencement Date.

ARTICLE 7

Insurance

7.1 Property Insurance. Tenant, at its sole cost and expense, will keep the Premises

and all Improvements insured against loss or damage by property insurance written on the standard Insurance Services Office (ISO) “special-form” policy, or its nearest equivalent in use at the time. Tenant will obtain endorsements to its special-form policy to maintain the following types of coverage to the extent required by Landlord and available at commercially reasonable rates: (a) flood and (b) earthquake. The property insurance must cover the full replacement value of the Improvements, less a deductible not to exceed \$2,500.00.

7.2 Liability Insurance. Tenant, at its sole cost and expense, will maintain commercial general liability insurance covering the Premises, the Improvements, and the conduct or operation of its business with limits of loss of at least \$2 million combined single-limit coverage for personal injury and property damage. The insurance policy must be primary to any insurance available to Landlord, and must name Landlord as an additional insured. Tenant’s insurance carriers must be reputable insurance companies reasonably acceptable to Landlord, licensed to do business in the State of Oregon, and have a minimum A-VIII rating as Tenant will provide Landlord with certificates of insurance concurrently with the execution of this Lease and upon request.

ARTICLE 8

Release and Indemnification

8.1 Release. Tenant is and will be in exclusive control of the Premises and the Improvements, and Landlord will not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements, or any injury or damage to the Premises or the Improvements or to any property, whether belonging to Tenant or to any other person, caused by any fire, breakage, leakage, defect, or bad condition on any part of the Premises or the Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or because of the use, misuse, or abuse of all or any of the Premises, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Improvements, including defects in construction of the Improvements, latent or otherwise. Tenant hereby releases Landlord from and against any and all liabilities resulting from any such injuries and damages. Notwithstanding the immediately preceding, Landlord acknowledges that it remains responsible for liability to the extent that the liability arises from Landlord’s own gross negligence or willful misconduct.

8.2 Indemnification. Except to the extent caused by the gross negligence or willful misconduct of Landlord, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all liabilities, obligations, damages, fines, penalties, claims, costs, charges, and expenses (including, without limitation, reasonable attorney fees) that may be imposed on or incurred by or asserted against Landlord by reason of any of the following occurrences during the Initial Term and any applicable Extended Terms:

(a) Any work, act or omission done in, on, or about all or any part of the Premises or the Improvements by Tenant or any party other than Landlord;

(b) Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements or any adjacent alley, sidewalk, curb, vault, passageway, or space;

(c) Any negligence on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, licensees, or invitees;

(d) Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements.

ARTICLE 9

Repairs and Maintenance

9.1 Tenant Obligation. Tenant, at its sole expense, must maintain, repair and replace the Premises and the Improvements as and when needed so as to keep them in a clean and attractive condition, and in good condition and repair, throughout the Initial Term and all applicable Extended Terms. Tenant's obligations extend to both structural and nonstructural items and to all maintenance, repair, landscaping and replacement work.

9.2 Landlord Obligation. Landlord is not required to furnish to Tenant, the Premises, or the Improvements: any facilities, utilities, or services. Landlord is not required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs to any portion of the Premises or the Improvements.

9.3 Limited Assignment of Rights. Landlord assigns to Tenant, any rights that Landlord may have against any parties causing damage to the Improvements on the Premises to sue for and recover amounts expended by Tenant as a result of the damage.

ARTICLE 10

Signage

Tenant is permitted to install signage on the Premises and the Improvements as long as Tenant complies with all applicable legal requirements.

ARTICLE 11

Damage and Destruction

If any Improvements on the Premises are damaged or destroyed by fire or other casualty during the Initial Term or any applicable Extended Term of this Lease, Tenant must (a) promptly restore the damaged Improvements to a comparable condition existing before the casualty, leaving the Premises in a clean, attractive, and safe condition.

ARTICLE 12

Assignment and Subletting

Tenant must not sell, assign, or transfer this Lease or any interest therein (each a "Transfer") without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. Landlord's consent to a Transfer will in no event release Tenant, any assignee, or any guarantor from their respective liabilities or obligations under this Lease. Notwithstanding the foregoing, Landlord acknowledges that Tenant is leasing the Premises for the purposes of subleasing and Landlord consents to the same; provided, however, that Tenant shall not allow any sublease which is in violation of the Lease or any applicable law or ordinance. Upon written request by Landlord, Tenant will promptly deliver to Landlord complete copies of any and all subleases. Any such subleases shall be consistent with the terms of this Lease, and contain a provision subjecting the subtenant(s) to the terms of this Lease. Landlord shall maintain the confidentiality of and shall not disclose any of the information of any sub leases except to the extent required by law.

ARTICLE 13

Landlord Mortgages and Subordination

Landlord may not sell, transfer, assign, or encumber its interest in the Premises or the Improvements without the prior written consent of Tenant, which consent shall not be unreasonably withheld. Tenant's consent will in no event release Landlord or any guarantor or successor in interest from their respective liabilities or obligations under this Lease. Upon written request by Tenant, Landlord will promptly deliver to Tenant complete copies of any and all encumbrance documents.

ARTICLE 14

Default

The occurrence of any one or more of the following constitutes an event of default under this Lease:

(a) Failure by Tenant to obtain and maintain any insurance, or provide evidence of insurance, as required by the terms of this Lease, and such failure continues and is not remedied within ten (10) days after written notice of such default thereof is given to Tenant;

(b) Failure by Tenant, whether by action or inaction, to comply with any material term or condition or fulfill any material obligation under this Lease, and such failure continues and is not remedied within thirty (30) days after written notice thereof is given to Tenant; provided, however, that if the failure is of such a nature that Landlord concludes it cannot be cured within said 30-day period, then this provision is satisfied if Tenant begins the cure within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to completion.

ARTICLE 15

Remedies

15.1 Remedies. Upon the occurrence of default and after the notice process provided in Article 14 above, Landlord may remedy the default and demand reimbursement from Tenant.

15.2 Landlord's Self-Help Right. If Tenant at any time (a) fails to make any payment required under this Lease, or (b) fails to perform any other obligation on its part to be made or performed under this Lease, then after the applicable written notice to Tenant and after Tenant's opportunity to cure period as further described in Section 14 (b), (or without such notice and opportunity to cure in the event of an emergency) Landlord may, but is under no obligation to, (i) pay payment required of Tenant under the terms of this Lease, (ii) perform any other act on Tenant's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, or iii) terminate this Lease and sue Tenant for any damages incurred by Landlord. In the event Landlord terminates this Lease, Landlord shall have the right to notify and require all subtenants in the Premises to pay Landlord under any Leases. All payments so made by Landlord in connection with the performance of any such act will constitute additional rent payable by Tenant under this Lease and must be paid to Landlord on demand.

15.3 No Waiver. No failure by the parties to insist on the strict performance of any of the terms of this Lease or to exercise any right or remedy, and no acceptance of full or partial Rent during any such breach constitutes a waiver.

ARTICLE 16

Sale by Landlord and Limitation of Landlord's Liability

If, after obtaining the required Tenant consent under Article 13, above, the Landlord under this Lease, or any successor owner of the Premises, sells, transfers, assigns, or conveys the same to another governmental entity or other party, the new owner shall assume the obligations of Landlord under this Lease, and all liabilities and obligations on the part of the original Landlord or the successor owner under this Lease accruing thereafter will terminate, and thereupon all such liabilities and obligations will be binding on the new owner. Tenant agrees to attorn to the new owner.

ARTICLE 17

Holdover and Surrender

17.1 Condition of Premises and Improvements. Upon the expiration or earlier termination of this Lease, Tenant will deliver all keys to Landlord and surrender the Premises and the Improvements in good condition and repair and broom clean (reasonable wear and tear excepted), free and clear of all occupancies. Tenant's obligations under this Article will be subject to the provisions of Article 11 relating to damage or destruction.

17.2 Tenant's Property. Before the expiration or earlier termination of this Lease, Tenant will remove all furnishings, furniture, and trade fixtures that remain Tenant's property (the "Tenant's Property").

17.3 Holding Over. Any holding over after the expiration of the Initial Term and any applicable Extended Term contemplated by this Lease with the written consent of Landlord will be construed to be a tenancy from month-to-month, at one hundred and five percent (105%) of the Rent payable for the month immediately preceding the expiration of the final Extended Term and will otherwise be on the terms and conditions of this Lease. If Landlord consents to Tenant holding over, either Party may thereafter terminate the tenancy at any time on thirty (30) days' advance written notice to the other Party.

ARTICLE 18

Condition of Premises and Maintenance Obligations

Tenant acknowledges that it will have the opportunity to examine the physical condition of the Premises and terminate this Lease under Section 2.3 if Tenant is not satisfied with the physical condition of the Premises (including whether the Premises contains any Hazardous Substances or fails to comply with any Environmental Laws) and as a result agrees to accept the Premises in its "as-is" condition, with all faults, subject to such inspection and acceptance. Tenant further acknowledges that no representations or warranties regarding the condition of the Premises have been made by Landlord or any agent or person acting for Landlord outside of the terms of this Lease. Tenant agrees to assume all maintenance obligations for the Premises, both interior and exterior, including but not limited to all upkeep and maintenance requirements for the Building and Improvements.

ARTICLE 19

Quiet Enjoyment

Tenant will have quiet enjoyment of the Premises during the Initial Term and any applicable Extended Term without hindrance or disturbance by any person claiming by, through, or under Landlord, subject, however, to the "Non-Objectionable Matters" pursuant to Section 2.3.3 of this Agreement, above.

ARTICLE 20

Notices

Any notice required or permitted by the terms of this Lease will be deemed given if delivered personally, sent by United States registered or certified mail, postage prepaid, return receipt requested, or sent by e-mail or fax with electronic confirmation of fax receipt, and addressed as follows:

If to Landlord: City of Canby
PO Box 930
Canby, OR 97013
Attn: Richard R. Robinson, City Administrator
Phone: 503-255-4021
Fax: 503-266-7961
Email: robinsonr@canbyoregon.gov
With copy to: Joseph Lindsay, City Attorney
Phone: 503-266-0754
Fax: 503-266-7961
Email: lindsayj@canbyoregon.gov

If to Tenant: _____

Attn: Robb Crocker, Partner Chris Edmiston, Partner
Fax:
Phone:
Email: Robbcrocker@gmail.com t5equities@gmail.com

With a copy to: Kuzmich & Associates
402 E. Southern Ave.
Tempe, AZ 85282
Attn: James A. Kuzmich, Esq.
Fax: 480-725-0087

ARTICLE 21

Tenant Right to Purchase Premises

21.1 Tenant Sole Right to Purchase Premises. Tenant has the right, but not the obligation, to purchase the Premises from Landlord at any time during the Initial Term or any applicable Extended Term. The right to purchase the Premises shall extend only to Tenant during the Initial Term and any applicable Extended Terms. Landlord shall not offer to sell the Premises to any non-party to this Lease without Tenant's prior express written consent, and any such offers made by Landlord to a non-party to this Lease without Tenant's express written consent shall be void.

21.2 Tenant Purchase Option for Premises. In the event that Tenant exercises its right to purchase the Premises from Landlord, the mutually agreed-upon fair market value purchase price shall be \$1,050,000.00 (the “Purchase Price”). Tenant and Landlord shall close the on the sale of the Premises no later than six (6) months following Tenant’s exercise of its option to purchase.

21.3 Closing of Sale. Landlord shall pay for the costs of the title insurance premium for the title insurance policy and each party shall pay one-half of any escrow fees. Tenant shall pay the fees for recording the Deed.

21.4 Termination of the Lease. On the closing date, this Lease shall automatically terminate and be of no further force or effect.

21.5 Landlord Reimbursement for Specific Pre-Approved Repairs and Expenses. Landlord agrees to reimburse Tenant for the following repairs and expenses, if identified and deemed necessary by Tenant during the Inspection and Approval Period:

(a) Expenses related to any hazardous material abatement or removal, including asbestos and lead-based paints, discovered during the Inspection and Approval Period;

(b) Expenses related to needed roof or foundation repairs discovered during the Inspection and Approval Period;

(c) Any additional System Development Charges arising from construction of the Project;

(d) Expenses related to the construction of any seismic upgrades required by Clackamas County.

Reimbursement by Landlord shall be limited to repairs and expenses identified in this Section 21.5, and in no case shall Landlord’s total reimbursement to Tenant exceed \$30,000.00. No repairs or expenses shall be eligible for reimbursement without Landlord’s prior written approval, which shall not be unreasonably withheld, conditioned or delayed. In requesting Landlord pre-approval, Tenant shall submit documentation acceptable to Landlord, in Landlord’s sole discretion, establishing the reimbursement eligibility and estimated cost of the repair or expense. Landlord shall reimburse Tenant for pre-approved repairs within thirty (30) days of receiving acceptable documentation, in Landlord’s sole discretion, of the final cost of the previously approved repair(s).

21.6 Statutory Disclosure. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS

AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

ARTICLE 22

Miscellaneous

22.1 Survival. All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required before the expiration or earlier termination of this Lease, will survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

22.2 Invalidity. If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

22.3 Force Majeure. If either Party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any legal requirement (and not attributable to an act or omission of the Party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the Party's control, whether or not the cause is specifically mentioned in this Lease, the Party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.

22.4 Entire Agreement; Counterparts. This Lease contains the entire agreement between the Parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by both Parties. Tenant and Landlord mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of

counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Lease.

22.5 Applicable Law. This Lease will be governed by, and construed in accordance with, the laws of the State of Oregon.

22.6 Binding Effect; Authority The covenants and agreements contained in this Lease are binding on and inure to the benefit of Landlord, Tenant, and their respective successors and assigns. Each Party warrants that the below signatory is authorized to enter into this agreement and bind that Party.

22.7 Recordation of Lease. Tenant may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both Parties, be recorded in the public records of Clackamas County, Oregon. In such case Tenant shall pay the recording costs.

22.8 Time Is of the Essence. Time is of the essence as to the performance of all the covenants, conditions, and agreements of this Lease.

22.9 Relationship of Parties. Nothing contained in this Lease is to be deemed or construed, either by the Parties to this Lease or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between Landlord and Tenant.

22.10 Relationship of Parties and Application of Laws. At all times under this Agreement, the Parties are acting as individual entities and are not establishing a business partnership. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, employee, partnership, joint venture, or any similar relationship, and each Party hereby specifically disclaims any such relationship. Employees or contractors providing services to each respective Party shall remain employees or contractors of the Party who retained such employee or contractor services. Each Party is wholly and individually responsible for its own employees and contractors. Each Party agrees to pay all wages and benefits (including but not limited to any required insurance and workers compensation), payroll tax, and to apply all laws, regulations, and policies relating to employment obligations. Each Party agrees to abide by all applicable local, state, and federal law.

IN WITNESS WHEREOF, Tenant and Landlord have caused this Lease to be executed by their duly authorized representatives as of the day and year first written above.

LANDLORD:

City of Canby

By: _____

Name: Richard R. Robinson

Title: City Administrator

TENANT:

T5 Equities LLC

By: _____

Name: Robb Crocker

Title: Partner

By: _____

Name: Chris Edmiston

Title: Partner

EXHIBIT A

Property

Location: 292 North Holly Street, Canby, Oregon 97013

Assessor's Parcel: 3S-1E-33CA, Tax Lot 7800, Clackamas County, Oregon

Area in Site(s): 11,500 SF



EXHIBIT B

Tenant Improvements

T5 will invest at least \$500,000 over 24 months in Tenant Improvements to implement the plan and rendering below:



Street frontage improvements: The goal is to redesign space for small retail/restaurant spaces, with roll-up doors and lots of natural light. The retail stalls are flexibly sized for small restaurants, pubs or any other type of entrepreneurial endeavor. Exterior Investments to accomplish this renovation could include:

- Remove existing west and north facing windows and replacement them with roll up doors and larger windows
- Install gooseneck or other attractive exterior lighting
- Install awnings along the north and west sides of the building
- Repaint at least the northern wall
- Update the cornice above the west entrance

Interior market stall investments to create up to 6 market stalls for small retail/restaurant spaces. Renovations are likely to include:

- Add permanent interior or movable walls to delineate spaces
- Install new doors for each stall
- Enhance lighting and power outlets for each space depending on tenant needs.

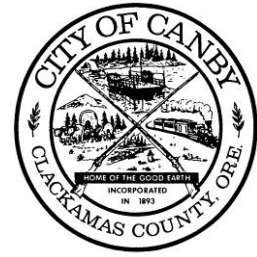
Office space: The goal is to design and develop eight to ten small office spaces, along with fun, comfortable common areas, for creatives and professionals. The offices would be more like a modified “co-working” space. High-end space, shared with other like-minded entrepreneurs, consultants and business owners.

- Install a reception area with desk and seating area and new entrance on 3rd Avenue.
- Construct interior office and meeting room walls and doors to delineate space
- Add enhanced lighting and new power outlets for each space depending on tenant needs.
- Install a break room area with kitchen amenities
- Provide high speed internet access for business tenants

General building interior improvements:

- Remove existing carpet and linoleum, and if feasible, refinish and buff concrete floors
- Realign the southern restroom entrance and other improvements
- Paint walls
- Install enhanced lighting for new spaces
- Upgrade roof or mechanical systems, as needed.
- Security systems realignment or upgrade

MEMORANDUM



TO: *Honorable Mayor Hodson and City Council*
FROM: *Bryan C. Brown, Planning Director*
DATE: *January 3, 2018*
THROUGH: *Rick Robinson, City Administrator*

Issue/Objective:

This is a legislative amendment application to text of Title 16 Land Development and Planning Ordinance, Section 16.110 of the Canby Municipal Code to include the addition of a Canby High School student, a proposal for a name change, and the addition of verbiage to formally address chair and vice-chair requirements the Historic Review Board which was initiated by City staff at the recommendation of the Historic Review Board.

Synopsis:

This request is subject to the review process that all amendments to Title 16 Land Development and Planning Ordinance must follow with a public hearing before the Planning Commission with a recommendation and final action by the City Council after holding their own public hearing.

The applicable review criteria and staff findings are indicated in the attach City Council Final Findings. At the 12-11-17 Planning Commission public hearing discussion centered around the addition of a Canby High School student to the Board as a non-voting member, a proposal for a name change, and the addition of verbiage to formally address requirements for electing the chair and vice-chair.

Recommendation: *The Planning Commission made a recommendation to the Council to approve the addition of a Canby High School student to the Board as a non-voting member, the proposed name change of HRB to the Heritage and Landmarks Commission, and the addition of verbiage to formally address requirements for electing chair and vice-chair.*

Rationale:

The findings of the Planning Commission and their formal recommendation is documented in written form in their Final Order in Attachment #2.

Notice Provided: Legal hearing notice was placed in the Canby Herald on 11-29-17 indicating the date, time, and place of the both the Planning Commission and Council public hearings on this matter. The public hearing notice or agenda was posted in 3 of the most public places in Canby prior to this hearing.

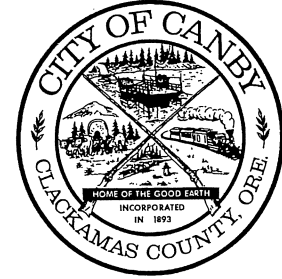
Public Input: No comments were received.

Options:

1. Approve the text amendment request as recommended and by the Planning Commission and indicated in Ordinance No. 1469.

Attachments:

1. Planning Commission staff report dated 11-27-17
2. Planning Commission Final Order with Findings & Recommendation



STAFF REPORT

TITLE: Historic Review Board Membership Change

FILE #: TA 17-01

STAFF: Jamie Stickel, Main Street Manager

DATE OF REPORT: November 27, 2017

DATE OF HEARING: December 11, 2017

REQUEST

This is a legislative amendment application to the text of Title 16 Land Development and Planning Ordinance. The application was initiated by City staff at the request of the Historic Review Board. This text amendment seeks to include the addition of a Canby High School student, a proposal for a name change, and the addition of verbiage to formally address chair and vice-chair requirements through amendment of Section 16.110 of the Canby Municipal Code.

At the October 2017 Historic Review Board (HRB) meeting, members voted unanimously to add a board position reserved for a Canby High School student. The board agreed that adding a student member would diversify their perspective, assist their efforts to reach a broader segment of community, and improve the planning and decision-making processes. From the student perspective, it will provide exposure and experience in city governance and heritage programming. Additionally, the student will acquire hours for the community service graduation requirement and accomplishments that will strengthen their college application. The proposal was reviewed and approved by City Administrator Rick Robinson and Canby High School Principal Greg Dinse. Given that this creates an even number of members, City Attorney Joseph Lindsay recommended that this be a non-voting position.

HRB members voted unanimously at the October meeting to change the name of their city board to the Heritage and Landmarks Commission. Reasons include:

- The term Historic Review Board has no clear meaning and does not describe the area of responsibility.

- The majority of Canby's residents think the HRB is the Canby Historical Society. Publicity surrounding projects has not eliminated the confusion.
- As a result, the city is not getting credit for the accomplishments of one of its boards.
- The previous HRB shut down due to lack of support (and other factors), it is important that people know who, what, and why that is important for Canby.
- Outside of the classroom and media, people, in general, engage with history in two venues. The first includes museums that collect, interpret, and exhibit. The second involves place-based experiences (the board's purpose) which can occur anywhere: neighborhoods, main streets, shopping malls, parks, cemeteries and battlefields - the sites of historic events/people.
- Museums attract a limited segment of the population: history buffs that have the time and resources to visit them.
- Place-based historical experiences happen where people live, work, play, and do business. Hence, they reach a much broader audience, which is important for generating support for preserving buildings and sites.
- The purpose as a place-based organization is defined in the guidelines and standards of the National Park Service and the SHPO and are reflected in the city code and in the requirements of major funding sources.
- A title change will not change or limit what the board accomplishes and will ensure that the city gets credit for its work.

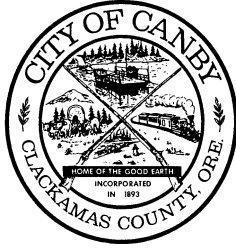
Lastly, at this time, the current code does not include requirements for electing chair and vice-chairs. Per City Recorder Kim Scheafer, this change will bring the HRB practices in alignment with those of the city's other boards and committees.

RECOMMENDATION

Based on the findings and conclusions presented in this report, and without benefit of a public hearing, staff recommends that the Planning Commission advance a recommendation of approval on to the City Council on Text Amendment TA 17-01.

ATTACHMENT:

Proposed amendments to Section 16.110 General Provisions



**BEFORE THE PLANNING COMMISSION
OF THE
CITY OF CANBY**

**AN APPLICATION TO AMEND THE CANBY)
MUNICIPAL CODE, CHAPTER 16.110.025 (1))
OF THE LAND DEVELOPMENT AND)
PLANNING ORDINANCE)**

**FINDINGS, CONCLUSION & FINAL ORDER
TA 17-01
HISTORIC REVIEW BOARD
NAME & MEMBERSHIP CHANGE**

NATURE OF APPLICATION

The City of Canby initiated amendments to the text of Title 16 of the Canby Municipal Code, the *Canby Land Development and Planning Ordinance*, in order to increase the membership size to include the addition of a Canby High School student, a proposal for a name change to the advisory body, and the addition of verbiage to formally address requirements for electing a chair and vice-chair through amendment of Section 16.110 of the Canby Municipal Code.

CRITERIA AND STANDARDS

In judging whether or not this legislative land use amendment of Title 16 of the *Canby Municipal Code* should be amended, the Planning Commission must consider the following criteria from Chapter 16.88 of the *Land Development and Planning Ordinance*:

1. The *Comprehensive Plan* of the city, and the plans and policies of the county, state, and local districts, in order to preserve functions and local aspects of land conservation and development;
2. A public need for the change;
3. Whether the proposed change will serve the public need better than any other change which might be expected to be made;
4. Whether the change will preserve and protect the health, safety and general welfare of the residents in the community;
5. Statewide planning goals.

FINDINGS AND REASONS

The Planning Commission held a public hearing December 11, 2017. The Planning Commission advanced a recommendation of approval to the City Council for Text Amendment TA 17-01 with the following recommended changes to the draft of Ordinance No. 1469 that would increase the membership size to include the addition of a Canby High School student as a nonvoting member, to change that name of the HRB to the Heritage and Landmarks Commission, and add verbiage to formally address chair and vice-chair requirements through amendment of Section 16.110 of the Canby Municipal Code.

CONCLUSION

The Planning Commission concludes that the proposed amendment complies with the *Comprehensive Plan* of the city, and the plans and policies of the county, state, and local districts, and will preserve functions and local aspects of land conservation and development.

ORDINANCE NO. 1469

**AN ORDINANCE AMENDING CANBY MUNICIPAL CODE
CHAPTER 16.110 BY CHANGING THE NAME OF THE HISTORIC REVIEW BOARD
TO THE HERITAGE AND LANDMARK COMMISSION AND ADDING A NON-
VOTING MEMBERSHIP POSITION OF A CANBY HIGH SCHOOL STUDENT**

WHEREAS, Chapter 16.110.025 of the Canby Municipal Code created an Historic Review Board to advise the Planning Commission and City Council regarding alterations to historic landmarks and recommendations for designation of historic landmarks or districts; and

WHEREAS, the Historic Review Board has proposed their name be changed to the Canby Heritage and Landmark Commission which invites a more focused view of the Commission and criteria for future projects; and

WHEREAS, the Historic Review Board has proposed expanding their membership size by adding one non-voting positions for Canby High School student which would increase the total membership size from seven to eight members in order to better serve the community.

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Chapter 16.110 of the Canby Municipal Code is amended to read as noted in Exhibit “A” attached hereto.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, January 3, 2018 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on January 17, 2018 commencing at the hour of 7:30 PM in the Council Meeting Chambers located at 222 NE 2nd Avenue, 1st Floor, Canby, Oregon.

Kimberly Scheafer, MMC
City Recorder

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on January 17, 2018 by the following vote:

YEAS_____ NAYS_____

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

Exhibit "A"
GENERAL PROVISIONS

Sections:

- ~~16.110.005 Title.~~
- 16.110.010 Purpose.
- 16.110.020 Definitions.
- 16.110.025 **Heritage and Landmarks Commission.** ~~Historic Review Board~~
- 16.110.030 **Heritage and Landmarks Commission** ~~Historic Review Board~~ – powers and duties.
- 16.110.035 Inventory of historic resources.
- 16.110.040 Register of Historic Landmarks and Historic Districts.
- 16.110.045 Designation procedure for Historic Landmarks and Historic Districts.
- 16.110.050 Review notice and public hearing procedures.
- 16.110.055 Criteria for Historic Landmark and Historic District designation.
- 16.110.070 Building Code requirements and handicap access.
- 16.110.075 Moving or demolition of a landmark or contributing resource.
- 16.110.080 Alteration of a Historic Landmark or contributing resource, or new construction a within a Historic District.
- 16.110.085 Partitions and subdivisions.
- 16.110.090 Incentives.
- 16.110.095 Casualty destruction.
- 16.110.100 Fees.
- 16.110.105 Enforcement.
- 16.110.110 Penalties.
- 16.110.115 Official action.
- 16.110.120 Abatement of violation.
- 16.110.125 Injunctive relief.
- 16.110.130 Evidence of violation.
- 16.110.135 Cumulative remedies.
- 16.110.140 Interpretation, regulations, and procedures.
- 16.110.145 Appeals.
- 16.110.185 Carryover provisions.
- 16.110.190 Severability.

16.110.010 Purpose. ~~purpose of this division is to:~~

- A. **The purpose of this chapter is to** promote the historic, educational, cultural, architectural, economic and general welfare of the public, and to safeguard the city's historic and cultural heritage through the identification, preservation and protection of structures, site, objects and districts of cultural interest within the city.
- B. Foster community pride and a sense of cultural identity.

- C. Strengthen the city's economy by enhancing property values and enhancing the historic and cultural resources for tourists, visitors and residents and to serve as a support and stimulus for business and industry.
- D. To encourage public knowledge, understanding and appreciation of the city's history and culture.
- E. To facilitate and encourage restoration and maintenance of historic buildings, structures, or other physical objects and geographical areas.
- F. To preserve diverse architectural styles reflecting periods of the city's historical and architectural development, and to encourage complementary design and construction impacting historic development.
- G. To identify and resolve conflicts between the preservation of historic and cultural resources and alternative land uses.
- H. To integrate the management of historic and cultural resources into public and private land management and development processes.
- I. To provide an additional means to implement the mandates of Statewide Planning Goal 5 and the Comprehensive Plan policies relating to historic resources.
- J. To recognize the importance of historic transportation corridors (railroad venue and 99-E, Road of a Thousand Wonders, Territorial and Market roads) and waterways (Willamette and Molalla Rivers) to the origin and development of the Canby community. (Ord. 905, 1994)

16.110.015

(Ord. 905, 1994; Deleted by Ord. 1061, 2000)

16.110.020 Definitions.

For purposes of Division X, the following terms mean:

Alteration. Changes to the exterior of a Landmark or Contributing Resource; minor being that which does not change the existing appearance or material, or which duplicates or restores the affected exterior features and materials, as determined from historic photographs or other evidence of original features or materials; major being that which does change the existing material or appearance. (See section 16.110.080)

Board. ~~Canby's Historic Review Board. (See section 16.110.025, 16.110.030)~~

Building Code. State of Oregon Structural Specialty Code (Commercial Code); or state of Oregon One and Two Family Dwelling Code (Residential Code)

Heritage and Landmarks Commission ~~Historic Review Board.~~ An appointed committee of volunteers who are each experts in some aspect of historic preservation and who review all designations, alterations, demolitions and other activities involving historic resources. (See section 16.110.025)

Certificate of Appropriateness. An official permit which indicates approval of all proposed alterations, construction, and development affecting designated landmarks or districts. This is in addition to the normal building permit. (see section 16.10.080).

Commission. Canby's Planning Commission. (See Chapter 16.06)

Conflicting Use. Development or redevelopment planned for a property which may result in demolition, alteration or moving of a Landmark or Contributing Resource.

Contributing Resource. A building, site, structure, or object within a Historic District that contributes to its character. Such resources to be identified at the time of adoption of the Historic District or added at a later date through the same process.

Corridor. See Historic Corridor.

Council. Canby's City Council.

Demolish. Raze, destroy, dismantle, deface or, in any other manner, cause partial or total destruction of a Contributing Resource or Landmark. (See section 16.110.075)

Historic Corridor. A linear shaped grouping of properties, sites, trail, roadway, rail corridor, landscape corridor, or waterway, associated with events that have made a significant contribution to the broad patterns of our history.

Historic District. Includes contiguous or non-contiguous districts or corridors. A contiguous district is a geographically defined area composed of structures, sites and objects classified as Landmarks, Contributing Resources and non-contributing resources. A non-contiguous district is a non-geographically related collection of landmark quality structures, sites and objects which have a common builder, style, theme, or other relationship. May be referred to as a district within the ordinance. (See section 16.110.045)

Historic Landmark. Any building, site, object, or structure and the property surrounding it designated under this division as historically, architecturally, or environmentally significant. May be referred to as landmark within ordinance. (See section 16.110.040)

Historical Protection Overlay Zone. Specific zoning that is additional to base zone as per section 16.36. The Historical Protection Overlay Zone is applied to each property designated as a Historic Landmark or District, unless the City Council denies such zoning (See section 16.110.045).

Historic Resource. A general term for buildings, sites, structures and objects which are Historic Landmarks or Historic District, or have potential to be.

Historic Resource of Statewide Significance. A building, structure, object, site, or district that is listed on the National Register of Historic Places.

Historic Themes. Archeology and prehistory, exploration, western migration, settlement, agriculture, commerce and industry, transportation, government politics and military activities or culture.

Moving. Relocating a historic or cultural resource from its existing parcel or tax lot, to another site.

Non-compatible. An addition or new construction which is not architecturally or stylistically consistent with a historic resource or surrounding resources in a District.

Non-contiguous District. see Historic District.

Non-contributing Resource. A structure, site or object within a Historic District, which is neither a Contributing Resource, nor a Landmark.

Planning Director. Person holding the position of Planning Director for the City of Canby, or their designated representative. (Ord. 905, 1994; Ord. 1061, 2000)

16.110.025 ~~Heritage and Landmarks Commission~~ ~~Historic Review Board.~~

- A. For the purpose of this ordinance, the decisions regarding alterations to Historic Landmarks and recommendations for designation of Historic Landmarks or Districts, shall be accomplished by a City of Canby ~~Heritage and Landmarks Commission~~ ~~Historic Review Board.~~

- B. Appointment and Composition. The City Council shall appoint seven (7) individuals with a demonstrated positive interest, knowledge, or competence in historic preservation. **An additional non-voting member shall be a Canby High School Student.** To the extent possible, individuals chosen to serve on the **Heritage and Landmarks Commission** ~~Canby Historic Review Board~~ shall represent the disciplines listed in *The Secretary of the Interior's Proposed Historic Preservation Qualification Standards*. A majority of **Heritage and Landmarks Commission** ~~Historic Review Board~~ members shall reside or work inside Canby's Urban Growth Boundary. (Ord. 1369, 2013; Ord. 1435 2016)

Members are appointed by the City Council upon recommendation by the Committee Chairperson and assigned Council Liaison. The Mayor may vote only to break a tie, if necessary. Any **Heritage and Landmarks Commission** ~~Board~~ member failing to attend three (3) consecutive meetings without approval of the **Heritage and Landmarks Commission** ~~Board~~ Chairperson may be removed by the Council and a new member appointed to complete the unexpired term. **Heritage and Landmarks Commission** ~~Historic Review Board~~ members serve at the pleasure of the City Council and are subject to removal at any time by the Council with or without cause. (Ord. 1369, 2013)

- C. Terms of Service. The members of the **Heritage and Landmarks Commission** ~~Historic Review Board~~ shall be appointed for three (3) years, and may be reappointed or removed at the discretion of the City Council. **The Canby High School Student's term shall end upon graduation.** ~~In the first appointment one (1) members shall be appointed for three (3) years, at least one (1) members shall be appointed for two (2) years, and at least one (1) member shall be appointed for one (1) year.~~ (Ord. 905, 1994; Ord. 1061, 2000, Ord. 1369 2013, Ord. 1369, 2013)
- D. Officers. Each year at the first meeting the **Heritage and Landmarks Commission** shall select a Chairperson and Vice-Chairperson who shall serve for a term of one (1) year.

16.110.030 **Heritage and Landmarks Commission ~~Historic Review Board~~ – Powers and Duties**

It is the responsibility of the **Heritage and Landmarks Commission** ~~Historic Review Board~~ to ensure that the purposes of this section are implemented, and to perform the following duties:

- A. Adopt rules to govern its deliberations and decisions, including a method to record its proceedings.
- B. Carry out the duties described for it in this ordinance and assist the Planning Director, Planning Commission and ~~Canby~~ City Council on historic preservation matters.
- C. Maintain and update an inventory of historic resources within the city, as provided under section 16.110.035.
- D. Review and render decisions on all historic landmark and historic district applications, as provided under section 16.110.045.
- E. Review and make recommendations on application of the Historical Protection Overlay Zone, as provided under section 16.110.045.

- F. Review and render decisions on proposals to alter the exterior of a Historic Landmark subject to the procedures and criteria set forth in section 16.110.080.
- G. Review and render decisions on all proposed new construction on property where a Historic Landmark is located, or within a Historic District, subject to the procedures and criteria set forth in section 16.110.080.
- H. Review all requests for demolition of a historic landmark or contributing resource, as provided under section 16.110.075.
- I. Review and make recommendations to the Planning Commission on all Conditional Use applications under section 16.38.
- J. Review and make recommendations on all partitions and subdivisions of designated properties, as provided under section 16.110.085.
- K. Disseminate information to educate the public as to local, state and federal laws protecting antiquities and historic places.
- L. Act as consultant for local preservation groups, educational workshops, signage and monumentation projects, and other similar projects.
- M. Advise interest groups, agencies, boards, commissions, and citizens on matters relating to historic preservation within the city.
- N. Provide design guidance for historic property owners. (Ord. 905, 1994; Ord. 1061, 2000)

16.110.035 Inventory of Historic Resources

- A. The **Planning Commission, upon initiation and review by the Heritage and Landmarks Commission**, shall develop or adopt a system for evaluating historic resources. The system shall rank surveyed historic resources as eligible, potentially eligible, or ineligible for designation as a Historic Landmark or Historic District.
- B. The **Planning Commission, upon initiation and review by the Heritage and Landmarks Commission**, shall periodically update the Inventory of Historic Resources and make it available to the public.
- C. Properties listed on the National Register of Historic Places, including all properties within National Register Historic District boundaries, are automatically designated as Historic Landmarks or Historic Districts. As Historic Resources of Statewide Significance, all such properties are subject to the regulations in Sections 16.110.070-085, pursuant to Oregon Administrative Rule 660-023-200. However, only properties designated as Historic Landmarks or Historic Districts by the City of Canby as provided for under this Division are eligible for the local public incentives and zoning designation herein. (Orig. section del., repl. by Ord. 1061, 2000; Ord. 1111, 2003)

16.110.040 Register of Historic Landmarks and Historic Districts.

- A. The ~~Heritage and Landmarks Commission~~ Historic Review Board shall maintain a register of Historic Landmarks and Historic Districts, consisting of all properties so designated by the City Council.
- B. The three structures already designated under the Historic Overlay provisions in 1984, by Ordinance No. 742, are hereby added to the Register of Historic Landmarks.
- C. Designated Historic Landmarks and Historic Districts shall have the Historical Protection Overlay Zone applied to them unless the City Council finds that such zoning is not appropriate to a specific piece of property. (Orig. section del., repl. by Ord. 1061, 2000)

16.110.045 Designation Procedure for Historic Landmarks and Historic Districts.

- A. The City's Historic Landmark designation procedure may be initiated by the City Council, Planning Commission, ~~Heritage and Landmarks Commission~~ Historic Review Board, or owner(s) of the proposed landmark, hereby referred to as applicant.
- B. The City's Historic District designation procedure may be initiated by the ~~Heritage and Landmarks Commission~~ Historic Review Board, the City Council, Planning Commission, any citizen, or by owners of at least fifty-one (51) percent of the privately owned property in the area to be designated.
- C. No property shall be designated without the written consent of the owner, or, in the case of multiple ownership, a majority of the owners. If the owner or owners refuse to consent to designation at any point during the designation process, the property shall be removed from any form of consideration for local designation.
- D. The Planning Director shall establish standards for a complete application and may require a pre-application conference. Upon acceptance of a complete application, the Planning Director shall schedule a public hearing pursuant to applicable state laws.
- E. After review, notice and public hearing, as specified in section 16.110.050, the ~~Heritage and Landmarks Commission~~ Historic Review Board shall make a decision on the City's Historic Landmark or Historic District designation. In addition the ~~Heritage and Landmarks Commission~~ Board shall make a recommendation to the Canby Planning Commission and City Council for assignment of the Historical Protection Overlay Zone.
- F. The ~~Heritage and Landmarks Commission~~ Board shall develop findings to support its decisions. These findings shall indicate those elements of a property or district that are included in the designation and subject to regulation under the provisions of this Division. A list of Contributing Resources shall be identified upon creation of a Historic District.
- G. Upon receipt of the record of the ~~Heritage and Landmarks Commission~~ Historic Review Board proceedings and the recommendation of the ~~Heritage and Landmarks Commission~~ Board, the Planning Commission shall conduct a review of that record and shall make a recommendation to the City Council on the overlay zone designation. The City Council

shall conduct a review of the records of both the ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ and Planning Commission and shall vote to approve, deny, or approve subject to modifications the recommendation that has been forwarded to them. The Planning Commission and City Council may, but are not required to, hold new public hearings on the matter. (Ord. 905, 1994; Ord. 1061, 2000; Ord. 1111, 2003)

16.110.050 Review, Notice, Public Hearing Procedures.

- A. Review of any application pursuant to this chapter shall follow procedures set forth in Canby Ordinance Chapter 16.89.
- B. The ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ shall follow the public hearing procedures found in ordinance section 16.88.130(C) and the notice requirements of ordinance section 16.88.130 (D) when reviewing the following applications:
 - 1. Designation of a Historic Landmark or Historic District;
 - 2. Modification of a Historic District boundary;
 - 3. Demolition or moving of a Historic Landmark or Contributing Resource;
 - 4. Alterations subject to the ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ review.
 - 5. New construction subject to the ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ review.
- C. The Planning Commission shall apply the criteria of this ordinance to major alterations to be reviewed within its jurisdiction for reasons other than Historic Preservation purposes, but which occurs on or to a Historic Landmark or a Contributing Resource within a Historic District. The ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ will make recommendations regarding these matters to the Planning Commission and the commission shall recognize such recommendations in its action.
- D. The Planning Director shall apply the criteria of this ordinance when reviewing:
 - 1. Minor alterations subject to the Planning Director's jurisdiction (see section 16.110.020, definition of Alterations.)
 - 2. Lot line adjustments which occur on or to a Landmark or within a Historic District.
- E. All other historically related administrative actions for which the Planning Director has decision making authority shall be subject to the review procedures provided in section 16.89.
- F. The Planning Commission shall receive notice of all public hearings held by the ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~. (Ord. 905, 1994; renumb., mod. by Ord. 1061, 2000; Ord. 1080, 2001)

16.110.55 Criteria for Historic Landmark and Historic District Designation.

- A. In order to designate buildings, sites, objects, or structures as Historic Landmarks or Historic Districts, it shall be found that:

1. The resource is about 50 years or older, or the resource is less than 50 years old but of exceptional importance with regard to its historical, architectural or environmental significance; and
 2. There is historical, architectural, or environmental significance.
- B. The following factors shall be considered in determining whether the criteria found in subsection 1(b) of this section are satisfied:
1. Historical Significance.
 - a. Association with the life or activities of a person, group, organization, or institution that has made a significant contribution to the city, county, state or nation.
 - b. Association with an event that has made a significant contribution to the city, county, state or nation.
 - c. Association with broad patterns of cultural, political, social, economic, industrial, or agricultural history.
 - d. Potential for providing information of a prehistoric or historic nature in the city, county, state, or nation.
 - e. Listed on the National Register of Historic Places.
 2. Architectural Significance.
 - a. Example of a particular architectural style, building type and/or convention.
 - b. Example of quality of composition, detailing and/or craftsmanship.
 - c. An example of a particular material and/or method of construction.
 - d. It retains original design features, materials and/or character.
 - e. The only remaining, or one of few remaining resources of a particular style, building type, design, material, or method of construction.
 - f. The work of a master architect.
 3. Environmental Significance.
 - a. A visual landmark in the neighborhood or community.
 - b. Existing land use surrounding the resource contributes to the integrity of the pertinent historic period.
 - c. It consists of a grouping of interrelated elements including historic structures, plant materials and landscapes, view sheds and natural features.
 - d. It contributes to the continuity or historic character of the street, neighborhood and/or community. (Ord. 905, 1994; renumb., mod. by Ord. 1061, 2000)

16.110.070 Building Code Requirements, Handicapped Access.

- A. Permits Required. Any alteration or relocation of a Historic Landmark shall be subject to the applicable regulations under the Building Code.
- B. Waivers. Except for 1-2 family structures, as provided in section 104(f) of the Uniform Building Code, repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation or continued use of a Historic Landmark, or building within a Historic District or Historic Corridor, may be made without conformance to all the

requirements of the Uniform Building Code when authorized by the Building Official, provided:

1. Any unsafe conditions as described in the Uniform Building Code are corrected;
2. The restored building or structure will be no more hazardous, based on life safety, fire safety, and sanitation, than the existing building; and
3. The Building Official seeks the advice of the **Heritage and Landmarks Commission** ~~Historic Review Board~~ and/or the Oregon State Historic Preservation Officer.

- C. Alterations of Landmarks and Contributing Resources. to provide handicap access, as approved by the Building Official with advice from the Planning Director and **Heritage and Landmarks Commission** ~~Historic Review Board~~, shall be allowed. To the extent practical, the design of the alteration shall be discreet and preserve the historic features upon which the designation is based.
- D. Modifications to certain regulations. As pertains to designated properties, the Planning Commission may modify the Land Development and Planning Code regulations pertaining to signs, fence and wall provisions, general provisions regarding height, yards, area, lot width, frontage, depth, coverage, number of off-street parking spaces required, and regulations prescribing setbacks, if the modifications:

1. Are necessary to preserve the historic character, appearance or integrity of the proposed Historic Landmark, and
2. Are in accordance with the purposes of the zoning and sign regulations.

The **Heritage and Landmarks Commission** ~~Historic Review Board~~ shall make recommendations to the Planning Commission on such matters.

- E. Appeals. In the case of appeals related to the application of the Uniform Building Code to a Historic Landmark, or building within a Historic District, the City Council or the appropriate Local or state appeals board shall seek the advice of the state Historic Preservation Officer. (Ord. 905, 1994; Ord. 1061, 2000)

16.110.75 Moving or Demolition of a Landmark or Contributing Resource.

- A. Purpose. The intent of this subsection is to protect Historic Landmarks and Historic Districts from destructive acts and to provide the citizens of the city time to review the significance of a Historic Landmark or Contributing Resource within a Historic District, and to pursue options to preserve such building(s) if historic preservation is deemed in the best interest of the community.
- B. Prior to submittal of a request for moving or demolition, a preservation plan is required.
1. The applicant shall prepare and submit a plan for preservation of the Landmark or Contributing Resource. A pre-application conference shall be scheduled to allow the applicant and staff to discuss the proposal, the preservation plan requirements, and the applicable criteria. The plan shall be reviewed by the **Heritage and Landmarks Commission** ~~Historic Review Board~~.

2. The Preservation Plan shall include a narrative describing how the applicant will accomplish all of the following:
 - a. The resource shall be advertised in the local, regional and historic preservation newspapers of general circulation in the area, once per week during the pre-application period.
 - b. A city-provided sign shall be placed on the property informing the public of intended action which will remove or demolish the structure. The sign shall remain on the property until a permit is issued.
 - c. Information will be prepared and made available, related to the history and sale of the property, to all who inquire.
 - d. The proposed plan for the new use of the Historic Landmark site shall be provided.
 - e. A record of the parties who have expressed an interest in the structure shall be provided and, to ensure that an adequate effort has been made to secure a relocation site, a list of locations and owners who have been contacted regarding purchase of a relocation site shall be provided.
3. Following receipt of the preservation plan, the Planning Director shall review and approve said plan and shall issue a media release to local newspapers of general circulation. The media release shall include, but not be limited to, a description of the significance of the Historic Landmark, the reasons for the proposed demolition or removal, and the possible options for preserving the Historic Landmark.

C. Moving or Demolition Permit. No building designated as a Historic Landmark or Contributing Resource within a Historic District shall be intentionally moved unless such action is approved by the ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~. No building designated as a Historic Landmark or Contributing Resource within a Historic District shall be intentionally demolished unless such action is approved by the City Council. Application for permit to move or demolish such a building shall be made to the Planning Director.

D. Public Hearing Review. The ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ shall hold a public hearing under provisions and procedures in Subsection 16.110.050, to review the request to move, demolish or destroy a Historic Landmark or Contributing Resource within a Historic District. The ~~Heritage and Landmarks Commission~~ ~~Board~~ shall make a final decision on applications to move a Landmark or Contributing Resource and shall make a recommendation to the City Council on demolitions. The ~~Heritage and Landmarks Commission~~ ~~Board~~ shall make written findings supporting its decision to approve or suspend the request. The burden of proof lies with the applicant. For demolition applications, the City Council shall review the record and findings of the ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ and make a final decision. The Council may, but is not required to, hold a public hearing on the matter.

E. Moving a Historic Landmark or Contributing Resource. In order to allow the moving of a Historic Landmark or Contributing Resource, the ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ shall consider the following:

1. Relocation is the only alternative for preservation of the Historic Landmark or Contributing Resource;

2. The proposed relocation site will not greatly reduce the historical and/or architectural significance of the Historic Landmark or Contributing Resource; the site is a contextually appropriate setting; it is within the city and preferably within the neighborhood within which it is currently located;
3. The designated resource cannot reasonably be used in conjunction with the proposed use;
4. The continued location of the Landmark or Contributing Resource on the proposed development site precludes development on the site which would provide a greater community benefit;
5. The designated Landmark or Contributing Resource is structurally capable of relocation;
6. If the Landmark or Contributing Resource is relocated within the city, the owner of the relocation site agrees, as a condition of the purchase agreement, to apply within ninety (90) days of relocation, to the city for designation as a Historic Landmark, to be protected under the provisions of this ordinance;
7. The loss of the Landmark or Contributing Resource will not affect the integrity of a Historic District; and adequate effort has been made to seek a relocation site within the Historic District.

F. Demolition of a Historic Landmark or Contributing Resource. In order to allow the demolition of a Landmark or Contributing Resource, the **Heritage and Landmarks Commission** ~~Historic Review Board~~ and City Council shall consider the following:

1. All plans, drawings, and photographs submitted by the applicant; and,
2. Information presented at the public hearing concerning the proposed work proposal; and,
3. The Canby Comprehensive Plan; and
4. The purposes of this ordinance as set forth in section 16.110.010; and
5. The criteria used in the original designation of the Historic Landmark or Historic District in which the property under consideration is situated; and,
6. The historical and architectural style, the general design, arrangement, materials of the structure in question, or its appurtenant fixtures; the relationship of such features to the other buildings within the district or corridor; and the position of the building in relation to public rights-of-way and to other buildings and structures in the area; and,
7. The effects of the proposed work upon the protection, enhancement, perpetuation and use of the district or corridor which cause it to possess a special character or special historical or aesthetic interest or value; and,
8. Whether suspension of the permit will involve substantial hardship to the applicant, and whether approval of the request would act to the substantial detriment of the public welfare and would be contrary to the intent and purposes of this ordinance; and,
9. When applicable, the findings of the Building Official in determining the status of the subject building as a dangerous building under section 15.16 of the Municipal Code, and the feasibility of correcting the deficiencies to meet the requirements of the City Council rather than demolishing the building.

G. Approval of Moving or Demolition Request/Appeals. The **Heritage and Landmarks Commission** ~~Historic Review Board~~ or City Council may approve the moving or demolition request in consideration of the provisions under 3 and 4, above. The action of the **Heritage**

~~and Landmarks Commission Historic Review Board~~ shall be transmitted to the applicant in writing within ten (10) days of the decision on the request, and shall be final after a period of fifteen (15) days from the date of the letter and findings approving the request, unless a notice of appeal is filed by any aggrieved party, pursuant to section 16.89.

- H. Suspension of Moving or Demolition Permit Request. The ~~Heritage and Landmarks Commission Historic Review Board~~ may suspend the request for moving or demolition of a Historic Landmark or Contributing Resource if it determines that in the interest of preserving historic values for public benefit, the building should not be moved or demolished. Written findings supporting the suspension of the request shall be transmitted to the applicant within ten (10) days of the final public hearing on the request.
- I. Stay of Moving or Demolition. If the moving or demolition request is suspended by the ~~Heritage and Landmarks Commission Historic Review Board~~, the written finding supporting the action to suspend the request shall be transmitted to the Planning Director, along with a request that the enforcement of any applicable notice and order of the building official be stayed during the pendency of an appeal, or for a period of not more than sixty (60) days from the date of the letter and findings supporting the suspension. During this stay of demolition period, the following actions may be taken:
1. The Fire Marshal, Chief of Police, or the City Council designee, may require the owner or other party responsible for the subject building to take appropriate actions, other than demolition, to protect the public from hazardous conditions associated with the building.
 2. The applicant may be required by the ~~Heritage and Landmarks Commission Historic Review Board~~ to continue to carry out the Preservation Plan (Section 16.110.075 (2)) activities through the entire stay of moving or demolition.
 3. The ~~Heritage and Landmarks Commission Historic Review Board~~ may research programs or projects underway which could result in public or private acquisition of the subject building and site, and assess the potential for the success of these programs or projects.
 - a. If the ~~Heritage and Landmarks Commission Board~~ determines that there is reasonable grounds to believe that such program or project may be successful, it may extend the suspension period up to thirty (30) additional days per extension, not to exceed more than a total of 120 days from the date of the letter and finding suspending the request.
 - b. If the ~~Heritage and Landmarks Commission Board~~ determines that all such programs or projects are unlikely to be successful, and the applicant has not withdrawn his application for a demolition permit or taken appropriate alternative action to correct the hazards associated with the subject building as provided in a notice and order of the City Council, then at the end of the stay of demolition period, the building official may, with advice of the Planning Director, issue such permit, subject to all other applicable codes and ordinances.
- J. Appeal of Stay of Demolition. Action of the ~~Heritage and Landmarks Commission Historic Review Board~~ in suspending issuance of the permit for demolition may be appealed by the applicant, to the City Council, within fifteen (15) days of the date of the written findings

suspending the demolition permit, by filing a notice of appeal, as provided in section 16.88.140.

- K. Documentation Required. When moving or demolition is imminent, whether by direct approval or if efforts during the Preservation Plan and Stay of Demolition are unsuccessful, the following complete documentation of the structure(s) is required to be submitted to the Planning Director by the applicant, or access allowed to a designee of the **Heritage and Landmarks Commission** ~~Historic Review Board~~:
1. Floor plans, to scale, of the structure(s) and related structures.
 2. Site plan, to scale, showing surrounding roadways, landscaping, natural features, structure(s) and related structure(s).
 3. Photographs of all exterior elevations.
 4. Photographs of architectural detail not shown in elevation photographs.
 5. The Historic Preservation League of Oregon, Canby Heritage League, Old Home Forum, and any other local preservation group shall be given written notice of the opportunity to salvage and record the resource. A copy of such notice shall also be given to the Planning Director.
- L. Moving or Demolition Permit Issuance. A moving or demolition permit for a Landmark found to comply with all provisions set forth in Division 10 of this ordinance shall not be issued until all development permit applications for the new use or development have been approved by the city. (Ord. 905, 1994; Ord. 1061, 2000)

16.110.080 Alteration of a Historic Landmark or Contributing Resource, or New Construction Within a Historic District.

- A. Purpose. It is the intent of this subsection to provide for the appropriate level of review for proposed new construction, alterations and development affecting properties within Historic Districts, or those affecting Historic Landmarks, and to provide criteria for review.
- B. Application Requirements. In addition to any normally required building permits, a Certificate of Appropriateness is required. Prior to formal application, a pre-application conference between the applicant and Planning Director shall occur. All applications for alterations and development made pursuant to this section shall include:
1. The applicant's name and address.
 2. The owner's name(s) and address.
 3. A detailed explanation of proposed alterations.
 4. A written description of the location of the site and, if applicable, boundaries of the Historic District or Corridor.
 5. A map illustrating the location of the site and, if applicable, boundaries of the District.
 6. A list of exterior materials pertinent to the application request.
 7. Drawings:
 - a. Side elevation for each side of any affected structure,
 - b. Shall indicate dimensions and be to scale,
 - c. Photographs may be used in lieu of drawings for small projects.

8. Site plan showing relationship of structure(s) to roadways, parking areas, access drives, landscape features, plant materials, fences and other pertinent elements, drawn to scale.
- C. Maintenance. The normal responsibilities of the property owner to care, repair and replace with like materials can be done without formal review. Normal maintenance may include, but not be limited to:
1. Painting and related preparation of the structure.
 2. Repair and/or replacement of roofing materials with the same kind existing.
 3. Ground care and maintenance required for the permitted use on the property.
 4. Replacement of fences, shrubs or other yard fixtures or landscaping with like type or style.
 5. Existing materials may be replaced in-kind, of either building or grounds because of damage or decay of materials.
 6. Installation and maintenance of irrigation systems.
- D. Minor Alterations. The Planning Director shall determine the status of a proposed alteration. While the following improvements may not always require a regular building permit, minor alterations shall always be reviewed and approved by the Planning Director, who may consult with the **Heritage and Landmarks Commission** ~~Historic Review Board~~, or any member thereof, in applying the provisions of this section. A Certificate of Appropriateness is required for minor alterations. An alteration shall be considered minor when the result of the proposed action is to restore portions of the exterior to the original historic appearance while performing repairs, such as:
1. Addition of gutters and downspouts (suggest repair of built-in, wooden, or half-round gutters and round downspouts).
 2. Repairing or providing a compatible new foundation that does not result in raising or lowering the building elevation.
 3. Change in material to match original type of material on the structure or grounds.
 4. Change in type of roof material in character with the original roofing material.
 5. Replacement of storm windows or doors with wooden, dark anodized, clad or painted in compatible color.
- E. New Construction or Major Alterations Criteria. The **Heritage and Landmarks Commission** ~~Historic Review Board~~ shall review all proposed new construction and alterations which exceed a minor status. A request for a new construction or alteration permit under this provision shall be made on the appropriate application form provided by the Planning Department. Review and approval of an application shall consider the following Secretary of the Interior's Standards for Rehabilitation:
1. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and special relationships.
 2. The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features and spaces and special relationships that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other historic properties, shall not be undertaken.
4. Changes to properties that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive materials, features, finish and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
8. Archeological resources affected by a project shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and special relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale, and proportion and massing, to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property, including historic plant materials, and its environment would be unimpaired.
(Additional Criteria for Consideration)
11. The location and orientation of the new structure on the site is consistent with the typical location and orientation of similar structures on the site or within the District or Corridor, considering setbacks, distances between structures, location of entrances and similar siting considerations.
12. Changes to yard areas including planters, fences, ponds, walkways and landscape materials, should be compatible with the overall historic setting. (Ord. 905, 1994; Ord. 1061, 2000)

116.110.085 Partitions and Subdivisions.

The ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ shall review and make recommendations, as soon as possible, to the Planning Commission, on all proposed partitions or subdivisions of sites designated as a Landmark or located within a Historic District. The Planning Director shall transmit applications to the ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ as soon as possible. Review of proposed subdivisions or partitions shall be based on the following criteria:

- A. The partition or subdivision does not allow a significant feature of the original site, as identified in the designation action and inventory, to be located on a separate site from the Landmark.
- B. The partition or subdivision allows adequate setbacks from Landmark improvements to provide for buffering and mitigation of impacts associated with development of the new

parcels. Such special required setbacks shall be indicated on the plat or partition or in deed covenants.

- C. Yard and landscaped areas including large trees and shrubs associated with the Historic Landmark structure shall be retained with the structure whenever possible. (Ord. 905, 1994)

116.110.90 Incentives.

A. Economic.

1. The Planning Director or ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ shall provide all applicants and interested parties with details regarding monies available from national, state, county, and local sources.
2. The city shall explore and consider the feasibility and advisability of the adoption of economic incentives for the benefit of owners of historic resources (i.e. revolving fund, to offset hardship, buy endangered properties, offer low interest loans or grants, tax relief).
3. The city shall explore and consider property tax rebates for designated properties.
4. The city shall explore and consider Community Development Block Grants for rehabilitation of designated properties.
5. The city shall encourage the establishment of a mechanism for providing opportunities for:
 - a. Cooperative purchase of materials for improvement;
 - b. Assistance in application for National Register application; and
 - c. Facilitating loan and insurance availability for designated properties.

B. Educational.

1. The Planning Director shall provide owners of historic resources with the names of local, state, and national preservation organizations and pertinent publications.
2. All owners of historic resources shall be invited to attend an annual preservation workshop sponsored either by the city, or in partnership with other jurisdictions in the county and shall be made aware of their eligibility for and advantage of membership in the Historic Preservation League of Oregon.
3. The ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ members may provide design guidance (but not to be construed as free long-term design service).
4. The ~~Heritage and Landmarks Commission~~ ~~Historic Review Board~~ and the Planning Director shall work with Parks Development and local developers to feature historic themes at appropriate sites.

C. Recognition.

1. The city shall provide all owners of designated Landmark properties with an appropriate certificate.
2. Consistent with the requirements of the Sign Code section 16.42, property owners of Historic Landmarks and Contributing Resources shall be encouraged to display a standard identifying sign, as available through local preservation organizations. (Ord. 905, 1994; renumb. by Ord. 1061; 2000)

16.110.095 Casualty Destruction.

A historic resource damaged or destroyed by unintentional means, to the extent that the cost of rebuilding damaged portions would exceed fifty (50) percent of the replacement value of the entire historic resource, may be removed from the Landmark status list by requesting such action of the City Council, and providing such proof as is necessary to establish that the requirements of this section are met. (Ord. 905, 1994)

16.110.100 Fees.

No fees or deposits for applications, plan reviews, interpretations or any other action pursuant to this chapter, shall be established. (Ord. 905, 1994)

16.110.105 Enforcement.

It shall be the duty of the Planning Director to enforce the provisions of this chapter and to insure compliance with conditions of approval or postponement. (Ord. 905, 1994)

16.110.110 Penalties.

Any person who fails to comply with, or who violates any provision of this chapter, except the demolition provisions of section 16.110.075, or who violates or fails to carry out the terms and conditions of any approval granted pursuant to this chapter, shall be subject to a fine of not less than \$50.00 or more than \$500.00 per violation. The demolition of a Landmark in violation of section 16.110.075 is punishable by a fine of not less than \$500, nor more than \$25,000. (Ord. 905, 1994; Ord. 1061, 2000)

16.110.115 Official Action.

All officials, departments and employees of the city vested with authority to issue permits or grant approvals shall adhere to and require conformance with this chapter, and shall issue no permit or grant approval for any development, alteration, moving or demolition which violates or fails to comply with conditions or standards imposed to carry out this chapter. Any permit or approval issued or granted in conflict with the provisions of this chapter, whether intentional or otherwise, shall be void. (Ord. 905, 1994)

16.110.120 Abatement of Violations.

Any development which occurs contrary to the provisions of this chapter or contrary to any permit or approval issued or granted hereunder is hereby declared to be unlawful and a public nuisance, and may be abated by appropriate proceedings.(Ord. 905, 1994)

16.110.125 Injunctive Relief.

Upon request of the city administrator, the City Attorney may institute an appropriate action in any court to enjoin the demolition, alteration or moving of any historic resources, or noncontributing resource or construction on or to any Landmark or within any Historic District which is in violation of any provision of this chapter. (Ord. 905, 1994)

16.110.130 Evidence of Violation.

Proof of a violation of this chapter or permit or approval issued or granted hereunder shall be deemed prima facie evidence that such violation is that of the owner of the property upon which the unlawful activity, condition, building, structure or other development exists. Prosecution, or lack thereof, of the owner of the property, the occupant, or other person in possession or control of the property shall not be deemed to relieve any other responsible person. (Ord. 905, 1994)

16.110.135 Cumulative Remedies.

The rights, remedies and penalties provided in this chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the city under any other provision of law. A person holding a city business license who violates the provisions of this chapter is also subject to a proceeding to consider revocation of the license pursuant to Code section 5.04, Business Licenses. (Ord. 905, 1994)

16.110.140 Interpretation, Regulations and Procedures.

The Planning Director shall have the initial authority and responsibility to interpret all terms, provisions and requirements of this section. A request for an interpretation of this section shall be made in writing and may be appealed pursuant to section 16.110.145. The Planning Director may develop rules, regulations and procedures to aid in the implementation and interpretation of the provisions of this section. (Ord. 905, 1994; Ord. 1061, 2000)

16.110.145 Appeals.

- A. Any person may appeal a decision of the Planning Director to the **Heritage and Landmarks Commission** ~~Historic Review Board~~. The appeal must be filed within fifteen (15) days of the written decision of the Planning Director.
- B. Any person may appeal a decision of the **Heritage and Landmarks Commission** ~~Historic Review Board~~ within fifteen (15) days of the written decision of the **Commission** ~~Historic Review Board~~. The appeal will be heard by the City Council, pursuant to procedures set forth in Code section 16.89. (Ord. 905, 1994; Ord. 1061, 2000)

16.110.150

(Ord. 1061, 2000; del. by Ord. 1111, 2003)

16.110.155

(Renumb. to 16.110.090 by Ord. 1061, 2000)

16.110.160, .165, .170, .175, .180

(Ord. 905, 1994; Del. by Ord. 1061, 2000)

16.110.185 Carryover Provisions.

Any alteration of the three structures already designated under the Historic Overlay provisions in 1984, by Ordinance No.742, shall be reviewed under provisions of this chapter. (Tax Lot 6900 of Tax Map 3-1E-33CD; Tax Lot 1100 of Tax Map 3-1B-33CC; and Tax Lot 2600 of Tax Map 3-1E-33CC.) (Ord. 905, 1994)

16.110.190 Severability.

Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or parts of sections. (Ord. 905, 1994)



**BEFORE THE CITY COUNCIL
OF THE
CITY OF CANBY**

In Re:

APPEAL OF PLANNING COMMISSION DECISION)	
FOR APPLICATION FOR MAP AMENDMENT)	FINDINGS, CONCLUSION & FINAL ORDER
FROM LOW DENSITY RESIDENTIAL TO)	
RESIDENTIAL-COMMERCIAL; A CONDITIONAL)	APP 17-01
USE PERMIT AND SUBDIVISION)	

NATURE OF APPLICATION

Allen Manuel ("Appellant" and "Applicant") through an Appeal seeks to reverse (1) the Planning Commission recommendation to the Council for denial for Map Amendment File #ZC 17-02 to change the zoning of three existing tax lots totaling 1.31 acres located at 533, 553 & 583 S Ivy Street from low density residential zoning district (R-1) to residential-commercial (C-R) zoning district; (2) the Planning Commission decision denying Conditional Use Permit to allow two single-family dwellings having common wall construction (4 total dwelling units each on its own lot); and, (3) the Planning Commission decision denying Subdivision known as South Ivy Park containing 12 total lots consisting of two single-family dwellings having common wall construction, two lots with existing homes to be remodeled and preserved, six new single-family lots with all utilizing a common shared private 20' wide driveway and utility easement providing lot access and utility services. The applications involve property described as Tax Lots 6300, 7100, and 7200 in Section 4 of Township 4 South, Range 1 East, Clackamas County, Oregon (the "Property").

HEARINGS

The Planning Commission considered applications File# ZC 17-02/CUP 17-05/SUB 17-04 at a duly noticed hearing held on October 9, 2017 during which the Planning Commission by a 6/0 vote denied these applications submitted by Allen Manual. On October 23, 2017 the Planning Commission approved the written final decision and staff sent the final decision to those with standing on October 24, 2017. The applicant notified the City by email on October 13, 2017 to indicate that he would be filing an appeal and desired that all 3 applications be consolidated for review by the City Council upon his actual Appeal and granted an extension of the 120-day rule to allow staff to set a date for the consolidated application Appeal. Appeal was properly made and received within the applicable 10-day appeal period.

The City Council after duly noticed hearing on December 6, 2017 denied applications File# ZC 17-02/CUP 17-05/SUB 17-04. These findings and conclusions support the City Council's decision up-holding the Planning Commission's decision with a Council denial.

CRITERIA AND STANDARDS

Map Amendment

In judging whether or not the Zoning Map should be amended, the Planning Commission recommendation

APP 17-01 Appeal of Planning Commission's Decision on ZC 17-02/CUP 17-05/SUB 17-04 S Ivy Park Rezone, Conditional Use & Subdivision

and City Council final decision shall consider Section 16.54.040 of the Canby Municipal Code which states the applicable review criteria when reviewing an amendment to the zoning map to be the following:

In judging whether or not the zoning map should be amended or changed, the Planning Commission and City Council shall consider:

- A. The Comprehensive Plan of the city, giving special attention to Policy 6 of the land use element and implementation measures therefore, and the plans and policies of the county, state and local districts in order to preserve functions and local aspects of land conservation and development;
- B. Whether all required public facilities and services exist or will be provided concurrent with development to adequately meet the needs of any use or development which would be permitted by the new zoning designation.

(Section 16.54.060)

- A. In acting on an application for a zone change, the Planning Commission may recommend and the City Council may impose conditions to be met by the proponents of the change before the proposed change takes effect. Such conditions shall be limited to improvements or physical changes to the property which are directly related to the health, safety or general welfare of those in the area. Further, such conditions shall be limited to improvements which clearly relate to and benefit the area of the proposed zoned change.
- B. The city will not use the imposition of improvement conditions as a means of preventing planned development, and will consider the potential impact of the costs or required improvements on needed housing. The Planning Commission and City Council will assure that the required improvements will not reduce housing densities below those anticipated in the Comprehensive Plan.

Conditional Use Permit

In judging whether or not a Conditional Use Permit application shall be approved, the Planning Commission determines whether criteria from the Code are met, or can be met by observance of conditions, in accordance with Chapter 16.50 of the Canby Municipal Code which states the applicable review criteria when reviewing a Conditional Use Permit to include the following:

In judging whether or not conditional use permit shall be approved or denied, the Planning Commission shall weigh the proposal's positive and negative features that would result from authorizing the particular development at the location proposed and to approve such use, shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable:

- A. The proposal will be consistent with the policies of the Comprehensive Plan and the requirements of this title and other applicable policies of the city;
- B. The characteristics of the site are suitable for the proposed use considering size, shape, design, location, topography, existence of improvements and natural features;
- C. All required public facilities and services exist to adequately meet the needs of the proposed

development;

- D. The proposed use will not alter the character of the surrounding areas in a manner which substantially limits, or precludes the use of surrounding properties for the uses listed as permitted in the zone.

Subdivision

Applications for a subdivision shall be evaluated based upon the standards and criteria of Section 16.62.020, the subdivision design standards in 16.64, and other applicable requirements of the Land Development and Planning Ordinance contained in 16.08 General Provisions, 16.10 Off-street Parking and Access, 16.24 C-R Residential/Commercial Zone and applicable development standards of 16.18 R 1.5 Medium Density Residential Zone and 16.46 Access Limitations on Project Density.

FINDINGS AND CONCLUSIONS

After hearing testimony on December 6, 2017 and taking into consideration the Appellant's statement for appeal, the Planning Commission's written decision and record from the Planning Commission's deliberations and hearing, the staff report and applicant's original application submittals; the City Council voted to deny the "Appellant's" appeal (APP 17-0) and denied the applicant's request for approval of File #ZC 17-02/CUP 17-01/SUB 17-04. In support of its decision, the City Council adopts the findings set forth in this document and incorporates the findings of the Planning Commission included herein and within the staff report only to the extent that they do not conflict with the following specific supplemental findings of the City Council contained within this document.

After holding said public hearing and considering the October 9, 2017 dated staff report and acceptance of written and oral testimony, the Planning Commission closed the public hearing, deliberated and **made the following additional findings beyond those contained in the staff report to arrive at and support their recommendation and decision to deny the three applications before them as indicated below:**

- 1) With respect to the Map Amendment, the Planning Commission relied on the final description statement within the Special Area of Concern "Area C" that indicates "There is no reason to attempt to hasten this transition process (the transition to C-R zoning that has begun in the area) because residential uses can eventually be converted to mixed residential/commercial use."
- 2) The Planning Commission found the proposed tentative development plan density to be excessive as a result of a combination of inappropriate assumptions utilized in the application of the overall lot size averaging for compliance with the minimum average lot size allowed along with allowing the roadway easement area to be included in the lot area calculations. It was argued by citizen written and oral testimony that the townhome lots should not be excluded from the overall average lot size calculation and that road easement area is not appropriate to be included when calculating the minimum lot size allowed. The developer testified at the meeting that excluding the easement area from the lots would likely eliminate 3 lots. Including the single-family with common wall lots as part of the average lot size would further decrease the amount of lot lots otherwise allowed on the site.
- 3) It was not adequately demonstrated that the increased traffic onto SW 6th Avenue would not be detrimental to the area and cause undue congestion and safety hazard at the S Ivy Street

intersection as a full traffic study looking at existing traffic volumes and delay at the intersection caused by school bus traffic was not performed, merely a rezone TPR analysis and traffic generation analysis.

- 4) The private roadway easement's required "no parking" designation in conjunction with the number of lots proposed would result in a functional parking inadequacy even though the minimum code standard is met that could lead to emergency access issues when visitor's or residents ignore the "no parking signs" and park along the narrow 20' wide access easement. It was noted that visitors were not likely to park along SW 6th Avenue but would violate the no parking signs. Multiple homes with a visitor at one time would easily exhaust the available 4 visitor or overflow parking spaces provided. The likely parking problem would result in too great of a risk for safety and emergency access to the homes; therefore contributing to a loss in the quality of life for the residents of the development and the nearby area.
- 5) The Conditional Use Permit was deemed inappropriate as it contributed extra density, which increased the resulting functional parking problem that could result in risk for emergency access for the residents and were not deemed as compatible as the outright permitted uses within the proposed C-R zone.

After holding said appeal public hearing on December 6, 2017 and considering the appellant's presentation and acceptance of oral testimony, the City Council closed the public hearing, deliberated and **made the following specific findings to arrive at and support their recommendation and decision to deny the three applications before them on appeal as indicated below:**

- 1) The City Council incorporated the findings and conclusions of the Planning Commission on this matter. Further, the Council had its own additional findings.
- 2) The City Council found that the zone change portion of the consolidated application was deniable because in recognition of the uniqueness of the area in question per Policy No. 6 of the Comprehensive Plan, the application needed to provide assurances of strict adherence to parking and access requirements as well as ever-increasing traffic needs. Here, the applicant failed to adequately address or properly study the ever-increasing traffic, parking, and access issues with such a proposed zone change.
- 3) The City Council also found that the non-contiguous nature of the proposed zone change demonstrated a hastened approach that further failed to adhere to the uniqueness and future potential commercial and mixed uses planned for this area per the Comprehensive Plan for this area of special concern Area "C" under Policy No. 6.
- 4) The City Council found that the denial of the re-zoning necessarily meant that the rest of the application would also be denied because if the area remained zoned R-1, then the proposed subdivision and conditional use permit would fail to adhere to many of the City's planning codes.
- 5) The City Council found that the application relied on the lot size averaging exception under CMC 16.18.030(b), which is permissive, and in this case, it was not to be permitted. The Council also found that the averaging of all lots in a subdivision should actually mean all lots, and that withholding several lots out of the averaging calculation by relying on other, separate conditional uses and exceptions was a misuse of the aforementioned exception.

ORDER

The City Council by motion made, denied the appellant's appeal upholding the Planning Commission's decision, and denying the applicant's request for approval.

THEREFORE, IT IS ORDERED BY THE CITY COUNCIL of the City of Canby that **ZC 17-02/CUP 17-05/SUB 17-04** be denied.

I CERTIFY THAT THIS ORDER DENYING ZC 17-02/CUP 17-05/SUB 17-04 was presented to and APPROVED by the City Council of the City of Canby.

DATED THIS 3rd day of January 2018.

Brian Hodson
Mayor

Bryan Brown
Planning Director

ORAL DECISION –December 6, 2017

AYES: Smith, Parker, Hensley, Dale & Spoon

NOES: Heidt

ABSTAIN: None.

ABSENT: None.

WRITTEN FINDINGS – January 3, 2018

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Kimberly Scheafer, MMC
City Recorder