



## AGENDA

### CANBY CITY COUNCIL MEETING

December 6, 2017

7:30 PM

Council Chambers

222 NE 2<sup>nd</sup> Avenue, 1<sup>st</sup> Floor

*Mayor Brian Hodson*

*Council President Tim Dale*

*Councilor Tracie Heidt*

*Councilor Traci Hensley*

*Councilor Greg Parker*

*Councilor Tyler Smith*

*Councilor Sarah Spoon*

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### CITY COUNCIL MEETING – 7:30 PM

1. **CALL TO ORDER – 6:30 PM – Willow Creek Conference Room** – The Council will immediately go into Executive Session with the Regular Session following at 7:30 PM in the Council Chambers.
2. **EXECUTIVE SESSION: ORS 192.660(2)(e) Real Property**
3. **OPENING CEREMONIES**
  - A. Invocation
  - B. Pledge of Allegiance
  - C. Kiwanis Canby Community Food & Toy Drive Proclamation
4. **COMMUNICATIONS**
5. **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.)*
6. **MAYOR'S BUSINESS**
7. **COUNCILOR COMMENTS & LIAISON REPORTS**
8. **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 November 15, 2017 City Council Regular Meeting
  - B. Reappointment to Planning Commission
  - C. New Outlet Liquor License Application for Gwynn's Coffeehouse, LLC

Pg. 1

Pg. 2

Pg. 3

**9. PUBLIC HEARINGS**

- A. APP 17-01, Appeal of Planning Commission's Recommendation By Applicant for 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. 5
- B. Declaring Real Property Located at 292 N Holly Street Not Needed for Public Use Pg. 317

**10. RESOLUTIONS & ORDINANCES**

- A. Res. 1277, Declaring the Former City Library Building Located at 292 N Holly Street, Not Needed for Public Use Pg. 318
- B. Res. 1278, Adopting Reasonable Measures for Public Records Requests; and Repealing Resolution 1060 Pg. 327
- C. Ord. 1468, Authorizing Contract with Mark 43 Incorporated to Provide a Records Management and Analytics System and Related Public Safety Technology Services for the City; and Declaring an Emergency (**2<sup>nd</sup> Reading**) Pg. 333

**11. NEW BUSINESS**

- A. Cancellation of December 20, 2017 City Council Meeting

**12. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS**

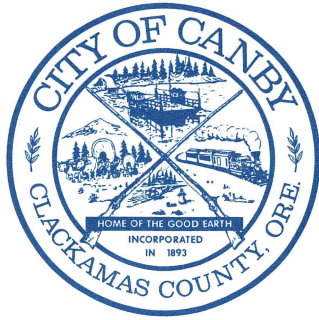
**13. CITIZEN INPUT**

**14. ACTION REVIEW**

**15. EXECUTIVE SESSION: ORS 192.660(2)(h) Litigation**

**16. 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](http://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.



Office of the Mayor

# Proclamation

## Kiwanis Canby Community Food & Toy Drive

WHEREAS, the Kiwanis Canby Community Food & Toy Drive originated for the purpose of providing toys and food for less fortunate families in our community; and

WHEREAS, by way of this Proclamation, the City of Canby recognizes that greater public awareness and involvement is needed in order for such programs to achieve their highest potential in providing and promoting joy to each household in this community; and

WHEREAS, Canby community members have undertaken the project of collecting and distributing toys and food to these needy families during the month of December; and

WHEREAS, donations for food baskets can be left at various locations around Canby.

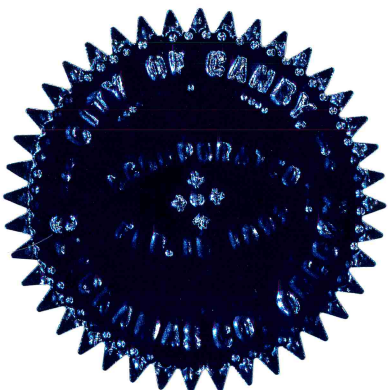
NOW, THEREFORE, I, Brian Hodson, by virtue of the authority vested in me as Mayor of the City of Canby, do hereby proclaim December 10 through December 16 as:

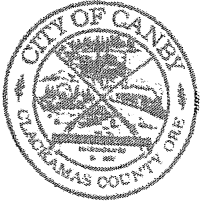
### KIWANIS CANBY COMMUNITY FOOD & TOY DRIVE WEEK

and urge all people of the City of Canby to observe this time by participating in this toy and food drive, helping to provide assurance that each family may have a twinkle in their eye this holiday season

Given unto my hand this 6<sup>th</sup> day of December 2017.

Brian Hodson  
Mayor





# **CITY OF CANBY COMMITTEE, BOARD, & COUNCIL APPOINTMENT APPLICATION**

Date: 11-14-17 Position Applying For: PLANNING COMMISSION

Name: Shawn Vornig Occupation: Business Owner

Home Address: \_\_\_\_\_

Employer: JUDSON ROY HOME Position: OWNER

Daytime Phone: \_\_\_\_\_ 5 Evening Phone: SAME

E-Mail Address: \_\_\_\_\_

What are your community interests (committees, organizations, special activities)? \_\_\_\_\_

Planning Commission, Chamber of Commerce  
Church Activities

What are your major interests or concerns in the City's programs? \_\_\_\_\_

Responsible growth & playing a role in the  
future of Canby

Reason for your interest in this position: I've enjoyed being a

part of the P.C. & would like to  
retain my seat

Experience and educational background: 2017 Planning Commission,

Board of Directors & Ambassador w/ Chamber  
of Commerce

List any other City or County positions on which you serve or have served: \_\_\_\_\_

N/A

Referred by (if applicable): \_\_\_\_\_

**Please return to:**

**City of Canby - Attn: City Recorder**

**PO Box 930, 222 NE 2nd Avenue, Canby, OR 97013**

**Phone: 503.266.0733 Fax: 503.266.7961 Email: [scheaferk@canbyoregon.gov](mailto:scheaferk@canbyoregon.gov)**

**Note: Information on this form may be available to anyone upon a Public Records Request and may be viewable on the City's web page.** 5/2017

Date Received: \_\_\_\_\_ Date Appointed: \_\_\_\_\_ Term Expires: \_\_\_\_\_

Date Resigned: \_\_\_\_\_ Destruction Date: \_\_\_\_\_



# Memo

To: Mayor Brian Hodson & Members of City Council  
From: Bret J. Smith, Chief of Police  
CC: Kim Scheafer, General Administration  
Date: November 20, 2017  
Re: Liquor License Application / New Outlet / Gwynn's Coffee House

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I have reviewed the attached liquor license application completed by the applicants/owners, Mr. Mallory Gwynn and Mrs. Sheri Gwynn, for the business, "Gwynn's Coffee House", located at 190 NW 2<sup>nd</sup> Avenue, Canby, Oregon, 97013.

On November 20, 2017, I spoke with Mr. Gwynn and we discussed the expectations and responsibilities involving the sale of alcoholic beverages. Mr. Gwynn said he and his wife are aware of the Oregon liquor laws and the consequences for failure to comply with the rules as set forth by Oregon State law. He further said everyone working at the business will take the OLCC training so all will have the same knowledge and understanding in regards to the expectations and responsibilities associated with the Oregon liquor laws.

It is my recommendation the Canby City Council approve this application to the Oregon Liquor Control Commission (OLCC).



# OREGON LIQUOR CONTROL COMMISSION LIQUOR LICENSE APPLICATION

PD 11/17/17  
V#1105  
\$100.00  
KX

Application is being made for:

## LICENSE TYPES

- ☐ Full On-Premises Sales (\$402.60/yr)
- ☐ Commercial Establishment
- ☐ Caterer
- ☐ Passenger Carrier
- ☐ Other Public Location
- ☐ Private Club
- ☒ Limited On-Premises Sales (\$202.60/yr)
- ☐ Off-Premises Sales (\$100/yr)
- ☐ with Fuel Pumps
- ☐ Brewery Public House (\$252.60)
- ☐ Winery (\$250/yr)
- ☐ Other: \_\_\_\_\_

## ACTIONS

- ☐ Change Ownership
- ☒ New Outlet
- ☐ Greater Privilege
- ☐ Additional Privilege
- ☐ Other \_\_\_\_\_

## 90-DAY AUTHORITY

☐ Check here if you are applying for a change of ownership at a business that has a current liquor license, or if you are applying for an Off-Premises Sales license and are requesting a 90-Day Temporary Authority

## APPLYING AS:

- ☐ Limited Partnership
- ☐ Corporation
- ☒ Limited Liability Company
- ☐ Individuals

## CITY AND COUNTY USE ONLY

Date application received: 11-17-2017

The City Council or County Commission:

City of Canby  
(name of city or county)

recommends that this license be:

☐ Granted ☐ Denied

By: \_\_\_\_\_  
(signature) (date)

Name: Brian Hodson

Title: Mayor

## OLCC USE ONLY

Application Rec'd by: [Signature]

Date: 10-16-17

90-day authority: ☐ Yes ☐ No

1. Entity or Individuals applying for the license: [See SECTION 1 of the Guide]

① GWYN'S COFFEEHOUSE, LLC ③ SHERI GWYN

② MALLORY GWYN ④ \_\_\_\_\_

2. Trade Name (dba): GWYN'S COFFEEHOUSE

3. Business Location: 190 NW 2<sup>ND</sup> AVE CANBY CLACKAMAS OR 97013  
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: \_\_\_\_\_  
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 503-910-1744  
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? ☐ Yes ☒ No

7. If yes to whom: N/A Type of License: \_\_\_\_\_

8. Former Business Name: THE PLACE TO BE CAFE

9. Will you have a manager? ☒ Yes ☐ No Name: MALLORY GWYN  
(manager must fill out an Individual History form)

10. What is the local governing body where your business is located? CITY OF CANBY  
(name of city or county)

11. Contact person for this application: MALLORY GWYN 503-910-1744  
(name) (phone number(s))

\_\_\_\_\_  
(address) (fax number) (e-mail address) N/A GWYN'SCOFFEEHOUSE@GMAIL.COM

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

① Mallory Gwyn Date 9/26/17 ③ \_\_\_\_\_ Date \_\_\_\_\_

② Sheri Gwyn Date 9/26/17 ④ \_\_\_\_\_ Date \_\_\_\_\_

RECEIVED  
OCT 09 2017



## **M E M O R A N D U M**

**DATE:** *November 21, 2017*

**TO:** *Mayor and City Council*

**FROM:** *Bryan Brown, Canby Planning Director*

**RE:** *Appeal (File No. APP 17-01) of Planning Commission Recommendation by Applicant for (ZC 17-02/CUP 17-05/SUB 17-04) –S Ivy Park Rezone, Conditional Use Permit and Subdivision at 533,553, & 583 S Ivy Street*

**Background:** At their October 9, 2017 meeting the Planning Commission, after holding a public hearing, voted 6 - 0 to deny the above referenced applications and thus forwarded a recommendation to the City Council to deny the rezoning of 533, 553 & 583 S Ivy Street from R-1 (Low Density Residential) to the C-R (Residential Commercial) zone district. Subsequently, the applicant-Allen Manual - appealed the accompanied Conditional Use Permit application to allow construction of two single-family common wall dwelling structures and the 12 lot Subdivision application for which the Planning Commission decision was final.

**Planning Commission Recommended motion to the Council:**

*"I move to deny zone change File No. ZC 17-02 from Low Density Residential (R-1) to Residential-Commercial (C-R) and to deny a 12-Lot Subdivision and a Conditional Use Permit to allow the construction of two single-family common wall dwelling structures (File Nos. SUB 17-04/CUP 17-05) affecting 1.31 acres located at 533, 553 & 583 S Ivy Street".*

**Appeal & Council Action:** The rezone of the property may stand on its own merits without the two accompanying development applications. Approval of all three applications are necessary to accomplish the proposed development project which are now before the City Council for a final decision based on Appeal (File No. APP 17-01).

The applicant (appellant) is required to provide a statement or narrative that explains the specific issues as to why they are appealing or aggrieved. The applicant's statement of appeal is attached to this memorandum and includes six specific appeal issues to support the applicant's premise that the Planning Commission incorrectly denied the three applications.

The Land Development & Planning Ordinance provides (Section 16.89.050 (I) (3) "The City Council shall overturn the decision of the Planning Commission only when one or more of the following findings are made:

- a. That the Commission did not correctly interpret the requirements of this title, the Comprehensive Plan, or other requirements of law,

- b. That the Commission did not observe the precepts of good planning as interpreted by the Council; or
- c. That the Commission did not adequately consider all of the information which was pertinent to the case.

The Council's action on an appeal shall be governed by the same general regulations, standards, and criteria as apply to the Commission in the original consideration of the application. To this end, staff has attached the original staff report to the Planning Commission, the applicant's submittal and supporting narrative and drawings, and the written input received to date in the application review process. The written findings of the Planning Commission are attached as well as the minutes of the Planning Commission meeting of October 9, 2017 at which the applications were denied.

The standards and review criteria for the original three applications are spelled out in the attached staff report. The staff recommended conditions of approval provided in the original staff report to the Planning Commission should be included if the City Council entertains a motion to approve the application's.

Possible Alternative Council Motion:

*"I move to approve zone change File No. ZC 17-02 from Low Density Residential (R-1) to Residential-Commercial (C-R) and to approve (or deny either one or both) a 12-lot Subdivision and a Conditional Use Permit to allow the construction of two single-family common wall dwelling structures (File Nos. SUB 17-04/CUP 17-05) affecting 1.31 acres located at 533, 553 & 583 S Ivy Street".*

Attachments:

- Applicant's (File No. APP 17-01) Statement or Reasons for Appeal
- Planning Commission Staff Report
- Applicant submittal: narrative and drawings
- All written input received, including input received the day of PC Mtg. and since the PC Hearing

**BEFORE THE CITY COUNCIL  
OF THE CITY OF CANBY, OREGON**

**In the Matter of an Appeal of a Decision  
by the Planning Commission to  
Recommend Denial of a Zone Change  
from Low-Density Residential (R-1) to  
Residential-Commercial (C-R) (File No.  
ZC 17-02) and to Deny a 12-Lot  
Subdivision and a Conditional Use  
Permit to Allow the Construction of Two  
Single-Family Common Wall Dwelling  
Structures (File Nos. CUP 17-05/SUB 17-  
04), All Affecting 1.31 Acres of Real  
Property Located at 533, 553, and 583  
South Ivy Street.**

**NARRATIVE IN SUPPORT OF THE REQUEST  
FILED BY ALLEN MANUEL**

**I. Introduction.**

Allen Manuel (“Appellant”) submits this appeal (“Appeal”) to the City of Canby (“City”) requesting that the City Council overturn the Planning Commission’s October 23, 2017, recommendation to deny Appellant’s application for a zone change from Low-Density Residential (R-1) to Residential-Commercial (C-R) (“Zone Change”) and the Planning Commission’s related denial of Appellant’s applications for a 12-lot subdivision (“Subdivision”) and a conditional use permit to allow the construction of two single-family common wall dwelling structures (“CUP”) on 1.31 acres of real property located at 533, 553, and 583 South Ivy Street (“Property”).<sup>1</sup> In this narrative, the Zone Change, the Subdivision, and the CUP shall be referenced as the “Applications.” For the reasons explained below, the City Council should grant the Appeal and approve the Applications.

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<sup>1</sup> Pursuant to CMC 16.89.060.F.1, the Planning Commission made a recommendation to the City Council on the Zone Change, and this recommendation is automatically forwarded to the City Council for final action. Accordingly, Appellant is not required to address the Zone Change in this Appeal. However, in an abundance of caution, and given that the Applications and the issues they raise are interrelated, Appellant has chosen to address the Zone Change in this Appeal.



## **II. Description of Property.**

Appellant is the owner of the Property, which is approximately 1.31 acres in size and is located at the northwest corner of South Ivy Street and SW 6<sup>th</sup> Avenue. The Property is identified as State ID #41E04AB Tax Lots 6300, 7100, and 7200 and is addressed as 533, 553, and 583 South Ivy Street. The Property is zoned as R-1 (Low Density Residential), which is inconsistent with the Property's Comprehensive Plan Map designation, which is RC (Residential Commercial). Surrounding properties are also mapped as R-1 and RC, respectively. There are three existing single-family residences on the Property. Surrounding uses are primarily single-family dwellings, with some home occupations.

## **III. Summary of Proposed Development.**

Appellant requests approval to redevelop the Property consistent with its existing Comprehensive Plan Map designation. Appellant's proposal is to remove one of the existing houses and to subdivide the Property into 12 lots (two for existing houses and 10 for new houses). Four of the new units would be located in two single-family residences with common wall construction, i.e., townhouses. The new lots would range in size from approximately 3000 square feet (for the townhouses) to approximately 8000 square feet. Appellant's plan would reduce conflicts on South Ivy Street because it would remove four accesses between the Property and South Ivy Street and relocate the access to SW 6<sup>th</sup> Avenue at a single private entrance to the Property. The proposed development is compatible with surrounding residential uses and consistent with applicable development standards. The City's transportation engineer determined that the proposed development is consistent with the City's Transportation System Plan. City Planning staff recommended approval of the Applications, with conditions.

## **IV. Appeal Requirements.**

CMC 16.89.050 establishes the requirements to appeal a Planning Commission decision to the City Council. As explained below, the Appeal meets these requirements. Further, the Appeal demonstrates that the Planning Commission erred when it denied the Applications.

### **16.89.050 Type III Decision**

\* \* \* \*

**I. Appeal. The Planning Commission's decision on a Type III decision or Type II appeal may be appealed to the City Council as follows:**

**1. The following have legal standing to appeal:**

- a. The applicant;**
- b. Any person who was mailed notice of the decision;**
- c. Any other person who participated in the proceeding by testifying or submitting written comments; and**
- d. The City Council, on its own motion.**

RESPONSE: Appellant is both the applicant and a person who was mailed notice of the Planning Commission's decision. Therefore, Appellant has legal standing to appeal.

**2. Procedure.**

- a. A Notice of Appeal shall be filed in writing, on forms provided for the purpose by the Planning Director, within 10 days of the date the Notice of Decision was mailed.**

RESPONSE: Appellant completed and filed the City's "Appeal of Planning Commission Decision – Process Type III" form with the City on October 23, 2017, which is one day before the date the City mailed the Notice of Decision. The appeal satisfies this requirement.

- b. The Notice of Appeal shall be accompanied by all required information and fees.**

RESPONSE: Appellant's Notice of Appeal includes a check to the City in the amount of \$1,920, and this appeal statement. Therefore, it is accompanied by all required information and fees.

- c. The appeal shall be limited to the specific issues raised during the comment period and public hearing process unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The hearings body may allow additional evidence if it determines that such evidence is necessary to resolve the case. The purpose of this requirement is to limit the scope of appeals by encouraging persons to be involved in the public hearing. Only in extraordinary circumstances should new issues be considered by the hearings body on an appeal.**

RESPONSE: Appellant is aggrieved because it is the applicant requesting approval of the Applications, which the Planning Commission incorrectly denied. The Planning Commission erred for the following reasons:

**Appeal Issue 1: The Planning Commission erred when it denied the zone change on the basis of Special Area of Concern “Area C.”**

The Planning Commission did not correctly interpret the requirements of the Comprehensive Plan for the following reasons:

(1) Special Area of Concern C implements Comprehensive Plan Policy 6, and the plain language of this policy requires the City to utilize the requirements of Special Area of Concern C “in conjunction with the requirements of the Land Development and Planning Ordinance, in guiding the use and development” of Area C. There is no indication that the Planning Commission considered the Special Area of Concern C requirements “in conjunction with” the CMC Title 16 requirements.

(2) The Zone Change satisfies applicable CMC Title 16 requirements, including “parking and access requirements,” which are the primary regulatory focus for Special Area of Concern C.

**Appeal Issue 2: The Planning Commission erred when it concluded that the Subdivision and CUP proposed “excessive” density as a combination of inappropriate assumptions in the Applications and allowing the private road to be included in the lot area calculations.**

The Planning Commission did not correctly interpret the requirements of the CMC, did not observe the precepts of good planning, and did not adequately consider all of the information that was pertinent to the case on this issue. The Applications do not propose “excessive” density; rather, they propose density consistent with the C-R zoning designation. The assumptions in the Applications are reasonable and consistent with the CMC. Nothing precludes including the private easement within the lot area calculations.

**Appeal Issue 3: The Planning Commission erred when it concluded that Applicant had not adequately demonstrated that increased traffic onto SW 6<sup>th</sup> Avenue would not be detrimental to the area.**

The Planning Commission’s finding is erroneous for the following reasons:

(1) The Planning Commission did not correctly interpret the requirements of the CMC because none of the City's approval criteria require an applicant to demonstrate that traffic from a development "would not be detrimental to the area."

(2) The Planning Commission did not adequately consider all of the information that was pertinent to the case. For example:

- City staff determined that the trips associated with the proposed development (approximately nine per day per townhouse) would be insignificant to the total capacity of SW 6<sup>th</sup> Avenue and would not overburden traffic in the area;
- The City's transportation engineer testified that the Applications were consistent with the City's Transportation System Plan; and
- The proposed access to the Subdivision will be located in the least impactful location possible (on SW 6<sup>th</sup> Avenue) and will remove four access points on South Ivy Street.

**Appeal Issue 4: The Planning Commission erred when it concluded that the proposed development had inadequate parking. The Planning Commission also erred in concluding that the "likely parking problem" would result in too great of a risk for safety and emergency access to homes.**

The Planning Commission did not correctly interpret the requirements of the CMC and did not adequately consider all of the information that was pertinent to the case on this issue. For example:

(1) There is no evidentiary basis to conclude that the development will have inadequate parking because it will exceed minimum parking standards.

(2) There is no evidentiary basis to conclude that there would be an unreasonable risk for safety and emergency access to homes when the Property provides adequate access for emergency vehicles and, as stated above, parking is adequate and will not interfere with such access.

**Appeal Issue 5: The Planning Commission erred when it concluded that approval of the CUP was inappropriate because it contributed extra density, which increased the resulting functional parking problem and could result in risk for emergency access for**

**the residents, and because it allowed uses that were not deemed as compatible as the outright permitted uses within the C-R zone.**

The Planning Commission's finding is erroneous for the following three reasons:

(1) There is no "functional parking problem" associated with this development because it will exceed minimum on-site parking standards.

(2) There is no evidence to support the conclusion that the proposed Subdivision would create any concerns for emergency access because it will adequately allow for emergency access.

(3) The question of whether uses permitted by right in the C-R zone are more compatible than the proposed townhouses is not a valid consideration under the City's approval criteria in CMC 16.50.010 and therefore cannot be a basis to deny the CUP.

**Appeal Issue 6: The Planning Commission erred when it concluded that the CUP and Subdivision were inappropriate and harmful to the quality of life within the surrounding neighborhood and did not contain enough functional and necessary elements to assure a "good plan" that is a proper fit for the area as reflected in the additional findings.**

The Planning Commission's finding is not based upon any applicable approval criteria and is not supported by evidence in the record. Therefore, the Planning Commission did not correctly interpret the requirements of the CMC.

All of these issues were before the Planning Commission during the comment period and public hearing and are reflected in the Planning Commission's decision. Therefore, they are properly preserved for appeal.

Because the Planning Commission erred with each of its findings for denial, the City Council should overturn the Planning Commission's decision.

Applicant reserves the right to submit additional argument (and evidence if permitted) and raise additional issues before the City Council.

**3. The City Council shall overturn the decision of the Planning Commission only when one or more of the following findings is made:**



- a. That the Commission did not correctly interpret the requirements of this title, the Comprehensive Plan, or other requirements of law;**
- b. That the Commission did not observe the precepts of good planning as interpreted by the Council; or**
- c. That the Commission did not adequately consider all of the information which was pertinent to the case.**

RESPONSE: For the reasons explained in the appeal issues above, the City Council should find that the Planning Commission did not correctly interpret the requirements of the Comprehensive Plan, the CMC, and state law; the Planning Commission did not observe the precepts of good planning as interpreted by the City Council; and the Planning Commission did not adequately consider all of the information that was pertinent to the case. Therefore, the City Council should overturn the Planning Commission's decision to deny the Applications.

**4. The Council's action on an appeal shall be governed by the same general regulations, standards, and criteria as apply to the Commission in the original consideration of the application.**

RESPONSE: Appellant acknowledges that the Applications are subject to the same general regulations, standards, and criteria before the City Council as applied to the Applications before the Planning Commission.

**J. Any decision of the Planning Commission may be appealed to the City Council unless otherwise specified in this Title. Such appeals will be processed using the Type III procedures unless otherwise specified in this Title.**

RESPONSE: CMC Title 16.89 does not restrict an appeal of the Planning Commission's decision to deny the Applications. Therefore, the decision is appealable to the City Council. Appellant acknowledges that the City's Type III procedures apply to the City Council's consideration of the appeal.

**K. The decision of the City Council regarding a Type IV decision, appeal of a Planning Commission decision, or any other process contained within this title, is the final decision of the City.**

RESPONSE: In this matter, the City Council would decide the appeal of a Planning Commission decision. As a result, it would be the final decision of the City concerning the Applications.

**V. Conclusion.**

For the reasons set forth in this narrative and on the basis of evidence in the record, the City Council should find that the Planning Commission erred and should approve the Applications.

Township Road: 60' ROW



Street Light

Power Pole

Fire Hydrant  
Service Pole

Power Pole  
Street Light

Not a Part

Existing Edge of Pavement  
South Ivy ROW 60'

Service Pole

Lot 6  
New SFR  
5,000 Sq. Feet  
0.115 Acres

Lot 5  
New SFR  
4,267 Sq. Feet  
0.098 Acres

Lot 4  
Townhome  
3,038 Sq. Feet  
0.070 Acres

Lot 3  
Townhome  
3,001 Sq. Feet  
0.069 Acres

Lot 2  
Townhome  
3,002 Sq. Feet  
0.069 Acres

Lot 1  
Townhome  
3,002 Sq. Feet  
0.069 Acres

Lot 7  
New SFR  
5,000 Sq. Feet  
0.115 Acres

Lot 8  
Existing SFR  
7,106 Sq. Feet  
0.163 Acres

Lot 11  
New SFR  
5,000 Sq. Feet  
0.115 Acres

Lot 12  
New SFR  
5,041 Sq. Feet  
0.116 Acres

Lot 9  
Existing SFR  
8,109 Sq. Feet  
0.186 Acres

Lot 10  
New SFR Lot  
5,647 Sq. Feet  
0.130 Acres

Overflow  
Parking

For existing legal lot of records  
lot lines see attached survey.

Note: Lot 5 currently has a small  
residence. That will be removed to  
make way for the access road way.

20' Paved Access  
and Utility Easement  
14" Red Oak

South 6th Street ROW 60'

Sanitary Sewer

Fire Hydrant-190

# South Ivy Park

Proposed Subdivision: Access off 6th Str

533, 553, 583 S Ivy, Canby OR 97013

DATE: 7/20/2017

SCALE: 1" = 60'

DRAWN BY: A. Manuel



# City of Canby

## STAFF REPORT

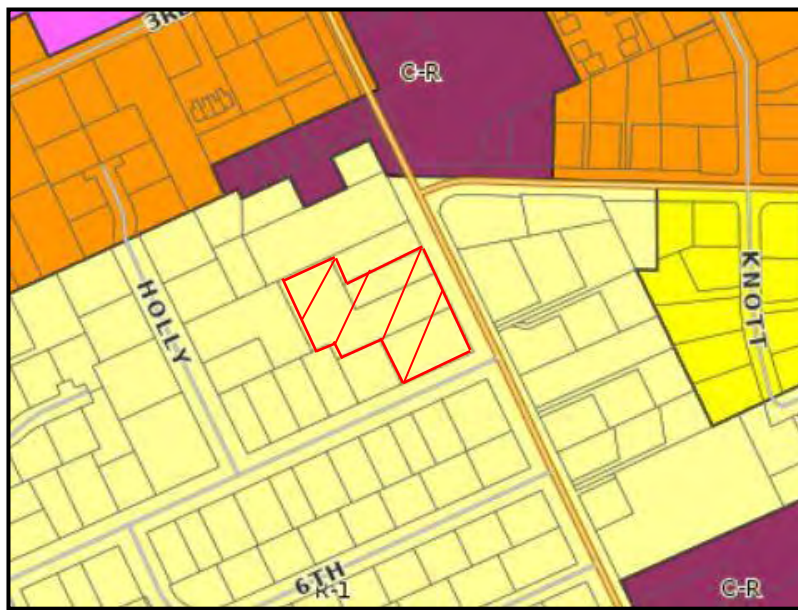
FILE #: ZC 17-02/SUB 17-04/CUP 17-05

Prepared for the October 9, 2017 Planning Commission Meeting

**LOCATION:** 533, 553, 583 S. Ivy Street

**ZONING:** R-1 Low Density Residential

**Tax Lots:** 41E04AB06300, 07100, 07200



**PROPERTY SIZE:** 0.21 Acres, 0.35 Acres, 0.75 Acres (1.31 Acres Total)

**COMPREHENSIVE PLAN LAND USE MAP DESIGNATION:** RC – RESIDENTIAL COMMERCIAL

**CURRENT ZONING:** R-1 Low Density Residential

**PROPOSED ZONING:** CR – RESIDENTIAL COMMERCIAL

**OWNER:** ALLEN MANUAL LIVING TRUST

**APPLICANT:** Allen Manual

**APPLICATION TYPE:** Amendment to Zoning Map (Zone Change) (Type IV)/Subdivision (Type III)/Conditional Use (Type III)

**CITY FILE NUMBER:** ZC 17-02/SUB 17-04/CUP 17-05

### I. PROJECT OVERVIEW & EXISTING CONDITIONS

The subject properties are located at the northwest corner of S. Ivy Street and SW 6<sup>th</sup> Avenue and extend north along the west side of S. Ivy Street approximately 225 feet and along the north side of SW 6<sup>th</sup> Avenue approximately 150 feet. The property owner requests to change the zone designation from R-1, Low Density Residential to C-R, Residential Commercial. The Comprehensive Plan designation is currently RC-Residential Commercial which is consistent

with the requested zone change to C-R Zone. Subsequently, a Comprehensive Plan Amendment is not required for this application. The requested zone district may be found to be in accordance with the Land Use Map component of the Comprehensive Plan. If the City Council approves the Zone Change Application, the property owner included with the file a Subdivision Application to subdivide three existing parcels of 0.21 acres, 0.35 acres, and 0.75 acres each into a 12 lot subdivision along with a Conditional Use Application to allow placement of townhouses on four of those resulting lots as required in the C-R Zone. Although the properties are designated Residential Commercial on the Comprehensive Plan Land Use Map, the R-1, Low Density Residential Zone includes and surrounds the parcels. The nearest C-R zoning is located approximately 150 feet north of the subject properties and approximately 530 feet to the south. The existing City of Canby Comprehensive Plan has envisioned the ultimate urbanization of this area and the intended land use of these 3-tax lots as appropriate for the requested R-C, Residential Commercial zone district.

## **II. Attachments**

- A.** Application forms
- B.** Application narratives
- C.** DKS Memo – August 10, 2017
- D.** Pre-application meeting minutes
- E.** Neighborhood meeting notice, notes, and attendance sheet
- F.** Warranty Deeds
- G.** Locations of Improvements Map
- H.** Record of Survey
- I.** Proposed Access Map 6<sup>th</sup> Avenue – See Revised Access Radius 9.27.17
- J.** Proposed Access Map S Ivy Street
- K.** S. Ivy Utilities Plan
- L.** Lot Size Averages – See Revised Lot Sizes 9.28.17
- M.** Assessor Map
- N.** Site Plan
- O.** Driveway Maintenance Agreement
- P.** Agency Comments
- Q.** Citizen Comments

## **III. APPLICABLE CRITERIA & FINDINGS**

Applicable criteria used in evaluating this application are listed in the following sections of the *City of Canby Comprehensive Plan Goals and Policies and Canby's Land Development and Planning Ordinance*:

### City of Canby Comprehensive Plan Goals, Policies and Implementation Measures

- Land Use Element- Applicable Goal, Policies, Findings & Implementation Measures
  - Policy No. 1 & Finding No. 1 & 2
  - Policy No. 2 & Finding No. 3
  - Policy No. 5 & Residential Commercial Description & Finding No. 6
  - Policy No. 6 & Implementation Measures (Area of Special Concern “C”)



## Canby Land Development and Planning Ordinance

- 16.08 General Provisions
- 16.10 Off-street Parking and Loading & Access
- 16.24 C-R Residential/Commercial Zone
- 16.43 Outdoor Lighting Standards
- 16.46 Access Limitations on Project Density
- 16.50 Conditional Uses
- 16.54 Amendments to Zoning Map
- 16.62 Subdivisions-Applications
- 16.64 Subdivisions-Design Standards
- 16.86 Street Alignments
- 16.88 General Standards & Procedures
- 16.89 Application and Review Procedures
- 16.120 Parks, Open Space, and Recreation Land General Provisions

### **ZONE CHANGE:**

#### ***Chapter 16.54 Amendments to the Zoning Map Analysis***

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##### ***16.54.010 & 0.20 & 0.30 Amendments to the Zoning Map***

**16.54.010** – Authorization to initiate amendments:

**16.54.020** – Application and Fee:

**16.54.030** – Public Hearing on Amendment:

**Findings:** The property owner has authorized initiation of the proposed map amendment by signing an application form. This criterion has been met.

The map amendment application and associated fee were received from the applicant. This criterion has been met.

Public Hearing criterion will be met when the Planning Commission holds a public hearing and makes a recommendation to the City Council and when the City Council conducts its own hearing and issues a decision.

##### ***16.54.040 Standards and criteria***

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;

**Findings:** The Land Use Element “Background” section of the Comprehensive Plan is relevant to this land use request. The Land Use Element Goal: To guide the development and uses of land so that they are orderly, efficient, aesthetically pleasing, and suitably related to one another. The provisions within the land use element of the Comprehensive Plan – including considerations related to the Areas of Special Concern (Area “C”) for which this request is a part, are not intended to be interpreted without an understanding and balance with

considering the contents and intent of the related and competing goals of all the other elements of the Plan. It must be remembered that the Comprehensive Plan as a whole was to provide a guide to accommodate growth of nearly 3 times the population when initially adopted in 1981 with a 20-year planning horizon. However, increasing land use efficiency does not mean the aesthetic qualities of life in Canby need to be sacrificed in the process. Increased efficiency is somewhat like the concept of “highest and best use” depending on one’s perspective. The things to evaluate and guide appropriate development that helps to preserve quality of life factors include: the separation of incompatible uses or activities, the provision of adequate space for each type of land use which is expected to develop and maximizing the use of existing public facilities without over-burdening their capacity, and an evaluation of whether there are any constraints that should alter the proposal – such as environmental, flood hazard, steep slopes, traffic or street capacity issues. Staff must rely on an evaluation of actual ordinance standards and evaluation criteria to guide us in determining how far we can go toward assuring how well the quality of life measures indicated above are being respected and preserved. While certain aspects of the proposed subdivision might be improved in terms of compatibility, we are hard pressed without corresponding ordinance standards to impose our vision for the area over the applicant’s if the proposal is shown to comply with development standards.

The developer is proposing a reasonable approach to “the highest and best use” of this area that conforms with the intended future of the area as indicated on the adopted Land Use Plan Map. In fact, light commercial or mixed commercial and residential uses, or just residential uses as allowed by the R 1.5 zone and in accordance with the R 1.5 development standards are allowed by the proposed C-R zoning district. The applicant has chosen generally a detached single-family home environment which is most similar to the surrounding existing uses. Evidence indicates that adequate utility infrastructure is in place to serve the increased density and intensity of land use proposed. Written public testimony has raised issues about the location of the point of access on SE 6<sup>th</sup> Avenue with particular concern raised due to this being a school bus route that causes difficulty in the stacking of vehicles on SE 6<sup>th</sup> Avenue as they attempt to turn onto busy S Ivy Street. Although this is an acknowledged concern, City ordinance requires that the point of access be located on the lower classification street and it has been located in the most favorable manner to reduce traffic conflicts the furthest away from the intersection with S Ivy Street as possible. Reducing points of conflict on the busy S Ivy Street arterial was a prime objective in review of the proposed subdivision request with recognition the greatest conflict originally proposed was a new private road accessing S Ivy Street in the vicinity of Township Road. Although the new access location is not without issues they pale compared to those safety issues that would result if allowed directly onto the busy arterial roadway in proximity with the SE Township Road and S Ivy Street intersection. Access must be provided to properties, and the choice of SE 6<sup>th</sup> Avenue complies with ordinance standard to utilize the lowest classification street for access when a choice exists. The access solution has removed four driveway locations from S Ivy Street and concentrated those trips at the SE 6<sup>th</sup> Avenue and S Ivy Street intersection. In in depth analysis of the traffic operations at this intersection was not perform in consideration that the increase in traffic generation amounts to 9 additional homes and a recognition that the TSP accounted for additional future trips from possible rezoning of this property when identifying problem traffic locations and future street improvement investment. No environmental hazards constraints have been identified. The detached single-family primary design, with 2 common wall townhomes is not all that out of character with the neighboring properties but is at a significant increased

density. All but the attached single-family homes match the intended future use of the area as called for by the Comprehensive Plan land use map. The attached homes can certainly be approved through the Conditional Use Permit if the design is considered satisfactory. The market typically drives when an area is ready to transition to a new use. These relevant policies of the Comprehensive Plan can be determined to be met by this proposal.

The Comprehensive Plan in general envisioned that community wide new development would result in: the number of dwelling units per acre rising from past developments at approximately 30 percent higher from 3.64 to 4.7 units per acre; a greater diversity within subdivisions through "lot size averaging" some smaller less expensive lots and some more expensive larger lots; new developments would begin to include duplex and common-wall units; PUD would be used in nearly half of all subdivisions containing over 5 acres; and condominiums, or unit ownership will increase in new higher density developments with more amenities included as inducements to buyers. The subject development will be increasing the residential density at this location within the guidelines envisioned for the C-R zone designated on the Land Use Plan Map. This exceeds the increased density envision for the community as a whole by the Plan but the land use plan map designated certain areas -such as the subject property- where higher density was considered to be more appropriate than others. It is best when an area designated to transition to a new zone district do so in a logical manner extending from areas of similar zoning when possible. In this instance the nearest C-R zoning is 150' to the north. The lack of adjacency can cause some increased boundary of dissimilar uses until redevelopment follows for those areas having the same future use designation on the Plan map. This can be perceived to reduce quality of life factors as the transition proceeds within the area. At its extreme, this is sometimes called spot zoning, however, this request could also be viewed as starting the transition to the intended future use in a logical point on the south edge of the designated future C-R area north and westward in a logical fashion. This finding could be found to be in compliance or not depending on one's perspective of the proposed density and where it is being proposed within the envisioned transition overall area.

The Comprehensive Plan text narrative explains that the area designated for residential-commercial (R-C) on the Land Use Map is presently almost entirely in residential use, although some home occupation businesses exist. The intended mixed-use nature of this category precludes intense commercial development. The applicant's submitted residential subdivision indicates that he intends similar residential use of the property over light commercial or a mixed use scenario which is also allowed by the C-R zone requested.

The "Buildable Lands: : section of the Land Use Element – Finding No 1 (F) Implementation Measure states: "Continue to utilize the Planned Unit Development overlay zone to assure that areas of special concern are properly addressed and not merely lumped together with development of adjacent properties." "Finding No 2 states: "It is recognized that the City has an obligation to maximize the efficiency of land use patterns within the urban area and to allow agricultural areas to remain in productivity for as long as possible before they are converted to urban uses. The best way to implement each of these objectives is to increase the density and intensity of land uses within the urban area. Through appropriate design, the utilization of land can be maximized without adverse impacts on neighborhood appearance or the overall quality of life in Canby. The PUD is usually reserved for use with larger subdivision developments or for those which could benefit from clustering density in order to work around and environmental constraint or where there is a desire or reason to provide meaningful

common open space. This particular area lacks any constraints and there is no particular resource to protect. There is however more discretion involved in the approval of a PUD than a typical subdivision, where it is considered as more of a site plan with lots. More attention can be directed toward amenities in some instances through the PUD approach to development and it often works well when private streets are proposed and the need for shared parking arises. A PUD also provides greater flexibility in the application of setbacks and lot size through the use of the alternative lot layout option. There is no directive for a developer to choose a PUD if he can otherwise comply with standard subdivision requirements.

Policy No 2 states: Canby shall encourage a general increase in the intensity and density of permitted development as a means of minimizing urban sprawl.” The Plan states that: “Implementation of the Comprehensive Plan will necessitate some actions which will be opposed by individuals or groups having an adverse impact on certain neighborhood areas in order to recognize the best interests of the overall community at times. No individual property is more important than the overall community when determining appropriate development.” Finding No 3 indicates that “the land use element must be used in coordination with the other sections of the Plan – Transportation and Public Facilities and Services Elements – to assure that development is not allowed to occur before the necessary services and facilities are available to accommodate the new growth.” This includes consideration of: water, sewer, storm drainage, electric service; police and fire and emergency services; schools, recreation facilities, access provision (both internal and off-site improvements, if necessary); and other transportation related factors. Determining whether or not a public service would be overburdened by a proposed development often becomes essentially a value judgement but we must look for cut-off points for defining when adequate public service is provided. Defined criterion is particularly important with subdivision applications which are subject to the application of clear and objective standards as a Limited Land Use decision by State Statute. As previously mentioned, there is no evidence that public services will be overburdened by this proposed development although traffic queuing on SE 6<sup>th</sup> Avenue at the intersection with S Ivy Street will see an increase. However, this intersection is not listed as one of concern at this time in the TSP. Improvements with the funded STIP project to provide sidewalks and drainage improvements on S Ivy Street adjacent and both north and south of this property along with a signal light installation at the Township Road and S Ivy Intersection will improve the safety for both pedestrian and vehicular traffic in this vicinity when completed in early 2019. Conformance with this criterion can be considered to be met by the rezone and proposed subdivision.

Policy No. 5 states: “Canby shall utilize the land use map as the basis of zoning and other planning or public facility decisions”. As an implementation measure, the Plan directs to rezone properties, as necessary, to conform to the Land Use Map. The use category indicated for the subject property on the Plan Map is Residential/Commercial. Its description is distinguished by a mixture of light commercial and residential activities connecting two areas of heavier commercial usage, this category is intended to provide a unique opportunity for mixed uses while maintaining a special focus on the access and traffic problems of S. Ivy Street. City C-R zoning conforms to the category with R-1 an allowable less intensive, interim zoning.

The subject property is identified as being in Area “C” of an “Area of Special Concern” that is stated in Policy 6 of the Comprehensive Plan. Area “C” is delineated as an elongated configured area that extends south along S. Ivy Street on the east and west side to SW 6<sup>th</sup>

Avenue and only on the east side of S. Ivy south to approximately 70 feet north of SW 8<sup>th</sup> Avenue. This area conforms to the R-C zone designated area on the Comprehensive Plan Map. The Area of Special Concern designation appears to have been given because of the somewhat unique C-R mixed use future envisioned for the area and concern in particular to assure strict adherence to parking and access requirements are maintained. Portions of the northern area just south of 3<sup>rd</sup> Avenue have been rezoned R-2 and will be allowed to remain R-2. C-R zoning has already begun to be used and approved in the Area "C". It indicates that the existing homes could be converted to mix residential/commercial use. We know that the majority of the Area "C" lots are developed with single-family dwellings in an area that allows increased density – including other various housing types on lots and light commercial uses. The area is planned for mixed residential/commercial use. The applicant's propose subdivision is within the long-range intent of the designated Area of Special Concern "C". Additionally, the proposed zone for the property is consistent with the zone designation on the Comprehensive Plan Map. The applicant is proposing single-family homes and two common-wall townhouses that accommodates four single-family units that are intended to be owner occupied. Finding No. 6 states that: All of the various Areas of Special Concern have characteristics which necessitate unique treatment rather than conventional development to minimum standards set by zoning. Some of the areas may currently lack full services necessary to support the density which is planned to occur. In "Area C" the primary concern was to manage access well due to the increasing level of traffic on S Ivy Street and to maintain strict adherence to parking standards in the area. The Plan narrative mentions that in areas lacking full services it could be proper to leave the present Low Density Residential zoning intact as a "holding pattern" until a thorough "redevelopment "of the area is undertaken. Other "Area" locations up-zoning is appropriate as soon as any increased development is undertaken. Staff does not see any evidence why up-zoning would not be appropriate immediately for Area "C" based on the evidence that adequate infrastructure is in place. Area "C" is not indicated within the Plan directly as being suitable as a "holding pattern" area.

Comprehensive Plan Provision Summary. After a review of the Comprehensive Plan and the applicant's zoning narrative, staff concludes that the request satisfactorily meets provisions in Policy 6 and the applicable goals and policies listed in the Comprehensive Plan. We note an argument could be made for use of the PUD process in conjunction with a subdivision development in this Area of Special Concern in order to obtain development as good as or potentially better than that provided through conventional means.

*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. (Ord. 749 section 1(B), 1984; Ord.740 section 10.3.85(D), 1984)*

Findings: Problems or issues in the extension of utility services have not been raised by City service providers that would prevent providing adequate services to this development. A subdivision application is submitted along with proposed utility service plan that has been deemed suitable to serve the subdivision. There is no evidence that development of the property cannot meet standards for adequate public facilities. Fire and emergency service needs have been adequately addressed, most recently with submittal of a revised preliminary plat that meets the necessary radius on the private access road that will satisfy both Canby Disposal and the fire departments emergency service needs. The fire Marshall indicated that trash day can be somewhat of a problem on narrow private roads but they do realize it is



limited to one day a week. Enforcement of no parking is also a concern on private roads as the City will not take responsibility for enforcement violations on private streets.

### ***Chapter 16.08 General Provisions***

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#### ***16.08.070. Illegally created lots***

In no case shall a lot which has been created in violation of state statute or city ordinance be considered as a lot of record for development purposes, until such violation has been legally remedied. (Ord. 740 section 10.3.05(G), 1984)

**Findings:** Based on available information, it appears that the subject properties were created by deed and survey prior to 1976 before land use regulations required a review for land divisions. The property is considered legally created for land use purposes.

#### ***16.08.150. Traffic Impact Study (TIS)***

***A.*** *Determination based on information provided by the applicant about the proposed development, the city will determine when a TIS is required and will consider the following when making that determination.*

- 1. Changes in land use designation, zoning designation, or development standard.*
- 2. Changes in use or intensity of use.*
- 3. Projected increase in trip generation.*
- 4. Potential impacts to residential areas and local streets.*
- 5. Potential impacts to priority pedestrian and bicycle routes, including, but not limited to school routes and multimodal street improvements identified in the TSP.*
- 6. Potential impacts to intersection level of service (LOS).*

**Findings:** The Transportation Planning Rule within State Statute (OAR 660-12-0060-9) requires that there be a record of traffic generation findings which are consistent with the City's Transportation System Plan with any Zoning Map Amendment. A traffic generation component was added based on the proposed subdivision application to document the additional approximate 100 daily trips that would be added by this subdivision. A full traffic analysis that would include documentation of current traffic counts and nearby intersection analysis was not considered necessary due to the scope of the development project and based on access already being located in the least impactful location for serving this property. A queuing analysis would be useful to better inform how much delay is caused by school buses on SE 6<sup>th</sup> Avenue. Current information lead staff to determine that off-site mitigation measures would not likely be triggered by this size of development. A traffic TPR memorandum from DKS Engineering concluded that the proposed zone and the uses that could be allowed were accounted for within the adopted TSP.

### ***Chapter 16.24 C-R Residential/Commercial Zone***

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The subject property shall be designated as the C-R zone as indicated in the Comprehensive Plan.

**Findings:** After receiving zone change approval, the property shall meet all development criteria and standards of the C-R zone including the criteria listed in Section 16.24.030 that refers to Section 16.18.030 (R 1.5 zone) for development standards.

## ***Chapter 16.89.060 Process Compliance***

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### **16.89.060 Type IV Decision**

For certain applications, including the proposed rezoning, the City Council makes a final decision after a recommendation by the Planning Commission. These application types are referred to as Type IV decisions.

**A. Pre-application conference.** A pre-application conference may be required by the Planning Director for Type IV applications.

**B. Neighborhood meetings.** The applicant may be required to present their development proposal at a neighborhood meeting (see Section 16.89.070). Table 16.89.020 sets the minimum guidelines for neighborhood review but the Planning Director may require other applications to go through neighborhood review as well.

**C. Application requirements.** Type IV applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.

**D. Public notice and hearings.** The public notice and hearings process for the Planning Commission's review of Type IV applications shall follow that for Type III applications, as provided in subsections 16.89.050.D and 16.89.050.E.

**E. Decision process.**

1. Approval or denial of a Type IV decision shall be based on the standards and criteria located in the code.
2. The hearings body shall issue a final written order containing findings and conclusions recommending that the City Council approve, approve with conditions, or deny the application.
3. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.
4. In cases involving attorneys, the prevailing attorney shall prepare the findings, conclusions, and final order. Staff shall review and, if necessary, revise, these materials prior to submittal to the hearings body.

**F. City Council proceedings:**

1. Upon receipt of the record of the Planning Commission proceedings, and the recommendation of the Commission, the City Council shall conduct a review of that record and shall vote to approve, approve with conditions, or deny the recommendation of the Planning Commission.

2. The City Council may question those individuals who were a party to the public hearing conducted by the Planning Commission if the Commission's record appears to be lacking sufficient information to allow for a decision by the Council. The Council shall hear arguments based solely on the record of the Commission.
3. The City Council may choose to conduct public hearings on Comprehensive Plan amendments, amendments to the text of this title, zone map amendments, and annexations. If the Council elects to conduct such hearings, it may do so in joint session with the Planning Commission or after receiving the written record of the Commission. (Ord. 1080, 2001)

**Findings:** Amendments to the Zoning Map, or "Zone Changes", are processed as a Type IV "quasi-judicial" process which is considered through a public hearing by the Planning Commission that forwards a recommendation to the City Council. The City Council also holds a public hearing and issues a final decision. The decision for a Map Amendment is documented by the Council through approval of an Ordinance. The notice requirements are the same as for Type III applications.

Notice of this application and the Planning Commission and Council Hearing dates were made to surrounding property owners on August 25, 2017, at least 20-days prior to the hearing. Prior notification and neighborhood meetings were completed by the applicant. The site was posted with a Public Hearing Notice sign by September 29, 2016. A notice meeting ordinance requirements of the public hearings was published in the Canby Herald by September 25, 2017. A pre-application meeting was required for this application and held on April 11, 2017. These findings indicate that all processing requirements have been satisfied with this application to date.

#### **Agency/Public Testimony Received**

Notice of this application and opportunity to provide comment was mailed to owners and residents of lots within 500 feet of the subject properties and to all applicable public agencies. All citizen and agency comments/written testimony received to date is attached and will be presented to the Planning Commission.

#### **SUBDIVISION:**

##### **Findings:**

The subject properties are currently three separate parcels that contain single-family dwellings. Assuming approval of the requested zone change, the applicant intends to divide the existing parcels into a 12 lot subdivision that includes eight single-family dwellings and two common wall townhomes. The applicant intends to remove one of the existing dwellings to allow space for a proposed private roadway and the two other dwelling will remain on the newly created lots with appropriate setbacks. A memo from DKS Engineering, dated August 10, 2017, summarized how the proposal meets requirements of Oregon Administrative Rule (OAR) 660-012-0060, the Transportation Planning Rule (TPR) are met.

The conclusion of DKS was that the subdivision and development is consistent with the City of Canby Transportation Plan (TSP). The findings included a review of forecasted development types and amounts from the travel demand forecasts in the TSP. Based on information included in the file, staff concurs that an additional Traffic Impact Study was not necessary for this small subdivision.

Public utilities are currently located at SW 6<sup>th</sup> Avenue and at S. Ivy Street and can be extended as development occurs, and storm drainage associated with the subdivision is intended with newly installed drywells. The applicant points out that there are currently four driveway accesses onto S. Ivy Street, and these driveways will be eliminated by a new private street access onto SW 6<sup>th</sup> Avenue. S. Ivy Street is classified as an arterial street in the Canby TSP, while SW 6<sup>th</sup> Avenue is a local street. The new design will be more consistent with the concerns stated in Policy 6 of the Comprehensive Plan as discussed under the zone change above.

A revised tentative subdivision plan has been submitted which slightly alters the lot sizes to comply with all aspects of the lot averaging requirements. Lot sizes range from 3,002 square feet to 8,109 square feet. Lot size averaging is permitted under 16.18.030 of the development standards in the R-1.5 zone that is referenced in the C-R zone and can be applied with final approval of the zone change by the City Council. A minimum lot size of 5000 square feet and a maximum of 6500 square feet is allowed under provisions in Section 16.18.030(A)(1) of the R-1.5 zone for single-family dwellings. The Planning Director determined that it is not the intent of the provisions in Section 16.18.030 (B) (1) (a) & (2) to include the common wall lots in the lot size average calculations. The lot size averaging applies only to the single-family detached homes. The common wall lots are separated from other criteria in 16.18.030(B) (4) whereas the rest of the provisions in the section are directed toward lots for single-family home development. The calculated average lot size for the subdivision equaled an average of 5,646. Under Section 16.18.030(B) (2), a public benefit must be demonstrated in order to allow more than 10% of the lots to be outside of the minimum or maximum lot area. A revised plan submitted by the applicant now shows only one lot below the minimum lot size standard which is within the allowed 10% of the 8 single-family detached homes planned. This criterion is met.

Staff was not aware of the requirement for all residences to have a sidewalk connection whether using a public or private street until late in the review process as provided in Section 16.10.070(B)(8). These minimum access requirements are intended to protect the public health, safety and general welfare and provide for both vehicular and pedestrian needs. It might be questioned as to why a low speed and low volume vehicular private driveway would need separate sidewalk facilities, but it is clearly identified as a design standard which has not been addressed by the submitted subdivision plan. It also looks like it will be functionally difficult to add a sidewalk to the proposed subdivision plan. Staff did not have time to notify the applicant of this deficiency prior to release of the staff report. Therefore, we have no other alternative but to recommend that approval of the subdivision

and Conditional Use Permit portion of the application submittal be postponed to a date certain to allow the applicant an opportunity to explore a possible redesign to incorporate this necessary development standard or explore the submittal of a Major Variance application to seek a waiver of the requirement which will require a new application and setting of a new public hearing. I would strongly suggest that the Planning Commission provide some guidance to the applicant on how they may perceive a request to vary this required standard.

The applicant must construct street improvements including curb-tight sidewalks along S. Ivy Street and SW 6<sup>th</sup> Avenue as noted in Canby Public Works comments that are conditions of approval. A dual PUE and sidewalk easement will be required for the subdivision along the two public street frontages.

The applicant shall construct DEQ approved drywells where required within the subdivision.

The Planning Director determined that the DKS memo was sufficient to address traffic concerns for this proposal.

As a condition of approval, a Street Tree Plan shall be submitted with the final plat, and street tree fees must be paid prior to release of the final plat.

Park SDC fees will be required for future lots developed on the property.

The applicant shall pay 0.4% of the contract cost of all public improvements at the time of construction plan approval before site improvements begin.

Staff has reviewed the applicant's narrative and submitted material and finds that this subdivision application conforms to the applicable review criteria and standards, **except for the minimum access requirement of Section 16.10.070(B)(8) requiring any development between 3 to 19 lots to provide one sidewalk connection to all residences and parking areas and specifies that a curb is required if the sidewalk is adjacent to a driveway, subject to the conditions of approval noted in Section V of the staff report.**

## **CONDITIONAL USE**

### **5. 16.50.010. Authorization to Grant or Deny Conditional Uses**

In judging whether or not a 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.

**FINDINGS:** The applicant filed a Conditional Use Application to allow two common wall town houses on four separate lots. Single-family dwellings that have common wall construction are listed as conditional use under Section 16.18.020(C). As previously discussed, the proposal is consistent with policies of the Comprehensive Plan that sites multi-family development in the C-R zone. The site is surrounded by similar uses, and the applicant indicates the site is level and existing trees are able to be preserved where possible. It appears to staff that the overall impervious surface on the property will not exceed the 70% maximum allowed depending on the size of townhouses proposed at the time of construction. The applicant has indicated he can provide 2 parking spaces to accompany each new attached dwelling.

Sewer, water, and electricity must be extended to the new dwellings and meet all Public Works and utility standards during the development process.

Based on the location of the townhouses, the proposal will not alter the character of the surrounding area or impact uses permitted in the zone. The subdivision can accommodate the increased intensity of use for the 2 attached single-family units without a significant loss of open space, air, and light which are typical components regulated by zoning. The development standards for an R-1.5 zone must be met – including setbacks, height, and maximum impervious coverage. Subject to approval of required construction permits, the proposal can meet criteria in B, C, and D above.

**COMPREHENSIVE PLAN CONSISTENCY ANALYSIS FOR ITEM “A” ABOVE:**

***LAND USE ELEMENT***

GOAL: TO GUIDE THE DEVELOPMENT AND USES OF LAND SO THAT THEY ARE ORDERLY, EFFICIENT, AESTHETICALLY PLEASING AND SUITABLY RELATED TO ONE ANOTHER.

**Applicable Policies:**

Policy #1: Canby shall guide the course of growth and development so as to separate conflicting or incompatible uses, while grouping compatible uses.

**Analysis:** *The proposed townhouses units is not a conflicting or incompatible use to the surrounding neighborhood. The lot sizes and availability of access makes them particularly suitable for an additional common wall dwelling units. Any possible concern would be more of crowding or density and perceived impacts possibly related to the loss of space, air, and light to the immediate adjacent properties. The new buildings that will be constructed must meet dwelling setbacks and other standards of the zone should address these concerns.*

Policy #2: Canby shall encourage a general increase in the intensity and density of permitted development as a means of minimizing urban sprawl.

**Analysis:** *The addition of townhouse dwelling units in medium density single-family and multi-family zone districts is considered to be one of the primary land use efficiency tools to better utilize space within our current urbanized residential areas. This accommodates the growing demand for housing without spreading to new green field sites on the edge or outside of the City limits which usually means using valuable farm land. The dwellings, if done appropriately, can better utilize land for increased housing without significantly altering the character of a predominantly single family district. As proposed, these dwellings must utilize a low pitched roof to stay within the maximum height allowed and must meet dwelling setbacks.*

Policy #3: Canby shall discourage any development which will result in overburdening any of the community's public facilities or services.

**Analysis:** *The impact of the four dwellings would be insignificant to public services. Based on available information, utility service providers have indicated that service connections can readily be made to the new structure. Staff understands that the applicant has options for separate water and sewer services. The applicant stated that he discussed hookups for water and electricity with Canby Utility and the connections appear feasible. Public facility and service providers were asked to comment on this application and it appears existing services are sufficient to serve the site.*

*A typical home is expected to generate approximately 9 vehicle trips in a typical 24 hour weekday. These are of course spread out over the day. SW 6<sup>th</sup> Avenue is classified as a neighborhood route in this immediate area so the increase of traffic is insignificant for the capacity of the street and should not overburden traffic in the area.*

Policy #4: Canby shall limit development in areas identified as having an unacceptable level of risk because of natural hazards.

**Analysis:** *No natural hazards have been identified on the subject property.*

Policy #5: Canby shall utilize the land use map as the basis of zoning and other planning or public facility decisions.

**Analysis:** *The parcel is currently zoned Low Density Residential (R-1) and is surrounded by other R-1 zoned properties. The Comprehensive Plan designated the properties RC, and the applicant applied for a zone change to make the zone consistent with that designation.*

Policy #6: Canby shall recognize the unique character of certain areas and will utilize the following special requirements, in conjunction with the requirements of the land development and planning ordinance, in guiding the use and development of these unique areas.

**Analysis:** *The property is located in an "area of special concern" designated in the Canby Comprehensive Plan as "Area C". The designation was previously discussed under the zone change above, and the proposal can successfully address those concerns.*

#### **ENVIRONMENTAL CONCERNS ELEMENT**

GOALS: TO PROTECT IDENTIFIED NATURAL AND HISTORICAL RESOURCES.  
TO PREVENT AIR, WATER, LAND, AND NOISE POLLUTION.  
TO PROTECT LIVES AND PROPERTY FROM NATURAL HAZARDS.

**Analysis:** *The subject property is considered to be urbanized and no environmental concerns have been identified.*

#### **TRANSPORTATION ELEMENT**

GOAL: TO DEVELOP AND MAINTAIN A TRANSPORTATION SYSTEM WHICH IS SAFE, CONVENIENT AND ECONOMICAL.

##### **Applicable Policies:**

Policy #1: Canby shall provide the necessary improvements to City streets, and will encourage the County to make the same commitment to local County roads in an effort to keep pace with growth.

**Analysis:** *Improvement to the street or sidewalk system is necessary to serve the intensification of use associated with this proposal.*

Policy #4: Canby shall work to provide an adequate sidewalk and pedestrian pathway system to serve all residents.

**Analysis:** *The subject property is accessed by a system of existing adequately paved streets and sidewalks are on nearby streets.*

Policy #6: Canby shall continue in its efforts to assure that all new developments provide adequate access for emergency response vehicles and for the safety and convenience of the general public.

**Analysis:** *The proposed townhouses must meet Canby Fire requirements for emergency vehicles to reach the dwellings. Prior to occupancy of the new dwellings, the applicant shall comply with any code requirements identified by various agencies.*

#### **PUBLIC FACILITIES AND SERVICES ELEMENT**

GOAL: TO ASSURE THE PROVISION OF A FULL RANGE OF PUBLIC FACILITIES AND SERVICES TO MEET THE NEEDS OF THE RESIDENTS AND PROPERTY OWNERS OF CANBY.

##### **Applicable Policies:**



Policy #1: Canby shall work closely and cooperate with all entities and agencies providing public facilities and services.

**Analysis:** *Based on available information, utility providers have indicated that adequate access and services are available.*

Policy #5: Canby shall assure that adequate sites are provided for public schools and recreation facilities.

**Analysis:** *No public schools or recreation facilities are required at this site.*

### ***Conclusion Regarding Consistency with the Standards of the Canby Municipal Code***

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Staff concludes, as detailed in the submittal from the applicant and as indicated here in this staff report, including all attachments hereto, that:

1. The application and proposed use is in conformance with applicable sections of the City's Comprehensive Plan and Land Development and Planning Ordinance when the determinations contained in this staff report are applied. (Noted deficiency in internal sidewalk with the proposed subdivision)
2. The zoning of the property shall be C-R, Residential/Commercial, as indicated in the application and pursuant to the approval criteria set forth for map amendments in Section 16.54.040, CMC.
3. The application complies with all applicable Oregon Revised Statutes.
4. There are sufficient public and private agency utility and service capacity to serve the site at the anticipated development intensity.
5. The proposed use will not alter the character of the surrounding area in a manner beyond that envisioned by the Comprehensive Plan and will not preclude the use of surrounding properties as they exist today.

## **VI. RECOMMENDATION**

Based on the application submitted and the facts, findings and conclusions of this report, but without benefit of a public hearing, staff recommends that the Planning Commission recommend to the City Council that ZC 17-02 be **approved for the requested C-R zone** but that the public hearing for SUB 17-04/CUP 17-05 be continued to a date certain to allow the applicant an opportunity to explore a possible redesign of the proposed subdivision to incorporate an internal sidewalk to provide a connection to residences and parking areas or to submit an application for a Major Variance to seek a modification or waiver of the requirement which will require a new application and notice of public hearing.

All of the conditions listed below, except for the rezone are associated with the proposed development applications and are not necessary for approval of the rezone. The applicant may prefer to have his zoning application postponed to a date certain along with his development applications. **If the applicant chooses to postpone his zoning application he must voluntarily agree to extend the 120-Day Rule for a decision to be made equal to the applicable time to the extension of the Planning Commission continued public hearing.**

**Zone Change:**

1. The zoning of the subject property be designated as C-R as indicated by the Canby Comprehensive Plan Map.

**Subdivision:**

**General Public Improvement Conditions:**

1. Prior to the start of any public improvement work, the applicant must schedule a pre-construction conference with the city and obtain construction plan sign off from applicable agencies.
2. The development shall comply with all applicable City of Canby Public Works Design Standards.
3. The final construction design plans shall conform to the requirements of the City Engineer.

**Fees/Assurances:**

4. All public improvements are normally installed prior to the recordation of the final plat. If the applicant wishes to forgo construction of any portion of the public improvements until after the recordation of the final plat, then the applicant shall provide the City with appropriate performance security (subdivision performance bond or cash escrow) in the amount of 110% of the cost of the remaining public improvements to be installed.
5. If the applicant chooses to provide a subdivision performance bond for some or all of the required public improvements, the applicant shall obtain a certificate from the city engineer that states:
  - a. The applicant has complied with the requirements for bonding or otherwise assured completion of required public improvements.
  - b. The total cost or estimate of the total cost for the development of the subdivision. This is to be accompanied by a final bid estimate of the sub divider's contractor, if there is a contractor engaged to perform the work, and the certificate of the total cost estimate must be approved by the city engineer.
6. The applicant must guarantee or warranty all public improvement work with a 1 year subdivision maintenance bond in accordance with 16.64.070(P).
7. The applicant must pay the city Master Fee authorized engineering plan review fee equal to 0.4% of public improvement costs prior to the construction of public improvements (with approval of construction plans)

**Streets, Signage & Striping:**

8. The street improvement plans for the S Ivy Street frontage as recommended by the City Engineer in his memorandum of record shall be the responsibility of the developer unless he chooses to delay those improvements in favor of those to be installed with the approved and funded STIP project to be completed in early 2019 from Hwy 99E south to near 13<sup>th</sup> Avenue.
9. The submittal of a private roadway signage plan shall be submitted by the applicant detailing the location of no parking signage and/or pavement designation prior to construction.
10. The applicant shall be responsible for installing a stop sign at the end of the private drive.

**Sewer:**

11. The applicant shall submit documentation of DEQ approval of the sewer plans to the City Engineer prior to the construction of this public improvement.

**Storm water:**

12. Storm water drainage plan shall be provided designed in compliance with the Canby Public Works Design Standards and approved by the City Engineer.

**Grading/Erosion Control:**

13. The applicant shall submit grading and erosion control plans for approval by Canby Public Works in conjunction with construction plan approval prior to the installation of public improvements and start of grading.
14. The applicant shall grade all areas of the site, including the proposed lots, to minimize the amount of soil to be removed or brought in for home construction.

**Final plat conditions:**

**General Final Plat Conditions:**

15. The applicant shall apply for final plat approval at the city and pay any applicable city fees to gain approval of the final partition and subdivision plat. Prior to the recordation of the final plat at Clackamas County, it must be approved by the city and all other applicable agencies. The city will distribute the final plat to applicable agencies for comment prior to signing off on the final plat if deemed necessary.
16. All public improvements or submittal of necessary performance security assurance shall be made prior to the signing and release of the final plat for filing of record.
17. The final plat shall conform to the necessary information requirements of CMC 16.68.030, 16.68.040(B), and 16.68.050. The city engineer or county surveyor shall verify that these standards are met prior to the recordation of the subdivision plat.
18. All "as-builts" of public improvements shall be filed at the Canby Public Works and the Canby Planning Department within sixty days of the completion and acceptance of the improvements.
19. Clackamas County Surveying reviews **pending subdivision plat documents for Oregon Statutes and county requirements. A subdivision final plat prepared in substantial conformance with the approved tentative plat must be submitted to the City for approval** within one year of approval of the tentative plat or formally request an extension of up to 6-months with a finding of good cause.
20. The applicant shall record the final plat at Clackamas County within 6 months of the date of the signature of the Planning Director.
21. The applicant shall assure that the city is provided with a copy of the final plat in a timely manner after it is recorded at Clackamas County, including any CC&Rs recorded in conjunction with the final plat.
22. The City shall assign addresses for each newly created subdivision lot and distribute that to the developer, and other agencies that have an interest.

**Dedications**

23. The applicant shall file for an amendment to his subdivision design if the final design of the STIP S Ivy Project results in a dedication of additional right-of-way along the S Ivy Street frontage for which he will receive fair market value.

**Easements**

24. A 12 foot utility easement along all of the lot's public street frontages shall be noted on the final plat. This easement may be combined with other easements and shall be measured from the property boundary.
25. Sidewalk easements shall be required along the frontage of the newly created private lots.

**Sidewalks**

26. A sidewalk connection is required to each residence and parking area with a curb if adjacent to the driveway.

**Street Trees**

27. A Street Tree Plan shall be submitted with the final plat, and street tree fees must be paid prior to release of the final plat. The plan will allow the city to establish street trees per the

Tree Regulation standards in Chapter 12.32 of the Canby Municipal Code. The total per tree fee amount is calculated at one tree per 30 linear feet of total street frontage on both sides of all internal streets and the adjacent side of external streets or as otherwise designated on an approved Street Tree Plan. A twelve foot temporary street tree easement along all lot public street frontages shall be noted on the final plat.

**Monumentation/Survey Accuracy Conditions**

- 28.** The county surveyor and/or city engineer shall verify that the lot, street, and perimeter monumentation shall meet the requirements set forth in Oregon Revised Statutes and conform with the additional survey and monumentation standards of 16.64.070(M)(1-3) prior to recordation of the final plat.

**Residential Building Permits Conditions:**

- 29.** Construction of all required public improvements and recordation of the final subdivision plat must be completed prior to the construction of any homes.
- 30.** The homebuilder shall apply for a City of Canby Site Plan Permit and County Building Permit for each home.
- 31.** The homebuilder shall apply for a City of Canby Erosion Control Permit.
- 32.** All residential construction shall be in accordance with applicable Public Works Design Standards.
- 33.** On-site storm water management shall be designed in compliance with the Canby Public Works Design Standards.
- 34.** Clackamas County Building Codes Division will provide structural, electrical, plumbing, and mechanical plan review and inspection services for home construction per contract with the City. The applicable county building permits are required prior to construction of each home.
- 35.** Per the Canby Public Works Design Standards, minimum residential driveway widths at the inside edge of the sidewalk shall be 12 feet and the maximum residential driveways widths shall be 24 feet with an allowed exception for 28 feet for a home with 3 or more garages.
- 36.** Sidewalks and planter strips shall be constructed by the homebuilder as shown on the approved tentative plat.
- 39.** All usual system development fees shall be collected with each home within this development.

## WRITTEN NARRATIVE

### Conditional Use request to include town homes in proposal.

Applicant: Allen Manuel  
489 SW First Ave.  
Canby OR 97013  
  
Phone: (503) 784-4950  
Email: [amanuel@canby.com](mailto:amanuel@canby.com)

Owner: Allen Manuel  
489 SW First Ave.  
Canby OR 97013  
  
Phone: (503) 784-4950  
Email: [amanuel@canby.com](mailto:amanuel@canby.com)

Location: 533, 553, & 583 S. Ivy Street  
West side of S. Ivy Street at S. 6<sup>th</sup> Avenue

Legal Description Tax Lots 6300, 7100, 7200 Sec. 04, T4S R1E WM  
(Assessor Map 4 1 E 04AB)

Zoning: Current R-1 (Low Density Residential Zone)  
Comprehensive Plan CR (Residential Commercial Zone)

Site Size: 1.31 Acres

Proposal To subdivide the property keeping two of the three existing homes creating **four new town home lots** and six new single family lots suitable for dwellings meeting the CR zone standard

Date: 1 August 2017

## SITE DESCRIPTION

The site is located on the south side of S. Ivy Street at the intersection with 6th Avenue in southwest Canby. The property has frontage on both roadways. The subject property is a 1.3 acre site made up of three existing single family homes. The average lot size for the existing homes is 19,000 sq. ft. South Ivy St in this area is fronted with older homes with variable lots sizes. A number of flag lot arrangements have been used to further divide older lots in the area. The north side of the subject property is a mixture of large lot single family and

newer infill development. The south and west sides have older single family development. Because of the Commercial Residential zone the S. Ivy frontage is interspersed with commercial uses.

The development site is presently occupied by three single family residences. All three homes currently take access from S. Ivy Street. As one home has a circular drive the total of accesses is four. These homes are currently rentals and the landscape maintenance is minimal. The site is mostly level with a slight drop to the north. Two large trees and other small trees are located around the property. The property has no identified significant natural resources or physical hazards.

Public sanitary sewer and water are available to the site in S. Ivy Street and 6th Avenue. Other public utilities, such as natural gas, power and communications are available from S Ivy St. Fire protection is available to the property from Canby Fire District and police protection is available from the City of Canby Police Department.

Storm drainage runoff is anticipated to be infiltrated into the ground, per the City of Canby's preferred method of storm drain disposal, drywells.

### **CONDITIONAL USE REQUEST**

This conditional use request is made to allow the inclusion of four town home lots in the proposed redevelopment. With the approval of the accompanying zone change request the property will be zoned CR, Residential/Commercial to match its comprehensive plan zone. Residential development in this zone is subject to the regulations of the R-1.5 zone. In the R-1.5 zone town homes are a conditional use (16.18.020.C).

#### **16.50.010 Authorization to grant or deny conditional uses.**

*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;*

Response: This proposal changes the present zone of R-1 to match the comprehensive plan CR Residential/Commercial zone. The development density allowed under the CR zone will, as demonstrated in the proposal, reach the density required by the comprehensive plan. Allowing the inclusion of town homes in the proposal increases the density attainable with this infill project.



*B. The characteristics of the site are suitable for the proposed use considering size, shape, design, location, topography, and the existence of improvements and natural features;*

Response: The subject site is difficult to re-plot because of the placement of the existing homes and the irregular boundaries of the property. The four town home lots proposed here fit very neatly into the configuration. The access to these town home lots is an important part of the fire and emergency access turn-around. The location of this property is ideal for higher density as it lies between the lower density R-1 zone to the south west and the commercial zone to the north-east. The property has good access to the arterial street system with its sidewalks and bike paths.

*C. All required public facilities and services exist to adequately meet the needs of the proposed development;*

Response: The Utility Map that accompanies this proposal shows that all public facilities and services are available and can be connected to 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.*

Response: A similar development of older homes, town homes, and newer homes is located just two parcels to the north east from the subject project. That development has shown over a period of about 15 years that surrounding single family and high density areas would not be adversely impacted. One can argue, in fact, that such properties are more of an asset to the city when fully developed and the large tracts of vacant land are filled. The distance from the closest neighboring single family structure to the nearest proposed town home is about sixty feet. The other two structures that are close to the proposed town home lots are shop buildings. No negative alteration of the neighborhood character will occur with the development of these town homes.

The conditions are met to allow the proposed four town home lots in the proposed redevelopment of this 1.3 acre parcel.

## WRITTEN NARRATIVE

### Application for Zone Change and Subdivision

Applicant: Allen Manuel  
489 SW First Ave.  
Canby OR 97013  
  
Phone: (503) 784-4950  
Email: [amanuel@canby.com](mailto:amanuel@canby.com)

Owner: Allen Manuel  
489 SW First Ave.  
Canby OR 97013  
  
Phone: (503) 784-4950  
Email: [amanuel@canby.com](mailto:amanuel@canby.com)

Location: 533, 553, & 583 S. Ivy Street  
West side of S. Ivy Street at S. 6<sup>th</sup> Avenue

Legal Description Tax Lots 6300, 7100, 7200 Sec. 04, T4S R1E WM  
(Assessor Map 4 1 E 04AB)

Zoning: Current R-1 (Low Density Residential Zone)  
Comprehensive Plan CR (Residential Commercial Zone)

Site Size: 1.31 Acres

Proposal To subdivide the property keeping two of the three  
existing homes creating four new town home lots  
and six new single family lots suitable for  
dwellings meeting the CR zone standard

Date: 1 August 2017



## **SITE DESCRIPTION**

The site is located on the south side of S. Ivy Street at the intersection with 6th Avenue in southwest Canby. The property has frontage on both roadways. The subject property is a 1.3 acre site made up of three existing single family homes. The average lot size for the existing homes is 19,000 sq. ft. South Ivy St in this area is fronted with older homes with variable lots sizes. A number of flag lot arrangements have been used to further divide older lots in the area. The north side of the subject property is a mixture of large lot single family and newer infill development. The south and west sides have older single family development. Because of the Commercial Residential zone the S. Ivy frontage is interspersed with commercial uses.

The development site is presently occupied by three single family residences. All three homes currently take access from S. Ivy Street. As one home has a circular drive the total of accesses is four. These homes are currently rentals and the landscape maintenance is minimal. The site is mostly level with a slight drop to the north. Two large trees and other small trees are located around the property. The property has no identified significant natural resources or physical hazards.

Public sanitary sewer and water are available to the site in S. Ivy Street and 6th Avenue. Other public utilities, such as natural gas, power and communications are available from S Ivy St. Fire protection is available to the property from Canby Fire District and police protection is available from the City of Canby Police Department.

Storm drainage runoff is anticipated to be infiltrated into the ground, per the City of Canby's preferred method of storm drain disposal, drywells.

## **PROPOSAL**

Two land use actions are proposed. The first proposal is to change the zone from the present R-1, low density residential zone to C-R, residential/commercial to match the comprehensive plan designation. This will allow the development of the property with residential uses at the R-1.5 density, and generally under the R-1.5 standards. The comprehensive plan generally applies the C-R zone to all properties along the S. Ivy Street frontage from the Highway Commercial zone at S. 3rd Ave to the Low Density Residential zone at S 6th Ave. In addition the east side of S. Ivy Street has the C-R zone continuing out to the old Wilco Store site at about S. 8th Avenue. Conversion of the subject property's zone to match the comprehensive plan designation will further the implementation of the city's comprehensive plan.

The second land use action proposed is to subdivide the subject property consistent with the CR zone density and requirements. The attached plan proposes to remove one of the existing residences making way for a private access roadway, and saving two of the existing residences. The remaining land will be subdivided into four town home lots of approximately 3000 sf each and six detached single family lots of approximately 5000 sf each.

At present, all access to the property is taken on four drive ways on S. Ivy Street. The proximity of these accesses to the already problematic S. Ivy Street intersection with S. Township Road creates traffic conflicts that are not allowed under current code. All access to the proposed subdivision, including to the existing homes will be taken on S. Sixth Avenue. The existing home at 583 S. Ivy will have a new driveway built off S. Sixth Avenue. The remaining eleven lots will share a private twenty foot wide paved private drive connected to S. Sixth Avenue. A footpath will allow pedestrian traffic to connect directly to S. Ivy Street.

This access plan will mesh smoothly with the City of Canby's current plan to rebuild S. Ivy Street along this frontage. With the installation of a traffic signal at the S. Township Road intersection and the removal of the four driveways currently serving the subject property traffic will flow more smoothly and safety will be enhanced.

No dedications will be required for frontages along S. Ivy Street and along S. Sixth Avenue. South Ivy Street has a 60' ROW and will have all frontages improved according to the City of Canby plan currently in development. Curbs and paving are in place on the 60' ROW of S. Sixth Avenue. A four foot sidewalk runs along S. Sixth Avenue to the property line of the subject property. This sidewalk is separated from the curb by a distance of two feet. A six foot curb tight sidewalk will be installed from the property line to the improvements on S. Ivy Street.

Public sanitary sewer and water are available to the site in S. Ivy Street and S. Sixth Avenue. Other public utilities, such as natural gas, power and communications are also available from S. Ivy St. and S. 6th Ave. Fire protection is available to the property from Canby Fire District and police protection is available from the City of Canby Police Department. Storm drainage runoff is anticipated to be infiltrated into the ground, per the City of Canby's preferred method of storm drain disposal, drywells.

A pre-application conference was held with the City of Canby and service providers to discuss the development of the site on April 11, 2017. At that meeting objections were voiced to accessing the development from S. Ivy Street. The current site plan shows access from S. Sixth Ave. Since that change is an outgrowth of the pre-application meeting it seems un-necessary to have a new pre-application meeting to review the new plan.



The change from S. Ivy St access to S. Sixth Ave., access greatly lowers the potential traffic impact of the proposed development. Staff now indicates that we probably will not need a full traffic impact study but may only need a Traffic Memorandum reviewing the adequacy of the traffic analysis conducted at the time of the development of the Comprehensive Plan. The Traffic Memorandum process was started about 24 July, 2017.

The area of the proposed development is not included in any of the neighborhood planning groups in Canby, but rather is generally included in the central business district. A neighborhood meeting to consider the proposed subdivision is not then required.

## **APPLICABLE CRITERIA AND STANDARDS**

### **Identification of Applicable Criteria and Standards**

The following sections of the City of Canby Land Development and Planning Ordinance apply to this application:

16.18	General Provisions & 16.08.150 Traffic Impact Study
16.10	Off-Street Parking and Loading
16.24	Residential/Commercial Zone
16.46	Access Limitations on Project Density
16.54.040	Amendments to Zoning Map
16.56	Land Division General Provisions
16.62	Subdivisions--Applications
16.64	Subdivisions – Design Standards
16.86	Street Alignments
16.88	General Standards & Procedures
16.88.190	Conformance with Transportation System Plan & Transportation Planning Rule.
16.89	Application and Review Procedures

## **LAND USE AND DEVELOPMENT ORDINANCE**

### *Chapter 16.18 General Provisions & 16.08.150 Traffic Impact Study*

Response: The change from S. Ivy St access to S. Sixth Ave., access greatly lowers the potential traffic impact of the proposed development. Staff now indicates that we probably will not need a full traffic impact study but may only need a Traffic Memorandum reviewing the adequacy of the traffic analysis conducted at the time of the development of the Comprehensive Plan. The Traffic Memorandum process was started about 24 July, 2017.

### *Chapter 16.10 Off-Street Parking and Loading*

Response: The parking requirement for single family dwellings is two spaces per dwelling unit (Table 16.10.050). The two existing single family dwellings that will be retained will have new two-space parking pads installed. The house at 583 S. Ivy Street will have a new parking and access off S. 6th Avenue. The house at 553 S. Ivy Street will have a new parking pad installed on the south side of the house with access taken from the new common roadway off S. 6th Avenue. The remaining four town homes and six single family dwellings will each have a standard two space parking pad constructed with the home. This requirement can be satisfied when building plans are submitted for each lot. In addition the plan specifies four over flow parking spaces at the south end of the common access way.

### *Chapter 16.24 CR Residential/Commercial Zone*

Response: The proposed subdivision will create 6 new lots for detached single family dwellings. This proposed residential use is allowed outright in the zone (16.24.010.A). New single family detached lots in the CR Zone are required to meet the development standards specified in Section 16.24.030 which in turn relies on Section 16.18.030. Development standards for structures can be verified when plans for building permits are submitted.

This plan proposed four common wall lots spaced to allow two buildings with two units each, sharing one wall. This is a conditional use in the CR zone (16.18.020.C). For residential uses the CR zone relies heavily on the R-1.5 zone. For residential uses permitted conditionally the density standard of a minimum of 14 units per acre applies (16.20.030.A). That density is about 3100 sq. ft per acre. The proposed common wall lots average 3011 sq ft. and thus slightly exceeds the minimum density requirement for common wall construction.

Lot size averaging is permitted (16.18.030.B.4). The average lot size must fall between five thousand square feet and six thousand five hundred square feet. No lot may be less than four thousand square feet. It is not clear whether the common wall homes are to be included in the lot size averaging. Below the calculation is shown both ways.

The following table lists each lot with its size in square feet. Two averages are calculated, one including the common wall lots and one excluding them. The average lot size including the common wall lots is 4518 sq ft. The average lot size excluding the common wall lots is 5217 sq ft. No single family lot is less than 4000 sq. Ft. The requirements of this section for lot size are met.

*Section 16.18.030 R-1.5 Zone Dimensional Standards*

Lot #	Style	Area/sf		Area/sf No Townhomes	
Lot 1	Townhome	3002			
Lot 2	Townhome	3002			
Lot 3	Townhome	3001			
Lot 4	Townhome	3038			
Lot 5	Single Family	4737		4737	
Lot 6	Single Family	4361		4361	
Lot 7	Single Family	5168		5168	
Lot 8	Single Family	7106		7106	
Lot 9	Single Family	8109		8109	
Lot 10	Single Family	5647		5647	
Lot 11	Single Family	1350		1350	
Lot 12	Single Family	5691	Average	5691	Average
		54212	<b>4518</b>	42169	<b>5271</b>

The language of 16.24.010.A says “conforming to the development standards of the R-1.5 zone.” The development standards of the R-1.5 zone are in 16.18.20, which include a 7’ setback.

(16.24.010.C) The minimum width and frontage for lots in the CR zone is sixty. The width and frontage requirement in the R-1.5 zone is forty feet except that twenty feet is allowed for common wall development. This plan holds to the R-1.5 requirement of forty feet from the R-1.5 zone. Otherwise the Planning Commission can allow exceptions subject to assuring adequate access. The proposed plan meets or can be made to meet these requirements.

(16.24.010.E) The maximum building height allowed in the CR zone is forty five feet. The applicable standard for residential development is 35’ as specified in 16.18.030.E. The requirement will be satisfied when building plans are submitted for structures on each lot.

(16.24.010.E) The maximum lot coverage allowed is sixty percent. The applicable standard for residential development is seventy percent as specified in 16.18.030.F. This requirement will be satisfied when building plans are submitted for structures on each lot.

(16.24.010.F) and 16.18.010; other regulations. This requirement will be satisfied when building plans are submitted for structures on each lot.



#### *16.46.010 Number of Units in Residential Development*

Response: The development proposes to create detached and attached single family residences on individual lots, therefore Sec. 16.46.010A is the appropriate standard.

The development will not require new street construction. The interior of the project will be served by a twenty foot wide private drive with no parking allowed on either side. This drive will access on to S. 6th Ave. The design features a seventy foot deep hammer head for fire and emergency vehicle turn around. Lots 1-10 will use this access. Lots 11-12 will access directly on to S. 6th Ave.,

Using the City's formula in 16.46.010.A.2, one street connection would permit up to 30 residential units. In total, 10 lots will use the new private access. Therefore, the single access will be sufficient to meet the standards of this section.

#### *16.46.030 Access Connection*

Response: The applicant proposes one new private roadway, as yet unnamed, that will connect to S. 6th Ave. The proposed access point lies 236' from S Holly St. and 157' from S. Ivy St. in conformance with the 150-foot minimum spacing requirement of Table 16.46.30, Access Management Guidelines for City Streets. Driveways off interior private roadway do not have to meet the standard spacing. Other driveways will need to conform to the spacing requirements of this section and conformance with the standards can be verified at the time of building permit submittal.

The driveway for the existing home on Lot 9 will be moved from its current location on S. Ivy to its new location on S. 6th Ave. The proposed distance from that driveway to S. Ivy St. is 65 feet exceeding the required 30' (16.10.070.B.10.f). Therefore, the driveway to Parcel 1 conforms to the standards of Table 16.46.30. Access Management Guidelines for City Streets.

#### *16.46.070 Exception Standards*

Response: With the applicant's current submittal, all intersections conform to the Access Management Guidelines for City Streets, Table 16.46.30 and no exceptions are necessary.

#### *Chapter 16.49 Site & Design Review*

Response: Site and Design Review is required for all new development, except for single family and two-family dwellings (16.49.030).

Dwellings in the proposed subdivision are single family, thus will not require site and design review.

*Chapter 16.54*

*16.54.040 Standards and criteria.*

*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 of development which would be permitted by the new zoning designation.*

Response: The proposal has been shown to be consistent with relevant goals and policies of the Comprehensive Plan. Policy 6 of the Land Use Element lists the "Areas of Special Concern" designated throughout the community. The subject site is not a designated area, but does have special characteristics that make it particularly suitable for a higher density zoning designation: It is located between a lower density area and a commercial district where goods and services are readily available. It has convenient access to a major arterial with minimal impacts on lower density neighborhoods. That arterial will soon have a new traffic signal that will facilitate traffic movement in the area. Public facilities are generally available to support the proposed development.

Therefore, the criteria of this section are satisfied.

*Division IV Land Division Regulations*

*Chapter 16.62 Subdivisions-Applications*

Response: An application that satisfies the filing procedures and information required in Sec. 16.62.010 has been submitted.

Standards and criteria for approval of a subdivision are set forth in Sec. 16.62.020, as follows:

*A. Conformance with other applicable requirements of the Land Development and Planning Ordinance;*



Response: Applicable requirements of other sections of the Land Development and Planning Ordinance are discussed in other sections of this narrative and on the maps included with the application, demonstrating that the proposed land divisions conform to applicable criteria.

*B. The overall design and arrangement of lots shall be functional and shall adequately provide building sites, utility easements, and access facilities deemed necessary for the development of the subject property without unduly hindering the use or development of adjacent properties;*

Response: The design and layout of the site provides for functional and desirable building sites. All lots meet or exceed the minimum lot area standards for the CR Zone, or permitted exceptions thereto. Each lot has access to a private driveway or access way or public street and has easy connectivity to S Sixth Ave., a local street, and nearby arterial streets, including S. Ivy Street, 13<sup>th</sup> Ave., and Highway 99E. Public utilities such as sewer, water, communications, and power will be extended into the development site. Surrounding properties are largely developed and all have direct access to a public roadway. Development of the site will not hinder the use or development of any adjacent properties.

*C. Subdivision design and layout shall incorporate Low Impact Development techniques where possible to achieve the following:*

*1. Manage storm water through a land development strategy that emphasizes conservation and use of onsite natural features integrated with engineered storm water controls to more closely mimic predevelopment hydrologic conditions.*

*2. Encourage creative and coordinated site planning, the conservation of natural conditions and features, the use of appropriate new technologies and techniques, and the efficient layout of open space, streets, utility networks and other public improvements.*

*3. Minimize impervious surfaces.*

*4. Encourage the creation or preservation of native vegetation and permanent open space.*

*5. Clustering of residential dwellings where appropriate to achieve (1-4 above). The arrangement of dwellings shall be designed to avoid linear development patterns.*



Response: Although the Code encourages Low Impact Development techniques, other provisions of the Code, such as emergency vehicle turnaround requirements and off-street parking requirements, make it difficult to achieve Low Impact Development within a medium density residential subdivision having lots of approximately 5,000 sq. ft.

The proposed layout will provide adequate sized lots that will allow space to create or preserve vegetation on the lots. The homes on Lot 8 & 9 will be preserved as will some of the existing trees and other landscaping features that currently surround the homes. The proposed common access way is placed on easements as opposed to a dedicated parcel allowing the lot areas to stay within those specified by code. Accessing the lots from S. 6th Ave does require more impervious surface than an optional plan to access the lots from S. Ivy St. The consensus at the pre-application meeting, however, was that access to S. Ivy should not be allowed. The proposed private street is efficiently designed and incorporates a 70' hammerhead for emergency vehicle access and maneuvering.

*D. It must be demonstrated that all required public facilities and services are available, or will become available through the development, to adequately meet the needs of the proposed land division.*

Response: Necessary facilities and services are available for the proposed development at the proposed CR zoning designation. Public water is located in both S. Ivy St. and S. 6th Ave. The pre-application meeting indicated that an additional fire hydrant would be required. That will be placed as specified by the appropriate authorities.

Public sanitary sewer is also available in S Ivy Street and in S. 6th Ave. Site storm drainage is available through construction of a new drywell within the development area

Power, gas, and communications facilities are available in S Ivy Street and S. 6th Ave. Garbage and recycling collection are available in the neighborhood through Canby Disposal. Fire protection for the area is provided by Canby Fire District, which serves all of the City of Canby and the surrounding area. Police protection is provided by Canby Police Department.

All public services are available or will become available for the subdivision at the time of development.

*E. The layout of subdivision streets, sidewalks, and pedestrian ways supports the objectives of the Safe Routes to Schools Program by providing safe and efficient walking and bicycling routes within the subdivision and between the subdivision and all schools within a one-mile radius. During review of a subdivision application, city staff will coordinate with the appropriate school*

*district representative to ensure safe routes to schools are incorporated into the subdivision design to the greatest extent possible.*  
(Ord. 890 section 53, 1993; Ord. 740 section 10.4.40(B), 1984; Ord. 1338, 2010)

Response: School attendance for the project is Lee Elementary School and Baker Prairie Middle School. Lee school is accessed directly along S. Ivy St. When the proposed redevelopment of S. Ivy Street is complete all students will have a safe and direct foot path to their elementary school. The Baker Prairie Middle School is more distant but connects directly along S. Township Rd. with sidewalks or a foot path the entire distance. A new traffic signal at the S. Ivy Street/S. Township Road intersection will provide safe crossing of S. Ivy Street, a designated arterial. A foot path is provided in the plan for pedestrian access directly to S. Ivy Street and sidewalks are also being installed on S. Sixth Avenue. This will facilitate direct and safe student access to both schools. Walking access to the Canby High school is available through a network of existing streets and sidewalks.

*F. A Traffic Impact Study (TIS) may be required in accordance with Section 16.08.150. (Ord. 1340, 2011)*

Response: Staff has indicated that a traffic impact study probably will not be required since all vehicular traffic is planned to exist on to a local street.

## *Chapter 16.64 Subdivisions Design Standards*

### *Section 16.64.010 Streets*

Response: The proposed interior street system will be designed and constructed with a pavement width of 20 feet from curb to curb. The street will be marked as no parking.

No new public streets or street modification are proposed. The interior access roadway will exit on to S. 6th Ave, a which is designated a local street. Only pedestrian access will be allowed directly to S. Ivy St. The proposed rebuild of S. Ivy Street by the city will specify the development standards of that street and the associated sidewalks and bike paths. For S. 6th Ave., the plan proposes a 6' curb tight sidewalk to match the existing sidewalk. The present sidewalk is four feet wide spaced two feet from the curb.

#### *Section 16.64.015 Access*

No connection to a State Highway is proposed; therefore the project does not have to be reviewed for conformance with state access management standards.

All access for the project will be taken from a 20' wide private roadway or by direct access to S. 6th Ave.

Lot access and driveway locations will be reviewed by the City at the time of building permits.

#### *Section 16.64.020 Blocks*

This project does not impact the existing block structure in the area.

#### *Section 16.64.030 Easements*

Easements for utility lines will be provided as necessary to satisfy requirements of the City and the public service providers. Existing rights-of-way on both S. Ivy St. And S. 6th Ave. are adequate to place the sidewalks in the public right-of-way. No additional public easements will be required

#### *Section 16.64.040 Lots*

(16.64.040.A & B) Lot sizes and shapes comply with dimensional requirements for the CR Zone, as previously discussed in this narrative and as shown on the proposed site plan.

(16.64.040.C) All CR lots have at least 40 feet of frontage on a public or private street.

(16.64.040.D) Although three of the lots in this project share a property line with S. Ivy St., all access will be taken on the interior roadway or on S. 6th Ave. Only pedestrian access will be allowed directly to S. Ivy St.

(16.64.040.E) Lot side lines are generally at right angles to the fronting streets.

(16.64.040.F) No lots in the subdivision can be re-divided.

(16.64.040.H) No hazardous situation related to flooding or soil instability has been identified on the site. The site will dispose of storm drain runoff through the installation of a new storm drain system with a drywell.

(16.64.040.I) No flag lots are proposed.



(16.64.040.J)

Response: The definition of an “infill” home is found in 16.04.255. *Infill homes mean existing and new single family dwellings, manufactured homes, two-family dwellings, duplexes and triplexes on lots that are located in an R-1 or R-1.5 zoning district.*

The subject property currently has a comprehensive plan designation of Commercial/Residential. Upon changing the zone to agree with the comprehensive plan the property will be zoned CR, residential/commercial. The definition of “infill lots” is not applicable to this zone.

#### *Section 16.64.050 Parks and Recreation.*

No area is proposed for dedication for public open space on this site. The City Development Services Department has indicated that they would prefer that a fee in lieu payment be provided by at the time of building permit submittal for lots in this subdivision.

#### *Section 16.64.060 Grading of Building Sites*

Minor grading will be accomplished on the site to create suitable building sites.

#### *Section 16.64.070 Improvements*

Improvements for the subdivision will be accomplished as required by this section. Plans have been submitted as part of this application to show the arrangement of streets and sidewalks, public utilities, and other improvements necessary to provide for the convenience, health, and safety of future residents of this community and of the City. Please refer to specific plans for details. Following approval of the preliminary plan, more detailed construction plans will be submitted to the City for review. At the same time the detailed construction plans will also be submitted to private utility service providers such as the gas and communications companies so that they may design their system improvements to serve the subdivision.

Streets will be constructed to the City’s standard structural section. Driveway approaches and street trees will be installed as homes are constructed throughout the development.

Storm water will be managed through the installation of new storm water inlets on the new private roadway. The new inlets will collect the storm water runoff, convey it to a water quality treatment manhole through new piping, then

to a drywell for disposal underground, as is commonly done in most areas of the City.

LID storm water approaches such as green roofs, pervious pavements and roadside swales often are not good fits for residential subdivisions. Green roofs tend to work best on flat roofs and are not as good of a fit for the pitched roof architecture seen in residential subdivisions. Pervious pavements tend to function better in mature subdivisions where there isn't a lot of ground disturbing activity taking place. The home building, landscaping, and fence building activities common in new subdivisions tend to deposit soil and other landscaping material onto the surface of the roadway, often clogging it, and preventing it from functioning as intended. Once material works its way down into the pores of the porous pavement, it becomes nearly sealed and it functions like standard pavement. Roadside swales can be problematic in residential subdivisions as the swales make it difficult to get out of cars parked against the curb line, as the planter strip is often soggy or under an inch or more of water.

Sanitary sewer will be provided through a connection to the existing sanitary sewer mains in S. Ivy Street and S. 6th Avenue.

Public water meters will be grouped at the entrance to the private roadway as directed by the Water Department. One additional fire hydrant will be provided.

#### *Section 16.64.080 Low Impact Development Incentives*

The project does not plan to increase density or building heights allowed through the incentives offered in this section.

#### *Chapter 16.86 Street Alignments*

This chapter is intended to insure that adequate space is provided in appropriate locations for the planned expansion, extension, or realignment of public streets and it is further intended to allow for the safe utilization of streets once developed.

No new public streets are proposed for this project nor is there any place where new streets would be desirable in the future. Sidewalks will be aligned with those existing where appropriate.

#### *Chapter 16.88 General Standards and Procedures*

The general standards and procedures set out in this chapter apply to the regulations of all sections of this title, except as may be specifically noted. The application has been submitted to the City by the property owner and the appropriate fees have been paid (Sec. 16.88.030).



### *Chapter 16.89 Application and Review Procedures*

The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to review applications and participate in the decision-making process in a timely and effective way.

This application is a Type III procedure. A pre-application meeting was held April 11, 2017 where utility concerns were discussed. The project area is not within a designated neighborhood association. A neighborhood meeting will nonetheless be held to explain the proposal to interested parties. A meeting notification will be sent to all parties within 500' of the subject property.

### *Chapter 16.120 Parks Open Space and Recreation Land*

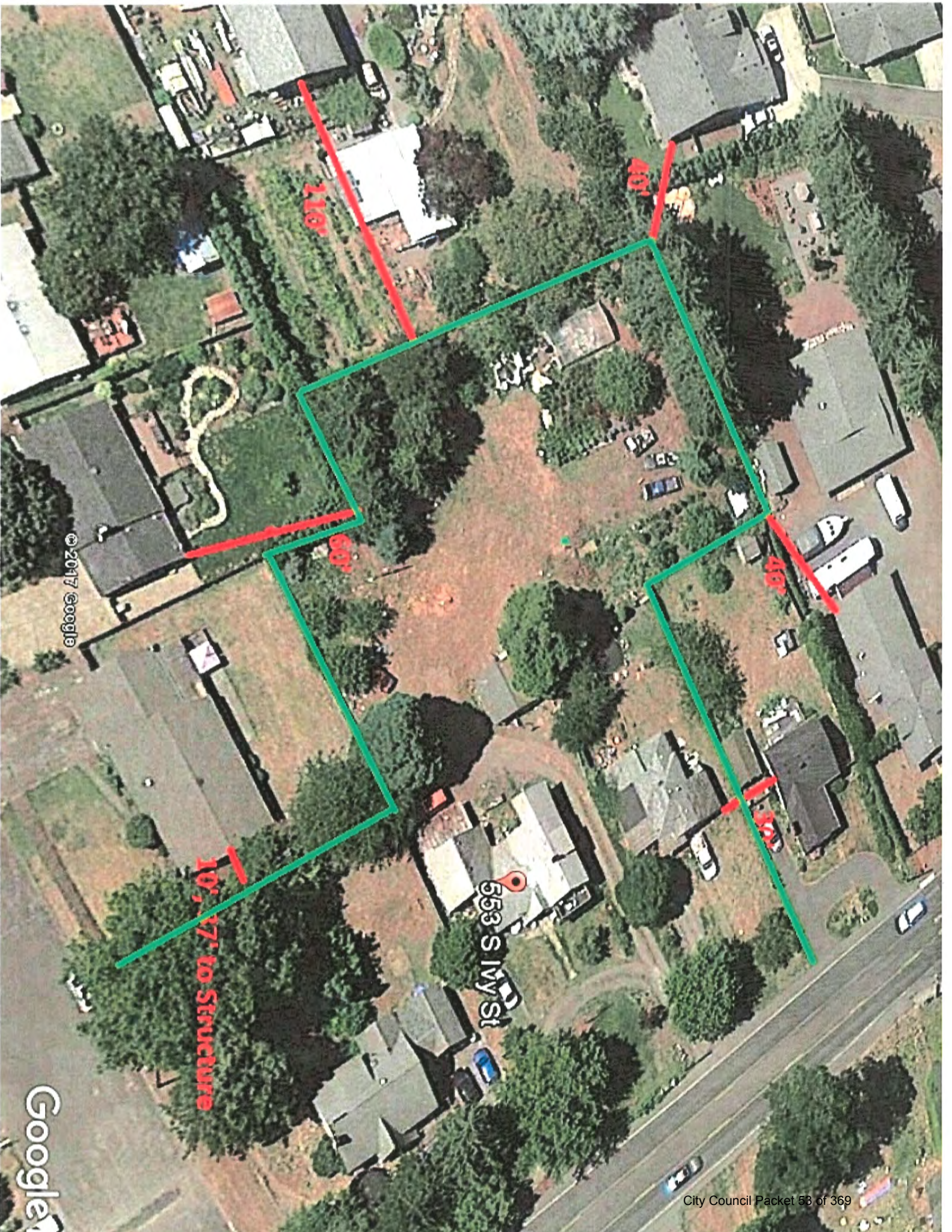
The City of Canby shall require park land dedication or a fee in lieu of park land dedication in the form of a system development charge. The City has indicated that it would prefer that lots in this subdivision pay a system development charge rather than dedicate park land.

## **CONCLUSION**

The foregoing narrative and accompanying plans and documents, together demonstrate that the proposed subdivision and partition conform to the applicable criteria and standards of the City's Land Development and Planning Ordinance. Therefore, the applicant requests that the Planning Commission approve the application.

NOTE: Sisul Engineering has prepared a utility service map and storm drainage plan to accompany this application.







Township Road: 60' ROW



Street Light

Power Pole

Fire Hydrant  
Service Pole

Power Pole  
Street Light

Not a Part

Existing Edge of Pavement  
South Ivy ROW 60'

Service Pole

Lot 6  
New SFR  
5,000 Sq. Feet  
0.115 Acres

Lot 5  
New SFR  
4,267 Sq. Feet  
0.098 Acres

Lot 4  
Townhome  
3,038 Sq. Feet  
0.070 Acres

Lot 3  
Townhome  
3,001 Sq. Feet  
0.069 Acres

Lot 2  
Townhome  
3,002 Sq. Feet  
0.069 Acres

Lot 1  
Townhome  
3,002 Sq. Feet  
0.069 Acres

Lot 7  
New SFR  
5,000 Sq. Feet  
0.115 Acres

Lot 8  
Existing SFR  
7,106 Sq. Feet  
0.163 Acres

Lot 11  
New SFR  
5,000 Sq. Feet  
0.115 Acres

Lot 12  
New SFR  
5,041 Sq. Feet  
0.116 Acres

Lot 9  
Existing SFR  
8,109 Sq. Feet  
0.186 Acres

Lot 10  
New SFR Lot  
5,647 Sq. Feet  
0.130 Acres

Overflow  
Parking

For existing legal lot of records  
lot lines see attached survey.

Note: Lot 5 currently has a small  
residence. That will be removed to  
make way for the access road way.

20' Paved Access  
and Utility Easement

South 6th Street ROW 60'

Sanitary Sewer

Fire Hydrant-190

## South Ivy Park

Proposed Subdivision: Access off 6th Str

533, 553, 583 S Ivy, Canby OR 97013

DATE: 7/20/2017

SCALE: 1" = 60'

DRAWN BY: A. Manuel



**MINUTES**  
**CANBY PLANNING COMMISSION**  
7:00 PM – Monday, October 9, 2017  
City Council Chambers – 222 NE 2<sup>nd</sup> Avenue

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**PRESENT:** Commissioners John Savory, John Serlet, Larry Boatright, Derrick Mottern, Shawn Varwig, and Tyler Hall  
**ABSENT:** Commissioner Andrey Chernishov  
**STAFF:** Bryan Brown, Planning Director, and Laney Fouse, Recording Secretary  
**OTHERS:** Robert Taylor, Allen Manuel, Pat Sisul, Charlie Yankus, Terri Yankus, Regina Taylor, Carol Hill, Wayne Fetters, Stephanie Boyce, Ed Netter, Gwyn Benson, George Beauadoin, Clint Barber, Brian Nava, Larry Graff, Bonnie Edwards, Jeannine Wibbels, Lee Wibbels, Liz Rossberg, and Jackie Jones

**1. CALL TO ORDER**

Chair Savory called the meeting to order at 7:00 pm.

**2. CITIZEN INPUT – None**

**3. MINUTES**

- a. Approval of September 25, 2017 Planning Commission Minutes

***Motion:*** A motion was made by Commissioner Varwig and seconded by Commissioner Hall to approve the September 25, 2017 Planning Commission minutes. The motion passed 6/0.

**4. NEW BUSINESS – None**

**5. PUBLIC HEARING:**

- a. Consider a request for a Zone Change, Conditional Use, and Subdivision application for property at 533, 553 & 583 S Ivy St to create 4 new townhome lots and 6 new single family lots. **(ZC 17-02/CUP 17-05/SUB 17-04 S Ivy Park Subdivision, Allen Manuel)**

Chair Savory opened the public hearing and read the public hearing format. He asked if any Commissioner had a conflict of interest or ex parte contact to declare.

Commissioner Boatright said he greeted Larry Graff outside as they were old friends.

Bryan Brown, Planning Director, entered his staff report into the record. The applicant was requesting a zone change from R-1, low density residential, to C-R, commercial residential. The property was surrounded by low density residential, however there was C-R zoning close by. The C-R zone was intended to be a bridge between higher density and lower density areas. The Comprehensive Plan map did designate this property as C-R for future redevelopment. There were many Comprehensive Plan policies that talked about accommodating for the projected 20 year population growth. In order to make that happen, there had to be places in the community that were chosen for redevelopment for the future population. The C-R zoning was one of those designated areas. There were not many areas in the City that had this designation, and this was one of the first opportunities to deal with this zoning district. It was a mixed zoning district and allowed light commercial uses. The applicant's intent was not for light commercial, but a higher intensity of residential. He

had also submitted a subdivision application and conditional use application to make that happen. There was one existing home on each of the three tax lots and the lots were in excess of the maximum R-1 zone lot size. In the original application, the applicant used lot averaging which was allowed in the Code to make some of the lots less than the minimum lot size in the R-1.5 zone. There was a provision in the Code that allowed the Planning Commission to consider more lots that were under the minimum size if there was a public benefit to doing so. However the applicant revised the application to create only one lot that would be below the minimum lot size. The Code allowed up to 10% of the proposed lots to be under the minimum size and staff thought the application complied. The applicant had proposed eight detached single family homes, which included keeping two of the existing homes. One existing home would be demolished. The lots for the two existing homes were larger than what was allowed in the R-1.5 zone due to setbacks. There was an exception for allowing larger lots when saving existing homes. The lot averaging allowed for that as well as long as the overall average of the lots did not exceed the minimum and maximum. The way the lot averaging had been calculated had come into question. Some of the written public comments were from people not convinced that the way the lot averaging was done was a proper method. One questioned whether the street itself should be included in the lot averaging. In this case the applicant did include the street area. The Code was silent on this issue. For a normal subdivision that had public streets, the street access areas were excluded in lot averaging. This was a private street and was an access easement which meant the road was part of the adjacent lots. There was nothing in the Code that stated they could not utilize the street as part of the lot averaging. By doing so, they were able to get more lots than they would otherwise. It did cause some problems with meeting the R-1.5 zoning development standards. Lot 5 was slightly over the 70% impervious surface area that was permitted. However, that could be easily remedied by shrinking the footprint of the house or using permeable pavers on the driveway to solve the issue. Townhomes in the C-R zone were not an outright permitted use. They were only allowed through a Conditional Use Permit. A neighbor in his written comments pointed out that conditional uses in the C-R zone had to use the development standards for townhomes in the R-2 zone. The applicant made an attempt to do that. The area proposed for townhomes came out to 3.8 units and 4 were required. The applicant was proposing 4 units. There were Comprehensive Plan policies for areas of special concern and this was Special Concern Area C in the Plan. It was noted that in Area C there needed to be caution regarding traffic issues on S Ivy Street and caution regarding access. The applicant had proposed access onto S Ivy, but there was a standard that no direct access onto arterials was allowed. Currently there were four existing driveways on S Ivy, and staff had requested that all of the driveways be removed and access would be on SW 6<sup>th</sup> Avenue. Some road improvements were going to be made in this area that would help address traffic issues and alleviate some of the conflicts as there was concern about increasing density and traffic. A traffic study was not done because of the size and scope of the development. The applicant did do a Transportation Planning Rule analysis which indicated the rezone was accounted for in the Transportation System Plan and no special projects were needed other than the signal light at Township and Ivy. That did not lessen the fact that there was more traffic going onto the residential street. It impacted some properties more than others. There was a written testimony from the owners of the house across from this property on SW 6<sup>th</sup> Avenue who were concerned about exiting their driveway. This was a concern, but they had to find a balance. The question the Planning Commission had to ask was did it meet Code requirements. No public street was proposed because of the shape of the lots and the amount of right-of-way a public street took. The applicant thought detached single family homes were an appropriate use rather than a commercial use or duplexes or triplexes. The use of the townhomes made sense to maximize the output. It also made sense in light of Comprehensive Plan policies that talked about moving toward a variety of housing types. There would be individual ownership of the lots which typically were better maintained than rentals. Even though the density was increased, the detached single family area was within the bounds of the R-1.5 development standards. The Conditional Use was a discretionary decision and the rezoning had some discretion as well. The strongest basis for rezoning was if it was in compliance with the Comprehensive Plan map, and in this case it was.

Mr. Brown explained the preliminary plat was revised so that no more than one lot was less than the normal minimum lot size of 5,000 square feet when utilizing lot size averaging. All of the internal homes had access

to an ADA compliant five foot wide sidewalk that would take them out to either S Ivy Street or SW 6<sup>th</sup> Avenue. There was a mailbox grouping on the property that served homes on the other side of Ivy Street. Staff did not know if the mailboxes would be moved. That decision was up to the USPS. The applicant proposed the mailboxes be moved to SW 6<sup>th</sup> Avenue, but he would have to work with the USPS on this issue. There was a request to restrict parking close to the intersection on the north side of SW 6<sup>th</sup> Avenue. Traffic studies said in the first 20-22 feet of a street intersection that on street parking should be restricted. He thought that could be added as a condition. It would limit the overall public parking, but the safety aspect overrode that. Another issue was the private street was the minimum width allowed, 20 feet. Canby Disposal had submitted testimony stating they would have trouble accessing internally to this development and all the trash receptacles would have to be lined up on the local street. The applicant worked with an engineer to devise radiuses that would allow trash trucks and emergency vehicles to access the site. He had submitted a revised drawing showing where trash receptacles could be located in one area rather than at each house. Another issue was their earlier proposal did not have an access to an internal sidewalk for every house. The applicant also revised the plan to include sidewalks. There was sidewalk two feet from the wall of two of the proposed houses. That was not the norm and it showed that it was a tight squeeze on the property. It did meet standards. There would be no parking on the private street. There were four visitor parking spots planned for the development and every unit had two parking spaces. There might not be enough parking for visitors and they might either park on the private street or 6<sup>th</sup> Avenue. Staff recommended the Planning Commission recommend approval of the zone change to the City Council and approve the subdivision and conditional use subject to conditions. He entered a letter into the record that was submitted a few hours ago from the Housing Land Advocates and Fair Housing Council of Oregon who discussed complying with Statewide Planning Goal 10 and making sure there was adequate and appropriate supply of affordable housing. They thought the staff report did not provide an adequate analysis for how this rezoning affected housing and recommended the Commission defer their decision until the Goal 10 findings were added to the staff report. He thought the recommendation was in error and unreasonable because this application for rezoning was in accordance with the Comprehensive Plan designation. It was a tremendous amount of work to do that analysis which was typically done for Comprehensive Plan amendments, and this application was not amending the Comprehensive Plan. He discussed the need to revise the Comprehensive Plan in the future so the requirements in the Plan would be transferred into the Development Code. There was concern about basing the decision on a Comprehensive Plan policy that did not correspond to Development Code requirements. The Commission could postpone the decision to find out the answer to this issue.

**Applicant:** Allen Manuel said this was a plan to redevelop 1.31 acres into medium density residential use. If the plan moved forward, one home would be removed and 10 new homes would be added. Access would move from S Ivy to SW 6<sup>th</sup> Avenue. The timing of the project coincided with the improvements on S Ivy which would include sidewalks, drainage improvements, and new signal at Township and Ivy. The improvements would be completed by 2019. He planned to have this project completed simultaneously with the improvements so the streets would not be torn up twice. This was three applications, a zone change, subdivision, and conditional use. The rezone matched the Comprehensive Plan designation and he thought it should be automatically approved. There was testimony that said this development was too hasty and the property should be used for R-1 development. The Comprehensive Plan was adopted in 1981 and 25 years later he purchased the property and 11 years after that he was proposing development. He did not think it was hasty. The Comprehensive Plan allowed for intermediate uses on the property, but those uses were intended to be applied where there were not sufficient public utilities to develop the property to its full density. He had been working with staff since December on this and had gone through many iterations. Many of the public comment concerns had been addressed. The request to subdivide the property was due to the difficult shape of the land. He was proposing a mix of housing types and a private road. The property was not conducive to flag lots. All access would be taken off of Ivy. He also submitted a utility plan that entailed how the stormwater system would work. There had been discussion regarding this area as it was an area of special concern. He thought that meant that more focus should be given to the C-R zone as it went along Ivy to make sure traffic flows and parking were addressed. He thought they had done that through moving the access off of Ivy and all

the lots had two parking spaces as well as overflow parking. Sidewalks were not originally included, and the plan had been modified to include them. There would be five foot sidewalks that would be ADA compliant. Regarding the mailboxes, they were not on his property. They were five feet beyond his property line and in the public right-of-way. He thought when the City and County rebuilt Ivy they would take care of that issue. The conditional use request was to put four townhome lots on the property. Townhomes were widely used and well done around the City. There was a considerable amount of dislike for them from the neighbors. He was proposing townhomes because they were the only thing that would fit. They also created a mix of housing types and helped achieve some of the goals of the Comprehensive Plan. He had relied on the Comprehensive Plan when he bought the property and had tried to follow what was in the Plan. He requested approval.

Commissioner Varwig thought some of the concern with the townhomes was height and visibility into the single family home yards. He asked if there was a way to restrict the height. Mr. Brown said that was a possibility. There were height restrictions for R-1.5, which was 35 feet.

Mr. Manuel had envisioned two story townhomes, however he was planning to sell the lots to a developer who would build the townhomes.

Pat Sisul, Engineer, discussed the drainage proposed for the property. It would be a private stormwater system. The plan was to handle the drainage through drywells and he explained the standards that they would follow.

**Proponent:** Ed Netter, local developer and builder, liked the variety of homes that was being proposed. There was a need for lots like this in Canby as it gave people a chance to buy a home in Canby who normally would not have a chance. It also opened up new lots developers could purchase to build. He thought having no parking on the private road could be enforced and would not be a problem. He was in favor of the subdivision for future homeowners and builders.

**Opponents:**

Carol Hill, Canby resident, questioned how the fire engines and emergency responders would get in and out of the development. The street was narrow and they would have difficulty turning around. If someone was parked where it was prohibited, would they be able to get in?

Mr. Brown said staff believed the application met the Fire Department requirements because the radiuses were expanded. He explained how the trucks would turn around.

Clint Barber, Canby resident, submitted pictures of how the rain flooded the storm drains in front of his house and his neighbor's house. The street sweeper was not keeping the street clean. He was a former fire fighter and had driven fire and garbage trucks as well. He thought the fire trucks would fit, but if the Fire Department thought it was a danger to the truck, it would not go in and the fire fighters would walk in. Garbage trucks might damage the sidewalks or curbs trying to get in and they would have to pay for that. This kind of situation was not something these service providers would be comfortable with. There was limited parking and it would make it difficult for people to have birthday parties and family gatherings. He thought the overflow parking would go on 6<sup>th</sup> Avenue. He thought the electric and water rates would go up the more the services were used. There would be traffic impacts on 6<sup>th</sup> and with all the new development he was concerned Canby would outgrow itself. The timing of the traffic report was in August when school was not in session. They had more growth than they could keep up with and they needed to preserve what they had. He was against this development.

Brian Nava, Canby resident, said one of the appeals to Canby was the small town feel. The Code was important, but the words that caught his attention were minimal, intense, and haste. Information had been

received tonight and he thought they could do better than the minimal. He was concerned there would not be enough parking and people would use 6<sup>th</sup>. He was a volunteer fire fighter, and if the Fire Department said the truck would fit, then it would probably fit. The higher density population made it riskier for safety. On a school day there were many children walking and biking to and from school. There were significant risks in adding more vehicles to the roads with the children. It would also add more students to already crowded classrooms. He questioned whether these units would be affordable housing. He did not think there was much public interest in the neighborhood for this development. The water drainage problem was a health issue. He encouraged the Commission to review the public testimony and oppose the development.

Robert Taylor, Canby resident, lived across the street from where the new private road would exit onto 6<sup>th</sup> Avenue. He was concerned about traffic, parking, and livability. He understood every property owner had the right to develop their property within certain limitations. The first proposal had a lot of issues and the changes to the proposal had been done last minute. The original traffic report that was done said there would be 42 exits and ingresses onto Ivy and that changed to 142 exits and ingresses onto 6<sup>th</sup>. There was 150 feet from the corner of Ivy and 6<sup>th</sup> to the lot directly to the west which was the absolute minimum separation from Ivy. He thought the traffic problems on Township would move south towards 6<sup>th</sup>. There was no way to tell that without a good traffic study. He questioned how the no parking on the private street would be enforced. There were issues with the stormwater. They had to make sure the drains were located on the lowest area of the property and that there would be curbs to prevent the water from running into neighbor's yards. Traffic would increase and there were safety concerns with sidewalks, street lighting, and street trees.

Regina Taylor, Canby resident, submitted a one page handout. She was speaking on behalf of the following people: Charlie Yankus, Terri Yankus, Gwyn Benson, Larry Graff, Stephanie Boyce, and Wayne Fetters. She had submitted written comments previously and the applicant had made some design changes after her comments were submitted. The one page handout was in response to the changes that had recently been made. She appreciated the changes. She read from the staff report regarding lot sizes and lot size averaging in the R-1.5 zone. She disagreed that the criteria for lot size and lot size averaging had been met with an average lot size of 5,646 square feet and one lot below the minimum lot size standard. In the Code it stated the Planning Commission could approve an exception to the minimum and maximum lot area standards if certain standards had been met. One of those standards was the average area of all the lots excluded the land in public areas and areas where building was not permitted. She thought this included the private street, which was also the utility easement, and she read the definition of a street. The applicant utilized the Code for joint and cross access. The use of joint and cross access was a savvy design maneuver, but it did not remove the need to follow other standards, such as lot size averaging calculations. If the street was included, the average lot size would be 4,407 square feet which was below the required 5,000 square feet minimum. Six of the eight single family residences would not be in compliance. The average lot size numbers were also skewed by the two existing homes that would not be torn down. If they did not include the sidewalks and visitor parking area as public areas, the average lot size for single family residences was 4,752 square feet, still below the minimum. The staff report stated they did not include the common wall lots in the lot size average calculations. However, these lots did not meet the 3,000 square foot minimum if they were calculated the same as other single family dwellings. She was also concerned that gross lot size was used instead of net lot size. A public benefit had to be demonstrated to allow more than 10% of the lots to be outside of the minimum or maximum lot area. A revised plan submitted by the applicant showed only one lot below the minimum which was within the 10% allowed. She disagreed that the criteria had been met since all of the townhomes and six of the single family homes were out of compliance with the lot size. The single family lots and townhomes were not out of character with the neighboring properties, but they were at a significant increased density. The design of the entire subdivision was not satisfactory as currently presented regardless of the market. A queuing analysis would be needed to know how much delay was caused by school buses on 6<sup>th</sup> and she hoped one would be requested. She did not know why staff applied the sidewalk standards when this was a subdivision application and the subdivision design standards should be applied which required sidewalks on both sides of the street. That had mostly been met by the application except for lot 10. There were other subdivision design standards

that had not been applied to this application such as street alignment, intersection angles, marginal access streets, utility easements for all street lot lines, street lights, and street trees.

**Rebuttal:**

Mr. Manuel thought the lot size averaging had been done correctly. This was a reasonable plan that generally met the Code. He had addressed most of the complaints from the original application. It came down to whose calculations they were going to use. If this project was not done, there would still be four accesses onto Ivy. He did not know what would happen to the houses on the property in the future.

Chair Savory closed the public hearing at 9:14 p.m.

Commissioner Boatright asked whose calculations were right. Mr. Brown said he had made the determination that the calculations proposed were right. He thought there was evidence that the townhomes were not counted as there was a different development standard for townhomes than detached single family homes. They always excluded public streets for lot size averaging, but this was a private road and every aspect of the road was private. He was comfortable that it was included.

Commissioner Serlet asked if they were requiring a fire hydrant next to lot 1 as suggested by the Fire Department. Mr. Brown said they could make sure that was included in the final construction plan.

Mr. Brown said another issue with private roads that were easements was whether setbacks applied internally, especially front setbacks.

Commissioner Boatright thought they were bending over backwards to create a housing density at this location just because several years ago the Comprehensive Plan designated it as such. Mr. Brown replied the intent was to balance urban sprawl and accommodate future growth. The plan tried to find the most suitable areas for higher density. The question was whether it was time for a transition to the higher density on this property, and the applicant thought it was. The idea was to look at the highest and best use of the property.

Commissioner Mottern would like to see a recalculation of the lots. He thought it was trying to put a square peg in a round hole.

Commissioner Serlet said there had been a lot of public opposition and this development did not seem to fit. He was not in favor of it.

Commissioner Varwig thanked all of those who came to testify. The Commission had to decide whether applications met the Code or not. He thought the community should grow, but did not know if this application fit. There were many questions left unanswered.

**Motion:** A motion was made by Commissioner Varwig and seconded by Commissioner Serlet to postpone making a decision on the application until some of the confusion could be clarified. The motion passed 4/2 with Chair Savory and Commissioner Boatright opposed.

Chair Savory thought there was an inadequate traffic study to show the traffic impact, which he thought would be more than what was indicated. He thought the parking was also inadequate. He was not satisfied with the idea of including the street in the lot size averaging. Several last minute items were submitted that he did not have a chance to put into context. He would have voted no on the application.

Mr. Brown said unless it was postponed to a date certain it would have to be re-noticed and the process would start over. He also needed direction on the questions that needed to be answered. Did they want staff to look at a different way to do the lot averaging and have the applicant redesign the property with fewer lots?

Commissioner Boatright also would have voted no. He was unclear whether or not the road should be included in the averaging. He thought they should make a decision on the application tonight.

Commissioner Varwig said the applicant had put in a lot of work, and he did not want to see it denied outright. He thought some of the issues needed to be clarified and the application needed to be amended to fit the neighborhood better.

Chair Savory re-opened the public hearing and asked the applicant if he would be willing to amend the application.

Mr. Manuel said the issue came down to economics. If they took the road out of the lot size averaging calculation, that would eliminate three lots. If traffic safety was a worry and they would accept the lot size calculations, he would be willing to pay for a traffic study. If the calculations were unacceptable, he asked that the Commission approve the zone change only and he would rethink the subdivision.

Chair Savory closed the public hearing.

Commissioner Hall thought they could make a decision tonight and approve the zone change only.

Commissioner Mottern was concerned about the Comprehensive Plan issue and he was not ready to approve the zone change at this time.

Commissioner Serlet thought the application needed to be changed. Decreasing the number of lots was a financial burden, but they had to balance that with the quality of life for citizens.

Mr. Brown reminded the Commission that the zone change would be forwarded on to the City Council. This was just a recommendation to the City Council.

Commissioner Varwig withdrew his motion to postpone the decision. He stated the applicant had the right to do something with this land, but this was not the right fit.

**Motion:** A motion was made by Commissioner Boatright and seconded by Commissioner Serlet to deny **ZC 17-02/CUP 17-05/SUB 17-04 S Ivy Park Subdivision, Allen Manuel**. The motion passed 6/0.

## **6. FINAL DECISIONS - None**

## **7. ITEMS OF INTEREST/REPORT FROM STAFF**

Mr. Brown said the next Planning Commission meeting would be held on Monday, October 23, 2017 which would be the continuation of the proposed subdivision on N Maple.

## **8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION**

Commissioner Mottern asked what the procedure was to make the changes to the Comprehensive Plan as staff had suggested. Mr. Brown stated these policies had been placed in the Plan so they didn't have to change the regulations. Legislation passed in 1991 that said that was not allowed. They might need to consult with a land use attorney to get a ruling on it. It would take Council approval to make the amendments to the Comprehensive Plan as it was an expensive process and took a lot of staff time.

Commissioner Mottern suggested holding a work session on the topic. Mr. Brown would send him some of the documentation regarding this issue.

**9. ADJOURNMENT**

The meeting was adjourned at 9:52 pm.



## Laney Fouse

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**From:** Kim Scheafer  
**Sent:** Tuesday, October 10, 2017 11:59 AM  
**To:** Laney Fouse; Bryan Brown  
**Subject:** Fwd: Comments on Land Use: File: ZC 17-02/SUB 17-04/CUP 17-05

Kim Scheafer, MMC  
City Recorder  
City of Canby  
222 NE 2nd Avenue  
PO Box 930  
Canby, OR 97013  
503.266.0733  
[www.canbyoregon.gov](http://www.canbyoregon.gov)

Begin forwarded message:

**From:** Robert Taylor <[taylorbobt@yahoo.com](mailto:taylorbobt@yahoo.com)>  
**Date:** October 10, 2017 at 11:48:19 AM PDT  
**To:** "ScheaferK@canbyoregon.gov" <[ScheaferK@canbyoregon.gov](mailto:ScheaferK@canbyoregon.gov)>, "[taylorbobt@yahoo.com](mailto:taylorbobt@yahoo.com)" <[taylorbobt@yahoo.com](mailto:taylorbobt@yahoo.com)>  
**Subject: Comments on Land Use: File: ZC 17-02/SUB 17-04/CUP 17-05**  
**Reply-To:** Robert Taylor <[taylorbobt@yahoo.com](mailto:taylorbobt@yahoo.com)>

Good Morning!!

Would you please accept and include these comments for the Canby City Council's consideration on the South Ivy Park proposed development.

A printed copy will be available at the Council Meeting on 18 October 2017.

Many Thanks,

Bob Taylor  
(503) 989-7033

**Canby City Council**  
**Canby, Oregon**

**Comments on Land Use: File: ZC 17-02/SUB 17-04/CUP 17-05**

My name is Robert Taylor and I reside at 173 SW 6<sup>th</sup> Avenue in Canby, Oregon.

Thank You for your time and consideration.

My Wife and I live almost directly across from the exit from the South Ivy Park Subdivision's proposed Private Road on to SW 6<sup>th</sup> Avenue.

I understand that the concern of the Canby Planning Commission and the Canby City Council is Traffic, Parking and Liveability within the City of Canby. Plus, of course, all the applicable Codes, Comprehensive Plan and other requirements.

I, also, understand and support that every property owner or developer has the right to improve their property within those limitations.

The initial proposed plan that was revealed to the attending local residents at the Developer's Neighborhood Planning Meeting failed in many ways.

At that meeting, the developer provided a Written Narrative of his intentions for the Proposed South Ivy Park Subdivision and I responded to the Canby Planning Commission with my concerns by referencing his Written Narrative (You may view my comments in the Planning Commission Packet for the 10/9/2017 Meeting.

Other local residents also provided comments or concerns for the Planning Commission to consider and some improvements were made, some last minute changes to the plan for the proposed South Ivy Park Subdivision were available just a couple of days before the Canby Planning Commission Public Meeting along with additional requirements levied by the Canby Planning Commission. I appreciate that the developer made those changes.

However, some concerns still remain and were raised at the Public Planning Commission Meeting.

#### TRAFFIC:

1. The Traffic Study determined that 42 daily ingresses/egresses from the existing homes on the area of the proposed subdivision would no longer exit to South Ivy Street. South Ivy Street is an arterial roadway and is due for significant upgrades in that area (Including the Township Road/South Ivy Street intersection) and private resident exits to South Ivy is highly discouraged. However, the proposed subdivision would generate 142 daily ingresses/egresses on to SW 6<sup>th</sup> Avenue where there were previously 0 (Zero) ingresses/egresses. SW 6<sup>th</sup> Avenue is the first East/West traffic corridor South of US Highway 99E and is relatively heavily trafficked (Including by School Buses). With the increased traffic due to those coming and going from the proposed subdivision, it would appear that some of the problems with the Township/South Ivy intersection would simply migrate South to SW 6<sup>th</sup> Avenue/South Ivy Street intersection. There is no indication that the Traffic Study considered this issue. Also, the traffic on SW 6<sup>th</sup> Avenue is considerably different during the school year as many Canby High School drivers (and pedestrians) utilize SW 6<sup>th</sup> Avenue during their morning and evening commute as do the School Buses.

2. The exit of the proposed Private Road to SW 6<sup>th</sup> Avenue may be within 150 feet of where SW 6<sup>th</sup> intersects with South Ivy Street. The Southeast corner of the lot directly to the West of the Private Road exit is shown on the Lot Survey Plan diagram as being 150 feet from South Ivy Street and the Code requires 150 feet but is unclear where the measurements are to be determined (from centerline or other starting point) but the Private Road is within the required 150 feet of separation and may, or may not, require an Exception to be granted.

3. The proposed Private Road raises many different issues and they have all been raised to the Planning Commission but include:

- a. The Private Road is a catch basin for stormwater run-off.
- b. The Private Road is to be posted "No Parking" but that condition will not be enforced by the Canby Police Department and concerns have been raised (and addressed) about Emergency Vehicle and Garbage Truck access.
- c. The Private Road has no 'buffer space' between the road and the property line of the lot directly to the West of its exit to SW 6<sup>th</sup> Avenue.
- d. The increase from 0 (Zero) to 142 ingresses/egresses to SW 6<sup>th</sup> Avenue.

#### PARKING:

Parking will be limited to 'on lot' parking for each individual lot owner's property and 4 overload parking spaces on Lot #12. Visitors will have to find their own parking within the proposed subdivision, park illegally on the Private Road or park on SW 6<sup>th</sup> Avenue and walk into the development. Illegal parking is expected and will hinder regular, Emergency or Utility (Garbage) traffic within South Ivy Park subdivision.

#### LIVEABILITY:

1. This area is a problem area on the Canby Stormwater Plan and the control of stormwater must be a high priority to capture the run-off to protect the neighboring properties from that hazard as well as the residents of South Ivy Park subdivision. The Private Road is the catch basin and must have adequate gradient and curbs to funnel the water to the 2 (Two) drains that must be at the lowest elevation within the subdivision on Lots #11 and 12.
2. An adequate Maintenance Agreement must be in place for the Private Road as the Fire Department has indicated that they will not utilize a non-maintained road.
3. The developer indicated at the Neighborhood Planning Meeting that the City of Canby Public Works Department would maintain the filters on the stormwater drains within the subdivision. Since this is a Private Road, the maintenance by city personnel should be verified.

#### SAFETY:

It was just shortly before the Public Planning Commission Meeting that an updated proposed Lot Plan was provided indicating that ADA sidewalks would be

included in the development along with a Tree Planting Schedule but no street lighting has been addressed.

#### LOT SIZE CALCULATION:

It was not determined how 'Lot Size' calculations should be done and whether the proposed lot sizes would meet Code requirements. If the proposed Private Road is subtracted from the indicated Lot Size, the average lot size required by the Code is not met. Individual lot sizes, in some cases, are especially deficient. Notably, Lot #5 which has the entire Private Road width on the vast majority of its frontage included in its Lot Size calculation and Lot #10 where the Private Road exits to SW 6<sup>th</sup> Avenue occupies one quarter or more of its platted lot. Also, Lot #12 had two-thirds of the Private Road on its frontage plus dedicate overload parking for four vehicles factored into its lot size. It should also be recognized that the 2 existing single family residences that are to remain occupy the two largest lots in the proposed subdivision and skew the Average Lot Size calculations. The Canby City Planning Director stated that he was not certain if the square footage of the street could be included in the size of the lots, but chose to make a determination. I do not agree that a land use decision which will affect the community into the future, should rely on inadequate information. Let's research the information and make an educated decision.

We understand that this piece of land in Canby will be developed and commend the developer for working with the City of Canby to correct deficiencies and issues raised toward the planned South Ivy Park subdivision. Traffic is expected to increase as the City grows and since we are one of the residents most affected by the traffic flowing in and out of the proposed South Ivy Park Private Road we will learn to live with it. But we expect the City to mitigate the impact on us and the SW 6<sup>th</sup> Avenue/South Ivy Street intersection as much as possible based on an accurate Traffic Study.

The City of Canby Planning Commission seemed to appear uncertain of the interpretation and application of a number of issues raised in referencing the City of Canby Comprehensive Plan, applicable Codes and Policies, and whether an adequate Traffic Study had been completed and is referring the decision to the Canby City Council for resolution. If the Canby City Planning Commission is unclear on any of the interpretations relating to lot size, the decision to approve this land use application should be deferred until all uncertainties are resolved.

A well planned community considering Traffic, Parking and Liveability at South Ivy Park would be a great addition to the City of Canby. It should be one that you would be proud to have in your neighborhood.

Again, thank you for your time and consideration.

Robert Taylor  
173 SW 6<sup>th</sup> Avenue,  
Canby, OR 97013  
[taylorbobb@yahoo.com](mailto:taylorbobb@yahoo.com)

## PUBLIC RECORDS LEGAL DISCLOSURE

This email is a public record of the City of Canby, Oregon, and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law.  
This email is subject to the State Retention Schedule.

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RE: Proposal for Zoning Map Amendment, Conditional Use Permit and Subdivision  
CUP 17-05/ZC 17-02/SUB 17-04

Applicant: Allen Manuel

Location: 1.31 Acres at 533, 553, 583 S Ivy Street, Canby, Oregon

INTRODUCTION: My name is Regina Taylor; I reside at 173 SW 6<sup>th</sup> Ave, Canby, where I am the homeowner.

OPENING COMMENTS: I had submitted my comments to the Planning Staff by the September 27 deadline for this land use application. Allen made some design changes after my comments were submitted, and I would like permission from the Chair to provide the council with my corresponding updates. It's just one page, front and back.

I want to thank both the Planning Staff and Allen Manuel for recent design changes to the proposed subdivision, which now includes a sidewalk and a clustered garbage bin area. I appreciate the efforts that were required to make these available.

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Regarding the Staff Report, I would like to make the following comments:

Lot Sizes and Lot Size Averaging in the R-1.5 Zone.

Page 11 of the Staff Report says "A minimum lot size of 5000 square feet and a maximum of 6500 square feet is allowed under the provisions of the R-1.5 zone for single family dwellings", and advises that lot size averaging is allowed for the single family homes but also says the Planning Director has determined lot size averaging should not be applied to the 4 common wall units.

Page 13 of the Staff Report indicates that "the criterion of lot size and lot size averaging has been met, with an average lot size of 5,646 {square feet} and only 1 lot {is} below the minimum lot size standard."

I disagree with this statement. The handout I have given to you shows Canby Ordinance 16.18.030.B.1 (a) which says that the Planning Commission may approve an exception to the minimum and maximum lot area standards as a part of a subdivision or partition application when ALL OF THE FOLLOWING STANDARDS ARE MET. It indicates "the average area of all lots is **exclusive of** (that means to subtract) the land in **public use areas** and areas in which

**building is not permitted under local, state, or federal laws or regulations,** to obtain the LOT SIZES, to average.

Examples of areas designed for public use in a subdivision are parks, sidewalks, and visitor parking areas. This proposal has no park, so sidewalks and visitor parking areas.

Canby's **local regulations** that prohibits building within a planned right-of-way of a new street is:

**16.86.020** Street Alignments (D).

No building permit shall be issued for the construction of a new structure within the planned right-of-way of a new street, or the appropriate setback from such a street as established in Division III

And the definition of Street is:

**16.04.570** Street. *Street means the entire width between the right-of-way line of every way which provides for **public use** for the purpose of vehicular and pedestrian traffic, and the placement of utilities and including the terms road, highway, lane, place, avenue, alley, or other similar designations.*

We know it is also prohibited to build on or in Utility Easements, and the street in this proposal is the Utility Easement, which is a second reason to subtract the street area from lot size.

You can see from the applicant's diagram of the proposed subdivision (on the reverse side of my handout) that the street, sidewalks and visitor parking areas are located inside the property lines of the lots with the exception of Lot 9. This demonstrates the applicant has chosen to utilize the ordinances for Joint and Cross Access, which is encouraged by the City of Canby. The use of Joint and Cross Access is a savvy design maneuver, but it does **not remove the need to obey other ordinances**, such as the Lot Size Averaging calculation.

(Joint & Cross Access: 16.10.070 and 16.46.040)

The Staff Report indicates they have calculated the Average Lot Size for the Single Family Residences (not including the common wall units) as 5,646 square feet, but they did not subtract the required areas.

Implementing the regulation in 16.18.030.B.1 (a) reduces the Average Lot Size to 4,407 square feet, which is below the required 5,000 square foot minimum. Six of the 8 single family residences are less than 5,000 square feet, with only the 2 existing lots being in compliance.

Canby Ordinance 16.18.030 (b) indicates: No lot shall be created that contains less than four thousand square feet (in this zone). You can see on my chart, the net square feet of six of the single family lots are only:

2,319              3,990              4,260              3,687              3,350              and 3,321 sq ft.

It is amazing how much the “average” size is skewed by the lots for the two existing homes, which are the oversized lots of 6,266 and 8,109 net square feet.

If you choose to believe that the sidewalks and visitor parking area are not “public areas”, the average lot size of the Single Family Residences is still only 4,752, and still below the 5,000 square foot minimum.

The Staff Report also indicates *“The Planning Director determined that it is not the intent of the city ordinances to include the common wall lots in the lot size average calculations. The lot size averaging applies only to the single-family detached homes”* and the Staff Report indicates the square footage of the townhouses is 3,000 each.

Since the 4 single family residences with common wall construction are so similar in size, actually averaging the lots would make little difference; but there is no indication in the ordinance (nor the Staff Report) that the **area of a lot** containing a single family home with a common wall is calculated any differently than any other single family dwelling type. That is, we must subtract the street right-of-way and public use areas (even if we don’t go the extra step to average those numbers). Therefore, the net area of the 4 units with common walls are as follows: Lot #1 and #2 each have 2,722 square feet, Lot #3 has 2,721 square feet and Lot #4 has 2,758 square feet, making 100% of them out of compliance, which requires a minimum of 3,000 square feet.

I wanted to see I had correctly assumed that townhouse lot areas were calculated the same as other single family dwellings and researched the websites of the Planning Commissions for 21 cities in Clackamas and Washington Counties to see how other cities handled this situation. I viewed the websites in Clackamas County for Estacada, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Molalla, Oregon City, Sandy, Tualatin, West Linn and Wilsonville and in Washington County for Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, North Plains, Sherwood, and Tigard. I learned that the various municipalities use different names of “Lot



Size", "Lot Area", and "Net Buildable Acre" but the definitions were consistent: "the horizontal area within the lot lines of a lot, exclusive of streets and land dedicated to public uses."

None of the 21 municipalities designated a different calculation method for single family homes with common walls. Several of the municipalities cited they had adopted their definitions from the same origin, which was the Metro Urban Growth Management Functional Plan. I saved the web links and took screenshots of these web pages, if anyone wants to see them.

I am not certain why the Planning Staff has not enforced ordinance 16.18.030.B.1 (a) when they did enforce the other portions of that same ordinance that follow, further down on the same page. I also delivered my concerns regarding the use of gross lot size versus net lot size to their attention in a 9 page document I delivered to them on September 25.

The Staff Report says on page 13 that "*a public benefit must be demonstrated in order to allow more than 10% of the lots to be outside of the minimum or maximum lot area. A revised plan submitted by the applicant now shows only one lot below the minimum lot size standard which is within the allowed 10% of the 8 single-family detached homes planned. This criterion is met.*"

I disagree that the criterion has been met, since 100% of the townhomes and 6 of the 8 single family homes are out of compliance with lot size.

Page 6 of the Staff Report reads "*The detached single-family primary design, with 2 common wall townhomes is not all that out of character with the neighboring properties but is at a significant increased density. All but the attached single-family homes match the intended future use of the area as called for by the Comprehensive Plan land use map. The attached homes can certainly be approved through the Conditional Use Permit if the design is considered satisfactory. The market typically drives when an area is ready to transition to a new use.*"

My response is that the design of the entire subdivision is not satisfactory as it is currently presented, regardless if the market is driving the transition to a new use.

I note the Staff Report indicates on Part 1, page **10** "***A queuing analysis would be useful to better inform how much delay is caused by school buses on SE 6th Avenue***" and I wonder if one will be requested?

And as I finish, I am curious why the Planning Staff has applied the sidewalk standards from Section 16.10.070(B)(8) which indicates sidewalks are required on one side of the street, when this a *subdivision application*, and I believe the correct Code to apply is the Subdivision Design Standards in Code 16.64, where 16.64.015 (E) and 16.64.70(G) both say streets in subdivisions

are required to have sidewalks on both sides. Further, the Subdivision Design Standards indicate specific requirements for the following that do not appear to have not been applied to this application:

Street Alignment 16.64.010. D

Intersection Angles 16.64.010. F

Marginal Access Streets (screen planting) 16.64.010.J

Planting Easements 16.64.010.M

Utility Easements required on all street lot lines 16.64.030.A

Street Lights 16.64.070.B (Improvements)

Street Trees 16.64.070.C.3 (Improvements)

Street Lighting System 16.64.070. J (Improvements)

Street Tree Planting 16.64.070.K (Improvements)

Thank you for listening. I appreciate the opportunity to share these thoughts with you.

Regina Taylor  
173 SW 6<sup>th</sup> Ave  
Canby, OR 97013  
503-989-9221

November 20, 2017

Lee and Jeannine Wibbels  
345 SW 6<sup>th</sup> Avenue  
Canby, Oregon 97013

City of Canby Planning Department  
P.O. Box 930  
Canby, Oregon 97013



Re: South Ivy Park Subdivision, Allen Manuel

Dear Sirs:

Our concerns/comments are the same as those of our neighbors and what you have on record concerning the proposed plan by Allen Manuel:

1. S.W. 6<sup>th</sup> Avenue between S. Elm and S. Ivy is used as a "thoroughfare" by High School drivers and other motorists which sometimes turns the street into a drag strip. Since there are no sidewalks up and down S.W. 6<sup>th</sup> Avenue, school children have to walk in the street around parked cars which can be very dangerous.

Delivery, utility trucks and occasional semis also sometimes use this as a short cut, which adds to the congestion and danger to pedestrians. Adding 10 more homes and their vehicles would only add to this congestion. The more cars there are, the greater the potential for pedestrian/car accidents.

2. We consider this proposed plan to be a "hidden" subdivision, where crime and wrong doings can basically go unnoticed.

The livability of our neighborhood will be diminished, potentially lowering our property values, especially for those neighbors who live the closest to the proposed subdivision.

3. Even though issues such as garbage and emergency vehicle access, over-flow parking and drainage from rain have been addressed, practical evaluation tells us that this is still very much a concern when considering these issues.

The comment made at a previous planning meeting, "Fitting a round peg into a square hole", is very apropos when studying this plan. We appreciate not wanting "urban sprawl" to eat up our outlying farm land, but is it right to shoehorn so many people into such a small area just to get more "Bang for the Buck"? Doing this, as the proposed plan would do, could potentially downgrade a well-established neighborhood, making it worse for all.

Do we want S.W. 6<sup>th</sup> Avenue to become "sardines in a can"? NO! Please maintain your stance and vote "NO" on South Ivy Park Subdivision.

Thank you for your time,

Two handwritten signatures in black ink. The first signature is "Lee Wibbels" and the second is "Jeannine Wibbels". They are written in a cursive, flowing style.

Lee and Jeannine Wibbels  
lwibbels@canby.com

## South Ivy Park Subdivision

One of my concerns is the lot sizes and zoning. I'm not an engineer or a lawyer, but it just seems by placing 12 homes (2 existing) on 1.3 acres is like putting a square peg in a round hole. I'm not opposed to the subdivision, but it needs to be developed in a way that improves the area, not degrade it.

I live on Ivy Street, bordering two sides to this subdivision, to the north on one side and west on the other side. I have a garage that was built 76 years ago. The garage now appears to be on or possibly over the property line (depending on city or county lines). With that said, according to the map the house on lot #5 (which is below the minimum lot size) will be built 7 feet from the property line. Possibly next to my garage, which could decrease to less the 7 feet, which I believe is code. This house also has a sidewalk running 2 feet from its walls on the opposite side. Does this meet city codes? Is this someplace you would like to live, small lot, small house, little to no parking? This is just one small example. Are the lot sizes calculated correctly according to the city code, can the lot size calculation include the roadway easement area?

In the past we have brought forward many questions that have not been answered by Mr. Brown. Whenever someone had a concern, instead of answering with a clear and concrete plan, Mr. Brown has waved us off or been unable to answer. There are many holes in the plan, such as traffic density or zoning issues. If these questions cannot be answered easily, what will happen should this plan go through? If these concerns cannot be addressed while still on paper, what will the reality look like if this plan is put into practice?

Our neighborhood is currently a low-density residential area. This subdivision plans to change that to a residential commercial area. This will change our neighborhood from a small town setting to a crowded mess. Many of us moved to this neighborhood for this small town feel. How is it fair that so many of us have our home and environment ruined, all for the sake of cramming in too many houses into too small of an area?

My last concern is; if the zoning passes what guarantee do we have that the plan set before us today will remain? If the property is sold to a developer, which I believe is the plan, does the developer have to stick to these plans or can they come in without notifying the neighborhood and modify everything?

I conclude that it seems like this subdivision plan has is being rushed through for the area. There have been many issues brought up that many of us neighboring property owners and even commissioners don't have answers to. Before you make your decision, please stop and think about what you are voting on tonight. With all the question dodging and shaky following of the rules, how do we know how this will affect the area in the future?

Thank you,  
Gwyn Benson

CANBY CITY COUNCIL – Public Hearing Date: December 6, 2017

Re: APPEAL of PLANNING COMMISSION DECISION for SOUTH IVY PARK  
SUBDIVISION, Allen Manuel

Subject: Traffic Impact

From: Wayne A Fetters, 485 S Ivy St., Canby Oregon

A “forward looking”- TRAFFIC SURVEY, and INTERSECTION IMPACT STUDY - is required before rezoning can be considered, according to the city’s application process.

We have owned and lived on our property at 485 S. Ivy St. for over 50 years, during which time, traffic volume on our street has increased – dramatically. The risk for turning lane accidents has increased for southbound S. Ivy St. traffic turning left onto Township Rd, and for traffic turning left from Township Rd. - entering southbound S. Ivy St. traffic.

Currently, there are no traffic lights to impede traffic flow on S. Ivy St. between the 13th street and Hwy 99E. Frequently however, northbound - S. Ivy St. traffic is backed up from Hwy 99E - to the south and well past the 6<sup>th</sup> St. / S. Ivy St. intersection. Future real-estate developments on the south side of town will obviously continue to increase S. Ivy St. traffic volume.

The planned traffic light at the S. Ivy St. / Township Rd. intersection will improve left turn traffic safety - however, it will impede southbound traffic, and “dramatically” impede northbound traffic on S. Ivy St. Unfortunately, such improvements at the at the S. Ivy St. / Township Rd. Intersection will create potential grid lock at the 6<sup>th</sup> St. / S. Ivy St. intersection during morning and afternoon heavy traffic. Eventually, that gridlock will continue throughout the day.

The planned traffic light will have at least three light cycles. North and south free traffic flow on S. Ivy St., southbound left turn traffic from S. Ivy St. onto Township Rd., and left turn from Township Rd. into southbound traffic on S. Ivy St.



North bound S. Ivy St. traffic must stop for “each” turn lane cycle and traffic flow could be restricted - by 50%, which will back up traffic far past the 6<sup>th</sup> St. Intersection.

Traffic on 6<sup>th</sup> street, wanting to turn left onto S. Ivy St. will be blocked from entry by backed up northbound traffic, and vehicles in line on 6<sup>th</sup> St., wanting to turn right onto S. Ivy St. will also be blocked. Stopped traffic on 6<sup>th</sup> St. will back-up toward Elm St. – impeding vehicle entry by many residents onto 6<sup>th</sup> St. - from their driveways.

Currently, there is periodic heavy traffic on 6<sup>th</sup> St. A lot of vehicle traffic is - school buses. There are no continuous sidewalks - causing pedestrian traffic to walk around parked cars and into traffic lanes. Much of the pedestrian traffic is school kids.

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Alan Manual is requesting a zone change and a special use permit to allow another “crowded density subdivision” which again, like his previous subdivision on S. Ivy St. - does not fit our community. His development will access 6<sup>th</sup> St. from his narrow street, which is – too close to the Ivy St. intersection. The narrow street pavement will directly border the neighbors fence on the west side of the road. Traffic will naturally move toward the center of the street to avoid scraping the fence, which will effectively make the street – even narrower. Subdivision traffic stopped on this narrow street, waiting for an opening to enter heavy 6<sup>th</sup> street traffic, will impede - auto traffic trying to make the “sharp” right turn onto the narrow street from 6<sup>th</sup> street, and larger vehicles such as garbage trucks, UPS and FedEx trucks may not be able to make the same sharp turn, causing west bound 6<sup>th</sup> street traffic to stop - resulting in backed up traffic to the S. Ivy St. intersection. Even full size pickup trucks will have difficulty making the same turn during the same - side street congestion.

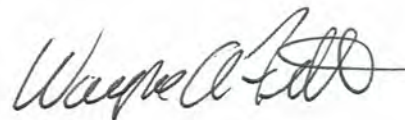
Most families have more than one vehicle. Inadequate subdivision parking will result in increased street parking on 6<sup>th</sup> street. Many residents on 6<sup>th</sup> street who currently park in front of their homes, will have to park - down the street - away from their homes due to additional street parking which has spilled out of the subdivision.

There are 40 homes on 6<sup>th</sup> street. If the proposed Manual development is allowed, cars from 12 additional homes will access 6<sup>th</sup> street. The existing "large house" - owned by Alan Manual is always occupied by several families. The total number of families living in this development will be much more than twelve. In that most families have multiple cars, the impact of 24 to 30 additional cars entering the existing 6<sup>th</sup> street traffic, could increase traffic volume by 35%.

Fortunes have been made in Canby, by building attractive - single family homes in Low-Density Zones. Yet, Allen Manual says he cannot make enough money developing his property within the limits of a Low-Density Zone."

Allen Manuel's previous "failed townhouse subdivision" on S. Ivy St. is a testament to his vision of progress. The neighborhood however, is not willing to "again" facilitate Allen Manuel's desire for a zone change, in terms of - crowded community chaos, unreasonable traffic congestion, resultant lowered property values and the need to relocate.

The 51-signature petition presented to Canby Planning, requesting a "no" vote on this zone change request is an indication of - community trepidation.

A handwritten signature in black ink, appearing to read "Wayne A. Edsall". The signature is fluid and cursive, with a large, stylized initial 'W'.



CANBY CITY COUNCIL – Public Hearing Date: December 6, 2017

Re: APPEAL of PLANNING COMMISSION DECISION for SOUTH IVY PARK  
SUBDIVISION, Allen Manuel

Subject: Application for REZONE to C-R

From: Wayne A Feters, 485 S Ivy St., Canby Oregon

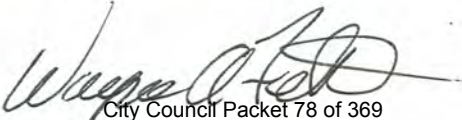
The property in question is owned by Allen Manuel. It is currently zoned Low Density, R-1. It is located within - "Area of Special Concern-C" which is subject to special restrictions and measures.

LCDC has specified that no additional R-2 developments are allowed in Area C. The intended use of properties on South Ivy must conform to R-1 Low Density Zoning. It is interesting to note that Allen Manuel has proposed a 12-unit subdivision, on 1.31 acres, which he claims to be in compliance with Medium Density R 1.5 requirements. In actuality, it conforms to High Density R-2.

There are two ways in Canby to obtain a zone change to R-2 in Area C. One is to directly apply for a rezone and be rejected because it is not allowed. The other is to enter through the back door and apply for a rezone to C-R, in the guise that it will merely allow future homeowners to have a small business in their home when, in reality - it will open the door for the developer to build a High-Density Subdivision, without a zone change, period.

High Density subdivisions are not compatible with in home businesses, especially in this case, in that there is no parking for customers. Customers will have to park, somewhere on 6<sup>th</sup> street, and hike into the complex. The four additional parking spaces shown in the proposed plan will be quickly occupied by homeowners with a second car. In-home business in High Density Subdivisions is a – misnomer, and renders the C-R Zoning before construction - disingenuous.

This area is covered in the Comprehensive Plan therefore there is no need to rush to C-R zoning. Future homeowners can apply individually, as needed.



Wayne A. Feters



CANBY CITY COUNCIL – Public Hearing Date: December 6, 2017

Re: APPEAL of PLANNING COMMISSION DECISION for SOUTH IVY PARK  
SUBDIVISION, Allen Manuel

Subject: Storm Water Runoff

From: Wayne A Feters, 485 S Ivy St., Canby Oregon

The natural terrain of this property is likely to cause storm-water runoff issues. There is an elevation drop of 7 to 9 feet from the 6<sup>th</sup> Street / S. Ivy Street intersection, measured diagonally to its northwest corner - where it borders three other properties. Even if storm-water runoff systems are in place, they are effective "only" if street storm drains, housing roof gutters and their individual dry wells are adequately maintained. This property will be owned by individual home owners. Consistent maintenance cannot be expected.

When such systems are allowed to plug with debris and / or frozen snow slush, they will be rendered useless during heavy rains. Due to the reduction of "uncovered" land during property development - along with the problematic terrain slope angle, reduced - surface area and percolation "dwell time" - will prevent water absorption at a rate necessary to avoid downstream property damage.

To prevent eventual property damage to adjacent properties, a storm-water runoff catch basin of adequate storage capacity, must be located at the lowest point, which is the northwest corner of this property- where it borders three other properties.

This potential problem must be properly addressed to prevent future litigation.



**REF: APP 17-01 SOUTH IVY PARK SUBDIVISION, ALLEN MANUEL of  
ZC 17-02/SUB 17-04/CUP 17-05 SOUTH IVY PARK SUBDIVISION**

I reside almost directly across from the proposed private road (private 20' driveway) on to SW 6<sup>th</sup> Avenue from the proposed South Ivy Subdivision.

Once again, I understand that the ongoing concern of the Canby Planning Commission and the Canby City Council has been Traffic, Parking and Livability within the City of Canby. Plus, of course, all the applicable Codes, Comprehensive Plan and other legal requirements. I also understand that both the City and its Residents have their wants and needs and that the Council and Planning Commission are the mediators and arbitrators of those interests.

Further, that every property owner or developer has a right to improve their property within those limitations.

Not having access to read the Notice of Appeal prior to submitting these comments, I am only able to respond to what is currently part of the record and what I can reasonably assume to be the potential ongoing course of action.

Any rezoning on this parcel should be denied based on a number of reasons:

1. There is not a complete legal understanding by the Planning Director and his Staff as to what standards to apply or to not apply on this request. The Comprehensive Plan and the City Ordinances do not necessarily agree on the appropriate application of standards for making



an informed decision as confirmed by statements of the Canby Planning Director.

2. The Comprehensive Plan anticipated that the commercial growth would proceed south down South Ivy Street to 13<sup>th</sup> Avenue but instead it developed east and west on Highway 99E between Safeway and Fred Meyer and resulted in the isolation of or a resultant less attractive/inappropriate locations for future businesses on South Ivy Street.
3. There is no agreement as to whether or not the Private Road (private 20' wide driveway) easement should be considered in determining the square footage of the proposed tax lots for the purpose of determining if the proposed development complies with the required average square footage of each tax lot in the proposed development.
4. The proposed rezone of the property to C-R would be a detriment to the surrounding area due to increased traffic on SW 6<sup>th</sup> Avenue without adequate mitigation engineered for access to South Ivy Street once the Township Road/South Ivy Street intersection is upgraded, inadequate/inappropriate consideration for adequate parking, and a possible decrease in the safety (possible difficult Fire Department response) of the surrounding residences,

And finally,

This oddly-shaped combination of the 3 existing tax lots will have little or no value in a commercial sense because it is basically a land-locked proposed development with no 'commercial' street frontage and just a single private 20' wide driveway exiting to an already moderately busy SW 6<sup>th</sup> Avenue.

#### **DISCUSSION:**

1. The overall shape and location of the proposed development lends itself

to the current R-1 designation as it is basically surrounded by single family residences. No vehicular access is planned or permitted to South Ivy Street therefore there will be no streetside recognition of a commercial building existing in the proposed C-R development. Additionally, there is inadequate or marginally adequate parking within the development for potential customers with only a single access from SW 6<sup>th</sup> Avenue. Since this location is called out in the Comprehensive Plan as 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." Besides, C-R zoning for this particular portion of Special Area of Concern "Area C" is inappropriate and overshadowed by other areas in Canby that would be far more appropriate for rezoning to C-R than this location.

2. The question of whether or not the 'Private Road' easement should be subtracted in the determination of the lot sizes is basically whether or not there is a standard method in place for including the 'road' easement in the size of the tax lot; this can essentially remove approximately one quarter of the size of the affected tax lot. The road is area which is considered non-buildable land area, and in the case of one tax lot the non-buildable area included both a road easement and 4 (four) visitor parking spaces to meet the excess parking needs of other tax lot owners since No Parking is permitted on the 20' Private Road to allow access for utility vehicle traffic (refuse and recyclables pickup, etc.) and emergency access (Fire Response, medical aide, etc.).
3. Traffic considerations for the proposed development were accomplished 'merely by a rezone TPR analysis and traffic generation analysis' and appears to only have considered the fact that traffic from the proposed subdivision would not exit to South Ivy Street but solely to SW 6<sup>th</sup> Avenue. Consideration should extend to the traffic at the SW 6<sup>th</sup> Avenue/South Ivy Street intersection and consideration for the 2018 planned improvement of the intersection at Township Road/South Ivy Street and its commensurate impact on traffic exiting SW 6<sup>th</sup> Avenue to



South Ivy Street in a northbound direction once the Township Road/South Ivy Street traffic light is functional. Perhaps traffic exiting the proposed development must be restricted to a 'Right Turn Only' to SW 6<sup>th</sup> Avenue because left turning traffic could be potentially impractical.

4. I concur with Findings #4 and #5 of the Canby Planning Commission and agree that additional mitigation/consideration should be determined as necessary.
5. This area is an identified problem area on the Canby Stormwater Plan and the control of stormwater must be a high priority to capture the run-off to protect the neighboring properties from that hazard as well as the residents of South Ivy Park subdivision. The Private Road is the stormwater collection basin and must have adequate gradient and curbs to funnel the water to the 2 (Two) drains that are on Lots #11 and 12. The latest Utilities Plan show 3 (three) Catch Basins (CB) and I have circled them in red on the attached Utilities Plan. To be effective they MUST be at the lowest elevations within the proposed development and the captured stormwater has to be directed even lower to the under-the-roadway stormwater drywells for disposal. The developer indicated at the Neighborhood Planning Meeting that the City of Canby Public Works Department has agreed to maintain the filters on the stormwater drains within the subdivision. This would seem to place the responsibility (and liability) on the City of Canby if this complicated system fails or exacerbates the existing area stormwater concerns.
6. Additionally, an adequate Maintenance Agreement must be in place for the Private Road as the Fire Department has indicated that they will not utilize a non-maintained road. The developer has indicated that an H.O.A. type agreement would be entered into by the individual

purchasers of the new tax lots. It must be legally adequate to insure continued maintenance of the roads to acceptable standards.

**CONCLUSION:**

The current Zoning is appropriate as R-1 and any future development should meet R-1 standards and requirements. The initial proposal was unacceptable and the Canby Planning Staff required additional considerations -- sidewalks, tree planting, garbage/refuse collection considerations, some lot size adjustments and such -- that was necessary and is greatly appreciated. Conditional Use permitting and Subdivision approval should be conditional on R-1 Zoning retention.

Thank You for your time and consideration,



Robert T. Taylor

173 SW 6<sup>th</sup> Avenue,

Canby OR 97013

taylorbobbt@yahoo.com





**COMMENTS FOR PUBLIC HEARING DATE: 12/06/2017**

**RE: ZC 17-02, SUB 17-04, CUP 17-05 and APPEAL 17-01**

South Ivy Park Subdivision, Allen Manuel

COMMENTS FROM: Regina Taylor, 173 SW 6<sup>th</sup> Ave, Canby, Or 97013

I am submitting this document in an effort to summarize the most important issues for the City Council to consider regarding this land application. I worry that these items may be underemphasized, owing to the time that has lapsed since they were originally voiced, the large volume of paper documentation generated and confusion from an inaccurate article in our local newspaper that used details of a completely unrelated and separate land use issue. There has been an overload of information I hope to simplify.

Therefore, I produced this brief overview including the corresponding City Codes

- 1) City Staff and Council are unfamiliar with the land type and Policy 6 implications
- 2) Is the land Eligible, Appropriate and Timely for Rezone
- 3) Calculation of Lot Size and use of lots (artfully dodging the lawful Zone density and use)

## 1) UNFAMILAIR WITH THE LAND TYPE AND POLICY 6 IMPLICATIONS

The City Planners and Councils are unfamiliar with the Commercial/Residential Zone:

Planning Director Bryan Brown commented: *"There are not many areas in the City that has this C-R designation, and this was one of the first opportunities our planning commission has had to deal with this zone which is a mixed zoning that allows light commercial uses."*

Staff Report pgs 1-2, included in Minutes of Oct 9

The City Planners and Council are unfamiliar with the Area of Special Concern #C:

City Staff reminds us this is one of the rare pieces of land on list called the "Areas of Special Concern" and subject to special restrictions and measures, which the Staff and Council has little or possibly no prior experience with. Considerable debate occurred during the Planning Commission Meeting when the Planning Director questioned if the city was authorized or required to comply with the Comprehensive Plan at all, until it was resolved that Canby City Ordinance 16.54.040.(A) lawfully *forces* the City to apply those restrictions in Comp Plan Policy 6 ---aka "Area of Special Concern C"--- to this land.

**Realize what this implies:** The City Planners had researched the ordinances, formulated their opinion, submitted their recommendations to the Planning Commissioners, published them in their official Staff Report and were in the midst of the Planning Commission meeting, *before* they fully understood that Policy 6/Area C has authority over the application!

Notice also that Oregon State Statute ORS 197.195 confirms that because the City of Canby converted Comp Plan Policy 6 into an *enforceable city code*, the City is obligated to use it as a basis for land use decisions.

Staff Report: pgs 1-2, included in Minutes of Oct 9

ORS Statute: <https://www.oregonlaws.org/ors/197.195>

City Ordinance: 16.54.040.A

We can see how very complex this land is. We must apply stringent and disciplined examination before making any land use decision.

## 2) IS THE LAND ELIGIBLE, APPROPRIATE AND TIMELY FOR REZONE?

Refer to City Ordinance 16.54.040 Amendments to Zoning Map which is copied below:

### **16.54.040 Standards and criteria.**

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. (Ord. 749 section 1(B), 1984; Ord.740 section 10.3.85(D), 1984)

#### **A. The Rezone Ordinance is only Tracking Mechanism in place to connect to Policy 6/Area C:**

Carefully reading this ordinance should raise some warnings to the City Council. The applicant has submitted a 3-part application, and the Council has the ability to approve "all or part" of them. The Council must recognize the jeopardy that will result if the applications are separated, which would occur if the applicant and his attorney appeal to the Council to pass a stand-alone REZONE while retiring the requests for subdivision and conditional use.

Here lies the jeopardy: the Rezoning criteria contains the only wording in all of our Canby City ordinances that directly connects this land to the Comprehensive Plan Policy 6, which is where we find the specific warning language "There is no reason to attempt to hasten this transition process (the transition to C-R zoning from the current R-1 zoning) because residential uses can eventually be converted to mixed residential/commercial use."

It is urgent for the City Council to deny the rezone to avoid losing this vital connection with the specific restrictions which govern this piece of land. If the city allowed a stand-alone Rezone, the city has **no tracking mechanism** in place to connect the land back to these specific restrictions, opening the land up to unforeseen and inadvertent development incompatible with the designated use of the land. Recall the City originally overlooked Policy 6 until it was spotlighted during public comments that Policy 6 warns against R-2 development here, yet the applicant's proposal includes four R-2 units (the townhouses). A Rezone must be denied to assure the prohibition against R-2 development remains connected to this piece of land, for the specific traffic and access reasons listed.

The applicant has submitted a diagram displaying his dream for the land, but he has also verbalized that he intends to sell all but two or three of the lots. No building plans have been submitted for any lot. We must not be hasty and inadvertently subject this land to future development that is inconsistent with Policy 6; success in this ideal requires denial of the Rezone to retain the connection of the land to Policy 6.

#### **B. Required Public Facilities not Adequately Determined.**

It is noted in the Findings of the October 9 meeting that the Traffic Survey was conducted on the wrong road and also did not include an Intersection Level of Service survey; therefore it has not been proven that the required Public roads are adequate to support the development. Note that any required traffic management devices must be included in the application process (such as right-turn-only lanes on the proposed new private street.) The applications should be DENIED until requirements have been satisfied.

### 3) CALCULATION OF LOT SIZE, AND USE OF LOTS

Considerable discussion was generated concerning the method used for Lot Size Averaging, since the square footage of lots is directly connected to the density of homes, and determines if they are compliant with the designated Zone for the land. Obviously if any application for development is out of compliance with the city Codes for the Zone, the application must be denied.

The Minutes of October 9, on page 2, ***“The way the lot averaging had been calculated had come into question. The (staff felt the) Code was silent on this issue. (but staff admits) For a normal subdivision with Public streets, the street access areas would be excluded (subtracted) during lot averaging. The report says this application has a private street and it uses an access easement which meant the road was part of the adjacent lots. Staff believes there was nothing in the Code that stated they could not utilize the street as part of the lot averaging. By doing so, they were able to get more lots than they would otherwise. It did cause some problems with meeting the R-1.5 zoning development standards.”***

Here, we see the Staff was willing to allow the applicant to exceed the limits of the Zone, admitting the applicant was “able to get more lots than they would otherwise” which “causes some problems meeting the zone standards”, all accomplished by breaking the City Ordinances, simply by declaring the road “private”.

The applicant’s proposed 12-unit subdivision on 1.31 acres, which he claims conforms to Medium Density R-1.5 is actually High Density, R-2. Notice R-2 is specifically restricted in Policy 6/Area C, no additional R-2 development is allowed in Area C. Our City Staff admitted in the Minutes and Final Decision that townhouses also exceed the density of the R-1.5 Zone.

Lot Size Averaging is fully discussed by me in my personal testimony at the October 9 meeting. Our City Ordinance 16.18.030(b.1.a) clearly indicates that “areas in which building is not permitted under local, state or federal laws or regulations” should be subtracted from lot sizes, and those areas include utility easements, storm water management areas, and the road that provides access to the homes, yet our City Planners and the applicant did not subtract these areas, essentially ignoring the City Codes and allowing R-2 High density in a R-1.5 Medium density Zone. I find this very deceptive, and possibly outright illegal. It simply feels wrong, as was voiced by all 6 of the City Planning Commissioners in their decision regarding this application. Is this the type of behavior and development we want to encourage? This type of interpretation (or manipulation) of our Codes essentially removes the ability to enforce the lower Zones, since they can be circumvented or avoided by crafty, clever, and artful maneuvering, to dodge or bypass the code’s intended Zone limitations simply by declaring the use of the Joint and Cross Access provision.

As I mentioned in my verbal testimony on October 9, I reviewed the websites of 21 other municipalities in Clackamas, Multnomah and Washington Counties and found ***all of them*** subtract the access road/street when calculating Lot Size to determine compliance with the Zone requirements. I believe the Land Use Board of Appeals would be interested in viewing this application if it is approved.

I have shown my concerns about Lot Size Averaging graphically in the chart below. Stormwater (surfacewater) management wells are proposed under the street in front of lots 2, 12 and to the side off lot 11, with utilities placed under the entire street, demonstrating a 2<sup>nd</sup> reason the entire street is an unbuildable area and therefore by Ordinance 16.18.030.B.1.a, MUST BE SUBTRACTED from the lot size. (The city used the legal verbiage “required areas”).



A	B	C	D	E	F	G	H	I	J	K
AVERAGE LOT SIZE FOR UNITS IN ALLEN MANUEL DEVELOPMENT										
Lot #	Type of Home	Beginning Lot Size	Minus unbuildable STREET Right-of-Way sq ft (est)	Lot Size minus Street Right-of-Way	Minus unbuildable SIDEWALK Right-of-Way sq ft (est)	Minus Street AND Sidewalk Right-of-Ways	Minus Visitor Parking Stalls sq ft (est)	NET LOT SQUARE FOOTAGE	Guideline Minimum Allowable Square Feet	Meets Minimum Guideline?
# 1	Townhouse	3002	-160	2,842	-120	2722	0	2722	3000	No
# 2	Townhouse	3002	-160	2,842	-120	2722	0	2722	3000	No
# 3	Townhouse	3001	-160	2,841	-120	2721	0	2721	3000	No
# 4	Townhouse	3038	-160	2,878	-120	2758	0	2758	3000	No
# 5	Single Family Residence	4267	-1628	2,639	-320	2319	0	2319	5000	No
# 6	Single Family Residence	5,000	-650	4,350	-360	3990	0	3990	5000	No
# 7	Single Family Residence	5,000	-500	4,500	-240	4260	0	4260	5000	No
# 8	Single Family Residence -(existing home)	7,106	-500	6,606	-340	6266	0	6266	5000	Yes
# 9	Single Family Residence -(existing home)	8,109	0	8,109	0	8109	0	8109	5000	Yes
# 10	Single Family Residence	5,647	-1600	4,047	-360	3687	0	3687	5000	No
# 11	Single Family Residence	5,000	-1,315	3,685	-380	3305	0	3305	5000	No
# 12	Single Family Residence	5,041	-960	4,081	-160	3921	-600	3321	5000	No
TOTAL	All Home Types	57,213	7,793	49,420	-2640	46780	-600	46180		

## Chapter 16.18 R-1.5 Medium Residential Zone

### 16.18.010 Uses permitted outright in the R-1.5 zone shall be as follows:

- Uses permitted outright in the R-1 zone;
- Two-family or three-family dwellings. One duplex or triplex on each lot.

### 16.18.020 Conditional uses in the R-1.5 zone shall be as follows:

- Uses listed as conditional in the R-1 zone; except as modified by Section 16.18.010, above;
- Four-family dwellings;
- Single-family dwellings having common wall construction 16.18.030

Development standards. The following subsections indicate the **required** development standards of the R-1.5 zone:

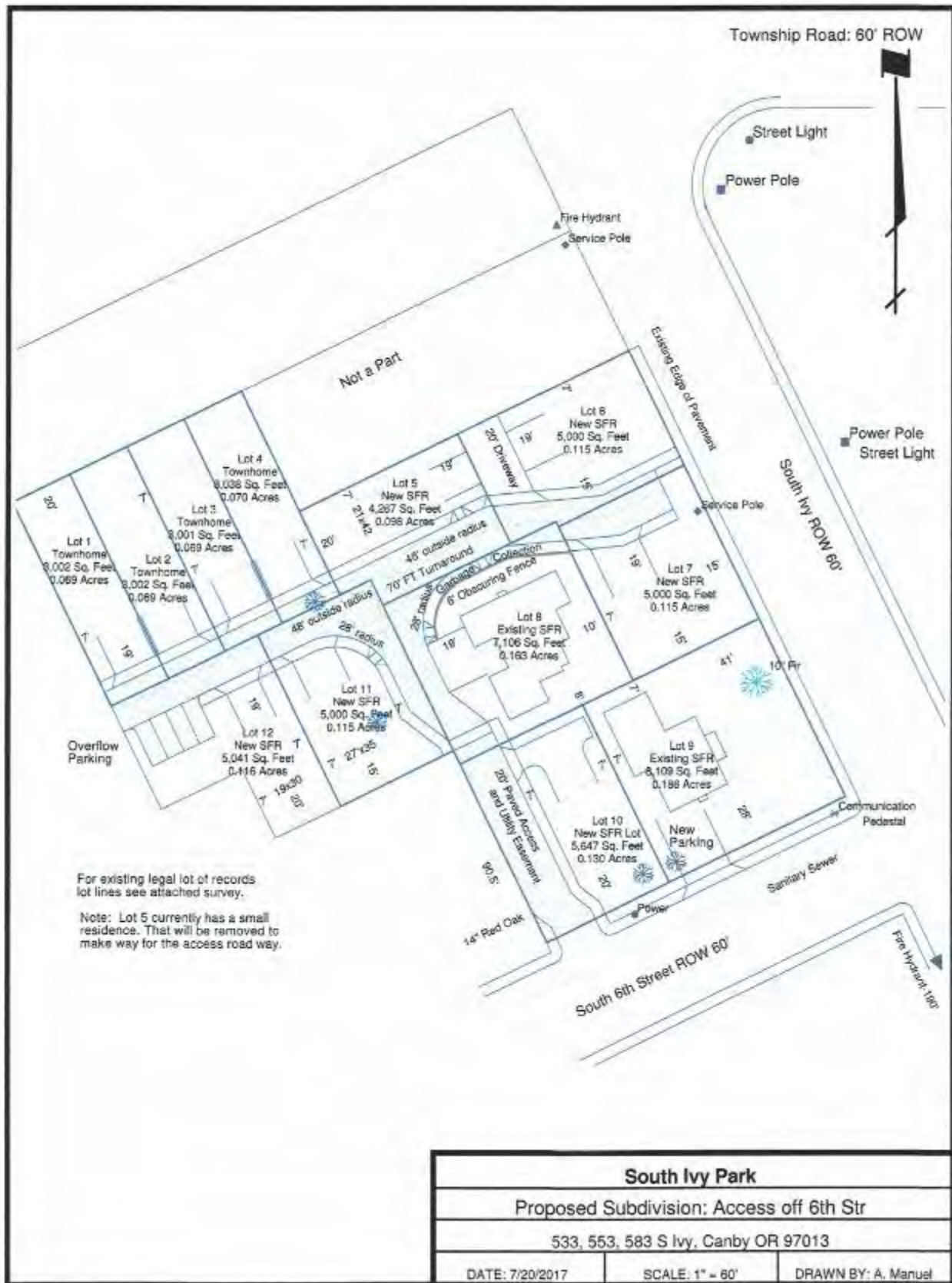
#### A. Minimum and maximum lot area:

- For single family dwellings: five thousand (5,000) square feet minimum and six thousand five hundred (6,500) square feet maximum.
- For two, three, or four-family dwellings: minimum of six units per acre. Density is calculated by dividing the number of dwelling units by the property area in acres (minus area required for street right-of-way and public park/open space areas). Decimals are rounded to the nearest whole number.
- The Planning Commission may approve smaller or larger lots in accordance with subsection B, below.

#### B. Lot area exceptions:

- The Planning Commission may approve an exception to the minimum and maximum lot area standards in subsection 16.18.030.A as part of a subdivision or partition application when *all of the following standards are met*:
  - The average area of all lots and open space tracts created through the subject land division, *excluding required* public park land dedications, surface water management facilities and similar public use areas, shall be no less than five thousand square feet and no greater than six thousand five hundred square feet. Non-required significant natural resource areas shall be included in the average lot size calculation to enable a transfer of density onto buildable portions of the site. *Required areas* include identified parks, wetland areas, riparian corridors, *and other areas in which building is not permitted under local, state, or federal laws or regulations*; **(My comment: utility easements, and street right-of-ways that provide access to each home are unbuildable, and must be subtracted)**
  - No lot shall be created that contains **less than four thousand square feet**; and
  - As a condition of granting the exception, the city will require the owner to record a deed restriction with the final plat that prevents the re-division of over-sized lots (six thousand five hundred square feet and larger), when such re-division would violate the average lot size provision in subsection 16.18.030.B.1.a. All lots approved for use by more than one dwelling shall be so designated on the final plat.
- A public benefit must be demonstrated in order to allow more than **ten percent** of the lots to be outside of the minimum and maximum lot areas in subsection 16.18.030.B.1.a.
- The Planning Commission may modify the maximum lot area requirements in subsection 16.18.030.B if these cannot be met due to existing lot dimensions, road patterns, or other site characteristics.
- Lots of **three thousand square feet** each may be permitted by the Planning Commission for single family dwellings having common wall construction.
- The maximum lot area standard does not apply to dwellings existing prior to subdivision or partition plan approval or to lots designated for open space.

**My Comments:** 100% of the Townhouses are below the 3,000 sq ft required minimum.  
75% of the SFR are below the 5,000 sq required minimum. (6 homes out of 8)





The following City Ordinances have not been addressed and/or are being violated in Allen Manuel's proposed development on S Ivy/S 6<sup>th</sup> Ave.

**Zoning General Provisions, 16.08.150(A-E) Traffic Impact Study.** The correct traffic impact study has not been conducted; Section F of this ordinance indicates a change to a Zone Map or the building of a subdivision requires a traffic study that includes projections 15-20 future, within a ½ mile from the development site, and appropriate mitigations provided. (This has also not been done.)

**Off-Street Parking and Loading 16.10.030.G.5 General Requirments:** Adequate directional signs shall be installed specifying the joint parking arrangement. (This has not been provided)

**Off-Street Parking and Loading 16.10.040** Prohibited near intersections. In no case will off-street parking be allowed within a vision clearance area of an intersection. (This has not been done)

**Parking Lots and Access 16.10.070** Groups of more than four (4) parking spaces shall be so located and served by driveways that their use will require no backing movements or other maneuvering within a street right-of-way other than an alley. (The 4 visitor parking stalls violate this ordinance; backing into the street is required).

**Off Street Parking and Loading 16.10.070.B. 9b. Parking Lots and Access.** No driveways shall be constructed within five (5) feet of an adjacent property line, except when two (2) adjacent property owners elect to provide joint access to their respective properties. (This ordinance is violated; the driveway or private road abuts the neighboring landowner without the required 5 foot buffer.)

**R-1.5 Medium Density Residential Zone, 16.18.030 Development Standards;** this ordinance is violated; the proposed lot sizes are smaller than the accepted minimum lot sizes for this zone, on 10 of the 12 lots. Townhouses require a conditional use permit, but are prohibited on this land which is listed in Comprehensive Plan Land Use Element, Policy 6, Area C (prohibits R-2 development on this land. Townhouses are R-2 development).

**Conditional Uses 16.50.010a and c:** In judging whether or not a 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; and C. All required public facilities and services exist to adequately meet the needs of the proposed development. (This application violates these ordinances; several negative features including crowding and traffic are created. The proposal is NOT consistent with Policy 6/Area C of the Comprehensive Plan, and not all required public facilities and services exist to adequately meet the needs of the proposed development (traffic issues and inadequate provision for Storm Water Management in this area already known for flooding. None of the available options under 16.50.040 Placing Conditions on Permit allow the city to impose the types of conditions needed to address these issues. )

**Amendments to Zoning Map 16.54.040 Standards and criteria.** 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. (This application violates these ordinances; the land is subject to Policy 6/Area C and not suitable for Commercial Residential use. The city has not grown and developed a Commercial interest along South Ivy street as our planners expected would happen. The area is unsuitable for commercial business and should remain low density housing due to traffic issues and limited access to the lots would be unsuitable for customers. Public facilities are not in place including adequate traffic control and storm water management. None of the Improvement Conditions that are available for the city planners to impose upon this property will rectify these issues nor resolve them. The time is not right to rezone this land as Residential Commercial; it should remain low density as recommended in Policy 6/Area C of the Comp Plan.)

**Land Division Regulation General Provisions 16.56.010 Purpose.** A. This application violates this ordinance; it does not “To ensure that the public health, safety, convenience and general welfare be given due consideration in the division and development of land; 2. To help implement the Comprehensive Plan and elements thereof” and it does not “minimize, by proper design and development, the danger to life and property caused by hazards of fire, flood, soil erosion and land slippage”, nor does it “To provide lots, parcels, and development sites of a sufficient shape, size, and character for the purpose for which they will be used;”. Nor “To provide the establishment of adequate water supply, sewage disposal, surface water drainage”. (Concerns regarding traffic, crowding, and inadequate emergency vehicle turn-around area, and storm water management).

**Subdivisions-Design Standards. 16.64.010 Streets.** A. Generally. The location, width and grade of streets shall be considered in relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation pattern with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried. (the lack of a traffic survey and intersection impact study causes this ordinance to be violated). 16.64.015 Access D. The road system shall provide adequate access to buildings for residents, visitors, deliveries, emergency vehicles, and garbage collection. E. Streets shall have sidewalks on both sides. Pedestrian linkages should also be provided to the peripheral street system. (This application is in violation of these ordinances; the density of the dwellings provides very narrow access that is not adequate, and there is concern for emergency vehicles and garbage collection which will require considerable backing maneuvers that are uncomfortable for the large service vehicles and block access for residents. The proposal provides some sidewalks, but not on both sides of all streets, so there will be pedestrians in the road with these vehicles.).

**16.64.030 Easements. A. Utility Lines.** Easements for electric lines or other public utilities are required, subject to the recommendations of the utility providing agency. Utility easements twelve feet in width

shall be required along all street lot lines unless specifically waived. The commission may also require utility easements along side or rear lot lines when required for utility provision. The construction of buildings or other improvements on such easements shall not be permitted. (This ordinance violates this ordinance; the utility easement is under the private road, causing it to be an “unbuildable” location, and therefore subject to that area being subtracted from lot sizes but the area has not been subtracted, causing lot sizes that are smaller than the required minimums)

**16.64.040 Lots. A. Size and Shape.** The lot size, width, shape and orientation shall be appropriate for the location of the subdivision and for the type of development and use contemplated. (This application violates this ordinance; the area is currently single family residences at Low Density. Applicant proposes to rezone to Commercial Residential in an area not suited for Commercial use, but retain single family homes. The land should remain as Low Density Residential to preserve the neighborhood and retain the lesser amount of traffic since no commercial benefit is gained. It is not time to rezone this land as Commercial Residential and no benefit is gained by the community by rezoning. A higher density zone would be detrimental due to the extra traffic just feet from S Ivy street which is a Truck Route. The Lot Sizes and shapes violate this ordinance; two lots are shaped and situated with sidewalks within 2 FEET of the walls of the home which is out of proportion for this type of development and out of character for the neighborhood. There is not sufficient public benefit gained by forcing such a density into this neighborhood.)

**16.64.040 Lots.** sizes shall conform with requirements of Division III. (This application violates this ordinance; the minimum lot sizes are not met by 10 of the 12 lots).

**16.64.040 J. Designation of Lots as ‘Infill Home’ Sites.** The Planning Commission may require that homes built on one or more lots adjacent to existing development be subject to any or all of the requirements of 16.21.050 - Infill Homes. Furthermore, for subdivisions where the parent parcel(s) is less than two acres in size, the Planning Commission may require that all homes built on lots in the subdivision be subject to any or all of the requirements of 16.21.050. These requirements are to be shown on the subdivision plat or included in the deed restrictions. (This application is out of compliance with this ordinance. The parent parcel(s) total 1.31 acres---under 2 acres---therefore the lots are subject to infill home standards but no Conditional Use has been imposed in the applicant to assure the homes comply with 16.21.050, such as limiting infill homes exceeding one story to not exceed lot coverage of 35%, and maximum height of 28 feet. These should be included in as Conditional Uses if the rezone and subdivision is approved).

**16.64.070 Improvements. C. Streets.** 6. The proposed use shall not impose an undue burden on the transportation system. The City may require the applicant to provide adequate information, such as a traffic impact study, to demonstrate the level of impact to the surrounding street system. The developer shall be required to mitigate impacts attributable to the project. 7. The determination of impact or effect and the scope of the impact study should be coordinated with the provider of the affected transportation facility. 8. Dedication of land for streets, transit facilities, sidewalks, bikeways, paths, or

access ways shall be required where the existing transportation system will be impacted by or is inadequate to handle the additional burden caused by the proposed use. 9. Improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, access ways, paths, or streets that serve the proposed use where the existing transportation system may be burdened by the proposed use. (This application is in violation with these ordinances: The applicant has not proven the proposed use will not impose an undue burden on the transportation system since the required traffic and intersection surveys have not been completed. Until they are completed, inadequate information prevents knowledge if additional requirements will be made for safety or mitigation of traffic. The rezone and subdivision should be denied until properly processed).

**16.64.070 Improvements. D. Surface Drainage and Storm Sewer System.** 4. A conceptual stormwater management report must be submitted with the subdivision application. The report must demonstrate how and where stormwater will be managed on site at the subdivision. Where LID practices are not used, the applicant must demonstrate why LID is not feasible. The report will be reviewed by the Canby Public Works Department and shall be consistent with the Public Works Design Standards. Generally, the stormwater management plan must include the following: a. A description of existing conditions including a map; b. A description of the proposed stormwater system including a map; c. An estimate of existing storm water run off; d. An estimate of proposed storm water run off; e. The detention/retention requirements; and f. The discharge location, treatment method and sizing, and if discharging to the ground, the expected infiltration rates based upon soils mapping data. 5. Responsibility for maintenance of LID facilities shall be as follows: a. The Canby Public Works Department shall be responsible for maintaining all LID facilities located within the public right-of-way, and for providing for the safety of the public as related to LID facilities, b. Private property owners shall be responsible for maintaining all LID facilities on their property. The city reserves the right to inspect such facilities at any time. Upon written notice by the city to the owner that the facility has been compromised to the point where the design capacity is no longer available or the facility is not functioning as designed and approved, the owner shall correct the problem. If the owner fails to respond to the written notice within 15 days, the city may undertake the work and bill all time and material to the owner. c. For LID facilities that are not located in the public right-of-way and serve multiple private residential properties, a public easement for the LID facility shall be established and the Canby Public Works Department shall be responsible for maintenance of the facility. All property owners served by the facility shall pay a stormwater maintenance fee to the city to cover the cost of maintenance of the facility (This application violates this ordinance: the conceptual Storm Water management report has not been submitted, and this area is a known flood area. No rezoning nor subdivision should be permitted in this area unless properly reviewed first.)

## CITY OF CANBY –COMMENT FORM

If you are unable to attend the Public Hearing, you may submit written comments on this form or in a letter. Please send comments to the City of Canby Planning Department:

By mail: Planning Department, PO Box 930, Canby, OR 97013

In person: Planning Department at 222 NE 2nd Ave, 2nd floor

E-mail: [PublicComments@canby.com](mailto:PublicComments@canby.com)

Written comments to be included in Council packet are due by Monday, November 27, 2017.

Written and oral comments can be submitted up to the time of the Public Hearing and may also be delivered in person during the Public Hearing on Wednesday, December 6, 2017

**Application:** Appeal of Planning Commission's Denial of Allen Manuel's S Ivy Park applications - Zone Change, Subdivision, Conditional Use Permit (ZC 17-02/SUB 17-04/ CUP 17-05).

### COMMENTS:

SEE ATTACHED...

CITIZEN NAME: SCOTT KENABY

ADDRESS 551 S. HOLLY ST. CANBY OR 97013

EMAIL: SKOKEN@LIVE.COM DATE: 11/27/17

### AGENCY COMMENTS:

Please check one box and fill in your Name/Agency/Date below:

- ☐ Adequate Public Services (of your agency) are available
- ☐ Adequate Public Services will become available through the development
- ☐ Conditions are needed, as indicated
- ☐ Adequate public services are not available and will not become available
- ☐ No Comments

NAME: \_\_\_\_\_ AGENCY: \_\_\_\_\_

DATE: \_\_\_\_\_

Please submit comments by email to:

[PublicComments@canbyoregon.gov](mailto:PublicComments@canbyoregon.gov)

Thank You!

11/27/2017

Ref: App 17-01

I just found out Thanksgiving day that this once denied zoning change was being appealed and further comments were due today.

Just to remind you in 2013 this single family home was purchased on 6<sup>th</sup> Street less than 1/2 block from this Hi-density development.

Home was purchased simply because

- 1) R-1 low density Residential
- 2) large lot for kids to play with Dogs & Cats
- 3) landscaping with old trees and shrubs
- 4) affordable neighbor hood - lower taxes, fees
- 5) easy of emergency vehicle access off 6<sup>th</sup> good access !!



However, this new development will only downgrade the quality of a easy access, added traffic on 6th Street, destroy existing trees and landmarks as well as encourage more crime by adding more residents -

as there is not enough time to prepare a better argument I will request time to speak at the 12-6-17 meeting -

I'd just ask that the city think this through. We are taking valuable commercial going off of our list for future development. why??

Keep Conley Safe ---

11/26/17

To whom it may concern,

RE: **Support for Denied Application** CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

I'd like to register my support for the Planning Commissions' rejection of the Ivy Park Zone Change/Subdivision/Conditional Use Permit applications. This decision is in alignment with the City's Comprehensive Plan and the concerns for "Area C" outlined by the city in that document. I can not see how the congestion that would be caused by moving forward with the project would benefit the city or its residents in any positive way.

I really was heartened that the committee took the concerns of citizens into account when making their decision, and I hope that continues in their review of this appeal.

The original comments/concerns our family submitted prior to the rejection are also included after the commencement of this statement.

Thank you!

Jennifer Driskill and Family

9/26/2017

To whom it may concern,

RE: Application CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

I live in Canby because I want my family in a safe and relatively quiet town. Approving these zoning requests will exponentially increase the car traffic in the 6<sup>th</sup> Ave street area, very close to the junction with the even busier Ivy street. The assessment done on traffic impact appears to have focused exclusively on the impact to Ivy and not to 6<sup>th</sup> Ave and its surrounding neighborhood – which I believe will be far more significant and negatively consequential than was examined. A left turn out of the subdivision on to 6<sup>th</sup> will be very difficult and cause congestion, exacerbated by any driver who attempts to turn left yet again onto Ivy (around car, pedestrian and bike traffic). As this is the best route to main roads and services, this will undeniably be the most utilized path. Those who leave the subdivision and head down 6<sup>th</sup> to the south will be driving quite a distance down 6<sup>th</sup> before they could make any turns, affecting the entire street and surrounding R-1 neighborhood streets. There are a lot of small children, and this area is already challenged by cars that go faster than the posted speed cutting through.

Canby is a town that requires a car to live in or visit. There will be a minimum of two cars at any of these new dwellings, just for the people who live there. The people moving in to the proposed subdivision can be expected like anyone else to host housewarmings, birthdays, holiday celebrations and everyday visitors. Each of those simple instances, for each of those twelve houses, will increase surrounding street

traffic and parking congestion on a regular basis. The developer reported that no street parking will be allowed in the subdivision as it's not wide enough to accommodate it. The extremely limited four spaces of "overflow" parking planned for will never be available, let's be frank, so where are visitors really going to park? On an already crowded 6<sup>th</sup> Ave...or nearly as bad, on the subdivision street despite it being posted that's not an acceptable location. That will have a notable negative impact on the lives of the people who elected to move into those homes.

I have grave concerns about the safety of the proposed drive to access these new houses and townhomes. The street is so narrow – fire trucks will not be able to get in (and get out)! They will out of necessity refuse to get stuck, and not having fire services available is not reasonable to expose new buyers to. It is well documented that new homes burn far faster than homes built before the 1980's; time and access are essential factors to saving lives and property. The three weekly Canby Disposal trucks for garbage, recycling, and yard debris will not be able to get in and out either. Nearly forty of their bins cannot reasonably be collected at 6<sup>th</sup> Ave entrance. One more consideration: Are we to expect that the twelve homes in this new development will never need to receive a UPS or FedEx package either? That no one uses Amazon or buys holiday presents via mail? That's completely unrealistic. All appearances are that these fundamental needs of a household in Canby can not be met as proposed.

I would also like to call out **Policy 6 of the Canby Comprehensive Plan**, which covers 10 areas of special concern for applying zoning changes. **Area C** is where the South Ivy subdivision is located, mapped on page 67 of the Canby Comprehensive Plan. Pages 56-58 specifically refer to Area C. On page 60, the plan's own assessment acknowledges this area as one that should likely be left as low density residential to protect from incompatible development, and left in a "holding pattern" until a "**thorough** redevelopment of the area has been undertaken". Neither the near-term plans to install sidewalks and a bike lane down Ivy, nor installation of a light at Township and Ivy, seem like they are substantial enough to meet the "thorough redevelopment of the area" criteria and consider the proposed kinds of changes in a designated area of special concern at this time.

Those of us who are neighbors made their home purchases with an understanding that they lived in or very near a low density residential area. While we all recognize that zoning may have a need to change with the city's growth over time, this is just not that time. To change the zoning in this area now is just downright greedy, and directly in conflict with the council's own assessment of this area not being conducive to changes of this nature until far later.

I am not opposed to developing within the current R-1 density. Full size lots today will be more readily converted piecemeal into C-R lots down the road when it does make sense to re-evaluate this area of special concern. I formally oppose the zoning request to change to C-R, the proposed subdivision plan, and the proposed townhome exemption.

Please don't make the same mistakes here that the City of Portland has. Over the last decade they ruined a vibrant, livable community. The overly ambitious high-density development did not account for the reality of parking, commuter vehicles and traffic patterns, and there is no going back. Car traffic impacts are even more necessary to consider here where there is not a robust transit system to offload

the need for nearly all adults to have a car. Current Canby residents and their families don't deserve to have their quality of life compromised forever for one person's short-term profit. Though I empathize with the land owner's development challenges, I firmly believe that those who will come in and continue to grow the town as the years go on won't benefit from us moving forward with this proposal either.

Thank you for your time and consideration,

Jennifer Driskill

On Behalf of the Driskill Family

249 SW 3<sup>rd</sup> Ave, Canby

**COMMENTS FOR PUBLIC HEARING DATE: 12/06/2017**

**RE: ZC 17-02, SUB 17-04, CUP 17-05 and APPEAL 17-01**

South Ivy Park Subdivision, Allen Manuel

COMMENTS FROM: Regina Taylor, 173 SW 6<sup>th</sup> Ave, Canby, Or 97013

I am submitting this document in an effort to summarize the most important issues for the City Council to consider regarding this land application. I worry that these items may be underemphasized, owing to the time that has lapsed since they were originally voiced, the large volume of paper documentation generated and confusion from an inaccurate article in our local newspaper that used details of a completely unrelated and separate land use issue. There has been an overload of information I hope to simplify.

Therefore, I produced this brief overview including the corresponding City Codes

- 1) City Staff and Council are unfamiliar with the land type and Policy 6 implications
- 2) Is the land Eligible, Appropriate and Timely for Rezone
- 3) Calculation of Lot Size and use of lots (artfully dodging the lawful Zone density and use)

## 1) UNFAMILAIR WITH THE LAND TYPE AND POLICY 6 IMPLICATIONS

The City Planners and Councils are unfamiliar with the Commercial/Residential Zone:

Planning Director Bryan Brown commented: *"There are not many areas in the City that has this C-R designation, and this was one of the first opportunities our planning commission has had to deal with this zone which is a mixed zoning that allows light commercial uses."*

Staff Report pgs 1-2, included in Minutes of Oct 9

The City Planners and Council are unfamiliar with the Area of Special Concern #C:

City Staff reminds us this is one of the rare pieces of land on list called the "Areas of Special Concern" and subject to special restrictions and measures, which the Staff and Council has little or possibly no prior experience with. Considerable debate occurred during the Planning Commission Meeting when the Planning Director questioned if the city was authorized or required to comply with the Comprehensive Plan at all, until it was resolved that Canby City Ordinance 16.54.040.(A) lawfully *forces* the City to apply those restrictions in Comp Plan Policy 6 ---aka "Area of Special Concern C"--- to this land.

**Realize what this implies:** The City Planners had researched the ordinances, formulated their opinion, submitted their recommendations to the Planning Commissioners, published them in their official Staff Report and were in the midst of the Planning Commission meeting, *before* they fully understood that Policy 6/Area C has authority over the application!

Notice also that Oregon State Statute ORS 197.195 confirms that because the City of Canby converted Comp Plan Policy 6 into an *enforceable city code*, the City is obligated to use it as a basis for land use decisions.

Staff Report: pgs 1-2, included in Minutes of Oct 9

ORS Statute: <https://www.oregonlaws.org/ors/197.195>

City Ordinance: 16.54.040.A

We can see how very complex this land is. We must apply stringent and disciplined examination before making any land use decision.



## 2) IS THE LAND ELIGIBLE, APPROPRIATE AND TIMELY FOR REZONE?

Refer to City Ordinance 16.54.040 Amendments to Zoning Map which is copied below:

### **16.54.040 Standards and criteria.**

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. (Ord. 749 section 1(B), 1984; Ord.740 section 10.3.85(D), 1984)

#### A. The Rezone Ordinance is only Tracking Mechanism in place to connect to Policy 6/Area C:

Carefully reading this ordinance should raise some warnings to the City Council. The applicant has submitted a 3-part application, and the Council has the ability to approve "all or part" of them. The Council must recognize the jeopardy that will result if the applications are separated, which would occur if the applicant and his attorney appeal to the Council to pass a stand-alone REZONE while retiring the requests for subdivision and conditional use.

Here lies the jeopardy: the Rezoning criteria contains the only wording in all of our Canby City ordinances that directly connects this land to the Comprehensive Plan Policy 6, which is where we find the specific warning language "There is no reason to attempt to hasten this transition process (the transition to C-R zoning from the current R-1 zoning) because residential uses can eventually be converted to mixed residential/commercial use."

It is urgent for the City Council to deny the rezone to avoid losing this vital connection with the specific restrictions which govern this piece of land. If the city allowed a stand-alone Rezone, the city has **no tracking mechanism** in place to connect the land back to these specific restrictions, opening the land up to unforeseen and inadvertent development incompatible with the designated use of the land. Recall the City originally overlooked Policy 6 until it was spotlighted during public comments that Policy 6 warns against R-2 development here, yet the applicant's proposal includes four R-2 units (the townhouses). A Rezone must be denied to assure the prohibition against R-2 development remains connected to this piece of land, for the specific traffic and access reasons listed.

The applicant has submitted a diagram displaying his dream for the land, but he has also verbalized that he intends to sell all but two or three of the lots. No building plans have been submitted for any lot. We must not be hasty and inadvertently subject this land to future development that is inconsistent with Policy 6; success in this ideal requires denial of the Rezone to retain the connection of the land to Policy 6.

#### B. Required Public Facilities not Adequately Determined.

It is noted in the Findings of the October 9 meeting that the Traffic Survey was conducted on the wrong road and also did not include an Intersection Level of Service survey; therefore it has not been proven that the required Public roads are adequate to support the development. Note that any required traffic management devices must be included in the application process (such as right-turn-only lanes on the proposed new private street.) The applications should be DENIED until requirements have been satisfied.

### 3) CALCULATION OF LOT SIZE, AND USE OF LOTS

Considerable discussion was generated concerning the method used for Lot Size Averaging, since the square footage of lots is directly connected to the density of homes, and determines if they are compliant with the designated Zone for the land. Obviously if any application for development is out of compliance with the city Codes for the Zone, the application must be denied.

The Minutes of October 9, on page 2, ***“The way the lot averaging had been calculated had come into question. The (staff felt the) Code was silent on this issue. (but staff admits) For a normal subdivision with Public streets, the street access areas would be excluded (subtracted) during lot averaging. The report says this application has a private street and it uses an access easement which meant the road was part of the adjacent lots. Staff believes there was nothing in the Code that stated they could not utilize the street as part of the lot averaging. By doing so, they were able to get more lots than they would otherwise. It did cause some problems with meeting the R-1.5 zoning development standards.”***

Here, we see the Staff was willing to allow the applicant to exceed the limits of the Zone, admitting the applicant was “able to get more lots than they would otherwise” which “causes some problems meeting the zone standards”, all accomplished by breaking the City Ordinances, simply by declaring the road “private”.

The applicant’s proposed 12-unit subdivision on 1.31 acres, which he claims conforms to Medium Density R-1.5 is actually High Density, R-2. Notice R-2 is specifically restricted in Policy 6/Area C , no additional R-2 development is allowed in Area C. Our City Staff admitted in the Minutes and Final Decision that townhouses also exceed the density of the R-1.5 Zone.

Lot Size Averaging is fully discussed by me in my personal testimony at the October 9 meeting. Our City Ordinance 16.18.030(b.1.a) clearly indicates that “areas in which building is not permitted under local, state or federal laws or regulations” should be subtracted from lot sizes, and those areas include utility easements, storm water management areas, and the road that provides access to the homes, yet our City Planners and the applicant did not subtract these areas, essentially ignoring the City Codes and allowing R-2 High density in a R-1.5 Medium density Zone. I find this very deceptive, and possibly outright illegal. It simply feels wrong, as was voiced by all 6 of the City Planning Commissioners in their decision regarding this application. Is this the type of behavior and development we want to encourage? This type of interpretation (or manipulation) of our Codes essentially removes the ability to enforce the lower Zones, since they can be circumvented or avoided by crafty, clever, and artful maneuvering, to dodge or bypass the code’s intended Zone limitations simply by declaring the use of the Joint and Cross Access provision.

As I mentioned in my verbal testimony on October 9, I reviewed the websites of 21 other municipalities in Clackamas, Multnomah and Washington Counties and found ***all of them*** subtract the access road/street when calculating Lot Size to determine compliance with the Zone requirements. I believe the Land Use Board of Appeals would be interested in viewing this application if it is approved.

I have shown my concerns about Lot Size Averaging graphically in the chart below. Stormwater (surfacewater) management wells are proposed under the street in front of lots 2, 12 and to the side off lot 11, with utilities placed under the entire street, demonstrating a 2<sup>nd</sup> reason the entire street is an unbuildable area and therefore by Ordinance 16.18.030.B.1.a, MUST BE SUBTRACTED from the lot size. (The city used the legal verbiage “required areas”).

A	B	C	D	E	F	G	H	I	J	K
AVERAGE LOT SIZE FOR UNITS IN ALLEN MANUEL DEVELOPMENT										
Lot #	Type of Home	Beginning Lot Size	Minus unbuildable STREET Right-of-Way sq ft (est)	Lot Size minus Street Right-of-Way	Minus unbuildable SIDEWALK Right-of-Way sq ft (est)	Minus Street AND Sidewalk Right-of-Ways	Minus Visitor Parking Stalls sq ft (est)	NET LOT SQUARE FOOTAGE	Guideline Minimum Allowable Square Feet	Meets Minimum Guideline?
# 1	Townhouse	3002	-160	2,842	-120	2722	0	2722	3000	No
# 2	Townhouse	3002	-160	2,842	-120	2722	0	2722	3000	No
# 3	Townhouse	3001	-160	2,841	-120	2721	0	2721	3000	No
# 4	Townhouse	3038	-160	2,878	-120	2758	0	2758	3000	No
# 5	Single Family Residence	4267	-1628	2,639	-320	2319	0	2319	5000	No
# 6	Single Family Residence	5,000	-650	4,350	-360	3990	0	3990	5000	No
# 7	Single Family Residence	5,000	-500	4,500	-240	4260	0	4260	5000	No
# 8	Single Family Residence -(existing home)	7,106	-500	6,606	-340	6266	0	6266	5000	Yes
# 9	Single Family Residence -(existing home)	8,109	0	8,109	0	8109	0	8109	5000	Yes
# 10	Single Family Residence	5,647	-1600	4,047	-360	3687	0	3687	5000	No
# 11	Single Family Residence	5,000	-1,315	3,685	-380	3305	0	3305	5000	No
# 12	Single Family Residence	5,041	-960	4,081	-160	3921	-600	3321	5000	No
TOTAL	All Home Types	57,213	7,793	49,420	-2640	46780	-600	46180		

## Chapter 16.18 R-1.5 Medium Residential Zone

### 16.18.010 Uses permitted outright in the R-1.5 zone shall be as follows:

- Uses permitted outright in the R-1 zone;
- Two-family or three-family dwellings. One duplex or triplex on each lot.

### 16.18.020 Conditional uses in the R-1.5 zone shall be as follows:

- Uses listed as conditional in the R-1 zone; except as modified by Section 16.18.010, above;
- Four-family dwellings;
- Single-family dwellings having common wall construction 16.18.030

Development standards. The following subsections indicate the **required** development standards of the R-1.5 zone:

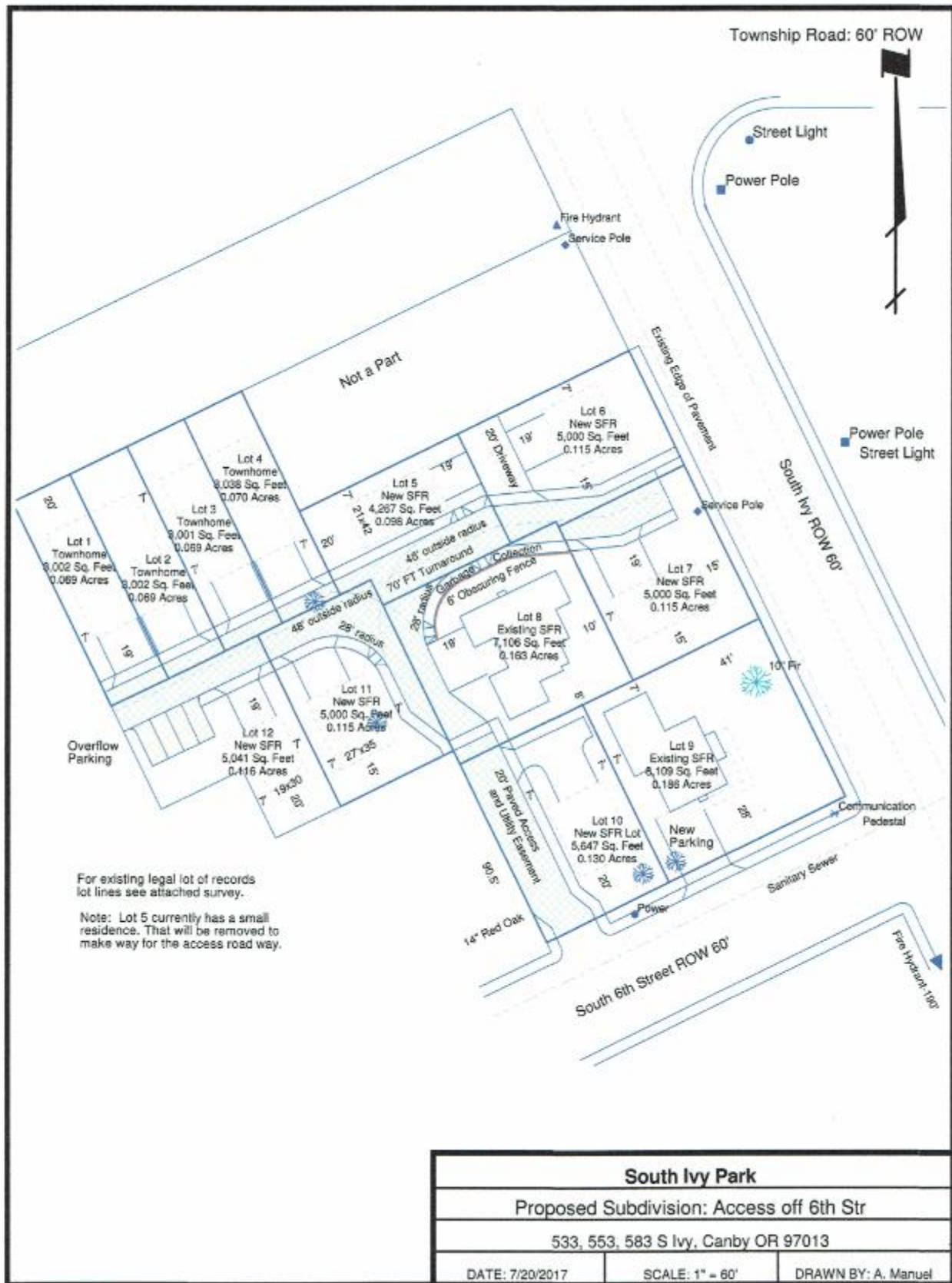
#### A. Minimum and maximum lot area:

- For single family dwellings: five thousand (5,000) square feet minimum and six thousand five hundred (6,500) square feet maximum.
- For two, three, or four-family dwellings: minimum of six units per acre. Density is calculated by dividing the number of dwelling units by the property area in acres (minus area required for street right-of-way and public park/open space areas). Decimals are rounded to the nearest whole number.
- The Planning Commission may approve smaller or larger lots in accordance with subsection B, below.

#### B. Lot area exceptions:

- The Planning Commission may approve an exception to the minimum and maximum lot area standards in subsection 16.18.030.A as part of a subdivision or partition application when *all of the following standards are met*:
  - The average area of all lots and open space tracts created through the subject land division, *excluding required* public park land dedications, surface water management facilities and similar public use areas, shall be no less than five thousand square feet and no greater than six thousand five hundred square feet. Non-required significant natural resource areas shall be included in the average lot size calculation to enable a transfer of density onto buildable portions of the site. *Required areas* include identified parks, wetland areas, riparian corridors, *and other areas in which building is not permitted under local, state, or federal laws or regulations*; **(My comment: utility easements, and street right-of-ways that provide access to each home are unbuildable, and must be subtracted)**
  - No lot shall be created that contains **less than four thousand square feet**; and
  - As a condition of granting the exception, the city will require the owner to record a deed restriction with the final plat that prevents the re-division of over-sized lots (six thousand five hundred square feet and larger), when such re-division would violate the average lot size provision in subsection 16.18.030.B.1.a. All lots approved for use by more than one dwelling shall be so designated on the final plat.
- A public benefit must be demonstrated in order to allow more than **ten percent** of the lots to be outside of the minimum and maximum lot areas in subsection 16.18.030.B.1.a.
- The Planning Commission may modify the maximum lot area requirements in subsection 16.18.030.B if these cannot be met due to existing lot dimensions, road patterns, or other site characteristics.
- Lots of **three thousand square feet** each may be permitted by the Planning Commission for single family dwellings having common wall construction.
- The maximum lot area standard does not apply to dwellings existing prior to subdivision or partition plan approval or to lots designated for open space.

**My Comments:** 100% of the Townhouses are below the 3,000 sq ft required minimum.  
75% of the SFR are below the 5,000 sq required minimum. (6 homes out of 8)





**REF: APP 17-01 SOUTH IVY PARK SUBDIVISION, ALLEN MANUEL of  
ZC 17-02/SUB 17-04/CUP 17-05 SOUTH IVY PARK SUBDIVISION**

I reside almost directly across from the proposed private road (private 20' driveway) on to SW 6<sup>th</sup> Avenue from the proposed South Ivy Subdivision.

Once again, I understand that the ongoing concern of the Canby Planning Commission and the Canby City Council has been Traffic, Parking and Livability within the City of Canby. Plus, of course, all the applicable Codes, Comprehensive Plan and other legal requirements. I also understand that both the City and its Residents have their wants and needs and that the Council and Planning Commission are the mediators and arbitrators of those interests.

Further, that every property owner or developer has a right to improve their property within those limitations.

Not having access to read the Notice of Appeal prior to submitting these comments, I am only able to respond to what is currently part of the record and what I can reasonably assume to be the potential ongoing course of action.

Any rezoning on this parcel should be denied based on a number of reasons:

1. There is not a complete legal understanding by the Planning Director and his Staff as to what standards to apply or to not apply on this request. The Comprehensive Plan and the City Ordinances do not necessarily agree on the appropriate application of standards for making



an informed decision as confirmed by statements of the Canby Planning Director.

2. The Comprehensive Plan anticipated that the commercial growth would proceed south down South Ivy Street to 13<sup>th</sup> Avenue but instead it developed east and west on Highway 99E between Safeway and Fred Meyer and resulted in the isolation of or a resultant less attractive/inappropriate locations for future businesses on South Ivy Street.
3. There is no agreement as to whether or not the Private Road (private 20' wide driveway) easement should be considered in determining the square footage of the proposed tax lots for the purpose of determining if the proposed development complies with the required average square footage of each tax lot in the proposed development.
4. The proposed rezone of the property to C-R would be a detriment to the surrounding area due to increased traffic on SW 6<sup>th</sup> Avenue without adequate mitigation engineered for access to South Ivy Street once the Township Road/South Ivy Street intersection is upgraded, inadequate/inappropriate consideration for adequate parking, and a possible decrease in the safety (possible difficult Fire Department response) of the surrounding residences,

And finally,

This oddly-shaped combination of the 3 existing tax lots will have little or no value in a commercial sense because it is basically a land-locked proposed development with no 'commercial' street frontage and just a single private 20' wide driveway exiting to an already moderately busy SW 6<sup>th</sup> Avenue.

#### **DISCUSSION:**

1. The overall shape and location of the proposed development lends itself

to the current R-1 designation as it is basically surrounded by single family residences. No vehicular access is planned or permitted to South Ivy Street therefore there will be no streetside recognition of a commercial building existing in the proposed C-R development. Additionally, there is inadequate or marginally adequate parking within the development for potential customers with only a single access from SW 6<sup>th</sup> Avenue. Since this location is called out in the Comprehensive Plan as 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." Besides, C-R zoning for this particular portion of Special Area of Concern "Area C" is inappropriate and overshadowed by other areas in Canby that would be far more appropriate for rezoning to C-R than this location.

2. The question of whether or not the 'Private Road' easement should be subtracted in the determination of the lot sizes is basically whether or not there is a standard method in place for including the 'road' easement in the size of the tax lot; this can essentially remove approximately one quarter of the size of the affected tax lot. The road is area which is considered non-buildable land area, and in the case of one tax lot the non-buildable area included both a road easement and 4 (four) visitor parking spaces to meet the excess parking needs of other tax lot owners since No Parking is permitted on the 20' Private Road to allow access for utility vehicle traffic (refuse and recyclables pickup, etc.) and emergency access (Fire Response, medical aide, etc.).
3. Traffic considerations for the proposed development were accomplished 'merely by a rezone TPR analysis and traffic generation analysis' and appears to only have considered the fact that traffic from the proposed subdivision would not exit to South Ivy Street but solely to SW 6<sup>th</sup> Avenue. Consideration should extend to the traffic at the SW 6<sup>th</sup> Avenue/South Ivy Street intersection and consideration for the 2018 planned improvement of the intersection at Township Road/South Ivy Street and its commensurate impact on traffic exiting SW 6<sup>th</sup> Avenue to



South Ivy Street in a northbound direction once the Township Road/South Ivy Street traffic light is functional. Perhaps traffic exiting the proposed development must be restricted to a 'Right Turn Only' to SW 6<sup>th</sup> Avenue because left turning traffic could be potentially impractical.

4. I concur with Findings #4 and #5 of the Canby Planning Commission and agree that additional mitigation/consideration should be determined as necessary.
5. This area is an identified problem area on the Canby Stormwater Plan and the control of stormwater must be a high priority to capture the run-off to protect the neighboring properties from that hazard as well as the residents of South Ivy Park subdivision. The Private Road is the stormwater collection basin and must have adequate gradient and curbs to funnel the water to the 2 (Two) drains that are on Lots #11 and 12. The latest Utilities Plan show 3 (three) Catch Basins (CB) and I have circled them in red on the attached Utilities Plan. To be effective they MUST be at the lowest elevations within the proposed development and the captured stormwater has to be directed even lower to the under-the-roadway stormwater drywells for disposal. The developer indicated at the Neighborhood Planning Meeting that the City of Canby Public Works Department has agreed to maintain the filters on the stormwater drains within the subdivision. This would seem to place the responsibility (and liability) on the City of Canby if this complicated system fails or exacerbates the existing area stormwater concerns.
6. Additionally, an adequate Maintenance Agreement must be in place for the Private Road as the Fire Department has indicated that they will not utilize a non-maintained road. The developer has indicated that an H.O.A. type agreement would be entered into by the individual

purchasers of the new tax lots. It must be legally adequate to insure continued maintenance of the roads to acceptable standards.

**CONCLUSION:**

The current Zoning is appropriate as R-1 and any future development should meet R-1 standards and requirements. The initial proposal was unacceptable and the Canby Planning Staff required additional considerations -- sidewalks, tree planting, garbage/refuse collection considerations, some lot size adjustments and such -- that was necessary and is greatly appreciated. Conditional Use permitting and Subdivision approval should be conditional on R-1 Zoning retention.

Thank You for your time and consideration,

A handwritten signature in black ink, appearing to read "Robert T. Taylor", with a stylized flourish at the end.

Robert T. Taylor

173 SW 6<sup>th</sup> Avenue,

Canby OR 97013

taylorbobbt@yahoo.com





CANBY CITY COUNCIL – Public Hearing Date: December 6, 2017

Re: APPEAL of PLANNING COMMISSION DECISION for SOUTH IVY PARK  
SUBDIVISION, Allen Manuel

Subject: Application for REZONE to C-R

From: Wayne A Fetters, 485 S Ivy St., Canby Oregon

The property in question is owned by Allen Manuel. It is currently zoned Low Density, R-1. It is located within - "Area of Special Concern-C" which is subject to special restrictions and measures.

LCDC has specified that no additional R-2 developments are allowed in Area C. The intended use of properties on South Ivy must conform to R-1 Low Density Zoning. It is interesting to note that Allen Manuel has proposed a 12-unit subdivision, on 1.31 acres, which he claims to be in compliance with Medium Density R 1.5 requirements. In actuality, it conforms to High Density R-2.

There are two ways in Canby to obtain a zone change to R-2 in Area C. One is to directly apply for a rezone and be rejected because it is not allowed. The other is to enter through the back door and apply for a rezone to C-R, in the guise that it will merely allow future homeowners to have a small business in their home when, in reality - it will open the door for the developer to build a High-Density Subdivision, without a zone change, period.

High Density subdivisions are not compatible with in home businesses, especially in this case, in that there is no parking for customers. Customers will have to park, somewhere on 6<sup>th</sup> street, and hike into the complex. The four additional parking spaces shown in the proposed plan will be quickly occupied by homeowners with a second car. In-home business in High Density Subdivisions is a – misnomer, and renders the C-R Zoning before construction - disingenuous.

This area is covered in the Comprehensive Plan therefore there is no need to rush to C-R zoning. Future homeowners can apply individually, as needed.



Wayne A. Fetters

CANBY CITY COUNCIL – Public Hearing Date: December 6, 2017

Re: APPEAL of PLANNING COMMISSION DECISION for SOUTH IVY PARK  
SUBDIVISION, Allen Manuel

Subject: Storm Water Runoff

From: Wayne A Feters, 485 S Ivy St., Canby Oregon

The natural terrain of this property is likely to cause storm-water runoff issues. There is an elevation drop of 7 to 9 feet from the 6<sup>th</sup> Street / S. Ivy Street intersection, measured diagonally to its northwest corner - where it borders three other properties. Even if storm-water runoff systems are in place, they are effective "only" if street storm drains, housing roof gutters and their individual dry wells are adequately maintained. This property will be owned by individual home owners. Consistent maintenance cannot be expected.

When such systems are allowed to plug with debris and / or frozen snow slush, they will be rendered useless during heavy rains. Due to the reduction of "uncovered" land during property development - along with the problematic terrain slope angle, reduced - surface area and percolation "dwell time" - will prevent water absorption at a rate necessary to avoid downstream property damage.

To prevent eventual property damage to adjacent properties, a storm-water runoff catch basin of adequate storage capacity, must be located at the lowest point, which is the northwest corner of this property- where it borders three other properties.

This potential problem must be properly addressed to prevent future litigation.





CANBY CITY COUNCIL – Public Hearing Date: December 6, 2017

Re: APPEAL of PLANNING COMMISSION DECISION for SOUTH IVY PARK  
SUBDIVISION, Allen Manuel

Subject: Traffic Impact

From: Wayne A Fetters, 485 S Ivy St., Canby Oregon

A “forward looking”- TRAFFIC SURVEY, and INTERSECTION IMPACT STUDY - is required before rezoning can be considered, according to the city’s application process.

We have owned and lived on our property at 485 S. Ivy St. for over 50 years, during which time, traffic volume on our street has increased – dramatically. The risk for turning lane accidents has increased for southbound S. Ivy St. traffic turning left onto Township Rd, and for traffic turning left from Township Rd. - entering southbound S. Ivy St. traffic.

Currently, there are no traffic lights to impede traffic flow on S. Ivy St. between the 13th street and Hwy 99E. Frequently however, northbound - S. Ivy St. traffic is backed up from Hwy 99E - to the south and well past the 6<sup>th</sup> St. / S. Ivy St. intersection. Future real-estate developments on the south side of town will obviously continue to increase S. Ivy St. traffic volume.

The planned traffic light at the S. Ivy St. / Township Rd. intersection will improve left turn traffic safety - however, it will impede southbound traffic, and “dramatically” impede northbound traffic on S. Ivy St. Unfortunately, such improvements at the at the S. Ivy St. / Township Rd. Intersection will create potential grid lock at the 6<sup>th</sup> St. / S. Ivy St. intersection during morning and afternoon heavy traffic. Eventually, that gridlock will continue throughout the day.

The planned traffic light will have at least three light cycles. North and south free traffic flow on S. Ivy St., southbound left turn traffic from S. Ivy St. onto Township Rd., and left turn from Township Rd. into southbound traffic on S. Ivy St.

North bound S. Ivy St. traffic must stop for "each" turn lane cycle and traffic flow could be restricted - by 50%, which will back up traffic far past the 6<sup>th</sup> St. Intersection.

Traffic on 6<sup>th</sup> street, wanting to turn left onto S. Ivy St. will be blocked from entry by backed up northbound traffic, and vehicles in line on 6<sup>th</sup> St., wanting to turn right onto S. Ivy St. will also be blocked. Stopped traffic on 6<sup>th</sup> St. will back-up toward Elm St. – impeding vehicle entry by many residents onto 6<sup>th</sup> St. - from their driveways.

Currently, there is periodic heavy traffic on 6<sup>th</sup> St. A lot of vehicle traffic is - school buses. There are no continuous sidewalks - causing pedestrian traffic to walk around parked cars and into traffic lanes. Much of the pedestrian traffic is school kids.

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Alan Manual is requesting a zone change and a special use permit to allow another "crowded density subdivision" which again, like his previous subdivision on S. Ivy St. - does not fit our community. His development will access 6<sup>th</sup> St. from his narrow street, which is – too close to the Ivy St. intersection. The narrow street pavement will directly border the neighbors fence on the west side of the road. Traffic will naturally move toward the center of the street to avoid scraping the fence, which will effectively make the street – even narrower. Subdivision traffic stopped on this narrow street, waiting for an opening to enter heavy 6<sup>th</sup> street traffic, will impede - auto traffic trying to make the "sharp" right turn onto the narrow street from 6<sup>th</sup> street, and larger vehicles such as garbage trucks, UPS and FedEx trucks may not be able to make the same sharp turn, causing west bound 6<sup>th</sup> street traffic to stop - resulting in backed up traffic to the S. Ivy St. intersection. Even full size pickup trucks will have difficulty making the same turn during the same - side street congestion.

Most families have more than one vehicle. Inadequate subdivision parking will result in increased street parking on 6<sup>th</sup> street. Many residents on 6<sup>th</sup> street who currently park in front of their homes, will have to park - down the street - away from their homes due to additional street parking which has spilled out of the subdivision.



There are 40 homes on 6<sup>th</sup> street. If the proposed Manual development is allowed, cars from 12 additional homes will access 6<sup>th</sup> street. The existing "large house" - owned by Alan Manual is always occupied by several families. The total number of families living in this development will be much more than twelve. In that most families have multiple cars, the impact of 24 to 30 additional cars entering the existing 6<sup>th</sup> street traffic, could increase traffic volume by 35%.

Fortunes have been made in Canby, by building attractive - single family homes in Low-Density Zones. Yet, Allen Manual says he cannot make enough money developing his property within the limits of a Low-Density Zone."

Allen Manuel's previous "failed townhouse subdivision" on S. Ivy St. is a testament to his vision of progress. The neighborhood however, is not willing to "again" facilitate Allen Manuel's desire for a zone change, in terms of - crowded community chaos, unreasonable traffic congestion, resultant lowered property values and the need to relocate.

The 51-signature petition presented to Canby Planning, requesting a "no" vote on this zone change request is an indication of - community trepidation.

A handwritten signature in black ink, appearing to read "Wayne A. Edsall". The signature is fluid and cursive, with a large, stylized initial 'W'.



The following City Ordinances have not been addressed and/or are being violated in Allen Manuel's proposed development on S Ivy/S 6<sup>th</sup> Ave.

**Zoning General Provisions, 16.08.150(A-E) Traffic Impact Study.** The correct traffic impact study has not been conducted; Section F of this ordinance indicates a change to a Zone Map or the building of a subdivision requires a traffic study that includes projections 15-20 future, within a ½ mile from the development site, and appropriate mitigations provided. (This has also not been done.)

**Off-Street Parking and Loading 16.10.030.G.5 General Requirments:** Adequate directional signs shall be installed specifying the joint parking arrangement. (This has not been provided)

**Off-Street Parking and Loading 16.10.040** Prohibited near intersections. In no case will off-street parking be allowed within a vision clearance area of an intersection. (This has not been done)

**Parking Lots and Access 16.10.070** Groups of more than four (4) parking spaces shall be so located and served by driveways that their use will require no backing movements or other maneuvering within a street right-of-way other than an alley. (The 4 visitor parking stalls violate this ordinance; backing into the street is required).

**Off Street Parking and Loading 16.10.070.B. 9b. Parking Lots and Access.** No driveways shall be constructed within five (5) feet of an adjacent property line, except when two (2) adjacent property owners elect to provide joint access to their respective properties. (This ordinance is violated; the driveway or private road abuts the neighboring landowner without the required 5 foot buffer.)

**R-1.5 Medium Density Residential Zone, 16.18.030 Development Standards;** this ordinance is violated; the proposed lot sizes are smaller than the accepted minimum lot sizes for this zone, on 10 of the 12 lots. Townhouses require a conditional use permit, but are prohibited on this land which is listed in Comprehensive Plan Land Use Element, Policy 6, Area C (prohibits R-2 development on this land. Townhouses are R-2 development).

**Conditional Uses 16.50.010a and c:** In judging whether or not a 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; and C. All required public facilities and services exist to adequately meet the needs of the proposed development. (This application violates these ordinances; several negative features including crowding and traffic are created. The proposal is NOT consistent with Policy 6/Area C of the Comprehensive Plan, and not all required public facilities and services exist to adequately meet the needs of the proposed development (traffic issues and inadequate provision for Storm Water Management in this area already known for flooding. None of the available options under 16.50.040 Placing Conditions on Permit allow the city to impose the types of conditions needed to address these issues. )

**Amendments to Zoning Map 16.54.040 Standards and criteria.** 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. (This application violates these ordinances; the land is subject to Policy 6/Area C and not suitable for Commercial Residential use. The city has not grown and developed a Commercial interest along South Ivy street as our planners expected would happen. The area is unsuitable for commercial business and should remain low density housing due to traffic issues and limited access to the lots would be unsuitable for customers. Public facilities are not in place including adequate traffic control and storm water management. None of the Improvement Conditions that are available for the city planners to impose upon this property will rectify these issues nor resolve them. The time is not right to rezone this land as Residential Commercial; it should remain low density as recommended in Policy 6/Area C of the Comp Plan.)

**Land Division Regulation General Provisions 16.56.010 Purpose.** A. This application violates this ordinance; it does not “To ensure that the public health, safety, convenience and general welfare be given due consideration in the division and development of land; 2. To help implement the Comprehensive Plan and elements thereof” and it does not “minimize, by proper design and development, the danger to life and property caused by hazards of fire, flood, soil erosion and land slippage”, nor does it “To provide lots, parcels, and development sites of a sufficient shape, size, and character for the purpose for which they will be used;”. Nor “To provide the establishment of adequate water supply, sewage disposal, surface water drainage”. (Concerns regarding traffic, crowding, and inadequate emergency vehicle turn-around area, and storm water management).

**Subdivisions-Design Standards. 16.64.010 Streets.** A. Generally. The location, width and grade of streets shall be considered in relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system shall assure an adequate traffic circulation pattern with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried. (the lack of a traffic survey and intersection impact study causes this ordinance to be violated). 16.64.015 Access D. The road system shall provide adequate access to buildings for residents, visitors, deliveries, emergency vehicles, and garbage collection. E. Streets shall have sidewalks on both sides. Pedestrian linkages should also be provided to the peripheral street system. (This application is in violation of these ordinances; the density of the dwellings provides very narrow access that is not adequate, and there is concern for emergency vehicles and garbage collection which will require considerable backing maneuvers that are uncomfortable for the large service vehicles and block access for residents. The proposal provides some sidewalks, but not on both sides of all streets, so there will be pedestrians in the road with these vehicles.).

**16.64.030 Easements. A. Utility Lines.** Easements for electric lines or other public utilities are required, subject to the recommendations of the utility providing agency. Utility easements twelve feet in width

shall be required along all street lot lines unless specifically waived. The commission may also require utility easements along side or rear lot lines when required for utility provision. The construction of buildings or other improvements on such easements shall not be permitted. (This ordinance violates this ordinance; the utility easement is under the private road, causing it to be an “unbuildable” location, and therefore subject to that area being subtracted from lot sizes but the area has not been subtracted, causing lot sizes that are smaller than the required minimums)

**16.64.040 Lots. A. Size and Shape.** The lot size, width, shape and orientation shall be appropriate for the location of the subdivision and for the type of development and use contemplated. (This application violates this ordinance; the area is currently single family residences at Low Density. Applicant proposes to rezone to Commercial Residential in an area not suited for Commercial use, but retain single family homes. The land should remain as Low Density Residential to preserve the neighborhood and retain the lesser amount of traffic since no commercial benefit is gained. It is not time to rezone this land as Commercial Residential and no benefit is gained by the community by rezoning. A higher density zone would be detrimental due to the extra traffic just feet from S Ivy street which is a Truck Route. The Lot Sizes and shapes violate this ordinance; two lots are shaped and situated with sidewalks within 2 FEET of the walls of the home which is out of proportion for this type of development and out of character for the neighborhood. There is not sufficient public benefit gained by forcing such a density into this neighborhood.)

**16.64.040 Lots.** sizes shall conform with requirements of Division III. (This application violates this ordinance; the minimum lot sizes are not met by 10 of the 12 lots).

**16.64.040 J. Designation of Lots as ‘Infill Home’ Sites.** The Planning Commission may require that homes built on one or more lots adjacent to existing development be subject to any or all of the requirements of 16.21.050 - Infill Homes. Furthermore, for subdivisions where the parent parcel(s) is less than two acres in size, the Planning Commission may require that all homes built on lots in the subdivision be subject to any or all of the requirements of 16.21.050. These requirements are to be shown on the subdivision plat or included in the deed restrictions. (This application is out of compliance with this ordinance. The parent parcel(s) total 1.31 acres---under 2 acres---therefore the lots are subject to infill home standards but no Conditional Use has been imposed in the applicant to assure the homes comply with 16.21.050, such as limiting infill homes exceeding one story to not exceed lot coverage of 35%, and maximum height of 28 feet. These should be included in as Conditional Uses if the rezone and subdivision is approved).

**16.64.070 Improvements. C. Streets.** 6. The proposed use shall not impose an undue burden on the transportation system. The City may require the applicant to provide adequate information, such as a traffic impact study, to demonstrate the level of impact to the surrounding street system. The developer shall be required to mitigate impacts attributable to the project. 7. The determination of impact or effect and the scope of the impact study should be coordinated with the provider of the affected transportation facility. 8. Dedication of land for streets, transit facilities, sidewalks, bikeways, paths, or

access ways shall be required where the existing transportation system will be impacted by or is inadequate to handle the additional burden caused by the proposed use. 9. Improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, access ways, paths, or streets that serve the proposed use where the existing transportation system may be burdened by the proposed use. (This application is in violation with these ordinances: The applicant has not proven the proposed use will not impose an undue burden on the transportation system since the required traffic and intersection surveys have not been completed. Until they are completed, inadequate information prevents knowledge if additional requirements will be made for safety or mitigation of traffic. The rezone and subdivision should be denied until properly processed).

**16.64.070 Improvements. D. Surface Drainage and Storm Sewer System.** 4. A conceptual stormwater management report must be submitted with the subdivision application. The report must demonstrate how and where stormwater will be managed on site at the subdivision. Where LID practices are not used, the applicant must demonstrate why LID is not feasible. The report will be reviewed by the Canby Public Works Department and shall be consistent with the Public Works Design Standards. Generally, the stormwater management plan must include the following: a. A description of existing conditions including a map; b. A description of the proposed stormwater system including a map; c. An estimate of existing storm water run off; d. An estimate of proposed storm water run off; e. The detention/retention requirements; and f. The discharge location, treatment method and sizing, and if discharging to the ground, the expected infiltration rates based upon soils mapping data. 5. Responsibility for maintenance of LID facilities shall be as follows: a. The Canby Public Works Department shall be responsible for maintaining all LID facilities located within the public right-of-way, and for providing for the safety of the public as related to LID facilities, b. Private property owners shall be responsible for maintaining all LID facilities on their property. The city reserves the right to inspect such facilities at any time. Upon written notice by the city to the owner that the facility has been compromised to the point where the design capacity is no longer available or the facility is not functioning as designed and approved, the owner shall correct the problem. If the owner fails to respond to the written notice within 15 days, the city may undertake the work and bill all time and material to the owner. c. For LID facilities that are not located in the public right-of-way and serve multiple private residential properties, a public easement for the LID facility shall be established and the Canby Public Works Department shall be responsible for maintenance of the facility. All property owners served by the facility shall pay a stormwater maintenance fee to the city to cover the cost of maintenance of the facility (This application violates this ordinance: the conceptual Storm Water management report has not been submitted, and this area is a known flood area. No rezoning nor subdivision should be permitted in this area unless properly reviewed first.)

## South Ivy Park Subdivision

One of my concerns is the lot sizes and zoning. I'm not an engineer or a lawyer, but it just seems by placing 12 homes (2 existing) on 1.3 acres is like putting a square peg in a round hole. I'm not opposed to the subdivision, but it needs to be developed in a way that improves the area, not degrade it.

I live on Ivy Street, bordering two sides to this subdivision, to the north on one side and west on the other side. I have a garage that was built 76 years ago. The garage now appears to be on or possibly over the property line (depending on city or county lines). With that said, according to the map the house on lot #5 (which is below the minimum lot size) will be built 7 feet from the property line. Possibly next to my garage, which could decrease to less the 7 feet, which I believe is code. This house also has a sidewalk running 2 feet from its walls on the opposite side. Does this meet city codes? Is this someplace you would like to live, small lot, small house, little to no parking? This is just one small example. Are the lot sizes calculated correctly according to the city code, can the lot size calculation include the roadway easement area?

In the past we have brought forward many questions that have not been answered by Mr. Brown. Whenever someone had a concern, instead of answering with a clear and concrete plan, Mr. Brown has waved us off or been unable to answer. There are many holes in the plan, such as traffic density or zoning issues. If these questions cannot be answered easily, what will happen should this plan go through? If these concerns cannot be addressed while still on paper, what will the reality look like if this plan is put into practice?

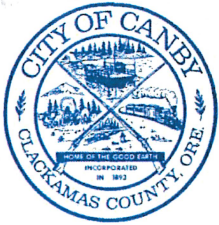
Our neighborhood is currently a low-density residential area. This subdivision plans to change that to a residential commercial area. This will change our neighborhood from a small town setting to a crowded mess. Many of us moved to this neighborhood for this small town feel. How is it fair that so many of us have our home and environment ruined, all for the sake of cramming in too many houses into too small of an area?

My last concern is; if the zoning passes what guarantee do we have that the plan set before us today will remain? If the property is sold to a developer, which I believe is the plan, does the developer have to stick to these plans or can they come in without notifying the neighborhood and modify everything?

I conclude that it seems like this subdivision plan has is being rushed through for the area. There have been many issues brought up that many of us neighboring property owners and even commissioners don't have answers to. Before you make your decision, please stop and think about what you are voting on tonight. With all the question dodging and shaky following of the rules, how do we know how this will affect the area in the future?

Thank you,  
Gwyn Benson





# City of Canby

## PUBLIC HEARING NOTICE & REQUEST FOR COMMENTS FORM

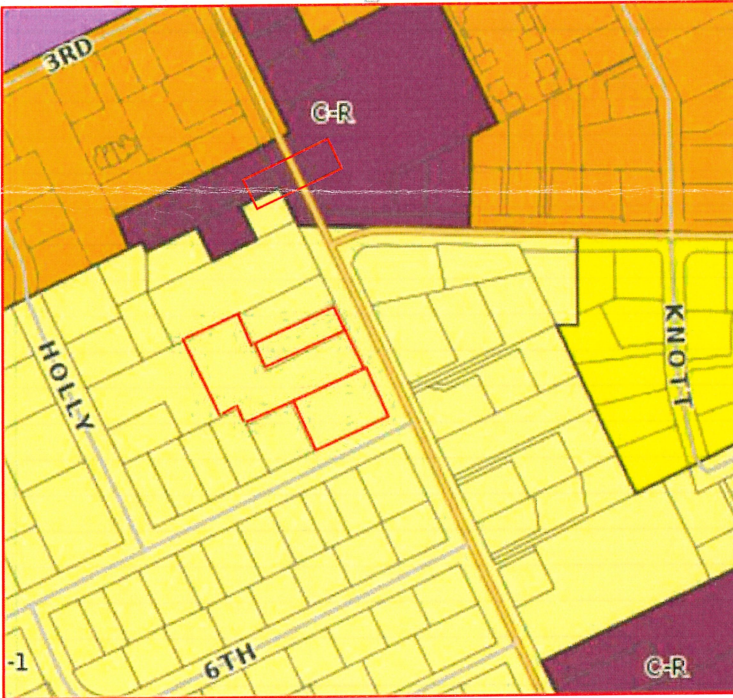
City File No.: APP 17-01

Project Name: APPEAL OF PLANNING

COMMISSION DECISION FOR SOUTH IVY PARK  
SUBDIVISION, ALLEN MANUEL

**PUBLIC HEARING DATE: MONDAY 12/6/17**

The City received an Appeal application (APP 17-01) from Allen Manuel appealing the Planning Commission's denial of S Ivy Park Zone Change/Subdivision/Conditional Use Permit applications (ZC 17-02/SUB 17-04/CUP 17-05). The applicable criteria for appeals are stated in Chapter 16.89.050(I) and (J) of the *Canby Land Development and Planning Ordinance*. The purpose of this **Notice is to invite you to comment on the Appeal of the Planning Commission decision. The Canby City Council will hold a Public Hearing on this Appeal application at 7:30 PM December 6, 2017 in the City Council Chambers at 222 NE 2<sup>nd</sup> Ave.**



**Location:** 533, 553, & 583 S Ivy St (Outlined in red on map at left).

**Tax Lots:** 41E04AB7100, 7200, 6300

**Lot Size and Zoning:** 1.31 acres, R-1 Low Density Residential

**Owners:** Allen Manuel Living Trust

**Applicant:** Allen Manuel

**Representative:** Seth King, Attorney

**Application Type:** Conditional Use Permit, Zoning Map Amendment, and Subdivision (Type III)

**City File Number:** ZC 17-02/SUB 17-04/ CUP 17-05

**Contact:** Bryan Brown, [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov) or 503-266-0702.

**Comments due** – If you would like your comments to be incorporated into the City's Staff Report, please return the Comment Form by Monday, Nov. 27, 2017.

**What is the Decision Process?** The City Council will make a decision after the Public Hearing. The Public Hearing will be limited to issues already raised in the previous hearing on these applications. No new issues will be allowed unless the City Council chooses to do so.

**Where can I send my comments?** Written and oral comments can be submitted up to the time of the Public Hearing and may also be delivered in person during the Public Hearing. Prior to the Public Hearing comments may be mailed to the Canby Planning Department, P O Box 930, Canby, OR 97013; delivered in person to 222 NE 2<sup>nd</sup> Ave; or emailed to [PublicComments@canbyoregon.gov](mailto:PublicComments@canbyoregon.gov).

**How can I review the documents and staff report?** Weekdays from 8 AM to 5 PM at the Canby Planning Department. The staff report and applicant's statement of reasons for appeal will be available for inspection starting Tuesday, Nov. 28, 2017, and can be viewed on the City's website: [www.canbyoregon.gov](http://www.canbyoregon.gov). Copies are available at \$0.25 per page or can be emailed to you upon request.

**Applicable Canby Municipal Code Chapters to original applications:**

Comprehensive Plan, Goals & Policies; Statewide Planning Goals; Canby Municipal Code Chapters:

- 16.08 General Provisions
- 16.10 Off-Street Parking and Loading
- 16.18 R-1 Low Density Residential Zone
- 16.24 C-R Residential Commercial Zone
- 16.43 Outdoor Lighting Standards
- 16.46 Access Standards
- 16.50 Conditional Uses
- 16.54 Amendments to Zoning Map
- 16.62 Subdivisions – Applications
- 16.64 Subdivisions – Design Standards
- 16.88 General Standards & Procedures
- 16.89 Application & Review Procedures
- 16.120 Parks, Open Space & Recreation Land General Provisions

**Please Note:** Failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue.

City Council Packet 122 of 369

November 20, 2017

Lee and Jeannine Wibbels  
345 SW 6<sup>th</sup> Avenue  
Canby, Oregon 97013

City of Canby Planning Department  
P.O. Box 930  
Canby, Oregon 97013

RECEIVED

NOV 27 2017

CITY OF CANBY

Re: South Ivy Park Subdivision, Allen Manuel

Dear Sirs:

Our concerns/comments are the same as those of our neighbors and what you have on record concerning the proposed plan by Allen Manuel:

1. S.W. 6<sup>th</sup> Avenue between S. Elm and S. Ivy is used as a "thoroughfare" by High School drivers and other motorists which sometimes turns the street into a drag strip. Since there are no sidewalks up and down S.W. 6<sup>th</sup> Avenue, school children have to walk in the street around parked cars which can be very dangerous.

Delivery, utility trucks and occasional semis also sometimes use this as a short cut, which adds to the congestion and danger to pedestrians. Adding 10 more homes and their vehicles would only add to this congestion. The more cars there are, the greater the potential for pedestrian/car accidents.

2. We consider this proposed plan to be a "hidden" subdivision, where crime and wrong doings can basically go unnoticed.

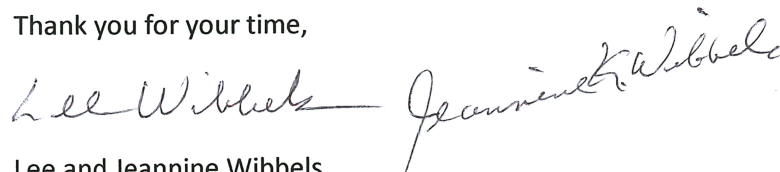
The livability of our neighborhood will be diminished, potentially lowering our property values, especially for those neighbors who live the closest to the proposed subdivision.

3. Even though issues such as garbage and emergency vehicle access, over-flow parking and drainage from rain have been addressed, practical evaluation tells us that this is still very much a concern when considering these issues.

The comment made at a previous planning meeting, "Fitting a round peg into a square hole", is very apropos when studying this plan. We appreciate not wanting "urban sprawl" to eat up our outlying farm land, but is it right to shoehorn so many people into such a small area just to get more "Bang for the Buck"? Doing this, as the proposed plan would do, could potentially downgrade a well-established neighborhood, making it worse for all.

Do we want S.W. 6<sup>th</sup> Avenue to become "sardines in a can"? NO! Please maintain your stance and vote "NO" on South Ivy Park Subdivision.

Thank you for your time,



Lee and Jeannine Wibbels  
lwibbels@canby.com

RE: Proposal for Zoning Map Amendment, Conditional Use Permit and Subdivision  
CUP 17-05/ZC 17-02/SUB 17-04

Applicant: Allen Manuel

Location: 1.31 Acres at 533, 553, 583 S Ivy Street, Canby, Oregon

INTRODUCTION: My name is Regina Taylor; I reside at 173 SW 6<sup>th</sup> Ave, Canby, where I am the homeowner.

OPENING COMMENTS: I had submitted my comments to the Planning Staff by the September 27 deadline for this land use application. Allen made some design changes after my comments were submitted, and I would like permission from the Chair to provide the council with my corresponding updates. It's just one page, front and back.

I want to thank both the Planning Staff and Allen Manuel for recent design changes to the proposed subdivision, which now includes a sidewalk and a clustered garbage bin area. I appreciate the efforts that were required to make these available.

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Regarding the Staff Report, I would like to make the following comments:

Lot Sizes and Lot Size Averaging in the R-1.5 Zone.

Page 11 of the Staff Report says "A minimum lot size of 5000 square feet and a maximum of 6500 square feet is allowed under the provisions of the R-1.5 zone for single family dwellings", and advises that lot size averaging is allowed for the single family homes but also says the Planning Director has determined lot size averaging should not be applied to the 4 common wall units.

Page 13 of the Staff Report indicates that "the criterion of lot size and lot size averaging has been met, with an average lot size of 5,646 {square feet} and only 1 lot {is} below the minimum lot size standard."

I disagree with this statement. The handout I have given to you shows Canby Ordinance 16.18.030.B.1 (a) which says that the Planning Commission may approve an exception to the minimum and maximum lot area standards as a part of a subdivision or partition application when ALL OF THE FOLLOWING STANDARDS ARE MET. It indicates "the average area of all lots is **exclusive of** (that means to subtract) the land in **public use areas** and areas in which



**building is not permitted under local, state, or federal laws or regulations,** to obtain the LOT SIZES, to average.

Examples of areas designed for public use in a subdivision are parks, sidewalks, and visitor parking areas. This proposal has no park, so sidewalks and visitor parking areas.

Canby's **local regulations** that prohibits building within a planned right-of-way of a new street is:

**16.86.020** Street Alignments (D).

No building permit shall be issued for the construction of a new structure within the planned right-of-way of a new street, or the appropriate setback from such a street as established in Division III

And the definition of Street is:

**16.04.570** Street. *Street means the entire width between the right-of-way line of every way which provides for **public use** for the purpose of vehicular and pedestrian traffic, and the placement of utilities and including the terms road, highway, lane, place, avenue, alley, or other similar designations.*

We know it is also prohibited to build on or in Utility Easements, and the street in this proposal is the Utility Easement, which is a second reason to subtract the street area from lot size.

You can see from the applicant's diagram of the proposed subdivision (on the reverse side of my handout) that the street, sidewalks and visitor parking areas are located inside the property lines of the lots with the exception of Lot 9. This demonstrates the applicant has chosen to utilize the ordinances for Joint and Cross Access, which is encouraged by the City of Canby. The use of Joint and Cross Access is a savvy design maneuver, but it does **not remove the need to obey other ordinances**, such as the Lot Size Averaging calculation.

(Joint & Cross Access: 16.10.070 and 16.46.040)

The Staff Report indicates they have calculated the Average Lot Size for the Single Family Residences (not including the common wall units) as 5,646 square feet, but they did not subtract the required areas.

Implementing the regulation in 16.18.030.B.1 (a) reduces the Average Lot Size to 4,407 square feet, which is below the required 5,000 square foot minimum. Six of the 8 single family residences are less than 5,000 square feet, with only the 2 existing lots being in compliance.

Canby Ordinance 16.18.030 (b) indicates: No lot shall be created that contains less than four thousand square feet (in this zone). You can see on my chart, the net square feet of six of the single family lots are only:

2,319            3,990            4,260            3,687            3,350            and 3,321 sq ft.

It is amazing how much the “average” size is skewed by the lots for the two existing homes, which are the oversized lots of 6,266 and 8,109 net square feet.

If you choose to believe that the sidewalks and visitor parking area are not “public areas”, the average lot size of the Single Family Residences is still only 4,752, and still below the 5,000 square foot minimum.

The Staff Report also indicates *“The Planning Director determined that it is not the intent of the city ordinances to include the common wall lots in the lot size average calculations. The lot size averaging applies only to the single-family detached homes”* and the Staff Report indicates the square footage of the townhouses is 3,000 each.

Since the 4 single family residences with common wall construction are so similar in size, actually averaging the lots would make little difference; but there is no indication in the ordinance (nor the Staff Report) that the **area of a lot** containing a single family home with a common wall is calculated any differently than any other single family dwelling type. That is, we must subtract the street right-of-way and public use areas (even if we don’t go the extra step to average those numbers). Therefore, the net area of the 4 units with common walls are as follows: Lot #1 and #2 each have 2,722 square feet, Lot #3 has 2,721 square feet and Lot #4 has 2,758 square feet, making 100% of them out of compliance, which requires a minimum of 3,000 square feet.

I wanted to see I had correctly assumed that townhouse lot areas were calculated the same as other single family dwellings and researched the websites of the Planning Commissions for 21 cities in Clackamas and Washington Counties to see how other cities handled this situation. I viewed the websites in Clackamas County for Estacada, Gladstone, Happy Valley, Lake Oswego, Milwaukie, Molalla, Oregon City, Sandy, Tualatin, West Linn and Wilsonville and in Washington County for Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, North Plains, Sherwood, and Tigard. I learned that the various municipalities use different names of “Lot



Size", "Lot Area", and "Net Buildable Acre" but the definitions were consistent: "the horizontal area within the lot lines of a lot, exclusive of streets and land dedicated to public uses."

None of the 21 municipalities designated a different calculation method for single family homes with common walls. Several of the municipalities cited they had adopted their definitions from the same origin, which was the Metro Urban Growth Management Functional Plan. I saved the web links and took screenshots of these web pages, if anyone wants to see them.

I am not certain why the Planning Staff has not enforced ordinance 16.18.030.B.1 (a) when they did enforce the other portions of that same ordinance that follow, further down on the same page. I also delivered my concerns regarding the use of gross lot size versus net lot size to their attention in a 9 page document I delivered to them on September 25.

The Staff Report says on page 13 that "*a public benefit must be demonstrated in order to allow more than 10% of the lots to be outside of the minimum or maximum lot area. A revised plan submitted by the applicant now shows only one lot below the minimum lot size standard which is within the allowed 10% of the 8 single-family detached homes planned. This criterion is met.*"

I disagree that the criterion has been met, since 100% of the townhomes and 6 of the 8 single family homes are out of compliance with lot size.

Page 6 of the Staff Report reads "*The detached single-family primary design, with 2 common wall townhomes is not all that out of character with the neighboring properties but is at a significant increased density. All but the attached single-family homes match the intended future use of the area as called for by the Comprehensive Plan land use map. The attached homes can certainly be approved through the Conditional Use Permit if the design is considered satisfactory. The market typically drives when an area is ready to transition to a new use.*"

My response is that the design of the entire subdivision is not satisfactory as it is currently presented, regardless if the market is driving the transition to a new use.

I note the Staff Report indicates on Part 1, page **10** "***A queuing analysis would be useful to better inform how much delay is caused by school buses on SE 6th Avenue***" and I wonder if one will be requested?

And as I finish, I am curious why the Planning Staff has applied the sidewalk standards from Section 16.10.070(B)(8) which indicates sidewalks are required on one side of the street, when this a *subdivision application*, and I believe the correct Code to apply is the Subdivision Design Standards in Code 16.64, where 16.64.015 (E) and 16.64.70(G) both say streets in subdivisions

are required to have sidewalks on both sides. Further, the Subdivision Design Standards indicate specific requirements for the following that do not appear to have not been applied to this application:

Street Alignment 16.64.010. D

Intersection Angles 16.64.010. F

Marginal Access Streets (screen planting) 16.64.010.J

Planting Easements 16.64.010.M

Utility Easements required on all street lot lines 16.64.030.A

Street Lights 16.64.070.B (Improvements)

Street Trees 16.64.070.C.3 (Improvements)

Street Lighting System 16.64.070. J (Improvements)

Street Tree Planting 16.64.070.K (Improvements)

Thank you for listening. I appreciate the opportunity to share these thoughts with you.

Regina Taylor  
173 SW 6<sup>th</sup> Ave  
Canby, OR 97013  
503-989-9221

## Laney Fouse

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**From:** Kim Scheafer  
**Sent:** Tuesday, October 10, 2017 11:59 AM  
**To:** Laney Fouse; Bryan Brown  
**Subject:** Fwd: Comments on Land Use: File: ZC 17-02/SUB 17-04/CUP 17-05

Kim Scheafer, MMC  
City Recorder  
City of Canby  
222 NE 2nd Avenue  
PO Box 930  
Canby, OR 97013  
503.266.0733  
[www.canbyoregon.gov](http://www.canbyoregon.gov)

Begin forwarded message:

**From:** Robert Taylor <[taylorbobt@yahoo.com](mailto:taylorbobt@yahoo.com)>  
**Date:** October 10, 2017 at 11:48:19 AM PDT  
**To:** "ScheaferK@canbyoregon.gov" <[ScheaferK@canbyoregon.gov](mailto:ScheaferK@canbyoregon.gov)>, "[taylorbobt@yahoo.com](mailto:taylorbobt@yahoo.com)" <[taylorbobt@yahoo.com](mailto:taylorbobt@yahoo.com)>  
**Subject: Comments on Land Use: File: ZC 17-02/SUB 17-04/CUP 17-05**  
**Reply-To:** Robert Taylor <[taylorbobt@yahoo.com](mailto:taylorbobt@yahoo.com)>

Good Morning!!

Would you please accept and include these comments for the Canby City Council's consideration on the South Ivy Park proposed development.

A printed copy will be available at the Council Meeting on 18 October 2017.

Many Thanks,

Bob Taylor  
(503) 989-7033

**Canby City Council**  
**Canby, Oregon**

**Comments on Land Use: File: ZC 17-02/SUB 17-04/CUP 17-05**

My name is Robert Taylor and I reside at 173 SW 6<sup>th</sup> Avenue in Canby, Oregon.

Thank You for your time and consideration.

My Wife and I live almost directly across from the exit from the South Ivy Park Subdivision's proposed Private Road on to SW 6<sup>th</sup> Avenue.

I understand that the concern of the Canby Planning Commission and the Canby City Council is Traffic, Parking and Liveability within the City of Canby. Plus, of course, all the applicable Codes, Comprehensive Plan and other requirements.

I, also, understand and support that every property owner or developer has the right to improve their property within those limitations.

The initial proposed plan that was revealed to the attending local residents at the Developer's Neighborhood Planning Meeting failed in many ways.

At that meeting, the developer provided a Written Narrative of his intentions for the Proposed South Ivy Park Subdivision and I responded to the Canby Planning Commission with my concerns by referencing his Written Narrative (You may view my comments in the Planning Commission Packet for the 10/9/2017 Meeting.

Other local residents also provided comments or concerns for the Planning Commission to consider and some improvements were made, some last minute changes to the plan for the proposed South Ivy Park Subdivision were available just a couple of days before the Canby Planning Commission Public Meeting along with additional requirements levied by the Canby Planning Commission. I appreciate that the developer made those changes.

However, some concerns still remain and were raised at the Public Planning Commission Meeting.

#### TRAFFIC:

1. The Traffic Study determined that 42 daily ingresses/egresses from the existing homes on the area of the proposed subdivision would no longer exit to South Ivy Street. South Ivy Street is an arterial roadway and is due for significant upgrades in that area (Including the Township Road/South Ivy Street intersection) and private resident exits to South Ivy is highly discouraged. However, the proposed subdivision would generate 142 daily ingresses/egresses on to SW 6<sup>th</sup> Avenue where there were previously 0 (Zero) ingresses/egresses. SW 6<sup>th</sup> Avenue is the first East/West traffic corridor South of US Highway 99E and is relatively heavily trafficked (Including by School Buses). With the increased traffic due to those coming and going from the proposed subdivision, it would appear that some of the problems with the Township/South Ivy intersection would simply migrate South to SW 6<sup>th</sup> Avenue/South Ivy Street intersection. There is no indication that the Traffic Study considered this issue. Also, the traffic on SW 6<sup>th</sup> Avenue is considerably different during the school year as many Canby High School drivers (and pedestrians) utilize SW 6<sup>th</sup> Avenue during their morning and evening commute as do the School Buses.

2. The exit of the proposed Private Road to SW 6<sup>th</sup> Avenue may be within 150 feet of where SW 6<sup>th</sup> intersects with South Ivy Street. The Southeast corner of the lot directly to the West of the Private Road exit is shown on the Lot Survey Plan diagram as being 150 feet from South Ivy Street and the Code requires 150 feet but is unclear where the measurements are to be determined (from centerline or other starting point) but the Private Road is within the required 150 feet of separation and may, or may not, require an Exception to be granted.

3. The proposed Private Road raises many different issues and they have all been raised to the Planning Commission but include:

- a. The Private Road is a catch basin for stormwater run-off.
- b. The Private Road is to be posted "No Parking" but that condition will not be enforced by the Canby Police Department and concerns have been raised (and addressed) about Emergency Vehicle and Garbage Truck access.
- c. The Private Road has no 'buffer space' between the road and the property line of the lot directly to the West of its exit to SW 6<sup>th</sup> Avenue.
- d. The increase from 0 (Zero) to 142 ingresses/egresses to SW 6<sup>th</sup> Avenue.

#### PARKING:

Parking will be limited to 'on lot' parking for each individual lot owner's property and 4 overload parking spaces on Lot #12. Visitors will have to find their own parking within the proposed subdivision, park illegally on the Private Road or park on SW 6<sup>th</sup> Avenue and walk into the development. Illegal parking is expected and will hinder regular, Emergency or Utility (Garbage) traffic within South Ivy Park subdivision.

#### LIVEABILITY:

1. This area is a problem area on the Canby Stormwater Plan and the control of stormwater must be a high priority to capture the run-off to protect the neighboring properties from that hazard as well as the residents of South Ivy Park subdivision. The Private Road is the catch basin and must have adequate gradient and curbs to funnel the water to the 2 (Two) drains that must be at the lowest elevation within the subdivision on Lots #11 and 12.
2. An adequate Maintenance Agreement must be in place for the Private Road as the Fire Department has indicated that they will not utilize a non-maintained road.
3. The developer indicated at the Neighborhood Planning Meeting that the City of Canby Public Works Department would maintain the filters on the stormwater drains within the subdivision. Since this is a Private Road, the maintenance by city personnel should be verified.

#### SAFETY:

It was just shortly before the Public Planning Commission Meeting that an updated proposed Lot Plan was provided indicating that ADA sidewalks would be



included in the development along with a Tree Planting Schedule but no street lighting has been addressed.

#### LOT SIZE CALCULATION:

It was not determined how 'Lot Size' calculations should be done and whether the proposed lot sizes would meet Code requirements. If the proposed Private Road is subtracted from the indicated Lot Size, the average lot size required by the Code is not met. Individual lot sizes, in some cases, are especially deficient. Notably, Lot #5 which has the entire Private Road width on the vast majority of its frontage included in its Lot Size calculation and Lot #10 where the Private Road exits to SW 6<sup>th</sup> Avenue occupies one quarter or more of its platted lot. Also, Lot #12 had two-thirds of the Private Road on its frontage plus dedicate overload parking for four vehicles factored into its lot size. It should also be recognized that the 2 existing single family residences that are to remain occupy the two largest lots in the proposed subdivision and skew the Average Lot Size calculations. The Canby City Planning Director stated that he was not certain if the square footage of the street could be included in the size of the lots, but chose to make a determination. I do not agree that a land use decision which will affect the community into the future, should rely on inadequate information. Let's research the information and make an educated decision.

We understand that this piece of land in Canby will be developed and commend the developer for working with the City of Canby to correct deficiencies and issues raised toward the planned South Ivy Park subdivision. Traffic is expected to increase as the City grows and since we are one of the residents most affected by the traffic flowing in and out of the proposed South Ivy Park Private Road we will learn to live with it. But we expect the City to mitigate the impact on us and the SW 6<sup>th</sup> Avenue/South Ivy Street intersection as much as possible based on an accurate Traffic Study.

The City of Canby Planning Commission seemed to appear uncertain of the interpretation and application of a number of issues raised in referencing the City of Canby Comprehensive Plan, applicable Codes and Policies, and whether an adequate Traffic Study had been completed and is referring the decision to the Canby City Council for resolution. If the Canby City Planning Commission is unclear on any of the interpretations relating to lot size, the decision to approve this land use application should be deferred until all uncertainties are resolved.

A well planned community considering Traffic, Parking and Liveability at South Ivy Park would be a great addition to the City of Canby. It should be one that you would be proud to have in your neighborhood.

Again, thank you for your time and consideration.

Robert Taylor  
173 SW 6<sup>th</sup> Avenue,  
Canby, OR 97013  
[taylorbobb@yahoo.com](mailto:taylorbobb@yahoo.com)

## PUBLIC RECORDS LEGAL DISCLOSURE

This email is a public record of the City of Canby, Oregon, and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law.  
This email is subject to the State Retention Schedule.

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## **CITY OF CANBY –COMMENT FORM**

If you are unable to attend the Public Hearing, you may submit written comments on this form or in a letter addressing the Planning Commission. Please send comments to the City of Canby Planning Department:

By mail: Planning Department, PO Box 930, Canby, OR 97013  
In person: Planning Department at 222 NE 2<sup>nd</sup> Ave, Canby, OR 97013  
E-mail: [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov)

Written comments to be included in the **Planning Commission's meeting packet are due by Noon on Wednesday, September 27, 2017.** Written comments to be included **City Council's meeting packet are due by Noon on Tuesday, October 10, 2017.** Written comments for the Planning Commission or the City Council can also be submitted up to the time of the Public Hearings, and may be delivered in person during the Public Hearings.

**Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel**

### **COMMENTS:**

SEE MEMORANDUM DATED AUGUST 28, 2017

NAME: HASSAN IBRAHIM  
ADDRESS: 6655 SW HAMPTON ST, SUITE 210  
EMAIL: hassan@curran-mcleod.com DATE: 8-28-2017

### **AGENCIES: Please check one box and fill in your Name/Agency/Date below:**

- ☐ Adequate Public Services (of your agency) are available  
☒ Adequate Public Services will become available through the development  
☒ Conditions are needed, as indicated  
☐ Adequate public services are not available and will not become available  
☐ No Comments

NAME: HASSAN IBRAHIM  
AGENCY: CURRAN-MCLEOD, INC  
DATE: 8/28/17

Thank you!


CURRAN-McLEOD, INC.  
CONSULTING ENGINEERS

6655 S.W. HAMPTON STREET, SUITE 210  
PORTLAND, OREGON 97223

August 28, 2017

**MEMORANDUM**

**TO:** Mr. Bryan Brown  
City of Canby

**FROM:** Hassan Ibrahim, P.E.   
Curran-McLeod, Inc.

**RE:** **CITY OF CANBY**  
**S IVY PARK SUBDIVISION (CUP 17-05/ZC 17-02/SUB 17-04)**

We have reviewed the submitted preliminary plans on the above mentioned project and have the following comments:

1. S Ivy Street is a County arterial street, the existing right-of-way width of 60' is adequate for completing the half street improvements. The half street improvements shall be built to City Standards with a 46-foot paved street width, 6-foot curb tight concrete sidewalk. An asphalt tapers at the rate of 10:1 shall be constructed to match existing asphalt surface at both ends of the street. The improvements shall also include curbs, sidewalks, street lights and utilities in conformance with section 2.207 of the City of Canby Public Works Design Standards dated June 2012. Clackamas County approval will be needed for those improvements.
2. The common driveway on SE 6<sup>th</sup> Avenue shall have a commercial driveway approach using 6" minimum concrete thickness with reinforcements over 4" min of crushed rock base.
3. An erosion control permit will be required from the City of Canby prior to any on-site disturbance.
4. A demolition permit will be required from the City prior to demoing the existing residence on lot #5.
5. It is not clear how the drainage runoff from the private drive is collected and how it will be disposed. It needs to be clarified during the design review phase. The storm drainage analysis shall meet Chapter 4 of the City of Canby Public Works Design Standards dated June 2012. A final drainage report shall be submitted to the city at the final design phase

Mr. Bryan Brown  
August 28, 2017  
Page 2

for review and approval. Any UIC structures must be Rule Authorized by the Department of Environmental Quality (DEQ) prior to their installation and approval of the construction plans. A copy of the DEQ approval must be submitted to the City.

6. There is an existing sanitary sewer on S Ivy Street and SE 6<sup>th</sup> Ave to be used as the collection system from this development.
7. The submitted storm drainage analysis appears to meet Chapter 4 of the City of Canby Public Works Design Standards dated June 2012. However, a final drainage report will be need at the final design phase.
8. Any existing domestic or irrigation wells shall be abandoned in conformance with OAR 690-220-0030. A copy of WRD abandonment shall be submitted to the City.
9. Any existing on-site sewage disposal system shall be abandoned in conformance with Clackamas County WES regulations. A copy of the septic tank removal certificate shall be submitted to the City.

Should you have any questions or need additional information, please let me know.



## Laney Fouse

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**From:** Todd Gary <tgary@canbyfire.org>  
**Sent:** Wednesday, September 27, 2017 11:44 AM  
**To:** Bryan Brown  
**Cc:** Sisul Engineering (patsisul@sisulengineering.com); Allen Manuel (amanuel@canby.com)  
**Subject:** Re: South Ivy Park Subdivision

I would like to see a over lay of the 28 inside radius and a 48 outside radius for turns on the plans for access . The turnaround in the proposed developments meets our requirements of the fire code. It is a very tight area with no parking on the streets. Garbage days are always a problem in narrow roadways when people put Garbage, recycling and yard debris containers on the street it makes it tough for response. but it is normally only 1 day a week so we kind of play the odds that 6 days a week it will be totally clear.

*Todd Gary*

Division Chief Community Risk Reduction

Canby Fire District

503-266-5851 / 503-969-7459

[www.Canbyfire.org](http://www.Canbyfire.org)

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**From:** Bryan Brown <BrownB@canbyoregon.gov>  
**Sent:** Wednesday, September 27, 2017 11:30 AM  
**To:** Todd Gary  
**Cc:** Sisul Engineering (patsisul@sisulengineering.com); Allen Manuel (amanuel@canby.com)  
**Subject:** South Ivy Park Subdivision

Todd,

I would sure appreciate a comment sheet back from you regarding adequacy of emergency access to serve this proposed subdivision as I just received comments from Canby Disposal voicing concerns that there "does not appear to be an adequate turning radius for his vehicles which are as big as a fire truck". The internal radius is not actually indicated. The thought is the upper east/west private drive becomes the T-turnaround for vehicles but not sure if radius is adequate.

Can you comment if this meets your needs ASAP?

Bryan  
**Bryan Brown | Planning Director**  
City of Canby | Development Services  
222 NE 2<sup>nd</sup> Avenue | PO Box 930  
Canby, OR 97013  
ph: 503-266-0702 | fax: 503-266-1574  
email: [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov) ; website: [www.canbyoregon.gov](http://www.canbyoregon.gov)  
Send applications to: [PlanningApps@canbyoregon.gov](mailto:PlanningApps@canbyoregon.gov)

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PUBLIC RECORDS LAW DISCLOSURE

This email is a public record of the City of Canby and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law. This email is subject to the State Retention Schedule.

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PUBLIC RECORDS LEGAL DISCLOSURE

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M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

MEMORANDUM

TO: Bryan Brown  
FROM: Robert Hixson, Development Engineering  
DATE: September 25, 2017  
RE: CUP 17-05, ZC 17-02 and SUB 17-04  
4-1E-4AB-6300, 7100 and 7200

Engineering staff has visited the site and reviewed the submitted materials. This office has the following comments pertaining to this proposal:

**FACTS AND FINDINGS:**

1. Clackamas County has received an application from the City of Canby for a 12 lot subdivision for properties located at the northwesterly corner of Ivy Street and Sixth Avenue. Access for all lots is proposed to Sixth Avenue.
2. Ivy Street is under the jurisdiction of Clackamas County and is classified as a major arterial roadway. Sixth Avenue is under the jurisdiction of the City of Canby and is classified as a local street. Due to the higher functional classification of Ivy Street, access is appropriately proposed only to Sixth Avenue, with all existing vehicular accesses to Ivy Street being permanently closed and removed with development of the subdivision.
3. The City of Canby is partnering with Clackamas County and the Oregon Department of Transportation to reconstruct Ivy Street between Highway 99E and 13th Street. An existing agreement for this project includes a requirement that the City assume jurisdiction of the aforementioned length of Ivy Street at the conclusion of the project.
4. As the Ivy Street frontage for this subdivision will be under the jurisdiction of the City of Canby in the near future, Clackamas County will defer to City requirements for street and frontage improvements for this subdivision.

**CONCLUSION:**

If Ivy Street remains under County jurisdiction at the time construction permits are sought, Clackamas County will process the permits for the Ivy Street roadway improvements, including frontage improvements. If Ivy Street is transferred to the City of Canby prior to permits being sought, the City will be the permitting authority.

# CITY OF CANBY –COMMENT FORM

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**In person:** Planning Department at 222 NE 2<sup>nd</sup> Ave, Canby, OR 97013  
**E-mail:** [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov)

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**Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel**

**COMMENTS:**

[illegible]

NAME: \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

EMAIL: \_\_\_\_\_ DATE: \_\_\_\_\_

***AGENCIES: Please check one box and fill in your Name/Agency/Date below:***

- ☐ Adequate Public Services (of your agency) are available
- ☐ Adequate Public Services will become available through the development
- ☐ Conditions are needed, as indicated
- ☐ Adequate public services are not available and will not become available
- ☐ No Comments

NAME: \_\_\_\_\_

**AGENCY:** \_\_\_\_\_

DATE: \_\_\_\_\_

**Thank you!**



9-26-17

To: City of Canby Planning Commission  
222 Ne 2<sup>nd</sup> Ave - Canby, Or 97013

Re: Development of South Ivy Street and SW 6<sup>th</sup> Ave  
Canby, Oregon (Allen Emanuel).

We would like to express our concerns in reference to the above referenced Development. We believe the City of Canby Planning Commission and the City of Canby have Canby's residents best interest and concern for traffic and keeping Canby safe, livable. We do not feel that this proposed development from Allen Emanuel meets those standards.

1: The lot sizes for the proposed development do not conform to the minimum lots sizes required by the Canby Municipal ordinances. We have attached a form showing the size of each lot and the majority of them are less than 5000 square feet. This does not appear to meet zoning requirements.

2. The South Ivy Street Traffic Corridor is an acknowledged problem and is part of **Special Concern Area "C" in the Comprehensive Plan**, as is the Township road/South Ivy Street intersection, from the proposed plan we understand that the traffic from all these additional homes/townhomes would enter and exit off of SW 6<sup>th</sup> Ave on a 20 foot entrance, this will be a huge impact of traffic on SW 6<sup>th</sup> Ave and the residents that live in the surrounding areas, SW 6<sup>th</sup> is also the street that many of the school buses use which already impacts residents trying to turn left from 6<sup>th</sup> on to Ivy, and this does not take into consideration the foot traffic of pedestrians and school kids.

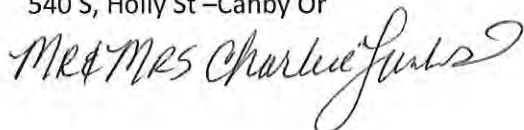
3. According to the proposed plan the access to this proposed development will be a new private road, Private roads like the South Ivy Park access road are not maintained by the City of Canby nor are they enforced by the City Law Enforcement. A resident, visitor that parks on a private road would likely present major concerns for Emergency, Fire, and Law enforcement. A structure fire in a crowded development would endanger nearby residences on top of children playing in the street due to lack of yard space and sidewalks.

4. Will Canby Disposal be able to get down a 20' private road with is configured as a "T" with dead ends with individual residences requiring pick-up of three cans each, will mail delivery be able to delivery down that private road or will they have to put all their garbage and mail boxes out on SW 6<sup>th</sup>? And then what/who's residence on SW 6<sup>th</sup> will all those additional cans and mailboxes have to be in front of?

This area is designated area of **Special Concern Area C**, We feel that this proposed development will not improve Area C – allowing 12 residences to be in this small of an area with only one exit/entrance will just cause chaos, overcrowding, safety issues and traffic and parking problems with in this already quiet Canby neighborhood.

Thank you for your consideration

Charlie and Terri Yankus  
540 S, Holly St –Canby Or



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**Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel**

**COMMENTS:**

Please See attached Comments

**NAME:** Charlie & Terri Yankus  
**ADDRESS** 540 S. Holly St Canby OR 97013  
**EMAIL:** tyankus@canby.com **DATE:** 9/27/17

**AGENCIES: Please check one box and fill in your Name/Agency/Date below:**

- ☐ Adequate Public Services (of your agency) are available
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- ☐ Conditions are needed, as indicated
- ☐ Adequate public services are not available and will not become available
- ☐ No Comments

**NAME:** \_\_\_\_\_  
**AGENCY:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

**Thank you!**

Lot No.	Use	Lot Size (sq ft)	Minus Roadbed (approx.)	Net Lot Size
1	Townhouse	3,002	-125 sq ft	2,877 sq ft
2	Townhouse	3,002	-125 sq ft	2,877 sq ft
3	Townhouse	3,001	-125 sq ft	2,876 sq ft
4	Townhouse	3,038	-125 sq ft	2,913 sq ft
5	SFD (new)	4,737	-1400 sq ft	3,337 sq ft
6	SFD (new)	4,361	-400 sq ft	3,961 sq ft
7	SFD (new)	5,168	-350 sq ft	4,818 sq ft
8	SFD (existing)	7,106	-500 sq ft	6,066 sq ft
9	SFD (existing)	8,109	- 0 sq ft	8,109 sq ft
10	SFD (new)	5,647	-1600 sq ft	4,047 sq ft
11	SFD (new)	4,350	-1125 sq ft	3,225 sq ft
12	SFD (new)	5,691	-900 sq ft	4,791 sq ft
Total		57,212 sq ft		49,897 sq ft
Average Lot Size		4,768 sq ft		4,158 sq ft

**Note 1: Remove Lots 8 & 9 (existing SFDs) 49.897 – 14,175 = 35,722 (3,572 sq ft avg lot size)**

**Note 2: Lot 12 has 4 Dedicated Visitor Parking Spaces. 35,722 – 760 sq ft (3,496 sq ft avg lot size)**

September 27, 2017

City of Canby Planning Commission

Community Development & Planning

222 NE 2<sup>nd</sup> Ave

Canby, OR 97013

I, Brittany Morrison, currently reside at 361 S Holly St and I have the following concerns pertaining to the planned development of South Ivy Park (A. Manuel) Development in the area of South Ivy Street & SW 6<sup>th</sup> Avenue in Canby, Oregon. I understand that the City of Canby Planning Commissioners and the Canby City Council have an ongoing interest and concern for traffic, parking, and live ability in Canby and that is immensely appreciated. However, I feel that the planned development fails to meet those same standards or share the same concerns.

- **Concern #1:** The S. Ivy Street traffic corridor is a well-known problem and is also part of special concern area "C", as is the Township Road/South Ivy Street intersection, but moving the traffic exit from the new development to SW 6<sup>th</sup> Avenue does not seem to resolve any of these issues, more just relocate them and possibly cause more issues on SW 6<sup>th</sup> Avenue.
- **Concern #2:** There was a TPR Analysis done on August 10<sup>th</sup>, 2017 that was based on existing traffic flow/numbers that currently exit to South Ivy Street, but did not consider the entire flow from the proposed South Ivy Park to South Ivy Street would then be routed to SW 6<sup>th</sup> Avenue, nor did it occur during school time which creates more congestion 9 months out of the year.
- **Concern #3:** Private roads like South Ivy Park access roads are not maintained by the City of Canby, nor are they policed/enforced by the City Law Enforcement, thus enforcement would most likely be by "No Parking" signage, which is easily ignored. A resident, visitor or party attendee that parks on the private road would likely present major concerns for Emergency Responders such as Fire, Ambulance and/or Law Enforcement.
- **Concern #4:** I see no inclusions in the proposed South Ivy Park subdivision development plan that addresses considerations for citizens that are handicapped, elderly and/or of low income.
- **Concern #5:** I noticed that there are two "common wall" townhouses proposed, will there be a requirement for them to be fire sprinkler protected seeing as how fire response access is going to be limited?
- **Concern #6:** I see no provisions for ADA accessible sidewalks, or otherwise, within the South Ivy Park, or for the pedestrian access/exit to South Ivy Street.
- **Concern #7:** I see no provisions for tree planting within South Ivy Park, only removal of some trees.
- **Concern #8:** I do not see any provisions for street lighting within South Ivy Park.
- **Concern #9:** What will prevent the City from imposing Flag Lot restrictions on this land-locked piece of property? And what attributes prevent it from being categorized as a Flag Lot?

- **Concern #10:** It has been proven many times over that townhouses can reduce the value of nearby homes, so why should I have to sacrifice my home's value so that an unnecessary subdivision can be built? Am I going to be reimbursed the value my home is reduced by?

In conclusion I want to say that I find it hard to believe this development would be called a "park" as in South Ivy "Park". It looks like the epitome of greed in which someone is trying to get the most bang for the buck, but without the necessary consideration and concern for traffic, parking and the quality of life that the City of Canby seeks to attain and maintain.

The proposed subdivision will be overcrowded, both with people & cars, along with an overall chaotic mess with the 12 residences crammed together in a land-locked development, all with only a single access point for vehicles. There are multiple exemptions, variances and other considerations that will need to be granted if the developer attempts to proceed as planned. This area was singled out as an area of Special Concern (Area C) and the purpose of development is to improve, yet I do not see any aspects of the proposed plan that will improve Area C.

I truly do consider myself to be an open-minded person and I would love to see the wonderful city of Canby thrive, but the vision that the City has for how the overall Canby community should be developed and this proposed plan are not equal, and this is not the right development plan for this area.

I sincerely appreciate your time and consideration.

Sincerely,

Brittany Morrison  
361 S. Holly St.  
Canby, OR 97013  
503-914-9752  
brittanyb@canby.com



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Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

### COMMENTS:

I am concerned the proposed project would endanger the neighborhood. With the increased traffic coming out onto 6<sup>th</sup> St. from 10 more dwellings it will be difficult to get out of the neighborhood & could be unsafe in an emergency situation. Also I doubt fire trucks would even go into the proposed development, again endangering the neighborhood. Where are the visitors to the dwellers of the proposed development going to park? Probably on 6<sup>th</sup> St. making Canby feel like Portland. Kids from surrounding schools walk down 6<sup>th</sup> & also school buses. With the Astoria traffic as a result of this proposed development our kids would be more at risk. I seriously question the traffic study that was done.

NAME: Bonnie Edwards  
ADDRESS: 420 S. Holly St., Canby, OR 97013  
EMAIL: \_\_\_\_\_ DATE: 9-27-2017

AGENCIES: Please check one box and fill in your Name/Agency/Date below:

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September 27, 2017

City of Canby Planning Commission

Community Development & Planning

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Brittany Morrison  
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Canby, OR 97013  
503-914-9752  
brittanyb@canby.com

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NAME: Bonnie Edwards  
ADDRESS: 420 S. Holly St., Canby, OR 97013  
EMAIL: \_\_\_\_\_ DATE: 9-27-2017

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- ☐ Conditions are needed, as indicated
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NAME: \_\_\_\_\_  
AGENCY: \_\_\_\_\_  
DATE: \_\_\_\_\_

Thank you!

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**Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel**

COMMENTS:

Please see items #1 and #2 attached.

NAME: Larry Graft  
ADDRESS: 580 S Ivy Canby OR 97013  
EMAIL: LAG2131@AOL.Com DATE: 9-26-2017

**AGENCIES: Please check one box and fill in your Name/Agency/Date below:**

- ☐ Adequate Public Services (of your agency) are available  
☐ Adequate Public Services will become available through the development  
☐ Conditions are needed, as indicated  
☐ Adequate public services are not available and will not become available  
☐ No Comments

NAME: \_\_\_\_\_  
AGENCY: \_\_\_\_\_  
DATE: \_\_\_\_\_

Thank you!



Canby Planning Commission and City Council  
9/26/2017

#1

Re: CUP 17-05/ZC 17-02?SUB 17-04 S Ivy Prk Subdivision, Allen Manuel


I am not against the applicants right to do some development of the subject property but am opposed to this proposal as requested. I strongly feel do to the number of potential residences it will have a considerable negative impact on the surrounding properties especially traffic flow.

The request to re-zone to CR does nothing to allow anything regarding Uses permitted Outright with the exception of relaxed building standards for smaller lot sizes and taller building height. In other words more bang for the buck..Nothing in this proposal “ Provides a mixture of light commercial and residential activities connection two areas of heavier commercial usage, this category is intended to provide unique opportunity for mixed uses while maintaining special focus on the traffic problems of s Ivy Street.

If this was approved without deed restrictions as proposed what would prevent someone from requesting a change from what is now proposed to something else allowable under CR zoning even if under conditional use thus providing even a higher traffic impact than what this will. The applicant stated he is not planning on developing all the lots but selling some of them.

SW 6<sup>th</sup> Ave is a major collector street for S Elm to S Ivy. Even the School busses utilize this street as evident when they line up 5 to 7 deep to access S Ivy. If Canby disposal refuses to drive into the narrow 20ft private road to the proposed 11 new properties the potential for 33 refuse cans - garbage, yard debris and recycling would be placed somewhere on SW 6<sup>th</sup>. This is how they now do at 387 - 395 S Ivy. All the cans line S Ivy St.

Is their really a need for this request for a change from R-1 to CR. I don't see a small business like what currently lines some properties along S Ivy St. A tax prepare office, lock smith, beauty salon small day care etc. I just see this applicants request to further build additional housing in an already established R-1 area.

  
Larry Graff  
580 S Ivy

# 2

Comments re: Cup 17-05/ZC 17-02/SUB 17-04 Ivy Park Subdivision, Allen Manuel


At the current time a cluster mailbox system located on the applicants property serves 8 properties on S Ivy Street. The 533, 553, & 583 are the applicants properties, with the other 5 (574, 580, 590, 592, & 596) properties located across on the East side of S. Ivy Street. Mail has been delivered to me at that cluster mail box location of 580 S. Ivy since 1980.

This area of S Ivy along with all the properties continuing south on Ivy to 13<sup>th</sup> are what I have been told by Kerry Jeffery Canby postmaster are considered rural route delivery. The carrier only delivers mail one way on a street on a rural route, thus all mail boxes along this S Ivy st. are all required to be on the West side of the street from I believe to be SW 3<sup>rd</sup> to 13<sup>th</sup>.

The cluster box is located on the applicants new lot 7 next to the service pole of applicants proposed South Ivy Park map. The applicant stated at his neighborhood meeting of 9/13/17 he planned to install a new cluster box system at the proposed entrance of the new subdivision on SW 6<sup>th</sup> Ave, for HIS 12 properties and did not know what we needed for our 5 properties

According to the Postmaster The Post Office which has not yet been consulted on this is the governing party as to the location and placement of any new or changes in any existing cluster box systems. It is unknown at this time as what property address would be given to the proposed new subdivision - are they SW 6<sup>th</sup> Ave or S. Ivy Street ?????

It is a consensus of opinion from the 574, 580, 590, 592, & 596 property owners that any changes or requirements for moving, installing new or whatever from the Post Office that affect any and all of the current cluster box of 533, 553, 583 of applicants properties on the west side of Ivy and the Individual properties of 574, 580, 590, 592, and 596 located on the East side of Ivy be at the sole expense of the applicant.

  
Larry Graff  
580 S Ivy

## CITY OF CANBY --COMMENT FORM

If you are unable to attend the Public Hearing, you may submit written comments on this form or in a letter addressing the Planning Commission. Please send comments to the City of Canby Planning Department:

By mail: Planning Department, PO Box 930, Canby, OR 97013  
In person: Planning Department at 222 NE 2<sup>nd</sup> Ave, Canby, OR 97013  
E-mail: [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov)

Written comments to be included in the Planning Commission's meeting packet are due by Noon on Wednesday, September 27, 2017. Written comments to be included City Council's meeting packet are due by Noon on Tuesday, October 10, 2017. Written comments for the Planning Commission or the City Council can also be submitted up to the time of the Public Hearings, and may be delivered in person during the Public Hearings.

Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

### COMMENTS:

I am submitting 3 documents that consist of my comments,  
please find them attached.

① Land Use Comments from Regina Taylor #1

② Land Use Comments from Regina Taylor #2

③ Land Use Comments from Regina Taylor #3

NAME: Regina Taylor

ADDRESS: 173 SW 6th Ave, Canby, OR

EMAIL: Reginae.wood@gmail.com DATE: 9/24/2017

AGENCIES: Please check one box and fill in your Name/Agency/Date below:

- ☐ Adequate Public Services (of your agency) are available
- ☐ Adequate Public Services will become available through the development
- ☐ Conditions are needed, as indicated
- ☐ Adequate public services are not available and will not become available
- ☐ No Comments

NAME: \_\_\_\_\_

AGENCY: \_\_\_\_\_

DATE: \_\_\_\_\_

Thank you!

## Land Use Comments from Regina Taylor-Part 1

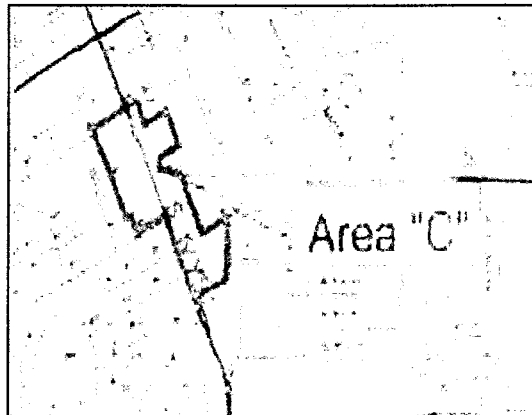
File #: CUP 17-05/ZC 17-02/SUB 17-04

Prepared for the October 9, 2017 Planning Commission and  
October 18, 2017 City Council Meetings

Location: 533, 553 and 583 S Ivy Street

Zoning: R-1 Low Density

Tax Lots: 41E04AB7100, 7200, 6300 (within Yellow Bordered are in Map Below)



Lot Sizes: 1.31 Total Acres

Owner: Allen Manuel/Manuel Family Trust

Applicant: Allen Manuel

Application Types: Conditional Use Permit, Zoning Map Amendment, Subdivision Application

City File Number: CUP 17-05/ZC 17-02/SUB 17-04

### I. PROJECT OVERVIEW & EXISTING CONDITIONS:

The applicant proposes to change the zoning of three existing lots consisting of 1.31 acres from R-1 Low Density Residential to C-R Residential Commercial to match the Comprehensive Plan land use designation; subdivide the property into twelve lots for single family homes and townhouses, and approval of conditional use permit to allow single family dwellings having a common wall.

### Comments:

Comments from landowner Regina Taylor of 173 SW 6th Avenue, Canby, Oregon: I present the following items and my comments on each item, as evidence and as part of my testimony for review and consideration by the Canby Planning Commission and Canby City Council in response to the proposed land application listed above. I have also presented information via email to Bryan Brown of the City of Canby and in a meeting with him on September 8, 2017 which is also part of my testimony.

## II. APPLICABLE CRITERIA & MY COMMENTS:

Applicable criteria used in developing my comments this application are found in the following resources:

- Canby Municipal Code Chapter 16
- City of Canby Comprehensive Plan
- Public Works Design Standards
- Stormwater Master Plan
- Transportation System Plan
- Oregon Dept of Land Conservation and Development <http://www.oregon.gov/LCD>

### Introduction:

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I am a recipient of the Notice of Public Hearing & Request for Comments which was mailed by the City of Canby regarding this proposed development, and Notice(s) of Planning Meeting from Allen Manuel, as I am the owner of land located within 500 feet of the proposed development.

I attended the Developer Meeting that was held by Allen Manuel on August 28, 2017, however the developer did not arrive. The number of attendees of this meeting was 19; attendees ended the meeting after about an hour and 15 minutes. Bryan Brown of the City of Canby very briefly visited this meeting in an unofficial capacity as he was occupied in an unrelated meeting in a room adjoining ours, at the Canby Library. We later received notice via mail of a rescheduled meeting.

I attended the rescheduled Developer Meeting that was held by Allen Manuel on September 13, 2017 where I received a copy of his Written Narrative, which I have read. The number in attendance at this meeting was 18, plus Allen Manuel for a total of 19.

During the Developer Meeting on September 13, Allen Manuel responded to numerous inquiries and questions about the proposed development. Questions were presented to Mr. Manuel regarding the density of homes, lack of sidewalks, narrow street, small lot sizes, lack of designated space for mail and garbage, space and noise concerns, safety issues, storm water and traffic issues. Mr. Manuel's responses indicated that he felt he was following the city land ordinances, maintained that land owners are provided the right to develop their land, and cited several economic reasons. Mr. Manuel further indicated that his current plan for the 3 lots is to complete the subject application process, then demolish the home at 533 S Ivy, update the homes at 553 and 583 S Ivy with new siding, roof and windows. He stated he intends to retain ownership of 553 and 583 S Ivy as rental units and then sell the remaining 10 lots, which would then be developed by a party or parties other than himself. Mr. Manuel confirmed that if the proposed rezoning occurred, and new ownership of any or all of the lots occurred, he would have no power to prevent the new owner(s) from developing the lots in a manner that is different from (and potentially a higher density) than his own proposal of 12 homes on 1.31 acres, as long as those plans conformed to the rezoned category of C-R. Therefore, if rezoned from the current R-1 to C-R, it would potentially open the area up for development under the R-2 High Density Residential density which is a conditional use under C-R.

I present the following items and my comments, as evidence and as part of my testimony for review and consideration by the Canby Planning Commission *and* Canby City Council in response to the proposed land application CUP 17-05/ZC 17-02/SUB 17-04. I have presented information and concerns to Bryan Brown of the City of Canby via email and in a meeting on September 8, 2017 which is also part of my testimony.



**City of Canby Comprehensive Plan:**

- Findings:**      The applicant's proposal does not comply with the text of:
- A)    Comprehensive Plan, Land Use Element for Buildable Lands, Policy #5 (zone & use)**
  - B)    Comprehensive Plan, Land Use Element for Buildable Lands, Policy #6 (Area C)**

The Comprehensive Plan is a document that was created to comply with Oregon Legislative Statute 197.005, and it governs the planning and development of land in Canby. Statute ORS197 empowered the Land Conservation and Development Commission (LCDC) with authority in developing the Comprehensive Plan in coordination with the City of Canby.<sup>i</sup> The Plan was approved by the State Legislative Assembly and adopted by the City of Canby in about 1980.<sup>ii</sup> The policies in the Comprehensive Plan are the official policies of the City.<sup>iii</sup>

There are several restrictions and regulations that control the planning and zoning of land in Canby that are not found in the Canby Municipal Code Ordinances; they are located in the Canby Comprehensive Plan.

The ability to establish restrictions and regulations in the Comprehensive Plan is authorized by ORS 197.405.1. d-f,<sup>iv</sup> which states the LCDC may: (quoted)

- “(d)    Establish permissible use limitations for all or part of the area,*
- (e)    Shall locate a boundary describing the area; and*
- (f)    May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or denial of designated state or local permits regulating specified uses of lands in the area, or both.”*

Page numbered 60 of the Comprehensive Plan explains why these restrictions and regulations are not found in the City Ordinances: (quoted) *“the special land use regulations for these areas shall be delineated in the Comprehensive Plan, without the necessity of making Zone Ordinance revisions for each area”*. The Merriam-Webster dictionary gives the definition of ‘delineate’ as *“to describe, portray, or set forth with accuracy or in detail the steps to be taken by the government”*. (In this case the government is the municipality of Canby.)

There are two Policies in the Comprehensive Plan that impose special Restrictions and Regulations on Allen Manuel's 3 lots located on S Ivy Street:

- 1) Policy #5, on pages numbered 56-60:
- 2) Policy #6, on pages numbered 60-64, and Map on page numbered 67

**Comprehensive Plan, Land Element, Policy #5**

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**Policy #5 on pages numbered 57-60:** Uses which are acceptable and descriptions

(Quoted) *“Canby shall utilize the Land Use Map as the basis of zoning and other planning or public facility decisions.”* The Implementation Measures that govern the city’s decisions on Policy #5 rely upon “use categories and descriptions of their respective development characteristics as follows”.

The use categories and descriptions outlined on pages 57-60 are different than those found in the Canby Planning and Zoning Ordinances. The ability to establish different use categories and descriptions for use in the Comprehensive Plan is authorized by ORS 197.405.1, d-f, as noted above.

Allen Manuel’s’ 3 lots are shown on Comprehensive Plan Land Use Map with proposed zoning of C-R Commercial/Residential. They are currently zoned R-1 Low Density Residential. Therefore the two use categories of Residential/Commercial and Low Density Residential found on pages 57 and 58 of the Comprehensive Plan apply and are shown in the screenshots below:

• ***RESIDENTIAL/COMMERCIAL:***

Distinguished by a mixture of light commercial and residential activities connecting two areas of heavier commercial usage, this category is intended to provide a unique opportunity for mixed uses while maintaining a special focus on the access and traffic problems of S. Ivy Street. City C-R zoning conforms with this category with R-1 an allowable, less intensive, interim zoning.

• ***LOW DENSITY RESIDENTIAL:***

Generally distinguished by detached single family dwelling units, occasional duplex units, and incidental accessory uses, but also including approved “home occupation” type commercial activities, planned unit developments consisting of multiple family units which meet the overall density standard of the zone and developments having received a density bonus for special design features, mobile home subdivisions subject to special criteria, mobile home parks subject to case-by-case review, churches, schools and other public uses, and remaining agricultural, silvicultural, or horticultural activities. City R-1 zoning conforms with this category.

This Policy imposes a special restriction on the properties of S. Ivy Street that is subject to Residential/Commercial zoning. The LCDC is specific regarding what they intended this property to be used for: (quoted) *"this category is intended to provide a unique opportunity for mixed uses while maintaining a special focus on the access and traffic problems of S. Ivy Street. City C-R zoning conforms with this category with R-1 an allowable, less intensive, interim zoning"*.

**FACT: The ORS 197 Restrictions in Policy #5 apply to all properties on S Ivy and zoned C-R:**

- 1) Allowable zones: Commercial/ Residential or Low Density Residential**
- 2) Zones Not Allowed: All Others (including Medium Density, High Density Residential)**
- 3) The Intended use of the land is mixed use.**
- 4) Uses not intended for this land: Development other than mixed use.**

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### **Comprehensive Plan, Land Element, Policy #6**

#### **Policy #6 on page numbered 60-64: Areas of Critical Concern**

ORS 197 also provided the authority for the LCDC to identify locations in the City of Canby that represent unique land use challenges, and to develop restrictions and regulations for them; 12 such locations were identified in Canby. They are called Areas of Critical Concern by the State of Oregon, and Areas of Special Concern by the City of Canby.

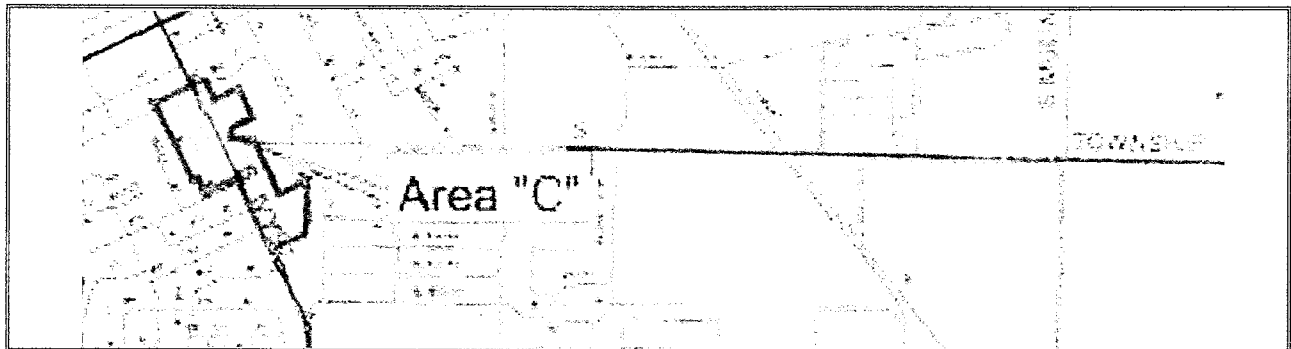
The restrictions and regulations that control the land use of these 12 locations cannot be found in the Canby Municipal Code Ordinances; they are located in the Canby Comprehensive Plan. They have been adopted as the official Policy of the City of Canby regarding these areas. It is truly critical that we treat them in these specific manners.

Canby's 12 Areas of Critical/Special Concern are labeled 'Area A' thru 'Area L'. Allen Manuel's 3 lots on S Ivy Street are located in "Area C" therefore they are subject to the restrictions and regulations in Policy #6. In Policy #5, we identified restrictions and regulations that also apply to the S Ivy Street lots. This means that the restrictions and regulations of both Policy #5 and Policy #6 shall be imposed to the 3 lots on S Ivy.

There are likely pieces of property in other parts of Canby *with the same C-R Zone designation* as Mr. Manuel's 3 lots that would not be affected by these restrictions and regulations, due to their address.

A special Map on page numbered 67 of the Comprehensive Plan shows the location of these Areas of Special Concern. It is used in conjunction with the Comprehensive Plan Map during for planning and zoning purposes.

A close up of Area C is below and the copy of the full map is included as an attachment.



Policy #6 Restrictions and Regulations: It is necessary to utilize all the information that is presented regarding the S Ivy Street location, prior to making any decision on the proposed land use application. The information is admittedly scattered throughout the text of Policy #5 and #6. The Area C text on page numbered 61 identifies the property that is subject to Area C treatment as “includes all of the property shown on the Land Use Map within the Residential-Commercial category and having frontage on S. Ivy Street”. It states the reason for special restrictions/regulation is ever increasing traffic, and imposes implementation measures:

- 1) Site plan review process shall be used to assure strict adherence to parking and access requirements. Strict adherence by legal terms means without conditions/strictly adhering, therefore conditional uses would not be entertained on parking or access to the S Ivy Street properties.
- 2) Portions of Area C which have already been zoned R-2 High Density (and developed residentially) will be allowed to remain in R-2 zoning. Note there is **NO** provision for any additional R-2 High Density development for properties that are on S Ivy and in Area C.
- 3) C-R Commercial Residential zoning has begun to be used as individual applications for Zone changes have been processed. There is no reason to attempt to **hasten** this transition process because residential ~~uses~~ can eventually be converted to mixed residential/commercial ~~uses~~.

**Notice the repeated thought between Policy 5 and 6 and Finding No 6:**

Policy 5: page numbered 54-60

- 1) R-1 Low Density Residential was identified as the allowable interim **zone**, with light commercial and residential the intended **use**.
- 2) R-1 allowed. No provision is provided for Medium or High Density Residential development in the C-R zone on S Ivy Street.
- 3) Reason cited: access and traffic.

Policy 6: page numbered 60-64

- 1) R-1 Low Density Residential **zoned** dwellings can be eventually be converted to the intended mixed Residential/Commercial **use**, so there is no reason to hasten rezoning to Commercial/Residential.
- 2) No provision is provided for Medium or High Density Residential development in the C-R zone on S Ivy Street.
- 3) Reason cited: traffic and protection from unintended development types; to cease R-2 High Density development.

Finding No 6: page numbered 60:

- 1) R-1 Low Density Residential zoning is proper to leave in place, with eventual conversion to commercial **use**.
- 2) No provision is provided for Medium or High Density Residential development.
- 3) Reason cited: Unique development constraints, or other special circumstances, protection from unintended development types.

If we have any doubt at all that the LCDC intended the S Ivy Street properties to remain as R-1 Low Density zoning, it is repeated a **Discrepancy**, in Finding No. 6 on page numbered 60.

“Other areas {of Special Concern} are presently developed in a certain manner which conflicts with the planned use of the site, that is, single family dwellings in an area designed for eventual commercial use. In such cases, it is proper to leave the present Low Density Residential Zoning intact ....”

A review of the 12 “Areas of Critical/Special Concern” demonstrates only Area C complies with the description above regarding single family dwellings in an area designed for eventual commercial use. By this process of elimination, the statement refers to Area C.

Finding No. 6 indicates the LCDC’s “additional work was done to **assure** that sites which are planned for eventual densities and intensities of development beyond those currently allowed by present zoning, **are protected from incompatible development during the interim.**”



## Screenshot of Finding No 6 and Policy #6:

### **FINDING NO. 6**

In every community there are certain areas which, because of unique development constraints or other special circumstances, warrant special attention in terms of land use regulations. By identifying these areas on a map to be used in conjunction with the Land Use Map, such special regulations can be delineated in the Comprehensive Plan without the necessity of making Zoning Ordinance revisions for each special area. After the adoption of the Comprehensive Plan and Land Development/Planning Ordinance in January 1984, L.C.D.C. staff requested that additional work be done to assure that sites which are planned for eventual densities and intensities of development beyond those allowed by present zoning, are protected from incompatible development during the interim. A number of new Areas of Special Concern have been added to those originally adopted in order to accomplish this.

All of the various Areas of Special Concern have characteristics which necessitate unique treatment rather than conventional development to minimum standards set by present zoning. Some of the areas presently lack full urban services of the sort necessary to support the density or intensity of development which is planned to eventually occur. Other areas are presently developed in a certain manner which conflicts with the planned use of the site (e.g., single-family dwellings in an area designated for eventual commercial use). In such cases, it is proper to leave the present Low Density Residential Zoning intact as a "holding pattern" until a thorough "redevelopment" of the area is undertaken. In other locations upzoning is appropriate as soon as any increased development is undertaken. Finally, there are some locations requiring special design considerations to assure that development, or redevelopment, is appropriate. It is the City's intention to use the upzoning process to implement the Comprehensive Plan in all cases where upzoning is indicated on the Land Use Map. In some cases, the upzoning could happen in the very near future. In other cases, it may be years before all required physical improvements are adequate to serve the subject properties. The City will continue to rely on the upzoning process as a means of assuring that improvements are made in a timely fashion. At the same time, all of these sites will continue to be protected from development which would preclude their eventual use as shown on the Land Use Map.

**POLICY NO. 6: CANBY SHALL RECOGNIZE THE UNIQUE CHARACTER OF CERTAIN AREAS AND WILL UTILIZE THE FOLLOWING SPECIAL REQUIREMENTS, IN CONJUNCTION WITH THE REQUIREMENTS OF THE LAND DEVELOPMENT AND PLANNING ORDINANCE, IN GUIDING THE USE AND DEVELOPMENT OF THESE UNIQUE AREAS.**

## Screenshot of the Implementation Measures for Area C:

### IMPLEMENTATION MEASURES:

- A) A map of "Areas of Special Concern" is included in the back of this Plan Element. That map is to be regarded as having the full force and effect of the Land Use Map in determining appropriate land uses and levels of development. Development proposals, even those that appear to conform with existing zoning, will be considered to conform with the Comprehensive Plan only if they meet the requirements imposed here.
- B) Specific characteristics of the Areas of Special Concern are as follows:
1. *Area "A"* is significant because of its location on Highway 99-E at a main entry to the City. This site has long been zoned for industrial development but has remained vacant because of topographic constraints, lack of State highway access, and limited rail access. With the installation of traffic signals at the intersection of Highway 99-E and S.W. Berg Parkway, the opportunity for major access improvements to the site can be seen. It now appears that commercial development would better utilize this area, but with a large adjacent area designated for industrial development, it would seem most reasonable to allow either light industrial or general commercial development (provided that any commercial development utilize the signalized intersection for access to Highway 99-E). The development of Area "A" is expected to have an impact on access to Area "B," which is adjacent. Area "A" has been rezoned C-M.
  2. *Area "B"* is designated for Heavy Industrial use on the Land Use Map. It is unique because of its location within an old aggregate removal site, with special access, water and sewer service, and drainage concerns which result from its physical condition and location. Area "B" will be upzoned to M-2 when all public facilities are available to serve the area and access problems have been resolved.
  3. *Area "C"* includes all of the property shown on the Land Use Map within the "Residential-Commercial" category and having frontage on S. Ivy Street. Every-increasing traffic on S. Ivy Street necessitates special treatment for access, especially where commercial or multi-family residential development occurs. The site plan review process shall be used to assure that strict adherence to parking and access requirements are maintained. Portions of this area which have already been zoned R-2 and developed residentially will be allowed to remain in R-2 zoning. C-R zoning has begun to be used as individual applications for zone changes have been processed. There is no reason to attempt to hasten this transition process because residential uses can eventually be converted to mixed residential/commercial use.

## **My Conclusion:**

Allen Manuel owns 3 lots that have frontage on S Ivy Street and are located in Area of Special Concern "C". He has voiced that his desire is to rezone his 3 lots on Ivy Street and then sell 10 of the 12 lots, to be developed by others

Rezoning the property to C-R would expose the land to potential R-2 High Density development as a conditional use under Commercial/Residential ORD 16.24.020 . The Comprehensive Plan Policy #5 and Policy #6 prohibit development of these 3 lots in a manner other than the intended use, with specific allowance to retain the land in R-1 Low Density, as I have demonstrated.

City Planners are bound by the Comprehensive Plan to protect the land from incompatible development. The City Planners and Allen Manuel should work toward a fresh development plan that satisfies the special restrictions and regulations that have been placed on properties.

I urge Canby City Planners to carefully consider the Comprehensive Plan when reviewing Allen Manuel's request for rezoning of his 3 lots on S. Ivy. A conclusion might be made that the Planning Commission have previously permitted Allen Manuel incompatible development of some Residential-Commercial zoned lots on S Ivy Street *and* in Area C, as evidenced by 8 townhouses and multiple single family homes associated with Allen Manuel and located at 423 to 445 S Ivy which were built in 2003, more than 2 decades after the Comprehensive Plan was created. It is imperative for the City to avoid repeating this mistake, and potentially be in violation of ORS 197.320.

<https://www.oregonlaws.org/ors/197.320>

*ORS 197.320 The Land Conservation and Development Commission shall issue an order requiring a local government, state agency or special district to take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions into compliance with the goals, acknowledged comprehensive plan provisions or land use regulations if the commission has good cause to believe:*

*6) A local government has engaged in a pattern or practice of decision making that violates an acknowledged comprehensive plan or land use regulation.*

Footnotes:

<sup>i</sup> ORS 197.005 <https://www.oregonlaws.org/ors/197.005>

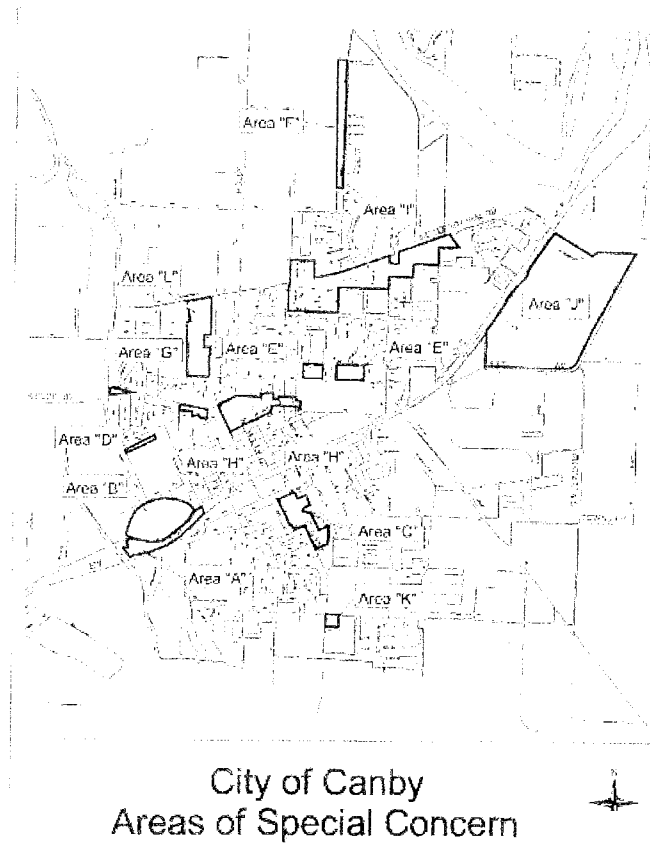
<sup>ii</sup> Page 1 of the Comprehensive Plan ....initial adoption in 1981."

[http://canbyoregon.gov/Departments/develop\\_services/plan\\_forms/ComprehensivePlan\\_2007.pdf](http://canbyoregon.gov/Departments/develop_services/plan_forms/ComprehensivePlan_2007.pdf)

<sup>iii</sup> Page 2 of the Comprehensive Plan. "Policy statements contained in this document become the official policies of the City of Canby on these subjects unless they are later amended or repealed by the City Council."

<sup>iv</sup> ORS 197.405 <https://www.oregonlaws.org/ors/197.405>

ATTACHEMENT: Map: Areas of Special Concern.



## Land Use Comments from Regina Taylor-Part 2

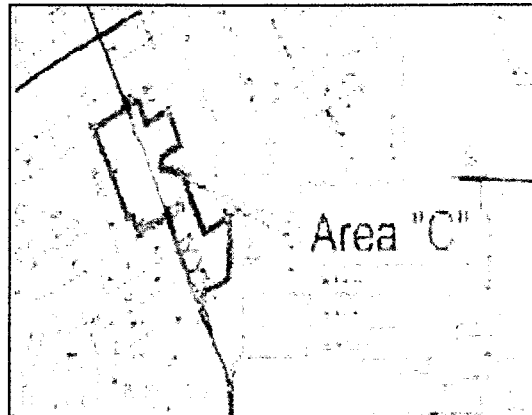
File #: CUP 17-05/ZC 17-02/SUB 17-04

Prepared for the October 9, 2017 Planning Commission and  
October 18, 2017 City Council Meetings

Location: 533, 553 and 583 S Ivy Street

Zoning: R-1 Low Density

Tax Lots: 41E04AB7100, 7200, 6300 (within Yellow Bordered are in Map Below)



Lot Sizes: 1.31 Total Acres

Owner: Allen Manuel/Manuel Family Trust

Applicant: Allen Manuel

Application Types: Conditional Use Permit, Zoning Map Amendment, Subdivision  
Application

City File Number: CUP 17-05/ZC 17-02/SUB 17-04

### I. PROJECT OVERVIEW & EXISTING CONDITIONS:

The applicant proposes to change the zoning of three existing lots consisting of 1.31 acres from R-1 Low Density Residential to C-R Residential Commercial to match the Comprehensive Plan land use designation; subdivide the property into twelve lots for single family homes and townhouses, and approval of conditional use permit to allow single family dwellings having a common wall.

### Comments:

Comments from landowner Regina Taylor of 173 SW 6th Avenue, Canby, Oregon: I present the following items and my comments on each item, as evidence and as part of my testimony for review and consideration by the Canby Planning Commission and Canby City Council in response to the proposed land application listed above. I have also presented information via email to Bryan Brown of the City of Canby and in a meeting with him on September 8, 2017 which is also part of my testimony.



**II. APPLICABLE CRITERIA & MY COMMENTS:**

**Applicable criteria used in developing my comments this application are found in the following resources:**

- Canby Municipal Code Chapter 16
- City of Canby Comprehensive Plan
- Public Works Design Standards
- Stormwater Master Plan
- Transportation System Plan

**Findings:**    **The applicant's proposal does not comply with the following Canby City Municipal Codes:**

**Average Lot Area/Size (Method of calculation) 16.16.030, 16.18.030**

**Average Area (method of calculation), Comprehensive Plan**

**Density                    16.18.030**

**Related Concern:    Notice of Public Hearing & Request for Comment  
(Errors/Omissions)**

**Introduction:**

---

*Please refer to my Introduction in my submission titled "Land Use Comments from Regina Taylor-Part 1".*

**Average Lot Area/Size. (Method of calculation):**

A Written Narrative from Allen Manuel was presented to attendees of the Developer's Planning Meeting held on September 13, 2017. The Narrative was accompanied by two diagrams which provide the data needed to calculate average lot size and density, and I have attached copies for your reference:

- 1) Proposed Subdivision for South Ivy Park which provides the lot sizes
- 2) Utilities Plan showing location of utility easements which is unbuildable area

On page 3 of the Manuel Narrative it is indicated:

*"The remaining land will be subdivided into four town home lots of approximately 3000 sf each and six detached single family lots of approximately 5000 sf each."*

I referenced the **Notice of Public Hearing & Request for Comments** which was created by the City of Canby to identify the Applicable Criteria for the proposed development. I intended to use the list of Applicable Criteria to search for the official mathematical calculation method used by the Planning and Zoning Commission in Canby. I desired to use the correct criteria and formula to verify if Allen Manuel's proposed subdivision satisfies the Municipal Code requirements for average lot sizes and densities. I have attached a copy of the Notice to the end of this document.

Below is a screenshot of the Applicable Criteria from the bottom portion of the Notice:

Applicable Criteria: Comprehensive Plan, Goals & Policies; Statewide Planning Goals; Canby Municipal Code Chapters:

<ul style="list-style-type: none"> <li>16.08 General Provisions</li> <li>16.10 Off-Street Parking and Loading</li> <li>16.18 R-1 Low Density Residential Zone</li> <li>16.24 C-R Residential Commercial Zone</li> <li>16.43 Outdoor Lighting Standards</li> <li>16.46 Access Standards</li> <li>16.50 Conditional Uses</li> </ul>	<ul style="list-style-type: none"> <li>16.54 Amendments to Zoning Map</li> <li>16.62 Subdivisions – Applications</li> <li>16.64 Subdivisions – Design Standards</li> <li>16.88 General Standards &amp; Procedures</li> <li>16.89 Application &amp; Review Procedures</li> <li>16.120 Parks, Open Space &amp; Recreation Land General Provisions</li> </ul>
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*Note: Failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue.*

City of Canby ■ Community Development & Planning ■ 222 NE 2nd Avenue, Canby, OR 97013 ■ (503) 266-7001

I identified errors or omissions in the list of Applicable Criteria which frustrated my search for the relevant data to include as “evidence sufficient to afford the decision maker an opportunity to respond”.

"Applicable Criteria"	Error/Omission	Concern Caused
16.18 R-1 Low Density Residential	<u>Confused title vs chapter heading:</u> 16.16 is the chapter for Low Density 16.18 is the chapter for Medium Density	I was uncertain if both Low and Medium Density applied and required my research?
16.20 R-2 High Density Residential	<u>Omitted</u> from Applicable Criteria however applicant's proposal to rezone to C-R with a Conditional Use Permit activates ORD 16.24.020.A which says "residential development shall conform to the development standards of the <u>R-2 Zone</u> ." R-2 is located in Chapter 16.20 which was not included as an Applicable Criteria.	Concerned citizens may not have been clear or aware that 16.20 R-2 High Density Residential Code applies, which may have affected their perception of the impact of the proposal and need to submit comments or testimony. This is disappointing.

Please be aware I performed due diligence in my research and referred to every chapter in the Municipal Code and Comprehensive Plan to substantiate my comments.

**City of Canby Municipal Code (Method of calculation):**

I believe Allen Manuel used a method to calculate average lot size which is not the methods used in the Canby Municipal Code and the Comprehensive Plan. Two Municipal Codes are cited below, which provide precedence for the calculation method applicable per City Ordinance (italics mine, for emphasis):

**16.16.030.B.1.a R-1 Low Density –Development Standards**

**16.18.030.B.1.a R 1.5 Medium Density-Development Standards**

a. *The average area of all lots created through the subject land division, excluding required public park land dedications, surface water management facilities and similar public use areas, shall be no less than seven thousand square feet and no greater than ten thousand square feet.*

Non-required significant natural resource areas shall be included in the average lot size calculation to enable a transfer of density onto buildable portions of the site.

*Required areas include identified parks, wetland areas, riparian corridors, and other areas in which building is not permitted under local, state, or federal laws or regulations;*

**16.86.020 Street Alignments**

D. No building permit shall be issued for the construction of a new structure within the planned right-of-way of a new street, or the appropriate setback from such a street as established in Division III

I searched throughout the Municipal Code 16 for verification of the approved method to calculate average lot size. I found additional verbiage in the following Code which appears to validate the correct method involves subtracting the unbuildable area of street right-of-way (access strip): (italics mine, for emphasis):

**16.64.040.I.6 Subdivision Design Standards -Flag lots**

6. *The area of a panhandle shaped or flag lot shall be considered to be the rear or buildable portion of the lot and shall not include the driveway or access strip.*

**DENSITY:** I also noted the calculations for ***density*** requires the subtraction of the unbuildable portion such as the street right-of-ways, and such calculation method must be applied where density is a requirement: (on next page)

**16.18.030.A.2 R-1.5 Medium Density, Development Standards**

2. For two, three, or four-family dwellings: minimum of six units per acre. Density is calculated by dividing the number of dwelling units by the property area in acres (*minus area required for street right-of-way and public park/open space areas*). Decimals are rounded to the nearest whole number

**16.20.030.A High Density, Development standards.**

The following subsections indicate the required development standards of the R-2 zone: A. Minimum residential density: New development shall achieve a minimum density of 14 units per acre. Density is calculated by dividing the number of dwelling units by the property area in acres (*minus area required for street right-of-way and public park/open space areas*). Decimals are rounded to the nearest whole number.

**City of Canby Comprehensive Plan (Method of calculation):**

In addition to the Municipal Code, the Comprehensive Plan includes narrative which includes the method which was used in calculations for area and density. These are found on pages 36-40 of the Comprehensive Plan. The calculations in the Comprehensive Plan had a different audience and were intended for a different purpose, but appear to show commonality in calculation methods with those in the Municipal Code, by subtracting right-of-ways and easements from the initial area to determine buildable area.

The following two screenshots are from page 37 of the Comprehensive Plan:

***LOW DENSITY RESIDENTIAL***

1. 31 acres less 4.7 acres (rights-of-way and easements) = 26.3 acres.

***MEDIUM DENSITY RESIDENTIAL***

1. 49 acres less 7.4 acres (rights-of-way and easements) = 41.6 acres.

A copy of the Utilities Plan diagram provided by Allen Manuel during the developer's meeting is attached at the end of this document. It indicates the location of the utilities and drywell will be located under the street right-of-way. It also indicates how the lot boundaries of eleven of the twelve proposed lots extend into the street right-of-way (all except lot #9). This illustrates that the square footage of the street right-of-way was included in Allen Manuel's calculation of average lot size for 11 of the lots.

It should be noted the City of Canby Ordinance 1610.070.B.2 for Off Street Parking and Loading encourages joint/shared access, as Allen Manuel used in the design of this subdivision proposal. Joint/shared access is accomplished via use of easements recorded on the deed for each lot. The ordinance does not; however change the method of calculating average lot size. The method to calculate average lot size requires subtraction of the area designated for street right-of-ways and other areas in which building is not permitted under local, state or federal laws or regulations.

## PUBLIC BENEFIT MUST BE DEMONSTRATED

**Canby Municipal Ordinance 16.18.010B.2** indicates a public benefit must be demonstrated to allow more than 10% of the proposed lots to be outside the minimum and maximum lot areas. Allen Manuel's Narrative includes no demonstrated public benefit for the reduction on lot sizes. Using Allen Manuel's data on page 3 of his Narrative to compare to the calculations provided on the following pages, we see 100% of the lots in the proposed development are out of compliance.

	Manuel's Calculation per Narrative pg 3	Code Calculation Method of lot size
Town home		
Average Lot size	3,000 sq ft	2,885 sq ft
Single Family Home		
Average Lot Size	5,000 sq ft	4,861 sq ft

## CALCULATIONS OF AVERAGE LOT SIZE

**TOWN HOME AVERAGE LOT SIZE:** The town homes are located on lots 1 thru 4. A rough calculation of the road size, using the data from the attached diagram of South Ivy Park indicates approximately 125 square feet of lot with a town home is a deed easement for the street right-of-way. This is unbuildable area and must be deducted from the square feet to calculate average lot size to conform to the method used in the Municipal Code.

Lot #	Lot Size	Less unbuildable right-of-way sq ft	net lot size
1	3,002	-125	2,877
2	3,002	-125	2,877
3	3,001	-125	2,876
4	3,038	-125	2,913
Total	12,043	-500	11,543
11,543 divided by 4			

Town Home Ave Lot Size= 2,885 sq ft

**SINGLE FAMILY RESIDENCE AVERAGE LOT SIZE:** Similarly, the average lot size for the Single Family Homes is reduced by the unbuildable "required areas" such as street right-of-way. The proposed private road is an area in which building is not permitted under local, state or federal laws or regulations, so this area must be subtracted to calculate average square feet of the lots.

Note: Lot #12 has about 760 sq ft of Visitor Parking Stalls but I was unable to determine with any certainty if there if this is considered an unbuildable area so I have not deducted the 760 sq ft (which would cause lot size to be still lower). (see chart on next page)



Lot #	Lot Size	Less unbuildable right-of-way sq ft	net lot size
5	4,737	-1,400	3,337
6	4,361	-400	3,961
7	5,168	-350	4,818
8	7,106	-500	6,606
9	8,109	0	8,109
10	5,647	1,600	4,047
11	4,350	-1,125	3,225
12	5,691	-900	4,791
Total	45,169	6,275	38,894

38,894 divided by 8	
SFR Ave Lot Size= 4,861 sq ft	

**AFFECT OF EXISTING HOMES:** The overall average lot size of the 12 homes (townhouse and single-family residences) using the Code Method of Calculation is 4,861 sq ft. This average lot size is affected by the sizes of the lots for the two existing homes, on lots 8 and 9 which occupy the largest lots in the subdivision. If they are removed from the equation, we see the average lot size of the *new lots* will be 3,572 represented in the chart below.

A	B	C	D
Lot #	Lot Size	Less unbuildable right-of-way sq ft	net lot size
1	3,002	-125	2,877
2	3,002	-125	2,877
3	3,001	-125	2,876
4	3,038	-125	2,913
5	4,737	-1,400	3,337
6	4,361	-400	3,961
7	5,168	-350	4,818
8	7,106	-500	6,606
9	8,109	0	8,109
10	5,647	-1,600	4,047
11	4,350	-1,125	3,225
12	5,691	-900	4,791
Total	57,212	-6,775	50,437

50,437 divided by 12	
Average Lot size all homes= 4,203 sq ft	

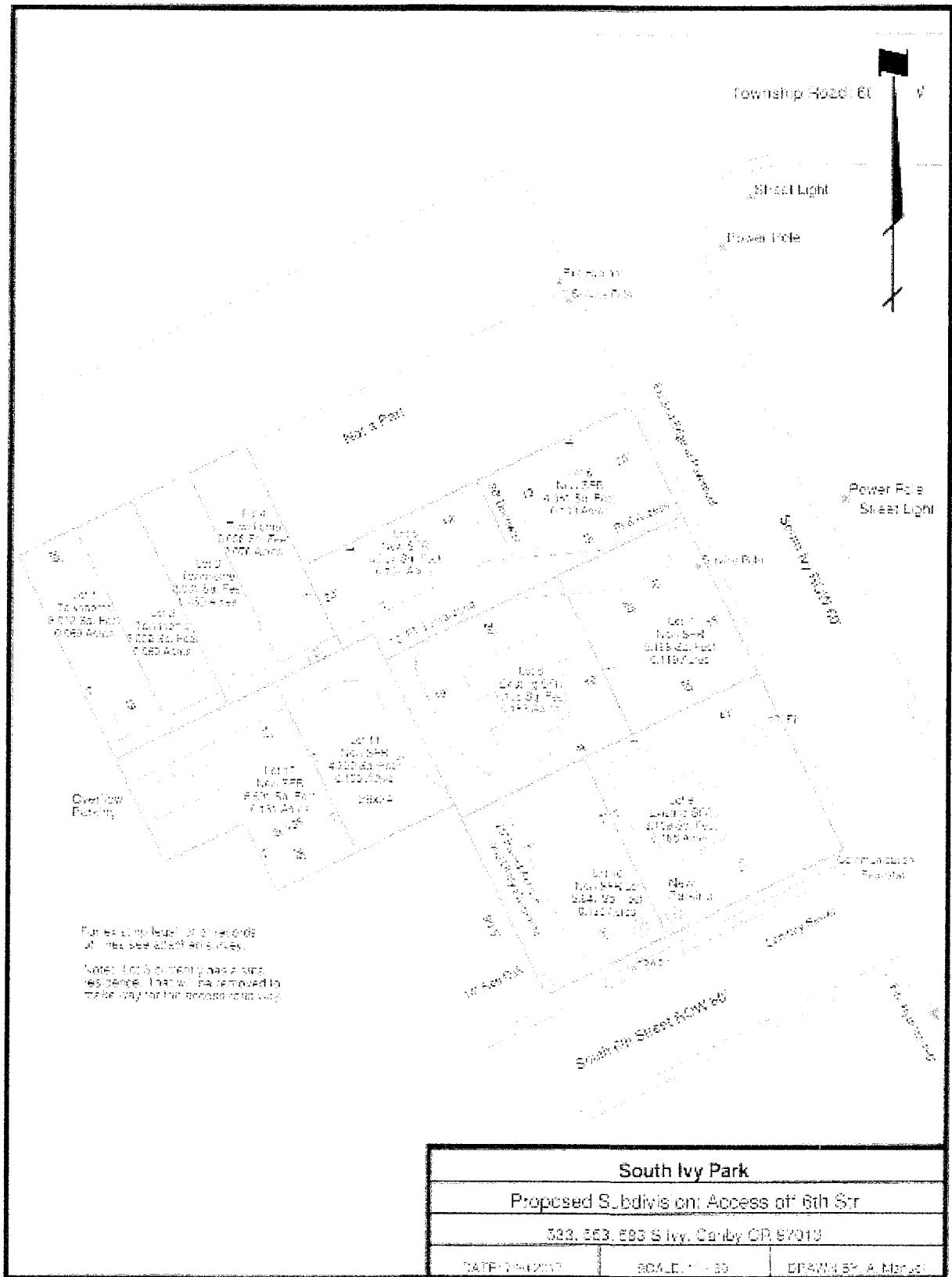
Less existing homes (largest lots)			
8	7,106	-500	6,606
9	8,109	0	8,109
14,715			

50,437-14,715=35,722 (divided by 10 lots)= 3,572 ave
Average Lot size less 2 existing homes: 3,572

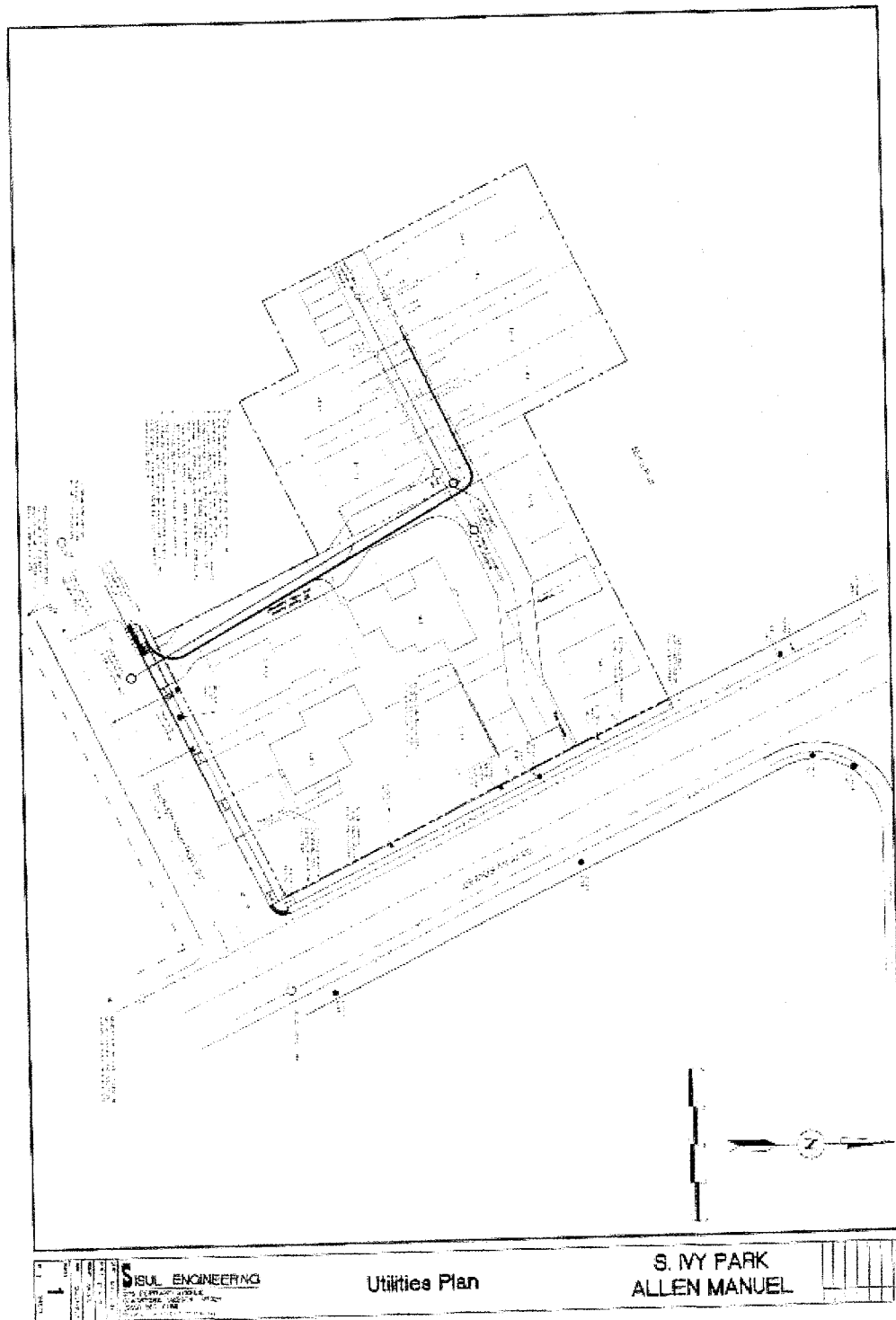
### Conclusion:

The average lot size in this development does not satisfy the zoning requirements. The applicant has not calculated average lot size using the method in the Canby Municipal Code.

**Attachment: Lot Sizes in Proposed Subdivision for South Ivy Park**



**Attachment:** Utilities Plan showing location of utility easements which is unbuildable area



## Land Use Comments from Regina Taylor-Part 3

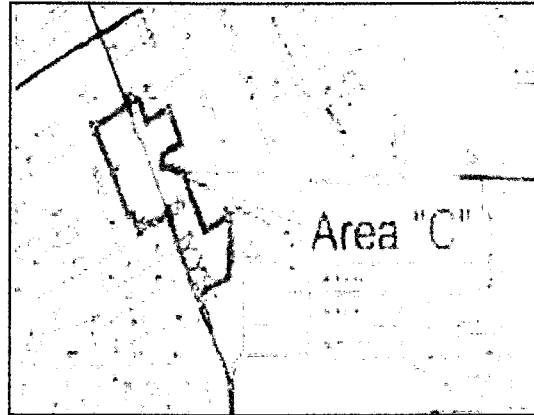
File #: CUP 17-05/ZC 17-02/SUB 17-04

Prepared for the October 9, 2017 Planning Commission and  
October 18, 2017 City Council Meetings

Location: 533, 553 and 583 S Ivy Street

Zoning: R-1 Low Density

Tax Lots: 41E04AB7100, 7200, 6300 (within Yellow Bordered are in Map Below)



Lot Sizes: 1.31 Total Acres

Owner: Allen Manuel/Manuel Family Trust

Applicant: Allen Manuel

Application Types: Conditional Use Permit, Zoning Map Amendment, Subdivision  
Application

City File Number: CUP 17-05/ZC 17-02/SUB 17-04

### I. PROJECT OVERVIEW & EXISTING CONDITIONS:

The applicant proposes to change the zoning of three existing lots consisting of 1.31 acres from R-1 Low Density Residential to C-R Residential Commercial to match the Comprehensive Plan land use designation; subdivide the property into twelve lots for single family homes and townhouses, and approval of conditional use permit to allow single family dwellings having a common wall.

### Comments:

Comments from landowner Regina Taylor of 173 SW 6th Avenue, Canby, Oregon: I present the following items and my comments on each item, as evidence and as part of my testimony for review and consideration by the Canby Planning Commission and Canby City Council in response to the proposed land application listed above. I have also presented information via email to Bryan Brown of the City of Canby and in a meeting with him on September 8, 2017 which is also part of my testimony.

**II. APPLICABLE CRITERIA & MY COMMENTS:**

**Applicable criteria used in developing my comments this application are found in the following resources:**

- **Canby Municipal Code Chapter 16**
- **City of Canby Comprehensive Plan**
- **Public Works Design Standards**
- **Stormwater Master Plan**
- **Transportation System Plan**

**Findings:**     **The applicant's proposal does not comply with the Canby City Municipal Codes listed below:**

**The applicant's proposal does not comply with the Public Works Design Standards listed below:**

*Canby Municipal Code Chapter 16.08.090 Sidewalks Required:*

*Please refer to my introduction in my submission titled "Land Use Comments from Regina Taylor-Part 1".*

**Canby Municipal Code:**

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My concerns below are delivered in the order which they appear in the Canby Municipal Code.

**16.08 General Provisions**

***16.08.090 Sidewalks Required:***

The applicant has submitted the request to rezone the property to Commercial Residential; this Ordinance indicates (quoted) "In all commercially zoned areas, the construction of sidewalks and curbs (with appropriate ramps for the handicapped on each corner lot) shall be required as a condition of the issuance of a building permit for new construction or substantial remodeling, where such work is estimated to exceed a valuation of twenty thousand dollars, as determined by the building code."

The submitted design has no provision for sidewalks to serve a private street with 11 homes; the lack of sidewalks presents a safety and comfort issue. The Comprehensive Plan (pages 57-61, map on page 67) places this property within the Area of Special Concern "C" and identified for light commercial/residential development, is a type of environment where sidewalks are expected. Additionally, city ordinance 16.10.070(B)(8) Minimum Access Requirements, requires safe sidewalk

access between the 11 residences and the 4 visitor parking stalls which serve the 11 residences. The chart included with ORD 16.10.079(B)(8) reads: (for 3-19 dwelling units) Minimum of one sidewalk connection to residences and parking areas; curb required if sidewalk adjacent to driveway.

Currently, a single Pedestrian Access path (or sidewalk) is proposed, providing access to S Ivy Street; the city should require a pedestrian deflector device on this Pedestrian Access, to "deflect" distracted pedestrians from traveling directly into the traffic on S Ivy Street (a similar device can be seen on S Ivy Street across from the Adult Center). Additional access should also be required to unite the residences with SW 6<sup>th</sup> Avenue, using either a sidewalk or a second Pedestrian Access path.

**16.08.150.C Traffic Impact Study, Determination:** This ordinance lists the information the city considers when making a determination if a TIS is required.

The traffic survey that was completed by DKS for this proposed development did not address the potential Local Street Impact nor Intersection Level of Service (LOS) at S Ivy/SW 6<sup>th</sup> Ave. The DKS traffic survey explained the impact the proposed development would have on S Ivy Street, since the original land use request showed the development exiting to S Ivy. DKS did not conduct a survey for impact on SW 6<sup>th</sup> Ave. Southwest 6<sup>th</sup> Avenue is a mature neighborhood, with 6 single-family residence driveways located within 250 feet of the intersection at S Ivy/SW 6<sup>th</sup> Ave. The proposed development adds one driveway and a private street, totaling 12 new residences with ingress/egress less than 150 feet of the intersection with S Ivy Street.

Using the traffic survey from DKS dated August 10, 2017 as a guide, their chart on page 3 shows the 3 existing single-family homes on Manuel's lots generate 42 daily trips per day, or 14 trips/day per residence (42 divided by 3=14). Using the same data but applying it to the situation on SW 6<sup>th</sup> (to obtain a rough estimate how traffic will change in the 250 feet nearest the intersection with S Ivy), this would indicate 84 current daily trips for those 6 existing homes (6 homes @ 14 trips/day). The DKS survey estimates an additional 100 trips from the proposed development, so even this simple extrapolation exposes how the traffic will be impacted from 84 to 184 trips per day, more than double the impact the short section of street currently receives.

While it is unlikely this increase in traffic will require any major change to the intersection itself, it does demonstrate the need for a Traffic Engineer to study the increased traffic volume, patterns, queuing and parking conditions and suggest traffic management/mitigation. Such Traffic management/mitigation may include restricting on-street parking on both sides of SW 6<sup>th</sup> Avenue at the intersection, and right-turn-only management for the traffic ingress/egress from the proposed new private street. The right-turn-only egress would control the pattern of traffic from the 11 residences and provide three benefits:

- 1) Providing a level of safety to the long-time residents of the six nearby existing homes, who currently utilize backing maneuvers from their driveways onto SW 6<sup>th</sup> Ave,
- 2) Increase pedestrian safety on the sidewalk on SW 6<sup>th</sup> Avenue and,
- 3) Simultaneously improving the traffic pattern/safety for the entire length of the street.



Note: City of Canby Public Facility Improvements, Design Manual and Standard Specifications, Chapter 2-Streets, 2.103.c indicates: "The scope of the TIS shall be determined by the City as detailed in the Canby development code section 16.08.150 E and F. At a minimum the traffic report shall evaluate nearby intersections as identified by the City and shall determine existing conditions (service level, v/c ratio, queing) during average day conditions, PM peak and AM peak; projected conditions, identify changes and impacts, and recommend potential solutions. The potential solutions should also be evaluated.

**16.08.150.I Mitigation:** Transportation impacts shall be mitigated at the time of development when the TIS identifies an increase in demand for vehicular, pedestrian, bicycle, or transit transportation facilities within the study area.

The TIS Study should be used to identify potential impacts to vehicular, pedestrian, bicycle use and propose mitigation resolutions which can be implemented at time of development.

**16.08.150.J.1 and 2: Conditions of Approval.** The city may deny, approve, or approve with appropriate conditions a development proposal in order to minimize impacts and protect transportation facilities.

1. Where the existing transportation system will be impacted by the proposed development, dedication of land for streets, transit facilities, sidewalks, bikeways, paths, or access ways may be required to ensure that the transportation system is adequate to handle the additional burden caused by the proposed use. 2. Where the existing transportation system is shown to be burdened by the proposed use, improvements such as paving, curbing, installation or contribution to traffic signals, traffic channelization, construction of sidewalks, bikeways, access ways, paths, or street that serve the proposed use may be required.

I have already shared my concern regarding the need for sidewalks, pedestrian access, curbs, and traffic mitigation; in addition, the city should consider the following as conditions for approval:

Provision in the development plan for a designated location for clustered mailboxes, to comply with the existing state statute 227.455 which reads: **Clustered mailboxes in city streets and rights-of-way.** (Enacted in 2015). Each city in this state shall adopt standards and specifications for clustered mailboxes within the boundaries of city streets and rights-of-way that conform to the standards and specifications for such mailboxes contained in the State of Oregon Structural Specialty Code. [2011 c.488 §2] [https://www.oregonlegislature.gov/bills\\_laws/Pages/ORS.aspx](https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx)

Street signs: The private street should be signed throughout, to help visitors identify the location of visitor parking stalls, also signage for 'no parking' areas, barricades or zebra striped signs at the two dead ends, and yield signs to guide traffic at the hammerhead and bi-directional two-headed arrow sign also at the hammerhead.

A clustered garbage receptacle pick-up location sufficient to service the 11 homes on the private drive should be designed and provided, to facilitate service by garbage service company, and to provide uninterrupted traffic flow on the private street. The idea of 33 garbage cans (refuse, recycle and lawn debris x 11 homes), blocking the street two days a week is just intolerable (most people put garbage out the evening before garbage day so they don't make noise early in the morning of garbage day).

Adding sidewalks should not reduce the condition for a clustered garbage area, sidewalks must be kept clear allow a safe place to walk other than the street, and are essential for handicapped access.

**16.08.160 Safety and Functionality Standards.** The city will require basic transportation safety and functionality standards;

**A. Adequate Street Drainage.**

S Ivy Street from OR993 to SW 7<sup>th</sup> Ave has significant Storm Water flooding issues as identified in the Storm Water Master Plan, Chapter Six, pages 17-18, which indicates estimated cost to correct the defect is \$730,000. The city should insist upon review by appropriate department for assurance of adequate storm water management as a more elaborate system may be required than the applicant has prepared to install.

**B. Safe access and clear vision at intersections.**

Implementation of traffic management is encouraged, as mentioned earlier in this document.

**16.10 Off-Street Parking and Loading**

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**16.10.030 General Requirements**

D. Off-street parking spaces for dwellings shall be located on the same lot, or adjacent lot, with the dwelling. Parking spaces located within an on-site garage shall count toward the minimum parking requirement for residential uses. Other required parking spaces may be located on a separate parcel, provided the parcel is not greater than five hundred (500) feet from the entrance to the building to be served, measured along the shortest pedestrian route to the building. The applicant must prove that the parking located on another parcel is functionally located and that there is safe vehicular and pedestrian access to and from the site.

The applicant has provided for 4 visitor parking stalls, but the lack of any sidewalks conflicts with the requirement for safe pedestrian access between the visitor parking and the dwellings within the development.

Streetlights throughout the private street would enhance neighborhood safety and traffic safety.

F. Institution of on-street parking shall not be allowed for off-street parking, where none is previously provided, and shall not be done solely for the purpose of relieving crowded parking lots in commercial or industrial planning districts.

No parking signs should be installed on the private street to help deter on-street parking.

**16.10.040 Prohibited near intersections.** In no case will off-street parking be allowed within a vision clearance area of an intersection.

No parking devices (signs and/or yellow curb paint) should be required at the intersection of S Ivy (on both sides of SW 6<sup>th</sup> Ave).

**16.10.070 Parking lots and access.**

**A. Parking Lots**

3. Areas used for standing or maneuvering of vehicles shall have paved asphalt, concrete, solid concrete paver surfaces, or paved "tire track" strips maintained adequately for all weather use and so drained as to avoid the flow of water across sidewalks or into public streets,

b. Use of permeable surfacing materials for parking lots and driveways is encouraged whenever site and soil conditions make permeable surfacing feasible. Permeable surfacing includes, but is not limited to: paving blocks, turf block, pervious concrete, and porous asphalt. All permeable surfacing shall be designed, constructed, and maintained in accordance with the Canby Public Works Design Standards and the manufacturer's recommendations. Maintenance of permeable surfacing materials located on private property are the responsibility of the property owner.

Due to known storm water flooding issues (Storm Water Master Plan pages 17-18), the City should coordinate with Storm Water personnel and applicant to discuss appropriateness of permeable surface parking and access materials.

(4) The full width of driveways must be paved in accordance with (3) above:

a. For a minimum of 20 feet from the right-of-way line back into the private property to prevent debris from entering public streets.

Seven of the 12 proposed lots have driveways that are only 19 feet long; if the city imposes sidewalks upon this development, the driveway will be reduced even further.

7. Off-street parking areas, and the accesses to them, shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and the maximum safety of pedestrian and vehicular traffic on the site and in adjacent roadways. The Planning Director or Planning Commission may require engineering analysis and/or truck turning diagrams to ensure safe and efficient traffic flow based on the number and type of vehicles using the site, the classification of the public roadway, and the design of the parking lot and access drives.

A large amount of concern was voiced at the Developer Meeting with Allen Manuel regarding the design of the proposed private street, which has multiple deviations/curves and will be very tight for garbage and fire/emergency vehicles (especially as it is currently designed, lacking sidewalks, therefore pedestrians will be sharing the street also). The multiple curves on the private street may very well cause difficulty in backing maneuvers of large vehicles such as garbage trucks or fire trucks, and the offset entrance is also troublesome. Lack of designated location for garbage receptacles indicate these will likely be in the street, therefore causing major blockage.

The applicant's proposal shows a 70 foot turnaround at the "hammerhead" of the private street. I would recommend the Planning Commission require an engineering analysis and/or truck turning diagrams to ensure safe and efficient traffic flow on this private road. This private road has design features beyond the turnaround that make it restricted and constrained, including five curves/kinks which may make backing or reversing large vehicles difficult, especially in poor weather or after sundown. (garbage trucks or fire trucks, for instance). Please use everything within your power to make this street safe for the residents, during the design phase, lives are at stake.

8. Parking bumpers or wheel stops shall be provided to prevent cars from encroaching on the street right-of-way, adjacent landscaped areas, or adjacent pedestrian walkways.

*Bumpers/stops should be required.*

9. Accessible parking shall be provided, constructed, striped, signed and maintained as required by ORS 447.233 and all Oregon Structural Specialty Code requirements.

*The applicant's plan currently has no provision for accessible parking; provision should be required. With a lack of sidewalks, visitors to the private street may be forced to park on SW 6<sup>th</sup> Ave and negotiate on foot (or wheelchair) down the private street as vehicles navigate the same area. Designation of at least one of the visitor parking stalls as handicap accessible would be a partial remedy.*

#### **B. Access**

1. The provision and maintenance of vehicular and pedestrian ingress and egress from private property to the public streets as stipulated in this ordinance are continuing requirements for the use of any structure or parcel of real property in the City of Canby.

*I am concerned about the maintenance of the proposed private street; what requirements can be enforced regarding the maintenance of the private street, particularly regarding the storm water flooding issue in this area, and the need periodic maintenance and cleaning of the storm water cleanout(s) proposed for the private street?*

6. To afford safe pedestrian access and egress for properties within the city, a sidewalk shall be constructed along all street frontages, prior to use or occupancy of the building or structure proposed for said property. The sidewalks required by this section shall be constructed to city standards except in the case of streets with inadequate right-of-way width or where the final street design and grade have not been established, in which case the sidewalks shall be constructed to a design, and in a manner approved by the Site and Design Review Board.

*The applicant currently has no provision for any sidewalk; the city should require an updated developer design plan which includes the required sidewalks, prior to approval of any proposed development.*

#### **16.10.070 (B)(8) Minimum Access Requirements (Chart).**

*This chart indicates the required sidewalks, and curb requirements for the proposed development, however this proposal shows no provision for sidewalks or curbs along the private drive (the only sidewalk is outside of the development, adjacent the public road, SW 6<sup>th</sup> Ave). No approval, even a conditional approval should be granted until a new updated design proposal is provided from the applicant, which shows the corrected deficiency in sidewalks and curbs, to city Ordinance standards. I have concerns that the addition of sidewalks will cause a drastic change in the average lot size and density of homes in the proposed development.*

The current proposal shows 9 of the 12 dwellings do not comply with the minimum standard of access width; 8 lots have 19 foot driveways, and lot #10 appears to have a 10 foot wide driveway where it intersects with the proposed private drive; once sidewalks and curbs are drawn into the plans, these measurements will be further out of compliance.

**16.10.070 (B) 9. b. No driveways shall be constructed within five (5) feet of an adjacent property line, except when two (2) adjacent property owners elect to provide joint access to their respective properties as provided by subsection 2.**

There is a potential violation of this Ordinance where the applicant's Lot #10 borders the adjacent property at 140 SW 6<sup>th</sup> Ave. The diagram of the proposed development shows a "wing" at the actual intersection of the private drive with SW 6<sup>th</sup> Ave, with the wing apparently providing the 5 foot separation from 140<sup>th</sup> SW 6<sup>th</sup>, however the remainder of the private street, moving back toward the hammerhead, appears to abut directly up against the side yard of 140 SW 6<sup>th</sup> Ave. with no curb or landscape buffer. This would be an ideal location for a sidewalk.

#### **16.24 Commercial-Residential Zone**

**16.24.020 Conditional Uses A. Uses listed as conditional in R-1 or R-1.5 zones, and not listed as permitted in section 16.24.010; residential development shall conform to the development standards of the R-2 zone.**

The proposed development on S Ivy Street, in the C-R zone has special restrictions and regulations which are imposed by the Comprehensive Plan, Land Use Element, Policies #5 and #6 on pages 56-61 and map on page 67. The Comprehensive Plan must be consulted during the review process for these lots on S. Ivy Street. This has been addressed fully in a separate commentary developed by me, please refer to it.

#### **16.46 Access Limitations on Project Density**

**16.46.010 Number of units in residential development:**

A major factor in determining the appropriate density of residential development, particularly in higher density areas, is vehicular access. In order to assure that sufficient access is provided for emergency response as well as the convenience of residents, the following special limitations shall be placed on the allowable number of units in a residential development:

**A. Single-family residential access, public and private roads:**

**1. Roads shall be a minimum of 28 feet in width with parking restricted to one side only, or a minimum of 36 feet in width with no parking restriction.**

This development does not comply with this requirement. The private street currently shows a 20 foot width and no sidewalk, the minimum requirement is 28 feet wide and parking restricted to one side.

**B) Single ownership Developments.**

This is not a "single owner development" (condominiums, townhouses, manufactured homes, multi-family developments, etc.), these are all single family residences (although 4 are common-wall single family residences). The provision for 20 foot width and no parking (which this developer has used in his proposal) is for "single owner developments" only. It appears the applicant may have applied the incorrect criteria.

**16.46.010**

**D. All turnaround systems shall meet or exceed the requirements of the parking provisions of Chapter 16.10.**

The 70' turnaround may cause uncomfortable or unsafe situations; Ord 16.10.070.(7) provides means for the city to require engineering analysis and/or truck turning diagrams prior to approval of any plan.

**E. All on-site private roads and drives shall be designed and constructed to provide safe intersections and travel surfaces which will not result in hazards for motorists, bicyclists or pedestrians.**

This lack of sidewalks, lack of pedestrian access to SW 6<sup>th</sup> Ave and lack of street lights cause this private street to appear dangerous. The City planners should insist on sidewalks, pedestrian access to SW 6<sup>th</sup> Ave and streetlights.

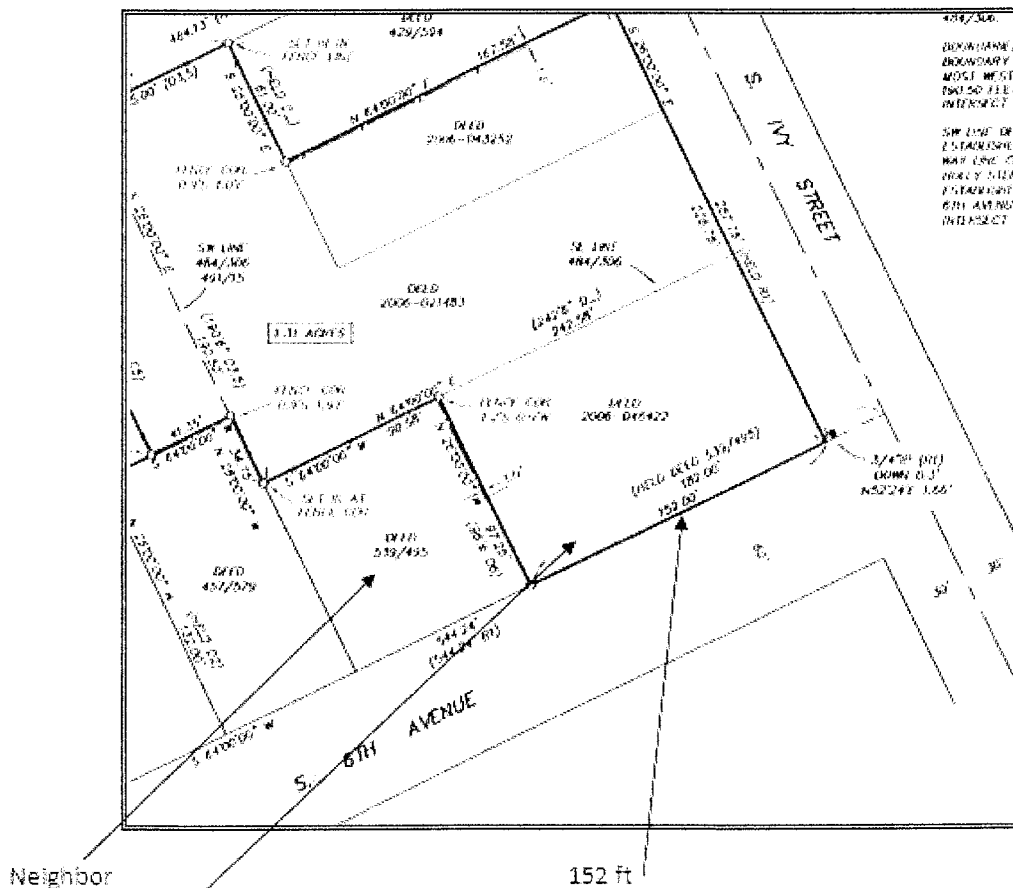
**16.46.030 Access Connection**

**A. Spacing of accesses on City streets.** The number and spacing of accesses on City streets shall be as specified in Table 16.46.030. Proposed developments or land use actions that do not comply with these standards will be required to obtain an access spacing exception and address the joint and cross access requirements of this Chapter.

The proposed development is located on a local street; minimum spacing of roadways is 150 feet, measured from the centerline on both sides of the street. The Record of Survey prepared by Griffin Land Surveying shows the applicant's lot is only 152 feet long, from the intersection of S Ivy to the neighbor's property line at 140 SW 6<sup>th</sup> Ave. From this 152 feet space must be deducted to provide for the width of the private road, sidewalks, and setbacks/wings adjacent the neighbors. There is not sufficient space and still be within the required 150 feet from S Ivy Street (measured from both sides of the street). See diagram below



Portion of Record of Survey by Griffin Land Surveying:



Entrance to private drive (5 foot wing + 28 Ft entrance + 5 foot wing = 38 feet needed for the entrance. This means there is only 114 feet from S. 1st to the entrance to the property, which is below the minimum required.

**16.46.035 Restricted access.** The City may allow an access to a City street that does not meet the spacing requirements of Table 16.46.030 if the proposed access is restricted (prevents certain turning movements). The City may require an applicant to provide an engineered traffic study, access management plan, or other information as needed to demonstrate that the roadway will operate within the acceptable standards with the restricted access in place.

Due to the lack of space evidenced in the diagram above and concerns I've already voiced, an engineering traffic study, management plan or other information as needed to demonstrate that the roadway will operate within the acceptable standards is required.

**16.46.070 Exception standards. A.** An exception may be allowed from the access spacing standards if the applicant can provide proof of unique or special conditions that make strict application of the provisions impractical. Applicants shall include proof that: 1. Indirect or restricted access cannot be obtained; 2. No engineering or construction solutions can be reasonably applied to mitigate the condition; and 3. No alternative access is available from a

street with a lower functional classification than the primary roadway. B. Access Management Plan Required. An applicant requesting an access exception may be required to submit an access management plan. The access management plan shall explain the need for the modification and demonstrate that the modification maintains the classified function and integrity of the facility. An access management plan shall be prepared and certified by a traffic or civil engineer registered in the State of Oregon. An access management plan shall at minimum contain the following:

1. The minimum study area shall include the length of the site's frontage plus the distance of the applicable access spacing standard, measured from each property line or access point(s), whichever is greater. For example, a property with 500 feet of frontage on an arterial (required 660 foot access spacing standard) shall have a minimum study area which is 1,820 feet in length.
  2. The potential safety and operational problems associated with the proposed access point. The access management plan shall review both existing and future access for all properties within the study area as defined above.
  3. A comparison of all alternatives examined. At a minimum, the access management plan shall evaluate the proposed modification to the access spacing standard and the impacts of a plan utilizing the City standard for access spacing. Specifically, the access management plan shall identify any impacts on the operations and/or safety of the various alternatives.
  4. A list of improvements and recommendations necessary to implement the proposed access modification, specifically addressing all safety and operational concerns identified.
  5. References to standards or publications used to prepare the access management plan.
- C. The granting of the exception shall be in harmony with the purpose and intent of these regulations and shall not be considered until every feasible option for meeting access standards is explored.
- D. No exception shall be granted where such hardship is self-created.
- E. Reasons for denying access spacing exception applications include, but are not limited to, traffic safety concerns, expected or planned traffic increases due to development or road construction, and emergency service provision issues

The particular access spacing configuration at the proposed property suggests the Exception Standards requirements must be applied to this proposal.

#### **16.50.010 Conditional Uses**

16.50.010 Authorization to grant or deny conditional uses. A conditional use listed in this title shall be permitted, altered, or denied in accordance with the standards and procedures of this chapter. In the case of a use existing prior to the effective date of the ordinance codified in this title as a conditional use, a change in the use, or reduction in lot area, or an alteration of the structure, shall require the prior issuance of a conditional use permit. In judging whether or not a 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. (Ord. 740 section 10.3.75 (A), 1984)

- A) This proposal is NOT in compliance with the Comprehensive Plan, Land Use Element, Policies #5 and #6 on pages 56-61 and map on page 67. Please refer to my extensive comments which I have submitted to the city in a separate document, regarding "Area C" and these 3 lots on S Ivy Street.
- B) The Land Conservation and Development Commission has determined this property is NOT suitable for a conditional use, and I have provided comments regarding this in detail in my extensive comments which I have submitted to the city in a separate document, regarding "Area C" and these 3 lots on S Ivy Street. LCDC had indicated the traffic and access characteristics of these properties require special restrictions and regulations. Issuing a conditional use permit is to be strictly avoided since such permit may inadvertently allow use/zoning that is other than the intended use/zoning, such as High Density.
- C) It should be determined if Storm Water management of a sufficient design can be developed to mitigate the storm water from these 3 lots and the proposed level of development. See CIP #8 in the Storm Water Master Plan. This area is already subject to frequent roadway flooding due to insufficient capacity by the city to manage storm water; the storm drainage basin area is 5 acres between OR99E and SW 7<sup>th</sup> Avenue; this development is 1.31 acres of that land mass and currently the "empty" lots are doing the percolating of storm water into the ground; this development will pave over the "empty" lots, creating a dire need to design and review the storm water management strategy.
- D) This area is intended for use as light-commercial/residential. See the Comprehensive Plan, Land Use Element, Policies #5 and #6 on pages 56-61 and map on page 67. Please refer to my extensive comments which I have submitted to the city in a separate document, regarding "Area C" and these 3 lots on S Ivy Street.

**16.50.040 Placing conditions on a permit.** In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may impose conditions which it finds necessary to avoid a detrimental impact and to otherwise protect the best interests of the surrounding area or the community as a whole. These conditions may include the following:

- A. Limiting the manner in which the use is conducted, including restricting the time an activity may take place, and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor;
- B. Establishing a special yard, other open space or lot area or dimensions;
- C. Limiting the height, size or location of a building or other structure;
- D. Designating the size, number, location, and nature of vehicle access points;
- E. Improving the street and/or expanding the rights-of-way;
- F. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area;
- G. Limiting or otherwise designating the number, size, location, height and lighting signs;
- H. Limiting the location and intensity of outdoor lighting and requiring its shielding;
- I. Requiring diking, screening, landscaping or other facility to protect adjacent or nearby property and designating standards for its installation and maintenance;
- J. Designating the size, height, location and materials for a fence;
- K. Protecting and preserving existing trees, vegetation, water, resources, wildlife habitat or other significant natural or open space areas;

L. Limiting the number, location, and design of street accesses and requiring shared access when appropriate;

M. Other conditions to assure that the development complies with standards and criteria listed in section 16.50.010. (Ord. 740 section 10.3.75 (D), 1984; Ord. 1019 section 6, 1999)

This area is intended for use as light-commercial/residential. See the Comprehensive Plan, Land Use Element, Policies #5 and #6 on pages 56-61 and map on page 57. Please refer to my extensive comments which I have submitted to the city in a separate document, regarding "Area C" and these 3 lots on S Ivy Street. Limitations and conditions should be developed to assure these lots are not developed in a manner or for uses that were not intended. Strict regulations and restrictions exist for these lots.

#### **16.54. Amendments to Zoning Map**

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16.54.040 Standards and criteria. 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;

This area is intended for use as light-commercial/residential. See the Comprehensive Plan, Land Use Element, Policies #5 and #6 on pages 56-61 and map on page 57. Please refer to my extensive comments which I have submitted to the city in a separate document, regarding "Area C" and these 3 lots on S Ivy Street. Limitations and conditions should be developed to assure these lots are not developed in a manner or for uses that were not intended. Strict regulations and restrictions exist for these lots.

16.54.060 Improvement conditions.

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 zone change. Allowable conditions of approval may include, but are not necessarily limited to:

1. Street and sidewalk construction or improvements;
2. Extension of water, sewer, or other forms of utility lines;
3. Installation of fire hydrants.

The Comprehensive Plan, Land Use Element, Policies #5 and #6 impose strict regulations and guidelines upon these lots with frontage on S Ivy Street; they include use, the zone allowed, strict adherence to access guidelines (meaning no "conditions" allowed for access which are less than those ordained outright) including zoning, use ("light commercial/residential mixed-use), street design, sidewalks and pedestrian access to both S Ivy and SW 6<sup>th</sup> Ave, parking and turnarounds sufficient for safe maneuvering without need for forward/back

movements, streetlights, street signs (no parking, "zebra" signs at each end of the private street, yield signs at hammerhead, automobile diversion sign at hammerhead, pedestrian diversion barrier at S Ivy, right turn only onto SW 6<sup>th</sup> Ave), handicapped parking, provision for mailboxes and garbage receptacle containers (clusters preferred), due diligence in storm water management in area already identified with storm water flooding, etc. Ordinance requirements for setbacks, lot size, lot averaging, design of driveways and parking, landscaping, fencing and buffers at least at each lot's nexus with existing established neighborhood, curb planter recommended along property line with 140 SW 6<sup>th</sup> Ave), fire hydrants.

**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.**

"B" above contains two separate sentences and I will comment on each sentence separately:

- 1) 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.
- 2) The Planning Commission and City Council will assure that the required improvements will not reduce housing densities below those anticipated in the Comprehensive Plan.

Sentence #1:

The applicant's 3 lots with frontage on S Ivy Street have the size, location, and physical features that provide for a bounty of possible subdivision designs that would comply with city Ordinances and the Comprehensive Plan, without need to apply "conditions". Enforcement of the city Ordinances and enforcement of the restrictions and regulations in the Comprehensive Plan cannot be equated with "preventing planned development". It is my opinion the applicant should design a new proposal for development that accounts for the pre-existing restrictions and regulations on the property, rather than ask the city to try to bring conformance to the current proposal via an endless list of "conditions", which likely would be rejected by the applicant.

The Ordinances and the Comprehensive Plan have been in existence for decades. Both documents were well established before the applicant purchased the 3 lots in 2006. The applicant is a licensed Realtor by trade. I believe he should have been mindful to learn about any land use limitations on the lots before he purchased them. I found the resources to be readily available on the City website and easy to access.

*Regarding the potential impact of the costs of required improvements on needed housing:*

The ordinances, rules and regulations imposed on land development have been carefully developed and the costs of required improvements were considered and weighed before each was adopted. Developers have options they can implement to reduce costs, including changes to design, less opulent building materials, or pacing the development into stages they can afford. Many ordinances already tender options, such as the option of paving materials for roadways. Further, regarding the "needed housing", the integrity of the ordinances and the Comprehensive Plan should not be

broken in an effort to reduce costs on "needed housing", especially if such costs are outweighed by the cost of the overall good of the community. The number of housing units being built in Canby is an indicator the costs of doing business here is not a deterrent.

Sentence #2:

The housing densities anticipated in the Comprehensive Plan for these lots with frontage on S Ivy Street (and subject to the limitations of "Area C") is R-1 Low Density Residential, as the R-1 uses that are *permitted outright* can eventually be converted to the intended use of the lots, which is light-commercial/residential, and the future intended zone, which is C-R Commercial Residential, with no reason to "hasten" the conversion to C-R.

### **16.86 Street Alignments:**

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16.86.010 Purpose. This chapter is intended to insure that adequate space is provided in appropriate locations for the planned expansion, extension, or realignment of public streets. Further, it is intended to allow for the safe utilization of streets once developed. The street standards are also intended to encourage the efficient layout of streets, minimize impervious surfaces, and incorporate LID green street treatments whenever feasible. This section is to be used in conjunction with other general ordinances of the city which affect public improvements, roads, highways, etc.

This ordinance applies to the proposed development.

16.86.020 General provisions.

B. Right-of-way widths and cross section standards for new streets shall be in conformance with the Canby Transportation System Plan and the Public Works Design Standards.

F. Bikeways and bike lanes shall be provided consistent with the Bicycle Plan element of the Transportation System Plan.

G. Pedestrian facilities shall be provided consistent with the Pedestrian Plan element of the Transportation System Plan.

16.86.040 Recommended Roadway Standards Specific standards for roadway design are located in the Transportation System Plan and Canby Public Works Design Standards.

16.86.060 Street Connectivity When developing the street network in Canby, the emphasis should be upon a connected continuous grid pattern of local, collector, and arterial streets rather than discontinuous curvilinear streets and cul-de-sacs. Deviation from this pattern of connected streets shall only be permitted in cases of extreme topographical challenges including excessive slopes (35 percent plus), hazard areas, steep drainage-ways and wetlands. In such cases, deviations may be allowed but the connected continuous pattern must be reestablished once the topographic challenge is passed.

City of Canby Public Facility Improvements, Design Manual and Standard Specifications, Chapter 2-Streets indicates the following requirements, multiple deficiencies or lack of compliance within the applicant's proposal. Since the design of



the applicant's proposal may change, these are listed without detailing my concerns for each, but show a need to review these sections during the review process.

2.103 A transportation impact study may be required.

c. The scope of the TIS shall be determined by the City as detailed in the Canby development code section 16.08.150 E and F. At a minimum the traffic report shall evaluate nearby intersections as identified by the City and shall determine existing conditions (service level, v/c ratio, cueing) during average day conditions, PM peak and AM peak; projected conditions, identify changes and impacts, and recommend potential solutions. The potential solutions should also be evaluated.

2.205: Intersections; The proposed development is not in compliance with offset intersection and intersection spacing requirements.

2.206 Cul-de-sacs and Eyebrows. The proposed development is not in compliance with minimum radius at curb, minimum radius for transitions into cul-de-sac, requirement for sidewalks.

2.209 Sidewalks. Not in compliance.

2.214 Street signs & stripping; The required plan was not submitted.

2.215 Street Lighting. The required plan was not submitted.

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**Conclusion:**

**The applicant's proposal does not meet the requirements set forth in the following resources:**

- **City of Canby Comprehensive Plan**
- **Public Works Design Standards**
- **Stormwater Master Plan**
- **Transportation System Plan**

**Applicant should address areas identified and resubmit an updated application for the City Planning Commission to review.**

## CITY OF CANBY –COMMENT FORM

If you are unable to attend the Public Hearing, you may submit written comments on this form or in a letter addressing the Planning Commission. Please send comments to the City of Canby Planning Department:

By mail: Planning Department, PO Box 930, Canby, OR 97013  
In person: Planning Department at 222 NE 2<sup>nd</sup> Ave, Canby, OR 97013  
E-mail: [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov)

Written comments to be included in the Planning Commission's meeting packet are due by Noon on Wednesday, September 27, 2017. Written comments to be included City Council's meeting packet are due by Noon on Tuesday, October 10, 2017. Written comments for the Planning Commission or the City Council can also be submitted up to the time of the Public Hearings, and may be delivered in person during the Public Hearings.

**Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel**

COMMENTS:

Please see items #1 and #2 attached.

NAME: Larry Graft  
ADDRESS: 580 S Ivy Canby OR 97013  
EMAIL: LAG2131@AOL.Com DATE: 9-26-2017

**AGENCIES: Please check one box and fill in your Name/Agency/Date below:**

- ☐ Adequate Public Services (of your agency) are available  
☐ Adequate Public Services will become available through the development  
☐ Conditions are needed, as indicated  
☐ Adequate public services are not available and will not become available  
☐ No Comments

NAME: \_\_\_\_\_  
AGENCY: \_\_\_\_\_  
DATE: \_\_\_\_\_

Thank you!

Canby Planning Commission and City Council  
9/26/2017

#1

Re: CUP 17-05/ZC 17-02?SUB 17-04 S Ivy Prk Subdivision, Allen Manuel


I am not against the applicants right to do some development of the subject property but am opposed to this proposal as requested. I strongly feel do to the number of potential residences it will have a considerable negative impact on the surrounding properties especially traffic flow.

The request to re-zone to CR does nothing to allow anything regarding Uses permitted Outright with the exception of relaxed building standards for smaller lot sizes and taller building height. In other words more bang for the buck..Nothing in this proposal “ Provides a mixture of light commercial and residential activities connection two areas of heavier commercial usage, this category is intended to provide unique opportunity for mixed uses while maintaining special focus on the traffic problems of s Ivy Street.

If this was approved without deed restrictions as proposed what would prevent someone from requesting a change from what is now proposed to something else allowable under CR zoning even if under conditional use thus providing even a higher traffic impact than what this will. The applicant stated he is not planning on developing all the lots but selling some of them.

SW 6<sup>th</sup> Ave is a major collector street for S Elm to S Ivy. Even the School busses utilize this street as evident when they line up 5 to 7 deep to access S Ivy. If Canby disposal refuses to drive into the narrow 20ft private road to the proposed 11 new properties the potential for 33 refuse cans - garbage, yard debris and recycling would be placed somewhere on SW 6<sup>th</sup>. This is how they now do at 387 - 395 S Ivy. All the cans line S Ivy St.

Is their really a need for this request for a change from R-1 to CR. I don't see a small business like what currently lines some properties along S Ivy St. A tax prepare office, lock smith, beauty salon small day care etc. I just see this applicants request to further build additional housing in an already established R-1 area.

  
Larry Graff  
580 S Ivy

# 2

Comments re: Cup 17-05/ZC 17-02/SUB 17-04 Ivy Park Subdivision, Allen Manuel


At the current time a cluster mailbox system located on the applicants property serves 8 properties on S Ivy Street. The 533, 553, & 583 are the applicants properties, with the other 5 (574, 580, 590, 592, & 596) properties located across on the East side of S. Ivy Street. Mail has been delivered to me at that cluster mail box location of 580 S. Ivy since 1980.

This area of S Ivy along with all the properties continuing south on Ivy to 13<sup>th</sup> are what I have been told by Kerry Jeffery Canby postmaster are considered rural route delivery. The carrier only delivers mail one way on a street on a rural route, thus all mail boxes along this S Ivy st. are all required to be on the West side of the street from I believe to be SW 3<sup>rd</sup> to 13<sup>th</sup>.

The cluster box is located on the applicants new lot 7 next to the service pole of applicants proposed South Ivy Park map. The applicant stated at his neighborhood meeting of 9/13/17 he planned to install a new cluster box system at the proposed entrance of the new subdivision on SW 6<sup>th</sup> Ave, for HIS 12 properties and did not know what we needed for our 5 properties

According to the Postmaster The Post Office which has not yet been consulted on this is the governing party as to the location and placement of any new or changes in any existing cluster box systems. It is unknown at this time as what property address would be given to the proposed new subdivision - are they SW 6<sup>th</sup> Ave or S. Ivy Street ?????

It is a consensus of opinion from the 574, 580, 590, 592, & 596 property owners that any changes or requirements for moving, installing new or whatever from the Post Office that affect any and all of the current cluster box of 533, 553, 583 of applicants properties on the west side of Ivy and the Individual properties of 574, 580, 590, 592, and 596 located on the East side of Ivy be at the sole expense of the applicant.

  
Larry Graff  
580 S Ivy

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Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

### COMMENTS:

I am submitting 3 documents that consist of my comments,  
please find them attached.

① Land Use Comments from Regina Taylor #1

② Land Use Comments from Regina Taylor #2

③ Land Use Comments from Regina Taylor #3

NAME: Regina Taylor  
ADDRESS: 173 SW 6th Ave, Canby, OR  
EMAIL: Reginae.wood@yahoo.com DATE: 9/24/2017

AGENCIES: Please check one box and fill in your Name/Agency/Date below:

- ☐ Adequate Public Services (of your agency) are available
- ☐ Adequate Public Services will become available through the development
- ☐ Conditions are needed, as indicated
- ☐ Adequate public services are not available and will not become available
- ☐ No Comments

NAME: \_\_\_\_\_  
AGENCY: \_\_\_\_\_  
DATE: \_\_\_\_\_

Thank you!

## Land Use Comments from Regina Taylor-Part 1

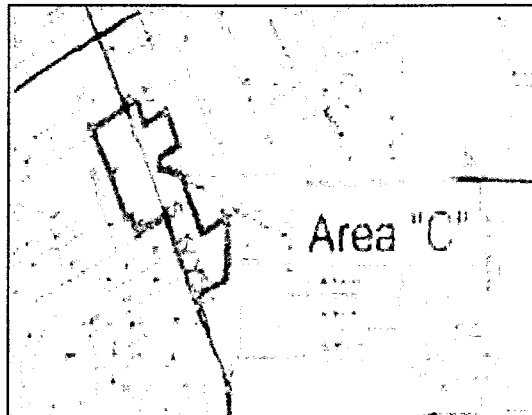
File #: CUP 17-05/ZC 17-02/SUB 17-04

Prepared for the October 9, 2017 Planning Commission and  
October 18, 2017 City Council Meetings

Location: 533, 553 and 583 S Ivy Street

Zoning: R-1 Low Density

Tax Lots: 41E04AB7100, 7200, 6300 (within Yellow Bordered are in Map Below)



Lot Sizes: 1.31 Total Acres

Owner: Allen Manuel/Manuel Family Trust

Applicant: Allen Manuel

Application Types: Conditional Use Permit, Zoning Map Amendment, Subdivision Application

City File Number: CUP 17-05/ZC 17-02/SUB 17-04

### I. PROJECT OVERVIEW & EXISTING CONDITIONS:

The applicant proposes to change the zoning of three existing lots consisting of 1.31 acres from R-1 Low Density Residential to C-R Residential Commercial to match the Comprehensive Plan land use designation; subdivide the property into twelve lots for single family homes and townhouses, and approval of conditional use permit to allow single family dwellings having a common wall.

### Comments:

Comments from landowner Regina Taylor of 173 SW 6th Avenue, Canby, Oregon: I present the following items and my comments on each item, as evidence and as part of my testimony for review and consideration by the Canby Planning Commission and Canby City Council in response to the proposed land application listed above. I have also presented information via email to Bryan Brown of the City of Canby and in a meeting with him on September 8, 2017 which is also part of my testimony.



## II. APPLICABLE CRITERIA & MY COMMENTS:

Applicable criteria used in developing my comments this application are found in the following resources:

- Canby Municipal Code Chapter 16
- City of Canby Comprehensive Plan
- Public Works Design Standards
- Stormwater Master Plan
- Transportation System Plan
- Oregon Dept of Land Conservation and Development <http://www.oregon.gov/LCD>

### Introduction:

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I am a recipient of the Notice of Public Hearing & Request for Comments which was mailed by the City of Canby regarding this proposed development, and Notice(s) of Planning Meeting from Allen Manuel, as I am the owner of land located within 500 feet of the proposed development.

I attended the Developer Meeting that was held by Allen Manuel on August 28, 2017, however the developer did not arrive. The number of attendees of this meeting was 19; attendees ended the meeting after about an hour and 15 minutes. Bryan Brown of the City of Canby very briefly visited this meeting in an unofficial capacity as he was occupied in an unrelated meeting in a room adjoining ours, at the Canby Library. We later received notice via mail of a rescheduled meeting.

I attended the rescheduled Developer Meeting that was held by Allen Manuel on September 13, 2017 where I received a copy of his Written Narrative, which I have read. The number in attendance at this meeting was 18, plus Allen Manuel for a total of 19.

During the Developer Meeting on September 13, Allen Manuel responded to numerous inquiries and questions about the proposed development. Questions were presented to Mr. Manuel regarding the density of homes, lack of sidewalks, narrow street, small lot sizes, lack of designated space for mail and garbage, space and noise concerns, safety issues, storm water and traffic issues. Mr. Manuel's responses indicated that he felt he was following the city land ordinances, maintained that land owners are provided the right to develop their land, and cited several economic reasons. Mr. Manuel further indicated that his current plan for the 3 lots is to complete the subject application process, then demolish the home at 533 S Ivy, update the homes at 553 and 583 S Ivy with new siding, roof and windows. He stated he intends to retain ownership of 553 and 583 S Ivy as rental units and then sell the remaining 10 lots, which would then be developed by a party or parties other than himself. Mr. Manuel confirmed that if the proposed rezoning occurred, and new ownership of any or all of the lots occurred, he would have no power to prevent the new owner(s) from developing the lots in a manner that is different from (and potentially a higher density) than his own proposal of 12 homes on 1.31 acres, as long as those plans conformed to the rezoned category of C-R. Therefore, if rezoned from the current R-1 to C-R, it would potentially open the area up for development under the R-2 High Density Residential density which is a conditional use under C-R.

I present the following items and my comments, as evidence and as part of my testimony for review and consideration by the Canby Planning Commission *and* Canby City Council in response to the proposed land application CUP 17-05/ZC 17-02/SUB 17-04. I have presented information and concerns to Bryan Brown of the City of Canby via email and in a meeting on September 8, 2017 which is also part of my testimony.

**City of Canby Comprehensive Plan:**

- Findings:**      The applicant's proposal does not comply with the text of:
- A) Comprehensive Plan, Land Use Element for Buildable Lands, Policy #5 (zone & use)**
  - B) Comprehensive Plan, Land Use Element for Buildable Lands, Policy #6 (Area C)**

The Comprehensive Plan is a document that was created to comply with Oregon Legislative Statute 197.005, and it governs the planning and development of land in Canby. Statute ORS197 empowered the Land Conservation and Development Commission (LCDC) with authority in developing the Comprehensive Plan in coordination with the City of Canby.<sup>i</sup> The Plan was approved by the State Legislative Assembly and adopted by the City of Canby in about 1980.<sup>ii</sup> The policies in the Comprehensive Plan are the official policies of the City.<sup>iii</sup>

There are several restrictions and regulations that control the planning and zoning of land in Canby that are not found in the Canby Municipal Code Ordinances; they are located in the Canby Comprehensive Plan.

The ability to establish restrictions and regulations in the Comprehensive Plan is authorized by ORS 197.405.1. d-f,<sup>iv</sup> which states the LCDC may: (quoted)

- “(d) Establish permissible use limitations for all or part of the area,*
- (e) Shall locate a boundary describing the area; and*
- (f) May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or denial of designated state or local permits regulating specified uses of lands in the area, or both.”*

Page numbered 60 of the Comprehensive Plan explains why these restrictions and regulations are not found in the City Ordinances: (quoted) *“the special land use regulations for these areas shall be delineated in the Comprehensive Plan, without the necessity of making Zone Ordinance revisions for each area”*. The Merriam-Webster dictionary gives the definition of ‘delineate’ as *“to describe, portray, or set forth with accuracy or in detail the steps to be taken by the government”*. (In this case the government is the municipality of Canby.)

There are two Policies in the Comprehensive Plan that impose special Restrictions and Regulations on Allen Manuel's 3 lots located on S Ivy Street:

- 1) Policy #5, on pages numbered 56-60:
- 2) Policy #6, on pages numbered 60-64, and Map on page numbered 67

**Comprehensive Plan, Land Element, Policy #5**

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**Policy #5 on pages numbered 57-60:** Uses which are acceptable and descriptions

(Quoted) *“Canby shall utilize the Land Use Map as the basis of zoning and other planning or public facility decisions.”* The Implementation Measures that govern the city’s decisions on Policy #5 rely upon “use categories and descriptions of their respective development characteristics as follows”.

The use categories and descriptions outlined on pages 57-60 are different than those found in the Canby Planning and Zoning Ordinances. The ability to establish different use categories and descriptions for use in the Comprehensive Plan is authorized by ORS 197.405.1, d-f, as noted above.

Allen Manuel’s’ 3 lots are shown on Comprehensive Plan Land Use Map with proposed zoning of C-R Commercial/Residential. They are currently zoned R-1 Low Density Residential. Therefore the two use categories of Residential/Commercial and Low Density Residential found on pages 57 and 58 of the Comprehensive Plan apply and are shown in the screenshots below:

• ***RESIDENTIAL/COMMERCIAL:***

Distinguished by a mixture of light commercial and residential activities connecting two areas of heavier commercial usage, this category is intended to provide a unique opportunity for mixed uses while maintaining a special focus on the access and traffic problems of S. Ivy Street. City C-R zoning conforms with this category with R-1 an allowable, less intensive, interim zoning.

• ***LOW DENSITY RESIDENTIAL:***

Generally distinguished by detached single family dwelling units, occasional duplex units, and incidental accessory uses, but also including approved “home occupation” type commercial activities, planned unit developments consisting of multiple family units which meet the overall density standard of the zone and developments having received a density bonus for special design features, mobile home subdivisions subject to special criteria, mobile home parks subject to case-by-case review, churches, schools and other public uses, and remaining agricultural, silvicultural, or horticultural activities. City R-1 zoning conforms with this category.

This Policy imposes a special restriction on the properties of S. Ivy Street that is subject to Residential/Commercial zoning. The LCDC is specific regarding what they intended this property to be used for: (quoted) *"this category is intended to provide a unique opportunity for mixed uses while maintaining a special focus on the access and traffic problems of S. Ivy Street. City C-R zoning conforms with this category with R-1 an allowable, less intensive, interim zoning"*.

**FACT: The ORS 197 Restrictions in Policy #5 apply to all properties on S Ivy and zoned C-R:**

- 1) Allowable zones: Commercial/ Residential or Low Density Residential**
- 2) Zones Not Allowed: All Others (including Medium Density, High Density Residential)**
- 3) The Intended use of the land is mixed use.**
- 4) Uses not intended for this land: Development other than mixed use.**

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### **Comprehensive Plan, Land Element, Policy #6**

#### **Policy #6 on page numbered 60-64: Areas of Critical Concern**

ORS 197 also provided the authority for the LCDC to identify locations in the City of Canby that represent unique land use challenges, and to develop restrictions and regulations for them; 12 such locations were identified in Canby. They are called Areas of Critical Concern by the State of Oregon, and Areas of Special Concern by the City of Canby.

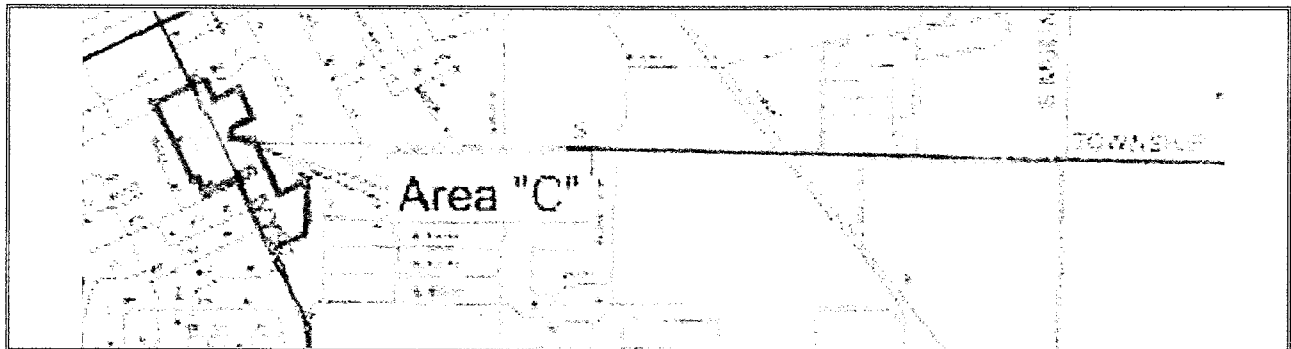
The restrictions and regulations that control the land use of these 12 locations cannot be found in the Canby Municipal Code Ordinances; they are located in the Canby Comprehensive Plan. They have been adopted as the official Policy of the City of Canby regarding these areas. It is truly critical that we treat them in these specific manners.

Canby's 12 Areas of Critical/Special Concern are labeled 'Area A' thru 'Area L'. Allen Manuel's 3 lots on S Ivy Street are located in "Area C" therefore they are subject to the restrictions and regulations in Policy #6. In Policy #5, we identified restrictions and regulations that also apply to the S Ivy Street lots. This means that the restrictions and regulations of both Policy #5 and Policy #6 shall be imposed to the 3 lots on S Ivy.

There are likely pieces of property in other parts of Canby *with the same C-R Zone designation* as Mr. Manuel's 3 lots that would not be affected by these restrictions and regulations, due to their address.

A special Map on page numbered 67 of the Comprehensive Plan shows the location of these Areas of Special Concern. It is used in conjunction with the Comprehensive Plan Map during for planning and zoning purposes.

A close up of Area C is below and the copy of the full map is included as an attachment.



Policy #6 Restrictions and Regulations: It is necessary to utilize all the information that is presented regarding the S Ivy Street location, prior to making any decision on the proposed land use application. The information is admittedly scattered throughout the text of Policy #5 and #6. The Area C text on page numbered 61 identifies the property that is subject to Area C treatment as “includes all of the property shown on the Land Use Map within the Residential-Commercial category and having frontage on S. Ivy Street”. It states the reason for special restrictions/regulation is ever increasing traffic, and imposes implementation measures:

- 1) Site plan review process shall be used to assure strict adherence to parking and access requirements. Strict adherence by legal terms means without conditions/strictly adhering, therefore conditional uses would not be entertained on parking or access to the S Ivy Street properties.
- 2) Portions of Area C which have already been zoned R-2 High Density (and developed residentially) will be allowed to remain in R-2 zoning. Note there is **NO** provision for any additional R-2 High Density development for properties that are on S Ivy and in Area C.
- 3) C-R Commercial Residential zoning has begun to be used as individual applications for Zone changes have been processed. There is no reason to attempt to **hasten** this transition process because residential ~~uses~~ can eventually be converted to mixed residential/commercial ~~uses~~.

**Notice the repeated thought between Policy 5 and 6 and Finding No 6:**

Policy 5: page numbered 54-60

- 1) R-1 Low Density Residential was identified as the allowable interim **zone**, with light commercial and residential the intended **use**.
- 2) R-1 allowed. No provision is provided for Medium or High Density Residential development in the C-R zone on S Ivy Street.
- 3) Reason cited: access and traffic.

Policy 6: page numbered 60-64

- 1) R-1 Low Density Residential **zoned** dwellings can be eventually be converted to the intended mixed Residential/Commercial **use**, so there is no reason to hasten rezoning to Commercial/Residential.
- 2) No provision is provided for Medium or High Density Residential development in the C-R zone on S Ivy Street.
- 3) Reason cited: traffic and protection from unintended development types; to cease R-2 High Density development.

Finding No 6: page numbered 60:

- 1) R-1 Low Density Residential zoning is proper to leave in place, with eventual conversion to commercial **use**.
- 2) No provision is provided for Medium or High Density Residential development.
- 3) Reason cited: Unique development constraints, or other special circumstances, protection from unintended development types.

If we have any doubt at all that the LCDC intended the S Ivy Street properties to remain as R-1 Low Density zoning, it is repeated a **fact**, in Finding No. 6 on page numbered 60.

“Other areas {of Special Concern} are presently developed in a certain manner which conflicts with the planned use of the site, that is, single family dwellings in an area designed for eventual commercial use. In such cases, it is proper to leave the present Low Density Residential Zoning intact ....”

A review of the 12 “Areas of Critical/Special Concern” demonstrates only Area C complies with the description above regarding single family dwellings in an area designed for eventual commercial use. By this process of elimination, the statement refers to Area C.

Finding No. 6 indicates the LCDC’s “additional work was done to **assure** that sites which are planned for eventual densities and intensities of development beyond those currently allowed by present zoning, **are protected from incompatible development during the interim.**”



## Screenshot of Finding No 6 and Policy #6:

### **FINDING NO. 6**

In every community there are certain areas which, because of unique development constraints or other special circumstances, warrant special attention in terms of land use regulations. By identifying these areas on a map to be used in conjunction with the Land Use Map, such special regulations can be delineated in the Comprehensive Plan without the necessity of making Zoning Ordinance revisions for each special area. After the adoption of the Comprehensive Plan and Land Development/Planning Ordinance in January 1984, L.C.D.C. staff requested that additional work be done to assure that sites which are planned for eventual densities and intensities of development beyond those allowed by present zoning, are protected from incompatible development during the interim. A number of new Areas of Special Concern have been added to those originally adopted in order to accomplish this.

All of the various Areas of Special Concern have characteristics which necessitate unique treatment rather than conventional development to minimum standards set by present zoning. Some of the areas presently lack full urban services of the sort necessary to support the density or intensity of development which is planned to eventually occur. Other areas are presently developed in a certain manner which conflicts with the planned use of the site (e.g., single-family dwellings in an area designated for eventual commercial use). In such cases, it is proper to leave the present Low Density Residential Zoning intact as a "holding pattern" until a thorough "redevelopment" of the area is undertaken. In other locations upzoning is appropriate as soon as any increased development is undertaken. Finally, there are some locations requiring special design considerations to assure that development, or redevelopment, is appropriate. It is the City's intention to use the upzoning process to implement the Comprehensive Plan in all cases where upzoning is indicated on the Land Use Map. In some cases, the upzoning could happen in the very near future. In other cases, it may be years before all required physical improvements are adequate to serve the subject properties. The City will continue to rely on the upzoning process as a means of assuring that improvements are made in a timely fashion. At the same time, all of these sites will continue to be protected from development which would preclude their eventual use as shown on the Land Use Map.

**POLICY NO. 6: CANBY SHALL RECOGNIZE THE UNIQUE CHARACTER OF CERTAIN AREAS AND WILL UTILIZE THE FOLLOWING SPECIAL REQUIREMENTS, IN CONJUNCTION WITH THE REQUIREMENTS OF THE LAND DEVELOPMENT AND PLANNING ORDINANCE, IN GUIDING THE USE AND DEVELOPMENT OF THESE UNIQUE AREAS.**

## Screenshot of the Implementation Measures for Area C:

### IMPLEMENTATION MEASURES:

- A) A map of "Areas of Special Concern" is included in the back of this Plan Element. That map is to be regarded as having the full force and effect of the Land Use Map in determining appropriate land uses and levels of development. Development proposals, even those that appear to conform with existing zoning, will be considered to conform with the Comprehensive Plan only if they meet the requirements imposed here.
- B) Specific characteristics of the Areas of Special Concern are as follows:
1. *Area "A"* is significant because of its location on Highway 99-E at a main entry to the City. This site has long been zoned for industrial development but has remained vacant because of topographic constraints, lack of State highway access, and limited rail access. With the installation of traffic signals at the intersection of Highway 99-E and S.W. Berg Parkway, the opportunity for major access improvements to the site can be seen. It now appears that commercial development would better utilize this area, but with a large adjacent area designated for industrial development, it would seem most reasonable to allow either light industrial or general commercial development (provided that any commercial development utilize the signalized intersection for access to Highway 99-E). The development of Area "A" is expected to have an impact on access to Area "B," which is adjacent. Area "A" has been rezoned C-M.
  2. *Area "B"* is designated for Heavy Industrial use on the Land Use Map. It is unique because of its location within an old aggregate removal site, with special access, water and sewer service, and drainage concerns which result from its physical condition and location. Area "B" will be upzoned to M-2 when all public facilities are available to serve the area and access problems have been resolved.
  3. *Area "C"* includes all of the property shown on the Land Use Map within the "Residential-Commercial" category and having frontage on S. Ivy Street. Every-increasing traffic on S. Ivy Street necessitates special treatment for access, especially where commercial or multi-family residential development occurs. The site plan review process shall be used to assure that strict adherence to parking and access requirements are maintained. Portions of this area which have already been zoned R-2 and developed residentially will be allowed to remain in R-2 zoning. C-R zoning has begun to be used as individual applications for zone changes have been processed. There is no reason to attempt to hasten this transition process because residential uses can eventually be converted to mixed residential/commercial use.

## **My Conclusion:**

Allen Manuel owns 3 lots that have frontage on S Ivy Street and are located in Area of Special Concern "C". He has voiced that his desire is to rezone his 3 lots on Ivy Street and then sell 10 of the 12 lots, to be developed by others

Rezoning the property to C-R would expose the land to potential R-2 High Density development as a conditional use under Commercial/Residential ORD 16.24.020 . The Comprehensive Plan Policy #5 and Policy #6 prohibit development of these 3 lots in a manner other than the intended use, with specific allowance to retain the land in R-1 Low Density, as I have demonstrated.

City Planners are bound by the Comprehensive Plan to protect the land from incompatible development. The City Planners and Allen Manuel should work toward a fresh development plan that satisfies the special restrictions and regulations that have been placed on properties.

I urge Canby City Planners to carefully consider the Comprehensive Plan when reviewing Allen Manuel's request for rezoning of his 3 lots on S. Ivy. A conclusion might be made that the Planning Commission have previously permitted Allen Manuel incompatible development of some Residential-Commercial zoned lots on S Ivy Street *and* in Area C, as evidenced by 8 townhouses and multiple single family homes associated with Allen Manuel and located at 423 to 445 S Ivy which were built in 2003, more than 2 decades after the Comprehensive Plan was created. It is imperative for the City to avoid repeating this mistake, and potentially be in violation of ORS 197.320.

<https://www.oregonlaws.org/ors/197.320>

*ORS 197.320 The Land Conservation and Development Commission shall issue an order requiring a local government, state agency or special district to take action necessary to bring its comprehensive plan, land use regulation, limited land use decisions or other land use decisions into compliance with the goals, acknowledged comprehensive plan provisions or land use regulations if the commission has good cause to believe:*

*6) A local government has engaged in a pattern or practice of decision making that violates an acknowledged comprehensive plan or land use regulation.*

Footnotes:

<sup>i</sup> ORS 197.005 <https://www.oregonlaws.org/ors/197.005>

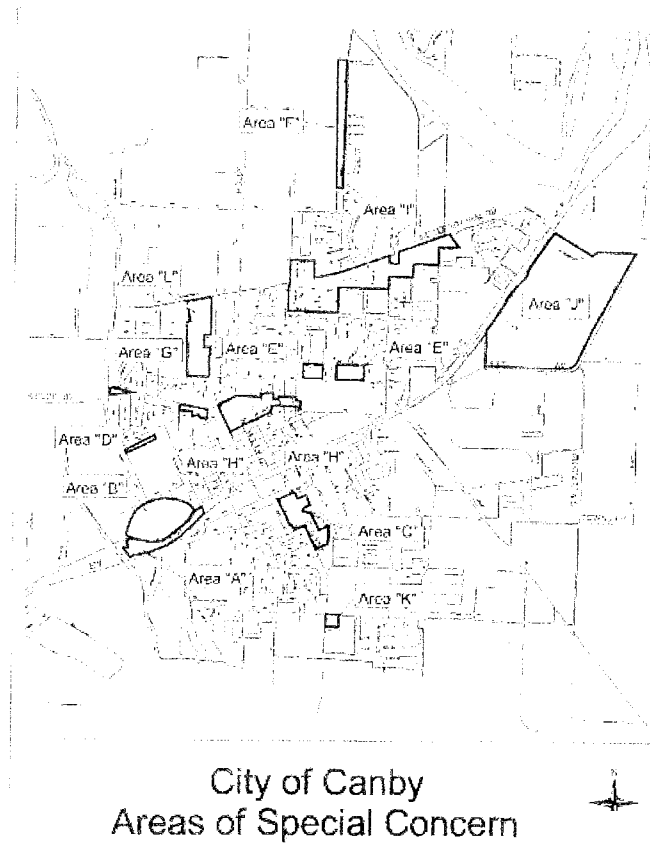
<sup>ii</sup> Page 1 of the Comprehensive Plan ....initial adoption in 1981."

[http://canbyoregon.gov/Departments/develop\\_services/plan\\_forms/ComprehensivePlan\\_2007.pdf](http://canbyoregon.gov/Departments/develop_services/plan_forms/ComprehensivePlan_2007.pdf)

<sup>iii</sup> Page 2 of the Comprehensive Plan. "Policy statements contained in this document become the official policies of the City of Canby on these subjects unless they are later amended or repealed by the City Council."

<sup>iv</sup> ORS 197.405 <https://www.oregonlaws.org/ors/197.405>

ATTACHEMENT: Map: Areas of Special Concern.



## Land Use Comments from Regina Taylor-Part 2

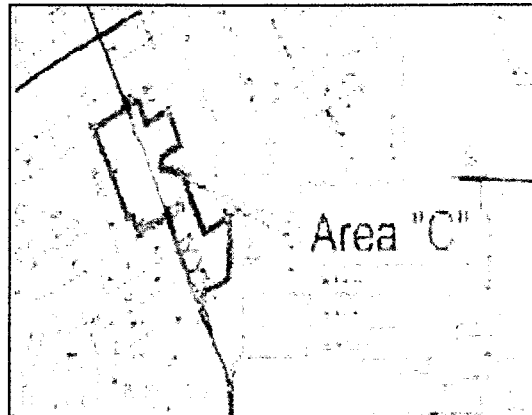
File #: CUP 17-05/ZC 17-02/SUB 17-04

Prepared for the October 9, 2017 Planning Commission and  
October 18, 2017 City Council Meetings

Location: 533, 553 and 583 S Ivy Street

Zoning: R-1 Low Density

Tax Lots: 41E04AB7100, 7200, 6300 (within Yellow Bordered are in Map Below)



Lot Sizes: 1.31 Total Acres

Owner: Allen Manuel/Manuel Family Trust

Applicant: Allen Manuel

Application Types: Conditional Use Permit, Zoning Map Amendment, Subdivision  
Application

City File Number: CUP 17-05/ZC 17-02/SUB 17-04

### I. PROJECT OVERVIEW & EXISTING CONDITIONS:

The applicant proposes to change the zoning of three existing lots consisting of 1.31 acres from R-1 Low Density Residential to C-R Residential Commercial to match the Comprehensive Plan land use designation; subdivide the property into twelve lots for single family homes and townhouses, and approval of conditional use permit to allow single family dwellings having a common wall.

### Comments:

Comments from landowner Regina Taylor of 173 SW 6th Avenue, Canby, Oregon: I present the following items and my comments on each item, as evidence and as part of my testimony for review and consideration by the Canby Planning Commission and Canby City Council in response to the proposed land application listed above. I have also presented information via email to Bryan Brown of the City of Canby and in a meeting with him on September 8, 2017 which is also part of my testimony.

**II. APPLICABLE CRITERIA & MY COMMENTS:**

Applicable criteria used in developing my comments this application are found in the following resources:

- Canby Municipal Code Chapter 16
- City of Canby Comprehensive Plan
- Public Works Design Standards
- Stormwater Master Plan
- Transportation System Plan

**Findings:** The applicant's proposal does not comply with the following Canby City Municipal Codes:

Average Lot Area/Size (Method of calculation) 16.16.030, 16.18.030

Average Area (method of calculation), Comprehensive Plan

Density 16.18.030

Related Concern: Notice of Public Hearing & Request for Comment  
(Errors/Omissions)

**Introduction:**

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*Please refer to my Introduction in my submission titled "Land Use Comments from Regina Taylor-Part 1".*

**Average Lot Area/Size. (Method of calculation):**

A Written Narrative from Allen Manuel was presented to attendees of the Developer's Planning Meeting held on September 13, 2017. The Narrative was accompanied by two diagrams which provide the data needed to calculate average lot size and density, and I have attached copies for your reference:

- 1) Proposed Subdivision for South Ivy Park which provides the lot sizes
- 2) Utilities Plan showing location of utility easements which is unbuildable area

On page 3 of the Manuel Narrative it is indicated:

*"The remaining land will be subdivided into four town home lots of approximately 3000 sf each and six detached single family lots of approximately 5000 sf each."*



I referenced the **Notice of Public Hearing & Request for Comments** which was created by the City of Canby to identify the Applicable Criteria for the proposed development. I intended to use the list of Applicable Criteria to search for the official mathematical calculation method used by the Planning and Zoning Commission in Canby. I desired to use the correct criteria and formula to verify if Allen Manuel's proposed subdivision satisfies the Municipal Code requirements for average lot sizes and densities. I have attached a copy of the Notice to the end of this document.

Below is a screenshot of the Applicable Criteria from the bottom portion of the Notice:

Applicable Criteria: Comprehensive Plan, Goals & Policies; Statewide Planning Goals; Canby Municipal Code Chapters:

<ul style="list-style-type: none"> <li>16.08 General Provisions</li> <li>16.10 Off-Street Parking and Loading</li> <li>16.18 R-1 Low Density Residential Zone</li> <li>16.24 C-R Residential Commercial Zone</li> <li>16.43 Outdoor Lighting Standards</li> <li>16.46 Access Standards</li> <li>16.50 Conditional Uses</li> </ul>	<ul style="list-style-type: none"> <li>16.54 Amendments to Zoning Map</li> <li>16.62 Subdivisions – Applications</li> <li>16.64 Subdivisions – Design Standards</li> <li>16.88 General Standards &amp; Procedures</li> <li>16.89 Application &amp; Review Procedures</li> <li>16.120 Parks, Open Space &amp; Recreation Land General Provisions</li> </ul>
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*Note: Failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue.*

City of Canby ■ Community Development & Planning ■ 222 NE 2nd Avenue, Canby, OR 97013 ■ (503) 266-7001

I identified errors or omissions in the list of Applicable Criteria which frustrated my search for the relevant data to include as “evidence sufficient to afford the decision maker an opportunity to respond”.

"Applicable Criteria"	Error/Omission	Concern Caused
16.18 R-1 Low Density Residential	<u>Confused title vs chapter heading:</u> 16.16 is the chapter for Low Density 16.18 is the chapter for Medium Density	I was uncertain if both Low and Medium Density applied and required my research?
16.20 R-2 High Density Residential	<u>Omitted</u> from Applicable Criteria however applicant's proposal to rezone to C-R with a Conditional Use Permit activates ORD 16.24.020.A which says "residential development shall conform to the development standards of the <u>R-2 Zone</u> ." R-2 is located in Chapter 16.20 which was not included as an Applicable Criteria.	Concerned citizens may not have been clear or aware that 16.20 R-2 High Density Residential Code applies, which may have affected their perception of the impact of the proposal and need to submit comments or testimony. This is disappointing.

Please be aware I performed due diligence in my research and referred to every chapter in the Municipal Code and Comprehensive Plan to substantiate my comments.

**City of Canby Municipal Code (Method of calculation):**

I believe Allen Manuel used a method to calculate average lot size which is not the methods used in the Canby Municipal Code and the Comprehensive Plan. Two Municipal Codes are cited below, which provide precedence for the calculation method applicable per City Ordinance (italics mine, for emphasis):

**16.16.030.B.1.a R-1 Low Density –Development Standards**

**16.18.030.B.1.a R 1.5 Medium Density-Development Standards**

a. *The average area of all lots created through the subject land division, excluding required public park land dedications, surface water management facilities and similar public use areas, shall be no less than seven thousand square feet and no greater than ten thousand square feet.*

Non-required significant natural resource areas shall be included in the average lot size calculation to enable a transfer of density onto buildable portions of the site.

*Required areas include identified parks, wetland areas, riparian corridors, and other areas in which building is not permitted under local, state, or federal laws or regulations;*

**16.86.020 Street Alignments**

D. No building permit shall be issued for the construction of a new structure within the planned right-of-way of a new street, or the appropriate setback from such a street as established in Division III

I searched throughout the Municipal Code 16 for verification of the approved method to calculate average lot size. I found additional verbiage in the following Code which appears to validate the correct method involves subtracting the unbuildable area of street right-of-way (access strip): (italics mine, for emphasis):

**16.64.040.I.6 Subdivision Design Standards -Flag lots**

6. *The area of a panhandle shaped or flag lot shall be considered to be the rear or buildable portion of the lot and shall not include the driveway or access strip.*

**DENSITY:** I also noted the calculations for ***density*** requires the subtraction of the unbuildable portion such as the street right-of-ways, and such calculation method must be applied where density is a requirement: (on next page)

**16.18.030.A.2 R-1.5 Medium Density, Development Standards**

2. For two, three, or four-family dwellings: minimum of six units per acre. Density is calculated by dividing the number of dwelling units by the property area in acres (*minus area required for street right-of-way and public park/open space areas*). Decimals are rounded to the nearest whole number

**16.20.030.A High Density, Development standards.**

The following subsections indicate the required development standards of the R-2 zone: A. Minimum residential density: New development shall achieve a minimum density of 14 units per acre. Density is calculated by dividing the number of dwelling units by the property area in acres (*minus area required for street right-of-way and public park/open space areas*). Decimals are rounded to the nearest whole number.

**City of Canby Comprehensive Plan (Method of calculation):**

In addition to the Municipal Code, the Comprehensive Plan includes narrative which includes the method which was used in calculations for area and density. These are found on pages 36-40 of the Comprehensive Plan. The calculations in the Comprehensive Plan had a different audience and were intended for a different purpose, but appear to show commonality in calculation methods with those in the Municipal Code, by subtracting right-of-ways and easements from the initial area to determine buildable area.

The following two screenshots are from page 37 of the Comprehensive Plan:

***LOW DENSITY RESIDENTIAL***

1. 31 acres less 4.7 acres (rights-of-way and easements) = 26.3 acres.

***MEDIUM DENSITY RESIDENTIAL***

1. 49 acres less 7.4 acres (rights-of-way and easements) = 41.6 acres.

A copy of the Utilities Plan diagram provided by Allen Manuel during the developer's meeting is attached at the end of this document. It indicates the location of the utilities and drywell will be located under the street right-of-way. It also indicates how the lot boundaries of eleven of the twelve proposed lots extend into the street right-of-way (all except lot #9). This illustrates that the square footage of the street right-of-way was included in Allen Manuel's calculation of average lot size for 11 of the lots.

It should be noted the City of Canby Ordinance 1610.070.B.2 for Off Street Parking and Loading encourages joint/shared access, as Allen Manuel used in the design of this subdivision proposal. Joint/shared access is accomplished via use of easements recorded on the deed for each lot. The ordinance does not; however change the method of calculating average lot size. The method to calculate average lot size requires subtraction of the area designated for street right-of-ways and other areas in which building is not permitted under local, state or federal laws or regulations.

## PUBLIC BENEFIT MUST BE DEMONSTRATED

**Canby Municipal Ordinance 16.18.010B.2** indicates a public benefit must be demonstrated to allow more than 10% of the proposed lots to be outside the minimum and maximum lot areas. Allen Manuel's Narrative includes no demonstrated public benefit for the reduction on lot sizes. Using Allen Manuel's data on page 3 of his Narrative to compare to the calculations provided on the following pages, we see 100% of the lots in the proposed development are out of compliance.

	Manuel's Calculation per Narrative pg 3	Code Calculation Method of lot size
Town home		
Average Lot size	3,000 sq ft	2,885 sq ft
Single Family Home		
Average Lot Size	5,000 sq ft	4,861 sq ft

## CALCULATIONS OF AVERAGE LOT SIZE

**TOWN HOME AVERAGE LOT SIZE:** The town homes are located on lots 1 thru 4. A rough calculation of the road size, using the data from the attached diagram of South Ivy Park indicates approximately 125 square feet of lot with a town home is a deed easement for the street right-of-way. This is unbuildable area and must be deducted from the square feet to calculate average lot size to conform to the method used in the Municipal Code.

Lot #	Lot Size	Less unbuildable right-of-way sq ft	net lot size
1	3,002	-125	2,877
2	3,002	-125	2,877
3	3,001	-125	2,876
4	3,038	-125	2,913
Total	12,043	-500	11,543
11,543 divided by 4			

Town Home Ave Lot Size= 2,885 sq ft

**SINGLE FAMILY RESIDENCE AVERAGE LOT SIZE:** Similarly, the average lot size for the Single Family Homes is reduced by the unbuildable "required areas" such as street right-of-way. The proposed private road is an area in which building is not permitted under local, state or federal laws or regulations, so this area must be subtracted to calculate average square feet of the lots.

Note: Lot #12 has about 760 sq ft of Visitor Parking Stalls but I was unable to determine with any certainty if there if this is considered an unbuildable area so I have not deducted the 760 sq ft (which would cause lot size to be still lower). (see chart on next page)

Lot #	Lot Size	Less unbuildable right-of-way sq ft	net lot size
5	4,737	-1,400	3,337
6	4,361	-400	3,961
7	5,168	-350	4,818
8	7,106	-500	6,606
9	8,109	0	8,109
10	5,647	1,600	4,047
11	4,350	-1,125	3,225
12	5,691	-900	4,791
Total	45,169	6,275	38,894

38,894 divided by 8		
SFR Ave Lot Size= 4,861 sq ft		

**AFFECT OF EXISTING HOMES:** The overall average lot size of the 12 homes (townhouse and single-family residences) using the Code Method of Calculation is 4,861 sq ft. This average lot size is affected by the sizes of the lots for the two existing homes, on lots 8 and 9 which occupy the largest lots in the subdivision. If they are removed from the equation, we see the average lot size of the *new lots* will be 3,572 represented in the chart below.

A	B	C	D
Lot #	Lot Size	Less unbuildable right-of-way sq ft	net lot size
1	3,002	-125	2,877
2	3,002	-125	2,877
3	3,001	-125	2,876
4	3,038	-125	2,913
5	4,737	-1,400	3,337
6	4,361	-400	3,961
7	5,168	-350	4,818
8	7,106	-500	6,606
9	8,109	0	8,109
10	5,647	-1,600	4,047
11	4,350	-1,125	3,225
12	5,691	-900	4,791
Total	57,212	-6,775	50,437

50,437 divided by 12		
Average Lot size all homes= 4,203 sq ft		

Less existing homes (largest lots)			
8	7,106	-500	6,606
9	8,109	0	8,109
14,715			

50,437-14,715=35,722 (divided by 10 lots)= 3,572 ave		
Average Lot size less 2 existing homes: 3,572		

### Conclusion:

The average lot size in this development does not satisfy the zoning requirements. The applicant has not calculated average lot size using the method in the Canby Municipal Code.

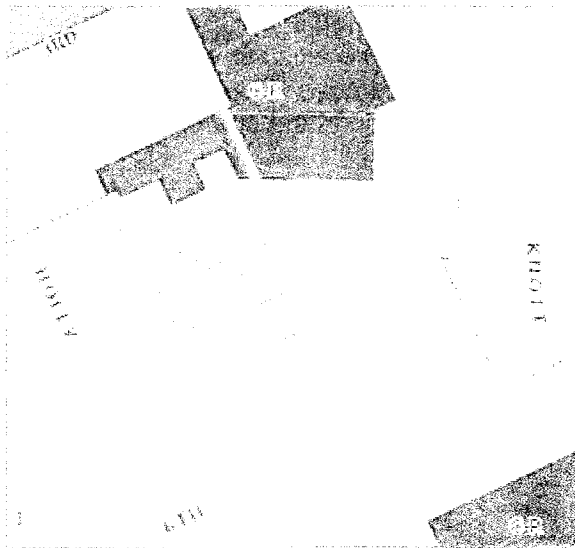
Attachment: Notice of Public Hearing with Applicable Criteria:



# City of Canby

## NOTICE OF PUBLIC HEARING & REQUEST FOR COMMENTS

The purpose of this Notice is to Request Your Comments and Invite you to two Public Hearings: **Planning Commission, Monday, October 9, 2017, 7 pm** and **City Council, Wednesday, October 18, 2017 at 7:30 pm**, Council Chambers, 222 NE 2<sup>nd</sup> Ave, 1<sup>st</sup> Floor, to review Conditional Use Permit, Zoning Map Amendment, and Subdivision applications. The applicant proposes to change the zoning of three existing lots consisting of 1.31 acres from R-1 Low Density Residential to C-R Residential Commercial to match the Comprehensive Plan land use designation; subdivide the property into twelve lots for single family homes and townhomes, and approval of a conditional use permit to allow single family dwellings having a common wall.



**Comments due**—If you would like your comments to be incorporated into the City's Staff Report, please return the Comment Form for the Planning Commission by **Wednesday, September 27, 2017**, and for the City Council by **Tuesday, October 10, 2017**.

**Location:** 583, 585, & 583 S Ivy St (Outlined in red on map at left).

**Tax Lots:** 41E04AB7200, 7200, 6300

**Lot Size and Zoning:** 1.31 acres, R-1 Low Density Residential

**Owners:** Allen Manuel Living Trust

**Applicant:** Allen Manuel

**Application Type:** Conditional Use Permit, Zoning Map Amendment and Subdivision (Type III)

**City File Number:** CUP 17-05/2C 17-02/SUR 17-04

**Contact:** Bryan Brown at 503-266-0702 or by email [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov)

**What is the Decision Process?** The Planning Commission will consider the applications and make a recommendation to the City Council. The City Council will then consider the applications and make a final decision.

**Where can I send my comments?** Written comments can be submitted up to the time of the Planning Commission Public Hearing on Monday October 9, 2017 and for the City Council Public Hearing on Wednesday, October 18, 2017 or may also be delivered in person during either Public Hearing. Comments can be mailed to the Canby Planning Department, P O Box 930, Canby, OR 97013; dropped off at 222 NE 2<sup>nd</sup> Ave, or emailed to [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov)

**How can I review the documents and staff report?** Weekdays from 8 AM to 5 PM at the Canby Planning Department. The Staff Report to the Planning Commission will be available for inspection starting **Friday, September 29, 2017** and can be viewed on the City's website: <http://www.canbyoregon.gov> Copies available \$0.25/ page or emailed upon request.

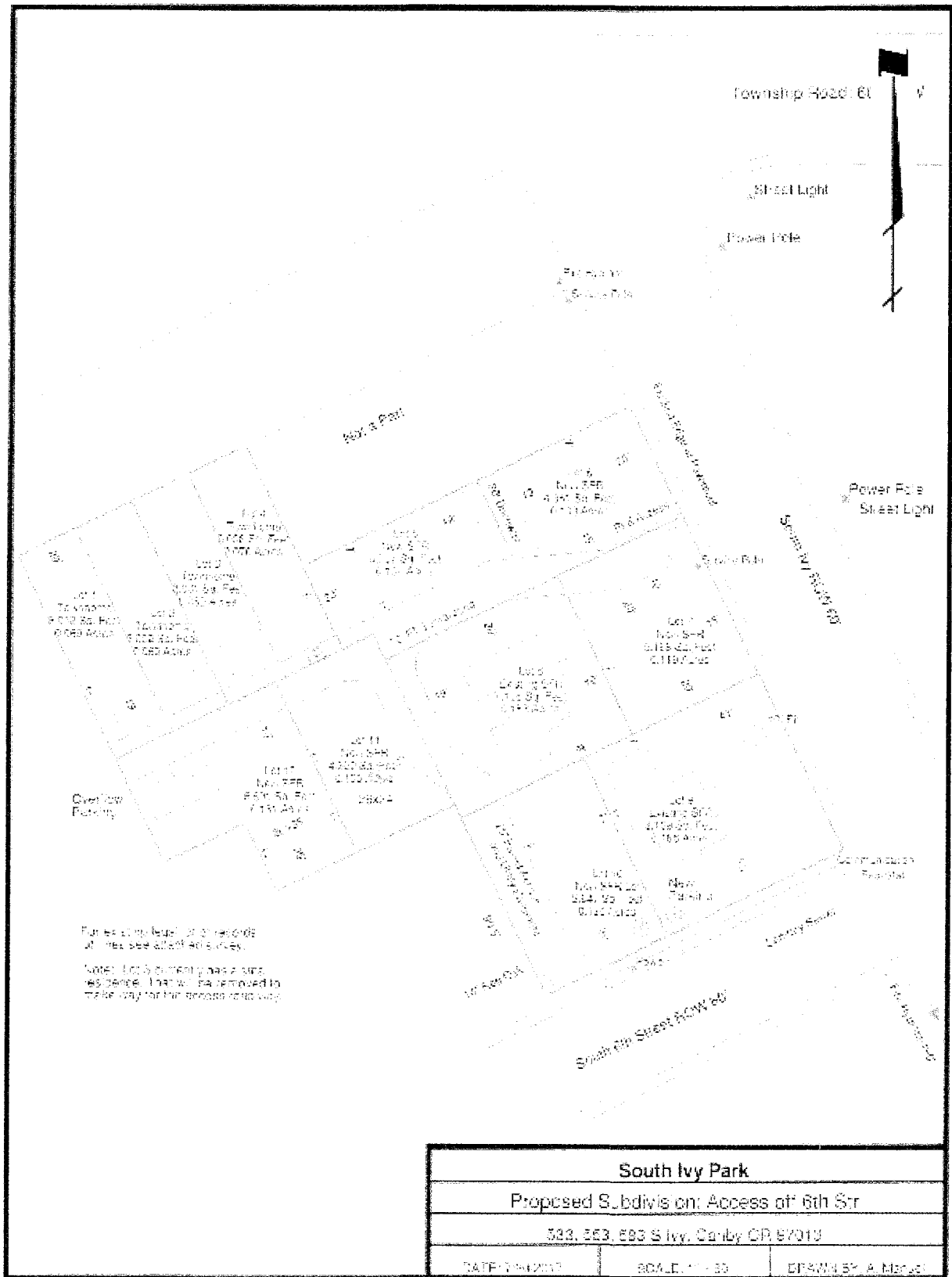
**Applicable Criteria:** Comprehensive Plan, Goals & Policies; Statewide Planning Goals; Canby Municipal Code Chapters:

- |  |   |
|--|---|
| • 16.08 General Provisions                         | • 16.54 Amendments to Zoning Map                                |
| • 16.30 C <sup>2</sup> -Street Parking and Loading | • 16.62 Subdivisions – Applications                             |
| • 16.18 R-1 Low Density Residential Zone           | • 16.64 Subdivisions – Design Standards                         |
| • 16.24 C-R Residential Commercial Zone            | • 16.83 General Standards & Procedures                          |
| • 16.43 Outdoor Lighting Standards                 | • 16.85 Application & Review Procedures                         |
| • 16.46 Access Standards                           | • 16.120 Parks, Open Space & Recreation Land General Provisions |
| • 16.50 Conditional Uses                           |   |

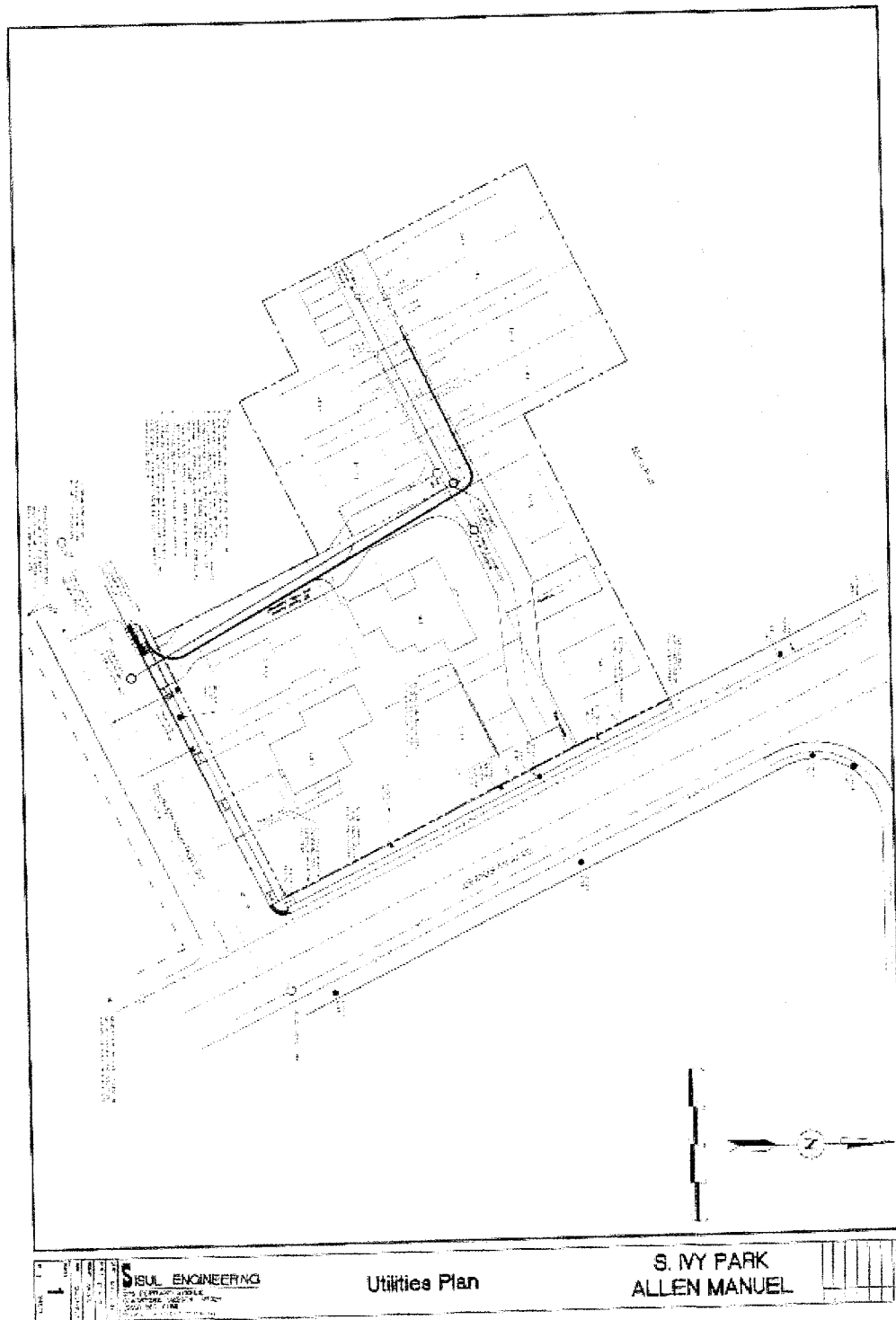
*Note: Failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue.*



**Attachment: Lot Sizes in Proposed Subdivision for South Ivy Park**



**Attachment:** Utilities Plan showing location of utility easements which is unbuildable area



## **Land Use Comments from Regina Taylor-Part 3**

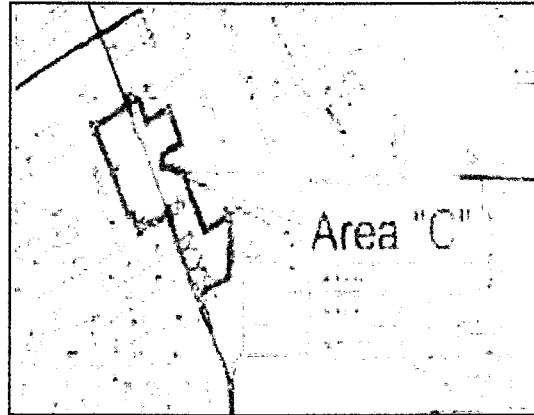
**File #: CUP 17-05/ZC 17-02/SUB 17-04**

**Prepared for the October 9, 2017 Planning Commission and  
October 18, 2017 City Council Meetings**

**Location: 533, 553 and 583 S Ivy Street**

**Zoning: R-1 Low Density**

**Tax Lots: 41E04AB7100, 7200, 6300 (within Yellow Bordered are in Map Below)**



**Lot Sizes: 1.31 Total Acres**

**Owner: Allen Manuel/Manuel Family Trust**

**Applicant: Allen Manuel**

**Application Types: Conditional Use Permit, Zoning Map Amendment, Subdivision  
Application**

**City File Number: CUP 17-05/ZC 17-02/SUB 17-04**

### **I. PROJECT OVERVIEW & EXISTING CONDITIONS:**

The applicant proposes to change the zoning of three existing lots consisting of 1.31 acres from R-1 Low Density Residential to C-R Residential Commercial to match the Comprehensive Plan land use designation; subdivide the property into twelve lots for single family homes and townhouses, and approval of conditional use permit to allow single family dwellings having a common wall.

### **Comments:**

Comments from landowner Regina Taylor of 173 SW 6th Avenue, Canby, Oregon: I present the following items and my comments on each item, as evidence and as part of my testimony for review and consideration by the Canby Planning Commission and Canby City Council in response to the proposed land application listed above. I have also presented information via email to Bryan Brown of the City of Canby and in a meeting with him on September 8, 2017 which is also part of my testimony.

**II. APPLICABLE CRITERIA & MY COMMENTS:**

**Applicable criteria used in developing my comments this application are found in the following resources:**

- **Canby Municipal Code Chapter 16**
- **City of Canby Comprehensive Plan**
- **Public Works Design Standards**
- **Stormwater Master Plan**
- **Transportation System Plan**

**Findings:**     **The applicant's proposal does not comply with the Canby City Municipal Codes listed below:**

**The applicant's proposal does not comply with the Public Works Design Standards listed below:**

*Canby Municipal Code Chapter 16.08.090 Sidewalks Required:*

*Please refer to my introduction in my submission titled "Land Use Comments from Regina Taylor-Part 1".*

**Canby Municipal Code:**

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My concerns below are delivered in the order which they appear in the Canby Municipal Code.

**16.08 General Provisions**

***16.08.090 Sidewalks Required:***

The applicant has submitted the request to rezone the property to Commercial Residential; this Ordinance indicates (quoted) "In all commercially zoned areas, the construction of sidewalks and curbs (with appropriate ramps for the handicapped on each corner lot) shall be required as a condition of the issuance of a building permit for new construction or substantial remodeling, where such work is estimated to exceed a valuation of twenty thousand dollars, as determined by the building code."

The submitted design has no provision for sidewalks to serve a private street with 11 homes; the lack of sidewalks presents a safety and comfort issue. The Comprehensive Plan (pages 57-61, map on page 67) places this property within the Area of Special Concern "C" and identified for light commercial/residential development, is a type of environment where sidewalks are expected. Additionally, city ordinance 16.10.070(B)(8) Minimum Access Requirements, requires safe sidewalk

access between the 11 residences and the 4 visitor parking stalls which serve the 11 residences. The chart included with ORD 16.10.079(B)(8) reads: (for 3-19 dwelling units) Minimum of one sidewalk connection to residences and parking areas; curb required if sidewalk adjacent to driveway.

Currently, a single Pedestrian Access path (or sidewalk) is proposed, providing access to S Ivy Street; the city should require a pedestrian deflector device on this Pedestrian Access, to "deflect" distracted pedestrians from traveling directly into the traffic on S Ivy Street (a similar device can be seen on S Ivy Street across from the Adult Center). Additional access should also be required to unite the residences with SW 6<sup>th</sup> Avenue, using either a sidewalk or a second Pedestrian Access path.

**16.08.150.C Traffic Impact Study, Determination:** This ordinance lists the information the city considers when making a determination if a TIS is required.

The traffic survey that was completed by DKS for this proposed development did not address the potential Local Street Impact nor Intersection Level of Service (LOS) at S Ivy/SW 6<sup>th</sup> Ave. The DKS traffic survey explained the impact the proposed development would have on S Ivy Street, since the original land use request showed the development exiting to S Ivy. DKS did not conduct a survey for impact on SW 6<sup>th</sup> Ave. Southwest 6<sup>th</sup> Avenue is a mature neighborhood, with 6 single-family residence driveways located within 250 feet of the intersection at S Ivy/SW 6<sup>th</sup> Ave. The proposed development adds one driveway and a private street, totaling 12 new residences with ingress/egress less than 150 feet of the intersection with S Ivy Street.

Using the traffic survey from DKS dated August 10, 2017 as a guide, their chart on page 3 shows the 3 existing single-family homes on Manuel's lots generate 42 daily trips per day, or 14 trips/day per residence (42 divided by 3=14). Using the same data but applying it to the situation on SW 6<sup>th</sup> (to obtain a rough estimate how traffic will change in the 250 feet nearest the intersection with S Ivy), this would indicate 84 current daily trips for those 6 existing homes (6 homes @ 14 trips/day). The DKS survey estimates an additional 100 trips from the proposed development, so even this simple extrapolation exposes how the traffic will be impacted from 84 to 184 trips per day, more than double the impact the short section of street currently receives.

While it is unlikely this increase in traffic will require any major change to the intersection itself, it does demonstrate the need for a Traffic Engineer to study the increased traffic volume, patterns, queuing and parking conditions and suggest traffic management/mitigation. Such Traffic management/mitigation may include restricting on-street parking on both sides of SW 6<sup>th</sup> Avenue at the intersection, and right-turn-only management for the traffic ingress/egress from the proposed new private street. The right-turn-only egress would control the pattern of traffic from the 11 residences and provide three benefits:

- 1) Providing a level of safety to the long-time residents of the six nearby existing homes, who currently utilize backing maneuvers from their driveways onto SW 6<sup>th</sup> Ave,
- 2) Increase pedestrian safety on the sidewalk on SW 6<sup>th</sup> Avenue and,
- 3) Simultaneously improving the traffic pattern/safety for the entire length of the street.

Note: City of Canby Public Facility Improvements, Design Manual and Standard Specifications, Chapter 2-Streets, 2.103.c indicates: "The scope of the TIS shall be determined by the City as detailed in the Canby development code section 16.08.150 E and F. At a minimum the traffic report shall evaluate nearby intersections as identified by the City and shall determine existing conditions (service level, v/c ratio, queing) during average day conditions, PM peak and AM peak; projected conditions, identify changes and impacts, and recommend potential solutions. The potential solutions should also be evaluated.

**16.08.150.I Mitigation:** Transportation impacts shall be mitigated at the time of development when the TIS identifies an increase in demand for vehicular, pedestrian, bicycle, or transit transportation facilities within the study area.

The TIS Study should be used to identify potential impacts to vehicular, pedestrian, bicycle use and propose mitigation resolutions which can be implemented at time of development.

**16.08.150.J.1 and 2: Conditions of Approval.** The city may deny, approve, or approve with appropriate conditions a development proposal in order to minimize impacts and protect transportation facilities.

1. Where the existing transportation system will be impacted by the proposed development, dedication of land for streets, transit facilities, sidewalks, bikeways, paths, or access ways may be required to ensure that the transportation system is adequate to handle the additional burden caused by the proposed use. 2. Where the existing transportation system is shown to be burdened by the proposed use, improvements such as paving, curbing, installation or contribution to traffic signals, traffic channelization, construction of sidewalks, bikeways, access ways, paths, or street that serve the proposed use may be required.

I have already shared my concern regarding the need for sidewalks, pedestrian access, curbs, and traffic mitigation; in addition, the city should consider the following as conditions for approval:

Provision in the development plan for a designated location for clustered mailboxes, to comply with the existing state statute 227.455 which reads: **Clustered mailboxes in city streets and rights-of-way.** (Enacted in 2015). Each city in this state shall adopt standards and specifications for clustered mailboxes within the boundaries of city streets and rights-of-way that conform to the standards and specifications for such mailboxes contained in the State of Oregon Structural Specialty Code. [2011 c.488 §2] [https://www.oregonlegislature.gov/bills\\_laws/Pages/ORS.aspx](https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx)

Street signs: The private street should be signed throughout, to help visitors identify the location of visitor parking stalls, also signage for 'no parking' areas, barricades or zebra striped signs at the two dead ends, and yield signs to guide traffic at the hammerhead and bi-directional two-headed arrow sign also at the hammerhead.

A clustered garbage receptacle pick-up location sufficient to service the 11 homes on the private drive should be designed and provided, to facilitate service by garbage service company, and to provide uninterrupted traffic flow on the private street. The idea of 33 garbage cans (refuse, recycle and lawn debris x 11 homes), blocking the street two days a week is just intolerable (most people put garbage out the evening before garbage day so they don't make noise early in the morning of garbage day).



Adding sidewalks should not reduce the condition for a clustered garbage area, sidewalks must be kept clear allow a safe place to walk other than the street, and are essential for handicapped access.

**16.08.160 Safety and Functionality Standards.** The city will require basic transportation safety and functionality standards;

**A. Adequate Street Drainage.**

S Ivy Street from OR993 to SW 7<sup>th</sup> Ave has significant Storm Water flooding issues as identified in the Storm Water Master Plan, Chapter Six, pages 17-18, which indicates estimated cost to correct the defect is \$730,000. The city should insist upon review by appropriate department for assurance of adequate storm water management as a more elaborate system may be required than the applicant has prepared to install.

**B. Safe access and clear vision at intersections.**

Implementation of traffic management is encouraged, as mentioned earlier in this document.

**16.10 Off-Street Parking and Loading**

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**16.10.030 General Requirements**

D. Off-street parking spaces for dwellings shall be located on the same lot, or adjacent lot, with the dwelling. Parking spaces located within an on-site garage shall count toward the minimum parking requirement for residential uses. Other required parking spaces may be located on a separate parcel, provided the parcel is not greater than five hundred (500) feet from the entrance to the building to be served, measured along the shortest pedestrian route to the building. The applicant must prove that the parking located on another parcel is functionally located and that there is safe vehicular and pedestrian access to and from the site.

The applicant has provided for 4 visitor parking stalls, but the lack of any sidewalks conflicts with the requirement for safe pedestrian access between the visitor parking and the dwellings within the development.

Streetlights throughout the private street would enhance neighborhood safety and traffic safety.

F. Institution of on-street parking shall not be allowed for off-street parking, where none is previously provided, and shall not be done solely for the purpose of relieving crowded parking lots in commercial or industrial planning districts.

No parking signs should be installed on the private street to help deter on-street parking.

**16.10.040 Prohibited near intersections.** In no case will off-street parking be allowed within a vision clearance area of an intersection.

No parking devices (signs and/or yellow curb paint) should be required at the intersection of S Ivy (on both sides of SW 6<sup>th</sup> Ave).

**16.10.070 Parking lots and access.**

**A. Parking Lots**

3. Areas used for standing or maneuvering of vehicles shall have paved asphalt, concrete, solid concrete paver surfaces, or paved "tire track" strips maintained adequately for all weather use and so drained as to avoid the flow of water across sidewalks or into public streets,

b. Use of permeable surfacing materials for parking lots and driveways is encouraged whenever site and soil conditions make permeable surfacing feasible. Permeable surfacing includes, but is not limited to: paving blocks, turf block, pervious concrete, and porous asphalt. All permeable surfacing shall be designed, constructed, and maintained in accordance with the Canby Public Works Design Standards and the manufacturer's recommendations. Maintenance of permeable surfacing materials located on private property are the responsibility of the property owner.

Due to known storm water flooding issues (Storm Water Master Plan pages 17-18), the City should coordinate with Storm Water personnel and applicant to discuss appropriateness of permeable surface parking and access materials.

(4) The full width of driveways must be paved in accordance with (3) above:

a. For a minimum of 20 feet from the right-of-way line back into the private property to prevent debris from entering public streets.

Seven of the 12 proposed lots have driveways that are only 19 feet long; if the city imposes sidewalks upon this development, the driveway will be reduced even further.

7. Off-street parking areas, and the accesses to them, shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and the maximum safety of pedestrian and vehicular traffic on the site and in adjacent roadways. The Planning Director or Planning Commission may require engineering analysis and/or truck turning diagrams to ensure safe and efficient traffic flow based on the number and type of vehicles using the site, the classification of the public roadway, and the design of the parking lot and access drives.

A large amount of concern was voiced at the Developer Meeting with Allen Manuel regarding the design of the proposed private street, which has multiple deviations/curves and will be very tight for garbage and fire/emergency vehicles (especially as it is currently designed, lacking sidewalks, therefore pedestrians will be sharing the street also). The multiple curves on the private street may very well cause difficulty in backing maneuvers of large vehicles such as garbage trucks or fire trucks, and the offset entrance is also troublesome. Lack of designated location for garbage receptacles indicate these will likely be in the street, therefore causing major blockage.

The applicant's proposal shows a 70 foot turnaround at the "hammerhead" of the private street. I would recommend the Planning Commission require an engineering analysis and/or truck turning diagrams to ensure safe and efficient traffic flow on this private road. This private road has design features beyond the turnaround that make it restricted and constrained, including five curves/kinks which may make backing or reversing large vehicles difficult, especially in poor weather or after sundown. (garbage trucks or fire trucks, for instance). Please use everything within your power to make this street safe for the residents, during the design phase, lives are at stake.

8. Parking bumpers or wheel stops shall be provided to prevent cars from encroaching on the street right-of-way, adjacent landscaped areas, or adjacent pedestrian walkways.

*Bumpers/stops should be required.*

9. Accessible parking shall be provided, constructed, striped, signed and maintained as required by ORS 447.233 and all Oregon Structural Specialty Code requirements.

*The applicant's plan currently has no provision for accessible parking; provision should be required. With a lack of sidewalks, visitors to the private street may be forced to park on SW 6<sup>th</sup> Ave and negotiate on foot (or wheelchair) down the private street as vehicles navigate the same area. Designation of at least one of the visitor parking stalls as handicap accessible would be a partial remedy.*

#### **B. Access**

1. The provision and maintenance of vehicular and pedestrian ingress and egress from private property to the public streets as stipulated in this ordinance are continuing requirements for the use of any structure or parcel of real property in the City of Canby.

*I am concerned about the maintenance of the proposed private street; what requirements can be enforced regarding the maintenance of the private street, particularly regarding the storm water flooding issue in this area, and the need periodic maintenance and cleaning of the storm water cleanout(s) proposed for the private street?*

6. To afford safe pedestrian access and egress for properties within the city, a sidewalk shall be constructed along all street frontages, prior to use or occupancy of the building or structure proposed for said property. The sidewalks required by this section shall be constructed to city standards except in the case of streets with inadequate right-of-way width or where the final street design and grade have not been established, in which case the sidewalks shall be constructed to a design, and in a manner approved by the Site and Design Review Board.

*The applicant currently has no provision for any sidewalk; the city should require an updated developer design plan which includes the required sidewalks, prior to approval of any proposed development.*

#### **16.10.070 (B)(8) Minimum Access Requirements (Chart).**

*This chart indicates the required sidewalks, and curb requirements for the proposed development, however this proposal shows no provision for sidewalks or curbs along the private drive (the only sidewalk is outside of the development, adjacent the public road, SW 6<sup>th</sup> Ave). No approval, even a conditional approval should be granted until a new updated design proposal is provided from the applicant, which shows the corrected deficiency in sidewalks and curbs, to city Ordinance standards. I have concerns that the addition of sidewalks will cause a drastic change in the average lot size and density of homes in the proposed development.*

The current proposal shows 9 of the 12 dwellings do not comply with the minimum standard of access width; 8 lots have 19 foot driveways, and lot #10 appears to have a 10 foot wide driveway where it intersects with the proposed private drive; once sidewalks and curbs are drawn into the plans, these measurements will be further out of compliance.

**16.10.070 (B) 9. b. No driveways shall be constructed within five (5) feet of an adjacent property line, except when two (2) adjacent property owners elect to provide joint access to their respective properties as provided by subsection 2.**

There is a potential violation of this Ordinance where the applicant's Lot #10 borders the adjacent property at 140 SW 6<sup>th</sup> Ave. The diagram of the proposed development shows a "wing" at the actual intersection of the private drive with SW 6<sup>th</sup> Ave, with the wing apparently providing the 5 foot separation from 140<sup>th</sup> SW 6<sup>th</sup>, however the remainder of the private street, moving back toward the hammerhead, appears to abut directly up against the side yard of 140 SW 6<sup>th</sup> Ave. with no curb or landscape buffer. This would be an ideal location for a sidewalk.

#### **16.24 Commercial-Residential Zone**

**16.24.020 Conditional Uses A. Uses listed as conditional in R-1 or R-1.5 zones, and not listed as permitted in section 16.24.010; residential development shall conform to the development standards of the R-2 zone.**

The proposed development on S Ivy Street, in the C-R zone has special restrictions and regulations which are imposed by the Comprehensive Plan, Land Use Element, Policies #5 and #6 on pages 56-61 and map on page 67. The Comprehensive Plan must be consulted during the review process for these lots on S. Ivy Street. This has been addressed fully in a separate commentary developed by me, please refer to it.

#### **16.46 Access Limitations on Project Density**

**16.46.010 Number of units in residential development:**

A major factor in determining the appropriate density of residential development, particularly in higher density areas, is vehicular access. In order to assure that sufficient access is provided for emergency response as well as the convenience of residents, the following special limitations shall be placed on the allowable number of units in a residential development:

**A. Single-family residential access, public and private roads:**

**1. Roads shall be a minimum of 28 feet in width with parking restricted to one side only, or a minimum of 36 feet in width with no parking restriction.**

This development does not comply with this requirement. The private street currently shows a 20 foot width and no sidewalk, the minimum requirement is 28 feet wide and parking restricted to one side.

**B) Single ownership Developments.**

This is not a "single owner development" (condominiums, townhouses, manufactured homes, multi-family developments, etc.), these are all single family residences (although 4 are common-wall single family residences). The provision for 20 foot width and no parking (which this developer has used in his proposal) is for "single owner developments" only. It appears the applicant may have applied the incorrect criteria.

**16.46.010**

**D. All turnaround systems shall meet or exceed the requirements of the parking provisions of Chapter 16.10.**

The 70' turnaround may cause uncomfortable or unsafe situations; Ord 16.10.070.(7) provides means for the city to require engineering analysis and/or truck turning diagrams prior to approval of any plan.

**E. All on-site private roads and drives shall be designed and constructed to provide safe intersections and travel surfaces which will not result in hazards for motorists, bicyclists or pedestrians.**

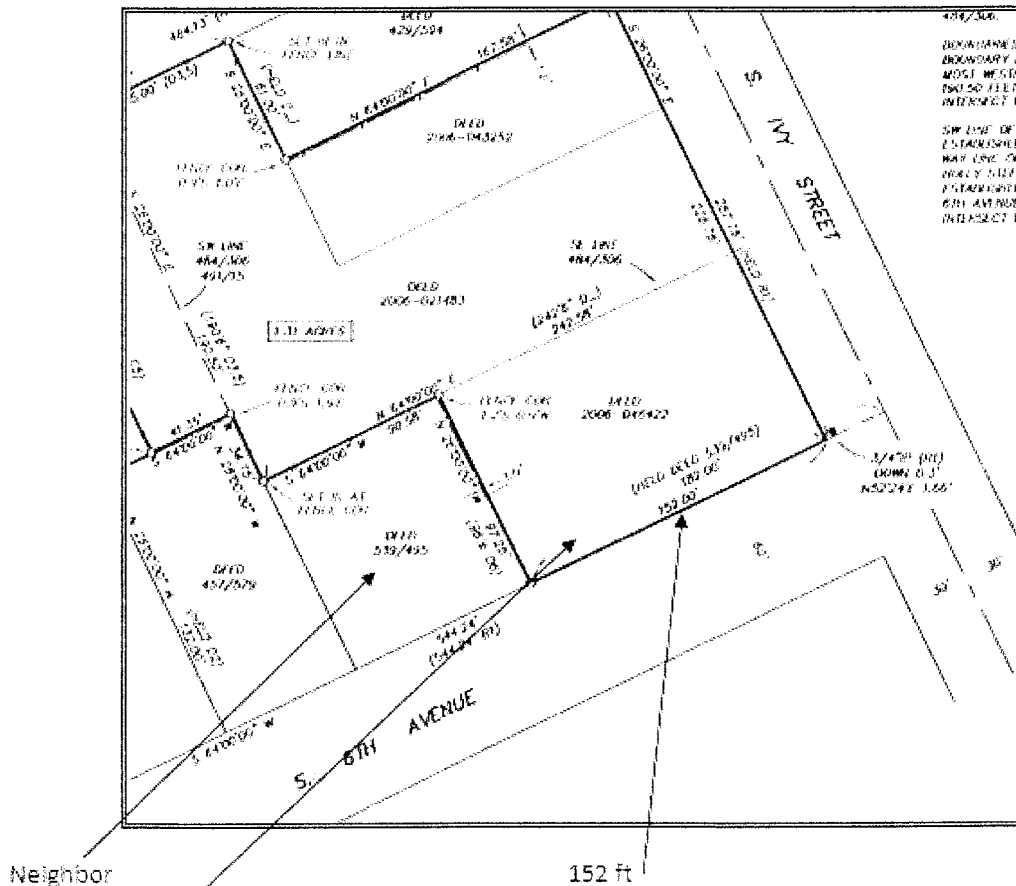
This lack of sidewalks, lack of pedestrian access to SW 6<sup>th</sup> Ave and lack of street lights cause this private street to appear dangerous. The City planners should insist on sidewalks, pedestrian access to SW 6<sup>th</sup> Ave and streetlights.

**16.46.030 Access Connection**

**A. Spacing of accesses on City streets.** The number and spacing of accesses on City streets shall be as specified in Table 16.46.030. Proposed developments or land use actions that do not comply with these standards will be required to obtain an access spacing exception and address the joint and cross access requirements of this Chapter.

The proposed development is located on a local street; minimum spacing of roadways is 150 feet, measured from the centerline on both sides of the street. The Record of Survey prepared by Griffin Land Surveying shows the applicant's lot is only 152 feet long, from the intersection of S Ivy to the neighbor's property line at 140 SW 6<sup>th</sup> Ave. From this 152 feet space must be deducted to provide for the width of the private road, sidewalks, and setbacks/wings adjacent the neighbors. There is not sufficient space and still be within the required 150 feet from S Ivy Street (measured from both sides of the street). See diagram below

Portion of Record of Survey by Griffin Land Surveying:



Entrance to private drive (5 foot wing + 28 Ft entrance + 5 foot wing = 38 feet needed for the entrance. This means there is only 114 feet from S. 14th to the entrance to the property, which is below the minimum required.

**16.46.035 Restricted access.** The City may allow an access to a City street that does not meet the spacing requirements of Table 16.46.030 if the proposed access is restricted (prevents certain turning movements). The City may require an applicant to provide an engineered traffic study, access management plan, or other information as needed to demonstrate that the roadway will operate within the acceptable standards with the restricted access in place.

Due to the lack of space evidenced in the diagram above and concerns I've already voiced, an engineering traffic study, management plan or other information as needed to demonstrate that the roadway will operate within the acceptable standards is required.

**16.46.070 Exception standards. A.** An exception may be allowed from the access spacing standards if the applicant can provide proof of unique or special conditions that make strict application of the provisions impractical. Applicants shall include proof that: 1. Indirect or restricted access cannot be obtained; 2. No engineering or construction solutions can be reasonably applied to mitigate the condition; and 3. No alternative access is available from a



street with a lower functional classification than the primary roadway. B. Access Management Plan Required. An applicant requesting an access exception may be required to submit an access management plan. The access management plan shall explain the need for the modification and demonstrate that the modification maintains the classified function and integrity of the facility. An access management plan shall be prepared and certified by a traffic or civil engineer registered in the State of Oregon. An access management plan shall at minimum contain the following:

1. The minimum study area shall include the length of the site's frontage plus the distance of the applicable access spacing standard, measured from each property line or access point(s), whichever is greater. For example, a property with 500 feet of frontage on an arterial (required 660 foot access spacing standard) shall have a minimum study area which is 1,820 feet in length.
  2. The potential safety and operational problems associated with the proposed access point. The access management plan shall review both existing and future access for all properties within the study area as defined above.
  3. A comparison of all alternatives examined. At a minimum, the access management plan shall evaluate the proposed modification to the access spacing standard and the impacts of a plan utilizing the City standard for access spacing. Specifically, the access management plan shall identify any impacts on the operations and/or safety of the various alternatives.
  4. A list of improvements and recommendations necessary to implement the proposed access modification, specifically addressing all safety and operational concerns identified.
  5. References to standards or publications used to prepare the access management plan.
- C. The granting of the exception shall be in harmony with the purpose and intent of these regulations and shall not be considered until every feasible option for meeting access standards is explored.
- D. No exception shall be granted where such hardship is self-created.
- E. Reasons for denying access spacing exception applications include, but are not limited to, traffic safety concerns, expected or planned traffic increases due to development or road construction, and emergency service provision issues

The particular access spacing configuration at the proposed property suggests the Exception Standards requirements must be applied to this proposal.

#### **16.50.010 Conditional Uses**

16.50.010 Authorization to grant or deny conditional uses. A conditional use listed in this title shall be permitted, altered, or denied in accordance with the standards and procedures of this chapter. In the case of a use existing prior to the effective date of the ordinance codified in this title as a conditional use, a change in the use, or reduction in lot area, or an alteration of the structure, shall require the prior issuance of a conditional use permit. In judging whether or not a 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. (Ord. 740 section 10.3.75 (A), 1984)

- A) This proposal is NOT in compliance with the Comprehensive Plan, Land Use Element, Policies #5 and #6 on pages 56-61 and map on page 67. Please refer to my extensive comments which I have submitted to the city in a separate document, regarding "Area C" and these 3 lots on S Ivy Street.
- B) The Land Conservation and Development Commission has determined this property is NOT suitable for a conditional use, and I have provided comments regarding this in detail in my extensive comments which I have submitted to the city in a separate document, regarding "Area C" and these 3 lots on S Ivy Street. LCDC had indicated the traffic and access characteristics of these properties require special restrictions and regulations. Issuing a conditional use permit is to be strictly avoided since such permit may inadvertently allow use/zoning that is other than the intended use/zoning, such as High Density.
- C) It should be determined if Storm Water management of a sufficient design can be developed to mitigate the storm water from these 3 lots and the proposed level of development. See CIP #8 in the Storm Water Master Plan. This area is already subject to frequent roadway flooding due to insufficient capacity by the city to manage storm water; the storm drainage basin area is 5 acres between OR99E and SW 7<sup>th</sup> Avenue; this development is 1.31 acres of that land mass and currently the "empty" lots are doing the percolating of storm water into the ground; this development will pave over the "empty" lots, creating a dire need to design and review the storm water management strategy.
- D) This area is intended for use as light-commercial/residential. See the Comprehensive Plan, Land Use Element, Policies #5 and #6 on pages 56-61 and map on page 67. Please refer to my extensive comments which I have submitted to the city in a separate document, regarding "Area C" and these 3 lots on S Ivy Street.

**16.50.040 Placing conditions on a permit.** In permitting a new conditional use or the alteration of an existing conditional use, the Planning Commission may impose conditions which it finds necessary to avoid a detrimental impact and to otherwise protect the best interests of the surrounding area or the community as a whole. These conditions may include the following:

- A. Limiting the manner in which the use is conducted, including restricting the time an activity may take place, and restraints to minimize such environmental effects as noise, vibration, air pollution, glare and odor;
- B. Establishing a special yard, other open space or lot area or dimensions;
- C. Limiting the height, size or location of a building or other structure;
- D. Designating the size, number, location, and nature of vehicle access points;
- E. Improving the street and/or expanding the rights-of-way;
- F. Designating the size, location, screening, drainage, surfacing or other improvement of a parking area or truck loading area;
- G. Limiting or otherwise designating the number, size, location, height and lighting signs;
- H. Limiting the location and intensity of outdoor lighting and requiring its shielding;
- I. Requiring diking, screening, landscaping or other facility to protect adjacent or nearby property and designating standards for its installation and maintenance;
- J. Designating the size, height, location and materials for a fence;
- K. Protecting and preserving existing trees, vegetation, water, resources, wildlife habitat or other significant natural or open space areas;

L. Limiting the number, location, and design of street accesses and requiring shared access when appropriate;

M. Other conditions to assure that the development complies with standards and criteria listed in section 16.50.010. (Ord. 740 section 10.3.75 (D), 1984; Ord. 1019 section 6, 1999)

This area is intended for use as light-commercial/residential. See the Comprehensive Plan, Land Use Element, Policies #5 and #6 on pages 56-61 and map on page 57. Please refer to my extensive comments which I have submitted to the city in a separate document, regarding "Area C" and these 3 lots on S Ivy Street. Limitations and conditions should be developed to assure these lots are not developed in a manner or for uses that were not intended. Strict regulations and restrictions exist for these lots.

#### **16.54. Amendments to Zoning Map**

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16.54.040 Standards and criteria. 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;

This area is intended for use as light-commercial/residential. See the Comprehensive Plan, Land Use Element, Policies #5 and #6 on pages 56-61 and map on page 57. Please refer to my extensive comments which I have submitted to the city in a separate document, regarding "Area C" and these 3 lots on S Ivy Street. Limitations and conditions should be developed to assure these lots are not developed in a manner or for uses that were not intended. Strict regulations and restrictions exist for these lots.

16.54.060 Improvement conditions.

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 zone change. Allowable conditions of approval may include, but are not necessarily limited to:

1. Street and sidewalk construction or improvements;
2. Extension of water, sewer, or other forms of utility lines;
3. Installation of fire hydrants.

The Comprehensive Plan, Land Use Element, Policies #5 and #6 impose strict regulations and guidelines upon these lots with frontage on S Ivy Street; they include use, the zone allowed, strict adherence to access guidelines (meaning no "conditions" allowed for access which are less than those ordained outright) including zoning, use ("light commercial/residential mixed-use), street design, sidewalks and pedestrian access to both S Ivy and SW 6<sup>th</sup> Ave, parking and turnarounds sufficient for safe maneuvering without need for forward/back

movements, streetlights, street signs (no parking, "zebra" signs at each end of the private street, yield signs at hammerhead, automobile diversion sign at hammerhead, pedestrian diversion barrier at S Ivy, right turn only onto SW 6<sup>th</sup> Ave), handicapped parking, provision for mailboxes and garbage receptacle containers (clusters preferred), due diligence in storm water management in area already identified with storm water flooding, etc. Ordinance requirements for setbacks, lot size, lot averaging, design of driveways and parking, landscaping, fencing and buffers at least at each lot's nexus with existing established neighborhood, curb planter recommended along property line with 140 SW 6<sup>th</sup> Ave), fire hydrants.

**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.**

"B" above contains two separate sentences and I will comment on each sentence separately:

- 1) 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.
- 2) The Planning Commission and City Council will assure that the required improvements will not reduce housing densities below those anticipated in the Comprehensive Plan.

Sentence #1:

The applicant's 3 lots with frontage on S Ivy Street have the size, location, and physical features that provide for a bounty of possible subdivision designs that would comply with city Ordinances and the Comprehensive Plan, without need to apply "conditions". Enforcement of the city Ordinances and enforcement of the restrictions and regulations in the Comprehensive Plan cannot be equated with "preventing planned development". It is my opinion the applicant should design a new proposal for development that accounts for the pre-existing restrictions and regulations on the property, rather than ask the city to try to bring conformance to the current proposal via an endless list of "conditions", which likely would be rejected by the applicant.

The Ordinances and the Comprehensive Plan have been in existence for decades. Both documents were well established before the applicant purchased the 3 lots in 2006. The applicant is a licensed Realtor by trade. I believe he should have been mindful to learn about any land use limitations on the lots before he purchased them. I found the resources to be readily available on the City website and easy to access.

*Regarding the potential impact of the costs of required improvements on needed housing:*

The ordinances, rules and regulations imposed on land development have been carefully developed and the costs of required improvements were considered and weighed before each was adopted. Developers have options they can implement to reduce costs, including changes to design, less opulent building materials, or pacing the development into stages they can afford. Many ordinances already tender options, such as the option of paving materials for roadways. Further, regarding the "needed housing", the integrity of the ordinances and the Comprehensive Plan should not be

broken in an effort to reduce costs on "needed housing", especially if such costs are outweighed by the cost of the overall good of the community. The number of housing units being built in Canby is an indicator the costs of doing business here is not a deterrent.

Sentence #2:

The housing densities anticipated in the Comprehensive Plan for these lots with frontage on S Ivy Street (and subject to the limitations of "Area C") is R-1 Low Density Residential, as the R-1 uses that are *permitted outright* can eventually be converted to the intended use of the lots, which is light-commercial/residential, and the future intended zone, which is C-R Commercial Residential, with no reason to "hasten" the conversion to C-R.

### **16.86 Street Alignments:**

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16.86.010 Purpose. This chapter is intended to insure that adequate space is provided in appropriate locations for the planned expansion, extension, or realignment of public streets. Further, it is intended to allow for the safe utilization of streets once developed. The street standards are also intended to encourage the efficient layout of streets, minimize impervious surfaces, and incorporate LID green street treatments whenever feasible. This section is to be used in conjunction with other general ordinances of the city which affect public improvements, roads, highways, etc.

*This ordinance applies to the proposed development.*

16.86.020 General provisions.

B. Right-of-way widths and cross section standards for new streets shall be in conformance with the Canby Transportation System Plan and the Public Works Design Standards.

F. Bikeways and bike lanes shall be provided consistent with the Bicycle Plan element of the Transportation System Plan.

G. Pedestrian facilities shall be provided consistent with the Pedestrian Plan element of the Transportation System Plan.

16.86.040 Recommended Roadway Standards Specific standards for roadway design are located in the Transportation System Plan and Canby Public Works Design Standards.

16.86.060 Street Connectivity When developing the street network in Canby, the emphasis should be upon a connected continuous grid pattern of local, collector, and arterial streets rather than discontinuous curvilinear streets and cul-de-sacs. Deviation from this pattern of connected streets shall only be permitted in cases of extreme topographical challenges including excessive slopes (35 percent plus), hazard areas, steep drainage-ways and wetlands. In such cases, deviations may be allowed but the connected continuous pattern must be reestablished once the topographic challenge is passed.

*City of Canby Public Facility Improvements, Design Manual and Standard Specifications, Chapter 2-Streets indicates the following requirements, multiple deficiencies or lack of compliance within the applicant's proposal. Since the design of*

the applicant's proposal may change, these are listed without detailing my concerns for each, but show a need to review these sections during the review process.

2.103 A transportation impact study may be required.

c. The scope of the TIS shall be determined by the City as detailed in the Canby development code section 16.08.150 E and F. At a minimum the traffic report shall evaluate nearby intersections as identified by the City and shall determine existing conditions (service level, v/c ratio, cueing) during average day conditions, PM peak and AM peak; projected conditions, identify changes and impacts, and recommend potential solutions. The potential solutions should also be evaluated.

2.205: Intersections; The proposed development is not in compliance with offset intersection and intersection spacing requirements.

2.206 Cul-de-sacs and Eyebrows. The proposed development is not in compliance with minimum radius at curb, minimum radius for transitions into cul-de-sac, requirement for sidewalks.

2.209 Sidewalks. Not in compliance.

2.214 Street signs & stripping; The required plan was not submitted.

2.215 Street Lighting. The required plan was not submitted.

#### **Conclusion:**

**The applicant's proposal does not meet the requirements set forth in the following resources:**

- **City of Canby Comprehensive Plan**
- **Public Works Design Standards**
- **Stormwater Master Plan**
- **Transportation System Plan**

**Applicant should address areas identified and resubmit an updated application for the City Planning Commission to review.**



## CITY OF CANBY –COMMENT FORM

If you are unable to attend the Public Hearing, you may submit written comments on this form or in a letter addressing the Planning Commission. Please send comments to the City of Canby Planning Department:

By mail: Planning Department, PO Box 930, Canby, OR 97013  
In person: Planning Department at 222 NE 2<sup>nd</sup> Ave, Canby, OR 97013  
E-mail: [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov)

Written comments to be included in the Planning Commission's meeting packet are due by Noon on Wednesday, September 27, 2017. Written comments to be included City Council's meeting packet are due by Noon on Tuesday, October 10, 2017. Written comments for the Planning Commission or the City Council can also be submitted up to the time of the Public Hearings, and may be delivered in person during the Public Hearings.

Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

COMMENTS:

SEE  
ATTACHED

NAME: WAYNE A FETERS  
ADDRESS 485 S. IVY ST., CANBY OR 97013  
EMAIL: MAKANAINC@GMAIL.COM DATE: 9-25-17

AGENCIES: Please check one box and fill in your Name/Agency/Date below:

- ☐ Adequate Public Services (of your agency) are available
- ☐ Adequate Public Services will become available through the development
- ☐ Conditions are needed, as indicated
- ☐ Adequate public services are not available and will not become available
- ☐ No Comments

NAME: \_\_\_\_\_  
AGENCY: \_\_\_\_\_  
DATE: \_\_\_\_\_

Thank you!

CANBY PLANNING – OCTOBER 9, 2017

RE: REQUEST FOR ZONE CHANGE

PROPOSED SOUTH IVY PARK SUBDIVISION - [ALLEN MANUEL]

HISTORY - [PREVIOUS - ALAN MANUAL SUBDIVISION]

APRIL – 2001. I, Wayne A Feters, the home owner at 485 S Ivy street, Canby, drafted a letter of concern to Canby Planning regarding the proposed development of property owned by Allen Manuel, which borders my property. At that time, his flag lot property bordered my north and west property lines.

The negative impact of his proposed - “Crowded Housing” development - was perceived by many to be a threat only to “my” property. I was alone in my efforts to resist.

Zone changes and special use permits were approved by the Canby City Counsel. The complex consists of a series of townhouses and single-family dwellings. The address numbers are - 423 thru 445, S. Ivy street.

The concept for his subdivision was presented to City Planning by Allen Manuel as a seven-unit townhouse project along with two single family homes. He predicted they would sell “quickly” in that Canby “needed” them. Due to the overcrowded undesirability of this subdivision, the townhouses never sold and have since, degraded into a rental apartment complex. The single-family homes did not sell for years and were also used as rentals. They were eventually sold and one is still a rental.

Over the past 16 years, we have experienced what we feared most. The tranquility of our neighborhood has vanished - where sporadic turmoil is the norm.

Occasionally - over the years, bored children from the complex have found destructive ways to play - such as throwing rocks, shooting pellet guns, bow and arrows, etc. On occasion, confined and unsupervised children with no place to

play - except in the crowded street, have vandalized our property in search of a spacious place to play.

There have been numerous renters. Many have occupied garages as additional living space, and as a result – many cars are parked on the narrow street.

Backyards bordering my property are often - unusable as a place for kids to play, in that some are “covered” with dog excrement - which are seldom cleaned, if ever. At times, some occupants have stacked dozens of full garbage bags against the back of their dwellings. The odor of such misbehavior drifts on to adjacent properties.

Crime has entered the development community. Some people have received “prison” sentences for illegal activities. Some such activities continue, causing increased car traffic and parking on the narrow street. [A fireman with the Canby Fire Dept. has indicated they will not enter the street due to parking congestion. To fight a fire at the last house, they would have to pull 400 feet of fire hose].

Due to good people being jammed together in such a small space, there is a lot of frustration and loud arguing, caused mostly by the discomfort of overcrowding. Chaos spreads throughout out the development, which spills over to the surrounding neighborhood - creating an unsettling atmosphere which, over the years, has driven away many renters. Some nearby homeowners are constantly looking for ways to escape. Our previously peaceful neighborhood has changed.

OCTOBER – 2017. Now, after creating the setting for a “failed” community which has damaged the value and livability of adjacent properties, Allen Manuel is once again requesting a zone change to allow the construction of another similar “Crowded Housing” development. His property is “small.” He plans to “jam” ten houses - including streets, driveways, parking and yards along with two existing houses onto 1.31 acres. All traffic will enter and exit from a “narrow” development street onto 6<sup>th</sup> street - near the S. Ivy street intersection. In that this is private property, there will be no continuous enforcement of rules, and cars will be parked on the street. Garbage trucks may occasionally, if not always, have back out onto 6<sup>th</sup> street. If residents pull their cans to 6<sup>th</sup> street for pickup, there will be periods of grid lock and traffic confusion at the S. Ivy street intersection when garbage trucks are servicing the cans.

This time, the negative impact of such an undesirable housing development will be felt by the community - not just "one" homeowner.

There is one "glowing" omission in the layout for this proposed subdivision. In his previous development on S. Ivy street, Alan Manuel had to include a "rain water runoff basin" near the northwest corner of my property. That basin often "fills" during winter and spring rains - just from street runoff. The basin is approximately 40 feet x 50 feet x 4 feet deep at the center. The basin needed to catch runoff from the property in question must be "larger" to prevent my property and two or three others from becoming a "swamp" rain during runoff. When questioned, Allen Manuel stated there will be drywells under the streets, to which runoff will be directed from street drains. The obvious question is - will there be perpetual enforcement of a neighborhood rule, requiring occupants to keep roof gutters and street drains clear of leaves and other materials. Judging from experience, that will never happen. The result will be repeated flooding of downstream private properties.

From the South Ivy Street and 6<sup>th</sup> Street intersection, there is an approximate 7.50 foot drop in elevation. Rain runoff will flow diagonally across his property to the southwest corner of my property, which is where flooding will occur to several properties. An open runoff basin is necessary - which is not subject to plugged roof gutters and street street drains.

#### CONCLUSION:

This project - as proposed, will cause additional damage to property values, and degrade the quality of life in our neighborhood. When a property developer seeks permission to jam a "Crowded Housing" subdivision into an established low-density community, City Planners should give weight to the interests of long-term residents who have purchased their homes with the confidence that city planners will protect their investment by restricting such land development. We have lived in and owned our home for over 50 years. Our neighbor to the south has lived in and owned her property for 30 years. She will be impacted on two borders.

Many other long-term homeowners share borders with the property in question. They are deeply concerned, along with the entire community.

In my opinion, the previous Manuel land development and resultant failed townhouse project, referred to above, is an example of bad City Planning. It appears to not comply with city policy. It does not fit well, and will cause community chaos and degradation for decades to come.

It is in the best interest of our city and its people for city planners to "not bend the rules." In this case, Alan Manuel should be restricted to the development of his property in a manner which will allow construction of attractive single-family dwellings within the limits of our "current" Low Density Zoning.

Submitted with this writing are the signatures of 51 concerned residents who live in the affected neighborhood. All have "eagerly" signed the following petition.

#### CANBY PLANNING:

We, the members of our affected neighborhood, respectfully request Canby Planning to reject the request by Allen Manuel for a zone change which would allow development of his proposed South Ivy Park Subdivision.

Please vote "NO" and retain the current - Low Density Zoning - for his property.



9-25-17

CANBY PLANNING:

We, the members of our affected neighborhood, respectfully request Canby Planning to reject the request by Allen Manuel for a zone change which would allow development of his proposed South Ivy Park Subdivision.

Please vote "NO" and retain the current - Low Density Zoning - for his property.

Name Jody Roggensack 890 N grant  
Address 140 SW 6th Canby

Name David Pursley  
Address 226 SW 6th Canby OR 97013 RENT

Name Debra Weiss  
Address 204 SW 6th Ave Canby OR 97013 OWNER

Name Richard J. Weiss  
Address 204 SW 6th Ave Canby OR 97013 OWNER

Name Clint Barbee Owner  
Address 309 SW 6th Ave Canby OR 97013

Name Pamela Barber Owner  
Address 309 S.W. 6th Ave Canby OR 97013

CANBY PLANNING:

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Please vote "NO" and retain the current - Low Density Zoning - for his property.

8-25-17	Name	Warren Popper	Owner
	Address	596 S. HOLLY ST. CANBY OR.	
8-25-17	Name	Norman K. Magy	Owner
	Address	27011 S. Meridian Rd Aurora, OR	
8-25-17	Name	Kathy B Lewis	Owner.
	Address	596 S. HOLLY ST. CANBY OR.	
8-25-17	Name	Scott Frazier	OWNER
	Address	551 S. HOLLY ST CANBY OR	
8-25-17	Name	Chad L. Runt	OWNER
	Address	229 SW 6 <sup>th</sup> AVE Canby OR	
8-25-17	Name	Dwight Scott	owner
	Address	229 SW 6 <sup>th</sup> Ave Canby OR	



CANBY PLANNING:

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Please vote "NO" and retain the current - Low Density Zoning - for his property.

8-22-17 Name Wayne A. Feltz OWNER  
Address 485 S. IVY ST. CANBY OR 97013

8-22-17 Name Sharon A. Feltz OWNER  
Address 485 S. IVY ST. Canby Ore 97013

8-22-17 Name Angie Benson OWNER  
Address 507 S. IVY ST. CANBY, OR 97013

8-22-17 Name Paul Ashenbrenner Renter  
Address 439 S IVY


8-24-17 Name Ruth Ashenbrenner Renter  
Address 439 S. IVY

8-24-17 Name Randy Cough OWNER  
Address 530 S Holly St


CANBY PLANNING:

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Please vote "NO" and retain the current - Low Density Zoning - for his property.

Name  George Beaudoin Aug. 25, 2017

Address 441 S Ivy St. Canby, OR 97013 OWNER

Name  Andra Beaudoin AUG 25, 2017

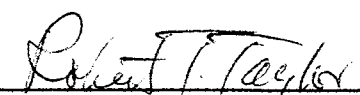
Address 441 S. IVY ST Canby OR 97013 OWNER

Name  WAYNE Dillinger SEP 9<sup>TH</sup>, 2017

Address 127 S.W. 6<sup>TH</sup> AVE CANBY OR 97013 RENTER

Name Regina Taylor Regina Taylor 9/9/17

Address 173 SW 10th Ave Canby OR 97013 owner

Name  Robert Taylor 9/9/17

Address 173 SW 6<sup>TH</sup> Ave Canby OR 97013 OWNER

Name Richard Zurcher 9/9/17

Address 615 S. Ivy canby or 97013 owner

CANBY PLANNING:

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Please vote "NO" and retain the current - Low Density Zoning - for his property.

Name Ryan Graham SEPT-9-17

Address 185 SW 6th Ave Canby OR 97013

Name Isabella Zuercher 9-9-17

Address 625 S IVY ST Canby, OR 97013 owner

Name Lynn Kadwell / David Kadwell owner / tenant

Address 148 SW 6th Ave Canby OR 97013

Name Gabe Watson owner 9-9-17

Address 249 SW 6th Ave Canby OR 97013

Name Carl Richy

Address 205 SW 6th Ave Canby OR 97013 OWNER 9/9/17

Name Jessica Richy

Address 207 SW 6th Ave Canby OR 97013 OWNER 9/9/17

CANBY PLANNING:

We, the members of our affected neighborhood, respectfully request Canby Planning to reject the request by Allen Manuel for a zone change which would allow development of his proposed South Ivy Park Subdivision.

Please vote "NO" and retain the current - Low Density Zoning - for his property.

Name <u>Rachael Dillinger</u>	<u>Renter</u>
Address <u>127 SW 6<sup>th</sup> Ave Canby OR 97013</u>	<u>9-9-2017</u>

Name <u>Gloria Christ</u>	
Address <u>24924 NE Prairie Vw Dr</u> <u>Aurora Or</u>	<u>9-16-17</u>

Name <u>Carol Hill</u>	<u>Owner</u>
Address <u>370 S. W. 6<sup>th</sup> Ave. Canby, Or.</u> <u>97013</u>	<u>9-16-17</u>

Name <u>Gina West</u>	<u>owner</u>
Address <u>320 SW 6<sup>th</sup> Ave Canby OR 97013</u>	<u>9-16-17</u>

Name <u>PAUL TANNER</u>	
Address <u>352 S.W. 1<sup>st</sup> AVE. CANBY, OR</u>	<u>OWNER</u>

Name <u>Harold Othert</u>	<u>owner</u>
Address <u>420 SW 5<sup>th</sup> St Dr. Canby</u>	<u>9/16/17</u>

CANBY PLANNING:

We, the members of our affected neighborhood, respectfully request Canby Planning to reject the request by Allen Manuel for a zone change which would allow development of his proposed South Ivy Park Subdivision.

Please vote "NO" and retain the current - Low Density Zoning - for his property.

Name Kimberly Ottertel owner  
Address 420 SW 6th Ave Canby OR 97013 9/16/17

Name Vicki Orr owner 9/16/17  
Address 587 S. Fir St. Canby OR 97013 #12

Name Mary Moss  
Address 452 SW 6th Ave Canby, OR 97013 owner 9/16/17

Name Jerry Moss owner  
Address 452 SW 6th Ave Canby OR 97013 9/16/17

Name LES HALL owner  
Address 482 SW 6th Ave Canby OR 97013 9/16/17

Name Ellen Hall owner  
Address 482 SW 6th Ave Canby OR 97013 9/16/17

CANBY PLANNING:

We, the members of our affected neighborhood, respectfully request Canby Planning to reject the request by Allen Manuel for a zone change which would allow development of his proposed South Ivy Park Subdivision.

Please vote "NO" and retain the current - Low Density Zoning - for his property.

Name Philip mason <sup>sender</sup> 9-16-17  
Address 608 SL Elm St Canby or 97013

Name Nancy O'Harrow  
Address 461 SW 6<sup>th</sup> Ave Canby 97013 <sup>owner</sup> 9-16-2017

Name Holly Donnelly  
Address 445 SW 6<sup>th</sup> Avenue Canby OR 97013 <sup>owner</sup> 9-16-17

Name Walter M TARR  
Address 413 SW 6<sup>th</sup> Ave Canby OR 97013 <sup>owner</sup> 9-17-17

Name LORELYN TARR  
Address 413 SW 6<sup>th</sup> Ave Canby OR 97013 <sup>owner</sup> 9-17-17

Name Garry Johnson  
Address 485 SW 6<sup>th</sup> Ave. Canby OR 97013 <sup>owner</sup> 9-23-17

CANBY PLANNING:

We, the members of our affected neighborhood, respectfully request Canby Planning to reject the request by Allen Manuel for a zone change which would allow development of his proposed South Ivy Park Subdivision.

Please vote "NO" and retain the current - Low Density Zoning - for his property.

Name <u>Joyce Johnson</u>	<u>owner</u>
Address <u>485 SW 6<sup>th</sup> Ave Canby</u>	<u>9/23/17</u>
Name <u>Wendy Morton</u>	<u>owner</u>
Address <u>365 SW 6TH AVE CANBY</u>	<u>9/23/17</u>
Name <u>Karen Albright-Pero</u>	<u>owner</u>
Address <u>195 S.W. 6<sup>th</sup> Ave Canby</u>	<u>9/23/17</u>
Name _____	_____
Address _____	_____
Name _____	_____
Address _____	_____
Name _____	_____
Address _____	_____



## CITY OF CANBY –COMMENT FORM

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Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

COMMENTS:

See Attached:

1. Response to Application South Ivy Park Subdivision (A. Manuel)  
CUP 17-05/ ZC 17-02/ SUB 17-04

2. WRITTEN NARRATIVE from A. Manuel

NAME:

Robert Taylor

ADDRESS

173 SW 6<sup>th</sup> Avenue, Canby OR 97013

EMAIL:

taylorbobt@yahoo.com

DATE:

9-25-2017

AGENCIES: Please check one box and fill in your Name/Agency/Date below:

- ☐ Adequate Public Services (of your agency) are available  
☐ Adequate Public Services will become available through the development  
☐ Conditions are needed, as indicated  
☐ Adequate public services are not available and will not become available  
☐ No Comments

NAME: \_\_\_\_\_

AGENCY: \_\_\_\_\_

DATE: \_\_\_\_\_

Thank you!

City of Canby Planning Commission  
Community Development & Planning  
222 NE 2<sup>nd</sup> Avenue,  
Canby, OR 97013

Response to Application: South Ivy Park Subdivision (A. Manuel)  
City of Canby File Number: CUP 17-05/ZC 17-02/SUB 17-04

I, Robert Taylor, residing at 173 SW 6<sup>th</sup> Avenue have the following concerns related to the planned development of South Ivy Park (A. Manuel) Development in the area of South Ivy Street and SW 6<sup>th</sup> Avenue in Canby, Oregon. I understand that City of Canby Planning Commissioners and the Canby City Council have ongoing interest and concern for Traffic, Parking and Liveability in Canby and that is greatly appreciated. I feel that the planned development fails to meet those same standards.

At the “Neighborhood Planning Meeting” arranged by the developer, Mr. Manuel stated that there were three steps necessary for him to proceed with the proposed development of South Ivy Park subdivision:

Zoning,  
Subdivision, and  
Conditions

Mr. Manuel provided the attendees a "WRITTEN NARRATIVE" of his Application rationale and several personal statements about his intentions at this rescheduled 'Neighborhood Development Meeting' (he failed to show up for the first scheduled meeting) which I attended. I have attached a single-sided photocopy of his "Written Narrative" with the pages numbered and each of the paragraphs sequentially numbered and this will be the blueprint for my concerns with each concern referenced by page number, paragraph number and Mr. Manuel's Code references when provided, i.e., Page 3 para 7 (10.31.900.A)

My comments are **predicated on the zoning remaining R-1** as is stated in the Comprehensive Plan under Areas of Special Concern (Area "C"). R-1 is an appropriate development for the planned area of development (South Ivy Park) within Area "C". My comments are intended to result in the Canby Planning Commission and Canby City Council considering the major concerns of Traffic, Parking and Liveability within a difficult to develop area of Area "C". Development under any other zoning category would result in unplanned and unknown impacts on Traffic, Parking and Liveability for both the proposed development area and its surrounding neighborhood. Plus, rezoning would require new Traffic impact studies and additional considerations by the City of Canby Planning Commission and the City Council.

I would suggest to the Planning Commission and the City Council that if the zoning is other than R-1, the planned development would be much different than what is currently proposed with more townhouses/apartments and/or a denser mix of single family dwellings

with resulting even smaller lot sizes. This would be highly undesirable and perpetuate the change in the neighborhood even more than that resulting from recent nearby ill-considered development almost directly to the north of the proposed South Ivy Park subdivision using planning by the same developer.

I will follow the sequence of his “WRITTEN NARRATIVE” as much as possible in addressing the developer’s statements to the Neighborhood Planning Meeting.

Page 2 para 4: Stormwater runoff is a major issue for the area within the vicinity of SW 6<sup>th</sup> Ave being recognized as an area of concern under the Canby Stormwater Master Plan. If properly engineered, designed and constructed mitigation of stormwater runoff should not be a problem if the drywell absorption volume is adequate to accommodate the runoff.

However, Mr. Manuel stated that the filters in the runoff catchment drains will be maintained by the City of Canby Public Works Department even though the catchment area is a proposed Private Road not maintained by the City of Canby. Other comments related to stormwater management are addressed below. Related concerns regarding stormwater are discussed at Page 7 para 28.

Page 2 para 5: The area of development being considered under Mr. Manuel’s application is within an area of ‘Special Concern’ as delineated in the City of Canby Comprehensive Plan that was developed in a period of less development and traffic and specifically states that development should not be hastened. With the marked population increase of the City of Canby and the linked traffic volumes, this concern is not diminished and should not be ignored.

Page 3 para 7: The developer identifies a footpath from his proposed development to South Ivy Street but not a similar footpath to SW 6<sup>th</sup> Avenue which would likely be the most used direction of travel for Canby High School students.

Page 3 para 7 & 8: I concur with the closing of ingress/egress from the proposed lots to South Ivy Street in the vicinity of Township Road/South Ivy Street intersection. However, that results in all of the traffic from the proposed development to exit to SW 6<sup>th</sup> Avenue. More traffic exiting from SW 6<sup>th</sup> Avenue/South Ivy Street intersection basically results in moving the problems from Township Road/South Ivy Street intersection south to SW 6<sup>th</sup> Avenue/South Ivy Street intersection. A possible solution is to create a physical 'No Left Turn' physical barrier where the proposed Private Road exits the proposed South Ivy Park development to SW 6<sup>th</sup> Avenue. The most recent TPR indicated that there are currently 42 daily ingresses/egresses for the existing residences (all to South Ivy Street) with 142 estimated daily ingresses/egresses from the development when fully completed and occupied. As the land use currently exists there are **NO** exits/entrances to SW 6<sup>th</sup> Avenue and **ALL** future exits/entrances to the proposed development, if permitted, will be to SW 6<sup>th</sup> Avenue.

Page 3 para 10: It appears that Canby Fire Department has been consulted and they are agreeable to a 70 foot turnaround at the hammerhead junction of the Private Road. Stormwater drainage has been commented on above at page 2 para 4.

Page 4 para 12: Did the traffic analysis consider that all of the traffic from the proposed development would exit to SW 6<sup>th</sup> Avenue and that in all probability that about half of the future traffic would utilize the SW 6<sup>th</sup> Avenue/ South Ivy Street intersection? The developer admitted at the 'Neighborhood Development Meeting' that he did not know if he had received the results of an appropriately developed TPR.

Page 4 para 13: The area is not part of the Southwest Neighborhood Planning Group however all of the traffic exiting/entering the proposed development will be to/from SW 6<sup>th</sup> Avenue and affects the residents of the Southwest Neighborhood Planning Group who reside on SW 6<sup>th</sup> Avenue. A Southwest Neighborhood Planning Group meeting would be appropriate.

Page 4 para 15 (16.18 *General Provisions* & 16.08.150 *Traffic Impact Study*): The developer states “The change from South Ivy St access to S. Sixth Ave. (SW 6<sup>th</sup> Avenue), access greatly lowers the potential traffic impact of the proposed development.” I do not believe that the actual traffic impact has been fully assessed as the impact was related to South Ivy Street and not to SW 6<sup>th</sup> Avenue, the SW 6<sup>th</sup> Avenue/South Ivy Street intersection and the area’s residents.

Page 5 para 16 (16.10 *Off-Street Parking and Loading*): Parking requirements are to be satisfied by posting the Private Road as “No Parking” and provision of four over flow parking spaces (The 4 over flow parking spaces are part of proposed new deeded Lot #12 and that concern will be raised under Page 6 para 21 comments.). It is highly improbable that parking will not result on the Private Road as there is no enforcement by the Canby Police Department on Private Roads.

As South Ivy Park is a land-locked development that has a single point of access - a narrow ‘T’-shaped Private Road potentially blocked (or partially blocked) by visitor’s or resident’s illegally parked vehicles – inadequate/inconvenient provision for visitor parking in this land-locked development increases the probability of improperly parked vehicles on this proposed Private Road. Any parking on the Private Road will hinder access whether routine or emergency.

Plus, if unmaintained, Private Roads would present other barriers to quick response times of emergency vehicles.

Page 5 para 18 (*16.24 CR Residential Commercial Zone*): The developer states “For residential uses the CR zone relies heavily on R-1.5 zone. For residential uses permitted conditionally the density standard of a minimum of 14 units per acres applies (16.20.030.A).” Within the proposed development of 1.31 acres that would equate to 1.31 times 14 or about 18 units. Since the proposed development is for 12 units that raises the question as to whether the developer plans to change his development scope if the rezoning is successful. If the number of units is greater than that addressed by the TPR, a new Traffic Study should be undertaken.

Page 5 para 19 (*16.18.030.B.4*), Page 5 para 20 and Page 6 para 21 (*16.18.030 R-1.5 Zone Dimensional Standards*). The calculation of the lot size in square feet (sq ft) is based on the deeded lot size and makes no allowance for the actual available buildable area of each of the deeded lot areas minus easements for road right of way, etc.

The next page lays out the individual lot sizes in sq ft based on the diagram provided by the developer followed by a column showing an approximation of the area of the Private Road that is included in each lot description. The right hand column gives an approximated buildable area for each of the lots with a calculated average lot size at the base of the column. That number is less than the minimum average lot size permitted. However, it should also be considered, that Lots #8 and #9 are disproportionally larger than all the other proposed Lots, and includes the 2 existing residences that will remain after the development of all the other proposed lots, it can be shown that they dramatically increase the average lot size for the development (See Note 1). Further, Lot #12 has the additional indignity of having a portion of that lot dedicated to over flow parking which should similarly reduce that owner’s lot size (See Note 2).



Lot No.	Use	Lot Size (sq ft)	Minus Roadbed (approx.)	Net Lot Size
1	Townhouse	3,002	-125 sq ft	2,877 sq ft
2	Townhouse	3,002	-125 sq ft	2,877 sq ft
3	Townhouse	3,001	-125 sq ft	2,876 sq ft
4	Townhouse	3,038	-125 sq ft	2,913 sq ft
5	SFD (new)	4,737	-1400 sq ft	3,337 sq ft
6	SFD (new)	4,361	-400 sq ft	3,961 sq ft
7	SFD (new)	5,168	-350 sq ft	4,818 sq ft
8	SFD (existing)	7,106	-500 sq ft	6,606 sq ft
9	SFD (existing)	8,109	- 0 sq ft	8,109 sq ft
10	SFD (new)	5,647	-1600 sq ft	4,047 sq ft
11	SFD (new)	4,350	-1125 sq ft	3,225 sq ft
12	SFD (new)	5,691	-900 sq ft	4,791 sq ft
<b>Total</b>		<b>57,212 sq ft</b>		<b>50,437 sq ft</b>
<b>Average Lot Size</b>		<b>4,768 sq ft</b>		<b>4,203 sq ft</b>

**Note 1: Remove Lots 8 & 9 (existing SFDs) 50,437 – 14,715 = 35,722 or 3,572 sq ft avg lot size**

**Note 2: Lot 12 has 4 Dedicated Visitor Parking Spaces. 35,722 – 760 sq ft (3,496 sq ft avg lot size)**

Page 6 para 23 (16.24.010.C): The developer, in the last sentence of the paragraph, 'The proposed plan meets or can be made to meet these requirements.' Whatever "can be made to meet these requirements" should be specified and either remedied or granted as a condition and not left to speculation by those reviewing his submissions.

Page 7 para 28 (16.46.010 *Number of Units in Residential Development and 16.46.010A*): The proposed Private Road (Drive) raises concerns for design and maintenance. This non-standard road has two dead ends, a hammerhead and 'jogs' plus is to be designated as No Parking. Canby Stormwater Master Plan is relevant to this area. So from the design perspective, the Private Road is the proposed storm water catchment system and the gradients to the two planned storm water drains (Near the NE corner of Lot #11 and the center NW side of Lot #12) will be a critical element in the effective storm water collection. Are the two proposed storm water drains adequate to capture the drainage off the entire Private Road? The Owner of the Lot fronting South Ivy Street abutting the proposed development on its North has commented that the townhouse/apartment complex directly to his north (Developed by the same developer as is submitting this application for South Ivy Park) as having continuing problems with runoff that is not constrained to that property. Maintenance would appear to be divided among 11 of the 12 Lots in the proposed development and storm water system maintenance would appear under the Private Road easements (Since the Private Road is the Storm water catchment area) against those 11 lots. It also appears to be planned to have the utilities and drywells under the roadbed, it would appear that recorded deed restrictions would be necessary to clearly delineate responsibility and necessary maintenance requirements.

Page 7 para 30 (16.46.030 *Access Connection and Table 16.46.30*): The SE corner of the Lot on SW 6<sup>th</sup> Avenue directly to the west of South Ivy Park is 152 feet from South Ivy Street according to the Survey Plot Plan provided by the developer and 16.46.30 states that the separation shall be 150 feet. With the offset jog in the Private Road immediately after access from SW 6<sup>th</sup> Avenue and its resultant

change in its entrance location, will the separation distance from South Ivy Street meet that 150 feet requirement? The necessary measurement method outlined in 16.46.30 is confusing and I absolutely defer to the Planning Commission to interpret the requirement. Further, the closest code reference that I could locate, requires a minimum radius of 10 feet for transition from one roadway to another.

Page 7 para 31 (16.46.070.B.10.f): It is agreed that the driveway placement for Lot 9 meets the code requirements but in light of current usage for parking close to that corner, it is suggested that the area between the driveway and the corner of SW 6<sup>th</sup> Avenue/South Ivy Street intersection be designated “No Parking” so as to provide safety for vehicular, bicycle or pedestrian traffic which is a recognized issue in the South Ivy Street Traffic corridor.

Page 7 para 32 (16.46.070 and Table 16.46.30): See comment under Page 7 para 30 above.

Page 8 para 33 thru 42 (16.49 Site & Design Review and 16.54 040 Standards and criteria): I disagree with the response of the developer. This proposed development IS in Area “C” and is designated as an area of Special Concern. My Wife has done considerable research on this issue and I concur with her findings. I would add however that the recognition of this area of special concern significantly predates this developer’s application and it was recognized as requiring significant attention in its development. In the intervening years both the intensity of the traffic and density (increased population of Canby as a City) further exacerbate the situation for this area and that is additionally recognized by the importance of the 2018 SIP for the South Ivy Traffic corridor. Furthermore, the verbiage within the designation of the Area of Special Concern “C” states that there was no need to ‘hasten the development’ of the area. Whether by that wording it was meant when it was to be developed or how the development was scrutinized in the planning process, but it is an area of Special Concern.

Page 9 para 44 (16.62.020.C.1 *Manage storm water through.....*): see my comments at Page 2 para 4, Page 7 para 28, and Page 13 para 77 & 78.

Page 9 para 45(16.62.020.C.2): The layout is creative and favorable to the developer but includes townhouses, small lots of random size and orientation plus two 50+ year old structures that will remain developer-owned rentals (that will be re-sided, re-windowed and re-roofed) on the largest of the lots while the remaining proposed lots are smaller. The Private Road layout is questionable with a jog in its alignment immediately after entering it from SW 6<sup>th</sup> Avenue with an additional jog between there and the T intersection plus an additional jog between that T and its dead-ending close to South Ivy Street. The utility network within the development -- water, for example, is shown as having the meters curb-side on SW 6<sup>th</sup> Avenue and private water supply lines under the Private Road to the majority of the proposed lots. Electrical supply, natural gas, and communications (cable, phone, internet, etc.) will also run under the road? I expect the utilities will actually be located in easements alongside the road edge and further decrease the available buildable area of the effected lots.

The most significant vegetation within the South Ivy Park proposed development is a 30+” inch Red Oak that is identified on the planning diagrams as a 14” red oak and it is unlikely to remain.

Page 10 para 49 & 50 (16.62.020.C.): The average lot size has been discussed at Page 5 para 19 thru 21.

The Developer stated at the ‘Developer’s Neighborhood Planning Meeting’ that it was his intention to sell the lots but preserve and upgrade the homes on the largest lots (Lot 8 & 9) and retain them as rental properties. The inclusion of the Private Road as easements on all but one of the proposed lots is necessary for the development to come closer to meeting code specified lot area minimums but is detrimental to each of the individual Owners of each of those properties because it is unbuildable land for that Owner (but taxable?).

I disagree that the proposed is “efficiently designed” and sometimes what the developer would like to do just is not practical or possible.

Page 10 para 56 & 57 (16.62.020.E): The Safe Routes to Schools Program -- I agree that the improvement planned for South Ivy Street Traffic corridor should meet the requirements/guidelines for the schools to the east and south. However, the developer dismisses those students walking to Canby High School by stating ‘Walking access to the Canby High School is available through a network of existing streets and sidewalks.’ The most logical access to Canby High School is by using the South Ivy Park Private Road and then west along SW 6<sup>th</sup> Avenue but there is no footpath/sidewalk from the proposed development to SW 6<sup>th</sup> Avenue for their use.

Page 11 para 58 & 59 (16.62.020.F *Traffic Impact Study may be required by 16.08.150*): see my comments at Page 3 para 7 & 8, Page 4 para 12 & 15.

Page 13 para 75 (16.64.070 *Improvements*): Improvements: Sidewalks, trees, street lighting, for the convenience, health and safety of future residents ..... etc. The South Ivy Park subdivision shows no plans for street lighting, sidewalks or tree planting.

Page 13 para 76 (16.64.070 *Improvements*): Driveway approaches and street trees will be installed as homes are constructed throughout the development. Street trees are part of the development while additional landscaping is at the buyer’s discretion therefore trees should be installed along with the street system in the development.

Page 13 para 77 & 78 (*16.64.070 Improvements*): Stormwater is an issue for the SW 6<sup>th</sup> Avenue area therefore it is important to know that this development won't increase the problems for this area. I have no idea how large a 'drywell' would have to be to act as a catchment for the water that would run-off the proposed Private Road but I would imagine that it would be considerable. The developer has planned for only two inlets (which would have to be at the lowest elevation points in the proposed development to be effective) for the stormwater to gain access to treatment and then the drywell(s) and would require great care in the construction (And, maintenance) of the Private Road to be effective. Are two inlets adequate and appropriately located? Further, the developer, at the Neighborhood Meeting stated that his plan was to develop South Ivy Park and sell each of the lots and, at that point, have no further responsibility for those lots. Once a builder or Owner purchases any of the 10 available lots how is effective care, maintenance or repair of the infrastructure -- roads, pedestrian pathway, drywells, etc. -- assured into the future.

Page 14 para 78 specifically (*16.64.070 Improvements*): The majority of this paragraph appears to be the developer's opinion. Pervious surfaces can be protected from 'clogging' if adequate soil erosion controls are in place and enforced. Pervious surfaced roads and driveways should be required as a means for dispersing, at least, part of the stormwater runoff although some collection may still be required. Drywells are required to capture each building's rooftop runoff by building permit issuance.

Page 15 para 86 (*16.120 Parks Open Space and Recreation Land*): The developer says 'The City has indicated that it would prefer that lots in this subdivision pay a system development charge rather than dedicate park land.' He further indicates that payment will be made by the buyer of each lot when he applies for a building permit. Does the City require a deed restriction, or some such, to insure that the park fee in lieu of land goes to the City as I am aware that the City of Canby has an agreement whereby Clackamas County issues/administers building permits?

And, the Final Comment on the Developer's "Written Narrative":

Each of 1, 2, & 3 are some of the elements moving the responsibility away from himself and to the Buyer of each individual lot and increases the importance of collaboration between the City of Canby and Clackamas County Building Permits Division:

1. Development standards for structures can be verified when plans for building permits are submitted (Page 5 para 17)
2. This requirement will be satisfied when building plans are submitted for structures on each lot (Page 6 para 24, 25 & 26)
3. Lot access and driveway locations will be reviewed by the City at the time of building permits Page 12 para 61.

The following comments are not based on Mr. Manuel's "Written Narrative" and are my opinions on other issues that may be of concern:

**Traffic and Parking have been discussed above.**

### **Liveability (Quality of Life), Safety and Miscellaneous:**

**Concern #1:** In reviewing the provided small scale lot plans, I note that the proposed Private Road has a zero clearance to the neighboring parcel to the west on SW 6<sup>th</sup> Avenue. The closest related ordinance to that boundary that I could locate is 16.10.070.B.9.b., which reads 'No driveways shall be constructed within



5 feet of an adjacent property line, except when two (2) adjacent property owners elect to provide joint access to their respective properties as provided in subsection 2.'

With the greater traffic volume on the proposed Private Road when compared to normal residential driveway traffic, it would seem that a greater buffer distance between the neighbor's property line and the Private Road would be required than the specified 5 feet. What is the required width of that buffer zone? Will that buffer be screened, fenced or shielded in some manner? Perhaps, that buffer could be the provided sidewalk access to SW 6<sup>th</sup> Avenue?

Further 16.10.070.B.1 thru 7 seem to mandate sidewalks within the proposed development as 16.10.070.B.7 states 'The standards set forth in this ordinance are minimum standards for access and egress, and may be increased .....' and 16.10.070.B.2 requires '..... shall be placed on permanent files with the city recorder.' Does a Private Road meet City of Canby Access code requirements? Will all of the necessary right of way easements and their corresponding maintenance agreements be filed with the city recorder after review by the City Attorney? Do these codes apply to this development?

**Concern #2.** Trash Disposal/Mail? I would assume that a dumpster would not be appropriate for this type development. Will City Refuse drivers be able/willing to negotiate a 20' Private Road that is configured as a 'T' with dead ends with individual residences requiring pick-up of their three cans or will the pick-up point be on SW 6<sup>th</sup> Ave?? Will USPS Mail delivery be on SW 6<sup>th</sup> Avenue or within the development?

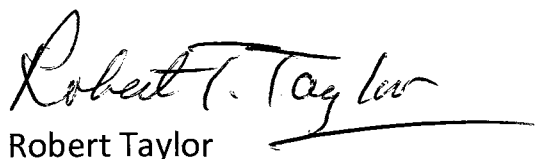
**Concern #3.** I see no stated provisions for ADA accessible sidewalks or travelways within the South Ivy Park.

**Concern #4.** I see no provisions for candy-striped barricades at the dead ends of the 'T'-shaped Private Road. Some type of warning/barricade is important.

**Finally:** Every developer or land Owner has the right to pursue development of their property to both the benefit of the developer/landowner and the community. A carefully considered balance of the developer's/landowner's wishes and the benefit to the community must be reached. I find it hard to consider this development to be a 'Park' as in South Ivy 'Park'. It looks like a maximum effort to get the most bang for the buck without careful consideration of goals for Traffic, Parking and Quality of Life that the City of Canby strives to attain. It will be an overcrowded, chaotic mess with 12 residences crammed in together in a jumbled, land-locked development with a single access point for vehicles. Multiple exemptions, variances, conditions and other considerations may have to be granted if the developer attempts to proceed as planned. City Planning and Government need to stand up and get commensurate development to what they would like to see in their own neighborhoods. This area was singled out as an area of Special Concern (Area C) and this will not improve Area C. The overall impact to the nearby residents will be unknown until after the fact. The purpose of 'Development' is to IMPROVE.

I admit that I am biased (But open minded!?) however the City has a vision for how the overall Canby community should be developed however, as planned and proposed, this is not the right development plan for this area.

Thank You for your time and consideration,

  
Robert Taylor

173 SW 6<sup>th</sup> Ave, Canby, OR 97013

Meeting of 9/13/2017  
Agenda Item 10 - Planning & Public Works

## WRITTEN NARRATIVE

### Application for Zone Change and Subdivision

Applicant: Allen Manuel  
489 SW First Ave.  
Canby OR 97013  
Phone: (503) 784-4950  
Email: [amanuel@canby.com](mailto:amanuel@canby.com)

Owner: Allen Manuel  
489 SW First Ave.  
Canby OR 97013  
Phone: (503) 784-4950  
Email: [amanuel@canby.com](mailto:amanuel@canby.com)

Location: 533, 553, & 583 S. Ivy Street  
West side of S. Ivy Street at S. 6<sup>th</sup> Avenue

Legal Description Tax Lots 6300, 7100, 7200 Sec. 04, T4S R1E WM  
(Assessor Map 4 1 E 04AB)

Zoning: Current R-1 (Low Density Residential Zone)  
Comprehensive Plan CR (Residential Commercial Zone)

Site Size: 1.31 Acres

Proposal To subdivide the property keeping two of the three  
existing homes creating four new town home lots  
and six new single family lots suitable for  
dwellings meeting the CR zone standard

Date: 1 August 2017

## SITE DESCRIPTION

The site is located on the south side of S. Ivy Street at the intersection with 6th Avenue in southwest Canby. The property has frontage on both roadways. The subject property is a 1.3 acre site made up of three existing single family homes. The average lot size for the existing homes is 19,000 sq. ft. South Ivy St in this area is fronted with older homes with variable lots sizes. A number of flag lot arrangements have been used to further divide older lots in the area. The north side of the subject property is a mixture of large lot single family and newer infill development. The south and west sides have older single family development. Because of the Commercial Residential zone the S. Ivy frontage is interspersed with commercial uses.

The development site is presently occupied by three single family residences. All three homes currently take access from S. Ivy Street. As one home has a circular drive the total of accesses is four. These homes are currently rentals and the landscape maintenance is minimal. The site is mostly level with a slight drop to the north. Two large trees and other small trees are located around the property. The property has no identified significant natural resources or physical hazards.

Public sanitary sewer and water are available to the site in S. Ivy Street and 6th Avenue. Other public utilities, such as natural gas, power and communications are available from S Ivy St. Fire protection is available to the property from Canby Fire District and police protection is available from the City of Canby Police Department.

Storm drainage runoff is anticipated to be infiltrated into the ground, per the City of Canby's preferred method of storm drain disposal, drywells.

## PROPOSAL

Two land use actions are proposed. The first proposal is to change the zone from the present R-1, low density residential zone to C-R, residential/commercial to match the comprehensive plan designation. This will allow the development of the property with residential uses at the R-1.5 density, and generally under the R-1.5 standards. The comprehensive plan generally applies the C-R zone to all properties along the S. Ivy Street frontage from the Highway Commercial zone at S. 3rd Ave to the Low Density Residential zone at S 6th Ave. In addition the east side of S. Ivy Street has the C-R zone continuing out to the old Wilco Store site at about S. 8th Avenue. Conversion of the subject property's zone to match the comprehensive plan designation will further the implementation of the city's comprehensive plan.

The second land use action proposed is to subdivide the subject property consistent with the CR zone density and requirements. The attached plan proposes to remove one of the existing residences making way for a private access roadway, and saving two of the existing residences. The remaining land will be subdivided into four town home lots of approximately 3000 sf each and six detached single family lots of approximately 5000 sf each.

6

At present, all access to the property is taken on four drive ways on S. Ivy Street. The proximity of these accesses to the already problematic S. Ivy Street intersection with S. Township Road creates traffic conflicts that are not allowed under current code. All access to the proposed subdivision, including to the existing homes will be taken on S. Sixth Avenue. The existing home at 583 S. Ivy will have a new driveway built off S. Sixth Avenue. The remaining eleven lots will share a private twenty foot wide paved private drive connected to S. Sixth Avenue. A footpath will allow pedestrian traffic to connect directly to S. Ivy Street.

7

This access plan will mesh smoothly with the City of Canby's current plan to rebuild S. Ivy Street along this frontage. With the installation of a traffic signal at the S. Township Road intersection and the removal of the four driveways currently serving the subject property traffic will flow more smoothly and safety will be enhanced.

8

No dedications will be required for frontages along S. Ivy Street and along S. Sixth Avenue. South Ivy Street has a 60' ROW and will have all frontages improved according to the City of Canby plan currently in development. Curbs and paving are in place on the 60' ROW of S. Sixth Avenue. A four foot sidewalk runs along S. Sixth Avenue to the property line of the subject property. This sidewalk is separated from the curb by a distance of two feet. A six foot curb tight sidewalk will be installed from the property line to the improvements on S. Ivy Street.

9

Public sanitary sewer and water are available to the site in S. Ivy Street and S. Sixth Avenue. Other public utilities, such as natural gas, power and communications are also available from S. Ivy St. and S. 6th Ave. Fire protection is available to the property from Canby Fire District and police protection is available from the City of Canby Police Department. Storm drainage runoff is anticipated to be infiltrated into the ground, per the City of Canby's preferred method of storm drain disposal, drywells.

10

A pre-application conference was held with the City of Canby and service providers to discuss the development of the site on April 11, 2017. At that meeting objections were voiced to accessing the development from S. Ivy Street. The current site plan shows access from S. Sixth Ave. Since that change is an outgrowth of the pre-application meeting it seems un-necessary to have a new pre-application meeting to review the new plan.

11

The change from S. Ivy St access to S. Sixth Ave., access greatly lowers the potential traffic impact of the proposed development. Staff now indicates that we probably will not need a full traffic impact study but may only need a Traffic Memorandum reviewing the adequacy of the traffic analysis conducted at the time of the development of the Comprehensive Plan. The Traffic Memorandum process was started about 24 July, 2017.

12

The area of the proposed development is not included in any of the neighborhood planning groups in Canby, but rather is generally included in the central business district. A neighborhood meeting to consider the proposed subdivision is not then required.

13

## **APPLICABLE CRITERIA AND STANDARDS**

### **Identification of Applicable Criteria and Standards**

The following sections of the City of Canby Land Development and Planning Ordinance apply to this application:

16.18	General Provisions & 16.08.150 Traffic Impact Study
16.10	Off-Street Parking and Loading
16.24	Residential/Commercial Zone
16.46	Access Limitations on Project Density
16.54.040	Amendments to Zoning Map
16.56	Land Division General Provisions
16.62	Subdivisions--Applications
16.64	Subdivisions – Design Standards
16.86	Street Alignments
16.88	General Standards & Procedures
16.88.190	Conformance with Transportation System Plan & Transportation Planning Rule.
16.89	Application and Review Procedures

14

## **LAND USE AND DEVELOPMENT ORDINANCE**

### *Chapter 16.18 General Provisions & 16.08.150 Traffic Impact Study*

Response: The change from S. Ivy St access to S. Sixth Ave., access greatly lowers the potential traffic impact of the proposed development. Staff now indicates that we probably will not need a full traffic impact study but may only need a Traffic Memorandum reviewing the adequacy of the traffic analysis conducted at the time of the development of the Comprehensive Plan. The Traffic Memorandum process was started about 24 July, 2017.

15

#### *Chapter 16.10 Off-Street Parking and Loading*

Response: The parking requirement for single family dwellings is two spaces per dwelling unit (Table 16.10.050). The two existing single family dwellings that will be retained will have new two-space parking pads installed. The house at 583 S. Ivy Street will have a new parking and access off S. 6th Avenue. The house at 553 S. Ivy Street will have a new parking pad installed on the south side of the house with access taken from the new common roadway off S. 6th Avenue. The remaining four town homes and six single family dwellings will each have a standard two space parking pad constructed with the home. This requirement can be satisfied when building plans are submitted for each lot. In addition the plan specifies four over flow parking spaces at the south end of the common access way.

16

#### *Chapter 16.24 CR Residential/Commercial Zone*

Response: The proposed subdivision will create 6 new lots for detached single family dwellings. This proposed residential use is allowed outright in the zone (16.24.010.A). New single family detached lots in the CR Zone are required to meet the development standards specified in Section 16.24.030 which in turn relies on Section 16.18.030. Development standards for structures can be verified when plans for building permits are submitted.

17

This plan proposed four common wall lots spaced to allow two buildings with two units each, sharing one wall. This is a conditional use in the CR zone (16.18.020.C). For residential uses the CR zone relies heavily on the R-1.5 zone. For residential uses permitted conditionally the density standard of a minimum of 14 units per acre applies (16.20.030.A). That density is about 3100 sq. ft per acre. The proposed common wall lots average 3011 sq ft. and thus slightly exceeds the minimum density requirement for common wall construction.

18

Lot size averaging is permitted (16.18.030.B.4). The average lot size must fall between five thousand square feet and six thousand five hundred square feet. No lot may be less than four thousand square feet. It is not clear whether the common wall homes are to be included in the lot size averaging. Below the calculation is shown both ways.

19

The following table lists each lot with its size in square feet. Two averages are calculated, one including the common wall lots and one excluding them. The average lot size including the common wall lots is 4518 sq ft. The average lot size excluding the common wall lots is 5217 sq ft. No single family lot is less than 4000 sq. Ft. The requirements of this section for lot size are met.

20



*Section 16.18.030 R-1.5 Zone Dimensional Standards*

Lot #	Style	Area/sf	Area/sf No Townhomes
Lot 1	Townhome	3002	
Lot 2	Townhome	3002	
Lot 3	Townhome	3001	
Lot 4	Townhome	3038	
Lot 5	Single Family	4737	4737
Lot 6	Single Family	4361	4361
Lot 7	Single Family	5168	5168
Lot 8	Single Family	7106	7106
Lot 9	Single Family	8109	8109
Lot 10	Single Family	5647	5647
Lot 11	Single Family	1350	1350
Lot 12	Single Family	5691	5691
		54212	42169
		<b>4518</b>	<b>5271</b>

21

The language of 16.24.010.A says “conforming to the development standards of the R-1.5 zone.” The development standards of the R-1.5 zone are in 16.18.20, which include a 7’ setback.

22

(16.24.010.C) The minimum width and frontage for lots in the CR zone is sixty. The width and frontage requirement in the R-1.5 zone is forty feet except that twenty feet is allowed for common wall development. This plan holds to the R-1.5 requirement of forty feet from the R-1.5 zone. Otherwise the Planning Commission can allow exceptions subject to assuring adequate access. The proposed plan meets or can be made to meet these requirements.

23

(16.24.010.E) The maximum building height allowed in the CR zone is forty five feet. The applicable standard for residential development is 35’ as specified in 16.18.030.E. The requirement will be satisfied when building plans are submitted for structures on each lot.

24

(16.24.010.E) The maximum lot coverage allowed is sixty percent. The applicable standard for residential development is seventy percent as specified in 16.18.030.F. This requirement will be satisfied when building plans are submitted for structures on each lot.

25

(16.24.010.F) and 16.18.010; other regulations. This requirement will be satisfied when building plans are submitted for structures on each lot.

26

*16.46.010 Number of Units in Residential Development*

Response: The development proposes to create detached and attached single family residences on individual lots, therefore Sec. 16.46.010A is the appropriate standard.

27

The development will not require new street construction. The interior of the project will be served by a twenty foot wide private drive with no parking allowed on either side. This drive will access on to S. 6th Ave. The design features a seventy foot deep hammer head for fire and emergency vehicle turn around. Lots 1-10 will use this access. Lots 11-12 will access directly on to S. 6th Ave.,

28

Using the City's formula in 16.46.010.A.2, one street connection would permit up to 30 residential units. In total, 10 lots will use the new private access. Therefore, the single access will be sufficient to meet the standards of this section.

29

*16.46.030 Access Connection*

Response: The applicant proposes one new private roadway, as yet unnamed, that will connect to S. 6th Ave. The proposed access point lies 236' from S Holly St. and 157' from S. Ivy St. in conformance with the 150-foot minimum spacing requirement of Table 16.46.30, Access Management Guidelines for City Streets. Driveways off interior private roadway do not have to meet the standard spacing. Other driveways will need to conform to the spacing requirements of this section and conformance with the standards can be verified at the time of building permit submittal.

30

The driveway for the existing home on Lot 9 will be moved from its current location on S. Ivy to its new location on S. 6th Ave. The proposed distance from that driveway to S. Ivy St. is 65 feet exceeding the required 30' (16.10.070.B.10.f). Therefore, the driveway to Parcel 1 conforms to the standards of Table 16.46.30. Access Management Guidelines for City Streets.

31

*16.46.070 Exception Standards*

Response: With the applicant's current submittal, all intersections conform to the Access Management Guidelines for City Streets, Table 16.46.30 and no exceptions are necessary.

32

*Chapter 16.49 Site & Design Review*

Response: Site and Design Review is required for all new development, except for single family and two-family dwellings (16.49.030).

33

Dwellings in the proposed subdivision are single family, thus will not require site and design review.

*Chapter 16.54*

*16.54.040 Standards and criteria.*

*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 of development which would be permitted by the new zoning designation.*

Response: The proposal has been shown to be consistent with relevant goals and policies of the Comprehensive Plan. Policy 6 of the Land Use Element lists the "Areas of Special Concern" designated throughout the community. The subject site is not a designated area, but does have special characteristics that make it particularly suitable for a higher density zoning designation: It is located between a lower density area and a commercial district where goods and services are readily available. It has convenient access to a major arterial with minimal impacts on lower density neighborhoods. That arterial will soon have a new traffic signal that will facilitate traffic movement in the area. Public facilities are generally available to support the proposed development.

Therefore, the criteria of this section are satisfied.

*Division IV Land Division Regulations*

*Chapter 16.62 Subdivisions-Applications*

Response: An application that satisfies the filing procedures and information required in Sec. 16.62.010 has been submitted.

Standards and criteria for approval of a subdivision are set forth in Sec. 16.62.020, as follows:

*A. Conformance with other applicable requirements of the Land Development and Planning Ordinance;*

Response: Applicable requirements of other sections of the Land Development and Planning Ordinance are discussed in other sections of this narrative and on the maps included with the application, demonstrating that the proposed land divisions conform to applicable criteria.

40

*B. The overall design and arrangement of lots shall be functional and shall adequately provide building sites, utility easements, and access facilities deemed necessary for the development of the subject property without unduly hindering the use or development of adjacent properties;*

41

Response: The design and layout of the site provides for functional and desirable building sites. All lots meet or exceed the minimum lot area standards for the CR Zone, or permitted exceptions thereto. Each lot has access to a private driveway or access way or public street and has easy connectivity to S Sixth Ave., a local street, and nearby arterial streets, including S. Ivy Street, 13<sup>th</sup> Ave., and Highway 99E. Public utilities such as sewer, water, communications, and power will be extended into the development site. Surrounding properties are largely developed and all have direct access to a public roadway. Development of the site will not hinder the use or development of any adjacent properties.

42

*C. Subdivision design and layout shall incorporate Low Impact Development techniques where possible to achieve the following:*

43

*1. Manage storm water through a land development strategy that emphasizes conservation and use of onsite natural features integrated with engineered storm water controls to more closely mimic predevelopment hydrologic conditions.*

44

*2. Encourage creative and coordinated site planning, the conservation of natural conditions and features, the use of appropriate new technologies and techniques, and the efficient layout of open space, streets, utility networks and other public improvements.*

45

*3. Minimize impervious surfaces.*

46

*4. Encourage the creation or preservation of native vegetation and permanent open space.*

47

*5. Clustering of residential dwellings where appropriate to achieve (1-4 above). The arrangement of dwellings shall be designed to avoid linear development patterns.*

48

Response: Although the Code encourages Low Impact Development techniques, other provisions of the Code, such as emergency vehicle turnaround requirements and off-street parking requirements, make it difficult to achieve Low Impact Development within a medium density residential subdivision having lots of approximately 5,000 sq. ft.

49

The proposed layout will provide adequate sized lots that will allow space to create or preserve vegetation on the lots. The homes on Lot 8 & 9 will be preserved as will some of the existing trees and other landscaping features that currently surround the homes. The proposed common access way is placed on easements as opposed to a dedicated parcel allowing the lot areas to stay within those specified by code. Accessing the lots from S. 6th Ave does require more impervious surface than an optional plan to access the lots from S. Ivy St. The consensus at the pre-application meeting, however, was that access to S. Ivy should not be allowed. The proposed private street is efficiently designed and incorporates a 70' hammerhead for emergency vehicle access and maneuvering.

50

*D. It must be demonstrated that all required public facilities and services are available, or will become available through the development, to adequately meet the needs of the proposed land division.*

51

Response: Necessary facilities and services are available for the proposed development at the proposed CR zoning designation. Public water is located in both S. Ivy St. and S. 6th Ave. The pre-application meeting indicated that an additional fire hydrant would be required. That will be placed as specified by the appropriate authorities.

52

Public sanitary sewer is also available in S Ivy Street and in S. 6th Ave. Site storm drainage is available through construction of a new drywell within the development area

53

Power, gas, and communications facilities are available in S Ivy Street and S. 6th Ave. Garbage and recycling collection are available in the neighborhood through Canby Disposal. Fire protection for the area is provided by Canby Fire District, which serves all of the City of Canby and the surrounding area. Police protection is provided by Canby Police Department.

54

All public services are available or will become available for the subdivision at the time of development.

55

*E. The layout of subdivision streets, sidewalks, and pedestrian ways supports the objectives of the Safe Routes to Schools Program by providing safe and efficient walking and bicycling routes within the subdivision and between the subdivision and all schools within a one-mile radius. During review of a subdivision application, city staff will coordinate with the appropriate school*

56

*district representative to ensure safe routes to schools are incorporated into the subdivision design to the greatest extent possible.*  
(Ord. 890 section 53, 1993; Ord. 740 section 10.4.40(B), 1984; Ord. 1338, 2010)

Response: School attendance for the project is Lee Elementary School and Baker Prairie Middle School. Lee school is accessed directly along S. Ivy St. When the proposed redevelopment of S. Ivy Street is complete all students will have a safe and direct foot path to their elementary school. The Baker Prairie Middle School is more distant but connects directly along S. Township Rd. with sidewalks or a foot path the entire distance. A new traffic signal at the S. Ivy Street/S. Township Road intersection will provide safe crossing of S. Ivy Street, a designated arterial. A foot path is provided in the plan for pedestrian access directly to S. Ivy Street and sidewalks are also being installed on S. Sixth Avenue. This will facilitate direct and safe student access to both schools. Walking access to the Canby High school is available through a network of existing streets and sidewalks.

57

*F. A Traffic Impact Study (TIS) may be required in accordance with Section 16.08.150. (Ord. 1340, 2011)*

58

Response: Staff has indicated that a traffic impact study probably will not be required since all vehicular traffic is planned to exist on to a local street.

59

#### *Chapter 16.64 Subdivisions Design Standards*

##### *Section 16.64.010 Streets*

Response: The proposed interior street system will be designed and constructed with a pavement width of 20 feet from curb to curb. The street will be marked as no parking.

60

No new public streets or street modification are proposed. The interior access roadway will exit on to S. 6th Ave, a which is designated a local street. Only pedestrian access will be allowed directly to S. Ivy St. The proposed rebuild of S. Ivy Street by the city will specify the development standards of that street and the associated sidewalks and bike paths. For S. 6th Ave., the plan proposes a 6' curb tight sidewalk to match the existing sidewalk. The present sidewalk is four feet wide spaced two feet from the curb.

*Section 16.64.015 Access*

No connection to a State Highway is proposed; therefore the project does not have to be reviewed for conformance with state access management standards.

All access for the project will be taken from a 20' wide private roadway or by direct access to S. 6th Ave.

Lot access and driveway locations will be reviewed by the City at the time of building permits.

61

*Section 16.64.020 Blocks*

This project does not impact the existing block structure in the area.

62

*Section 16.64.030 Easements*

Easements for utility lines will be provided as necessary to satisfy requirements of the City and the public service providers. Existing rights-of-way on both S. Ivy St. And S. 6th Ave. are adequate to place the sidewalks in the public right-of-way. No additional public easements will be required

63

*Section 16.64.040 Lots*

(16.64.040.A & B) Lot sizes and shapes comply with dimensional requirements for the CR Zone, as previously discussed in this narrative and as shown on the proposed site plan.

64

(16.64.040.C) All CR lots have at least 40 feet of frontage on a public or private street.

65

(16.64.040.D) Although three of the lots in this project share a property line with S. Ivy St., all access will be taken on the interior roadway or on S. 6th Ave. Only pedestrian access will be allowed directly to S. Ivy St.

66

(16.64.040.E) Lot side lines are generally at right angles to the fronting streets.

67

(16.64.040.F) No lots in the subdivision can be re-divided.

68

(16.64.040.H) No hazardous situation related to flooding or soil instability has been identified on the site. The site will dispose of storm drain runoff through the installation of a new storm drain system with a drywell.

69

(16.64.040.I) No flag lots are proposed.

70



(16.64.040.J)

Response: The definition of an “infill” home is found in 16.04.255. *Infill homes mean existing and new single family dwellings, manufactured homes, two-family dwellings, duplexes and triplexes on lots that are located in an R-1 or R-1.5 zoning district.*

71

The subject property currently has a comprehensive plan designation of Commercial/Residential. Upon changing the zone to agree with the comprehensive plan the property will be zoned CR, residential/commercial. The definition of “infill lots” is not applicable to this zone.

72

*Section 16.64.050 Parks and Recreation.*

No area is proposed for dedication for public open space on this site. The City Development Services Department has indicated that they would prefer that a fee in lieu payment be provided by at the time of building permit submittal for lots in this subdivision.

73

*Section 16.64.060 Grading of Building Sites*

Minor grading will be accomplished on the site to create suitable building sites.

74

*Section 16.64.070 Improvements*

Improvements for the subdivision will be accomplished as required by this section. Plans have been submitted as part of this application to show the arrangement of streets and sidewalks, public utilities, and other improvements necessary to provide for the convenience, health, and safety of future residents of this community and of the City. Please refer to specific plans for details. Following approval of the preliminary plan, more detailed construction plans will be submitted to the City for review. At the same time the detailed construction plans will also be submitted to private utility service providers such as the gas and communications companies so that they may design their system improvements to serve the subdivision.

75

Streets will be constructed to the City’s standard structural section. Driveway approaches and street trees will be installed as homes are constructed throughout the development.

76

Storm water will be managed through the installation of new storm water inlets on the new private roadway. The new inlets will collect the storm water runoff, convey it to a water quality treatment manhole through new piping, then

77

to a drywell for disposal underground, as is commonly done in most areas of the City.

LID storm water approaches such as green roofs, pervious pavements and roadside swales often are not good fits for residential subdivisions. Green roofs tend to work best on flat roofs and are not as good of a fit for the pitched roof architecture seen in residential subdivisions. Pervious pavements tend to function better in mature subdivisions where there isn't a lot of ground disturbing activity taking place. The home building, landscaping, and fence building activities common in new subdivisions tend to deposit soil and other landscaping material onto the surface of the roadway, often clogging it, and preventing it from functioning as intended. Once material works its way down into the pores of the porous pavement, it becomes nearly sealed and it functions like standard pavement. Roadside swales can be problematic in residential subdivisions as the swales make it difficult to get out of cars parked against the curb line, as the planter strip is often soggy or under an inch or more of water.

78

Sanitary sewer will be provided through a connection to the existing sanitary sewer mains in S. Ivy Street and S. 6th Avenue.

79

Public water meters will be grouped at the entrance to the private roadway as directed by the Water Department. One additional fire hydrant will be provided.

80

#### *Section 16.64.080 Low Impact Development Incentives*

The project does not plan to increase density or building heights allowed through the incentives offered in this section.

81

#### *Chapter 16.86 Street Alignments*

This chapter is intended to insure that adequate space is provided in appropriate locations for the planned expansion, extension, or realignment of public streets and it is further intended to allow for the safe utilization of streets once developed.

82

No new public streets are proposed for this project nor is there any place where new streets would be desirable in the future. Sidewalks will be aligned with those existing where appropriate.

#### *Chapter 16.88 General Standards and Procedures*

The general standards and procedures set out in this chapter apply to the regulations of all sections of this title, except as may be specifically noted. The application has been submitted to the City by the property owner and the appropriate fees have been paid (Sec. 16.88.030).

83

*Chapter 16.89 Application and Review Procedures*

The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to review applications and participate in the decision-making process in a timely and effective way.

84

This application is a Type III procedure. A pre-application meeting was held April 11, 2017 where utility concerns were discussed. The project area is not within a designated neighborhood association. A neighborhood meeting will nonetheless be held to explain the proposal to interested parties. A meeting notification will be sent to all parties within 500' of the subject property.

85

*Chapter 16.120 Parks Open Space and Recreation Land*

The City of Canby shall require park land dedication or a fee in lieu of park land dedication in the form of a system development charge. The City has indicated that it would prefer that lots in this subdivision pay a system development charge rather than dedicate park land.

86

**CONCLUSION**

The foregoing narrative and accompanying plans and documents, together demonstrate that the proposed subdivision and partition conform to the applicable criteria and standards of the City's Land Development and Planning Ordinance. Therefore, the applicant requests that the Planning Commission approve the application.

87

NOTE: Sisul Engineering has prepared a utility service map and storm drainage plan to accompany this application.

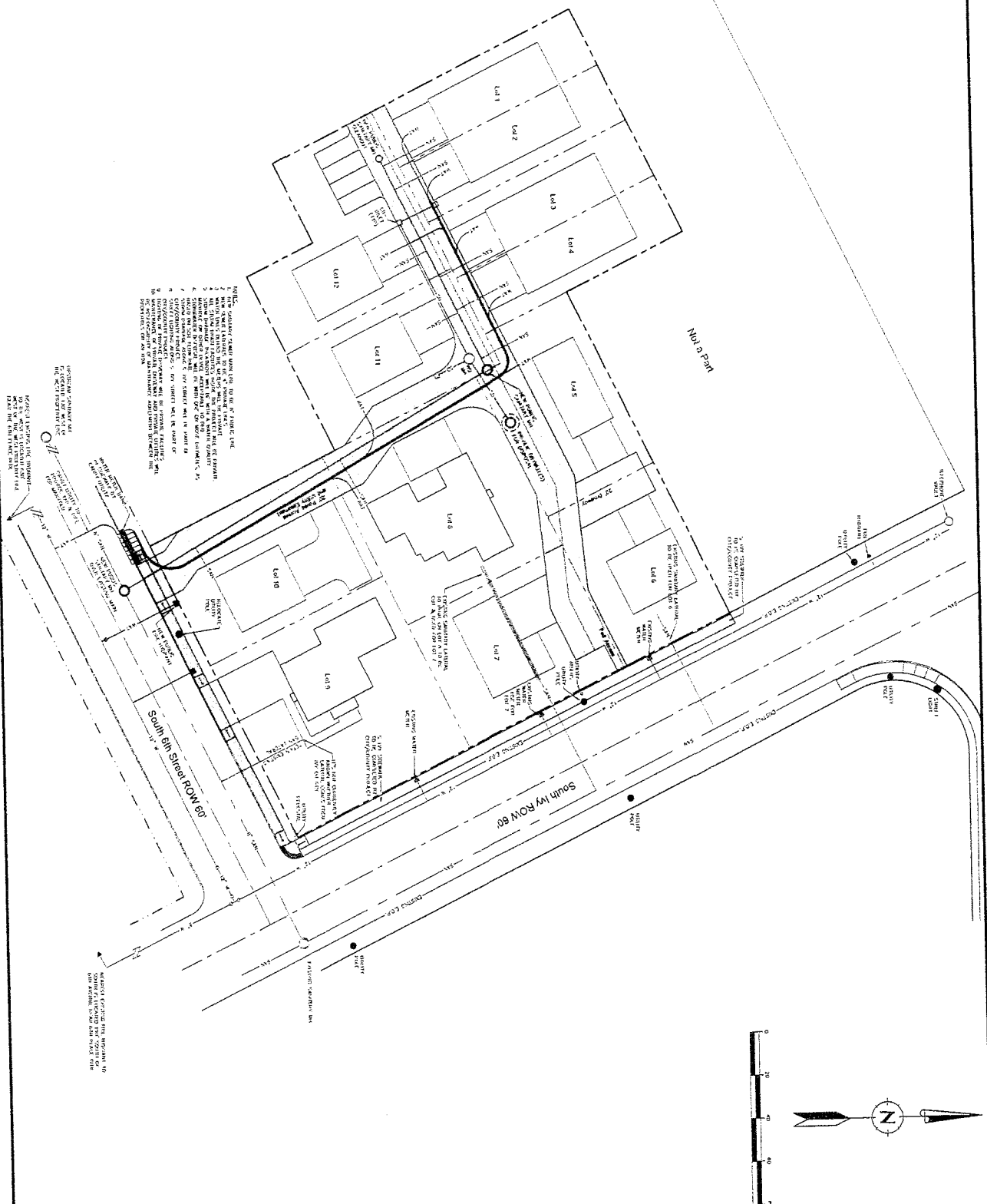
88



Google Earth

feet  
meters

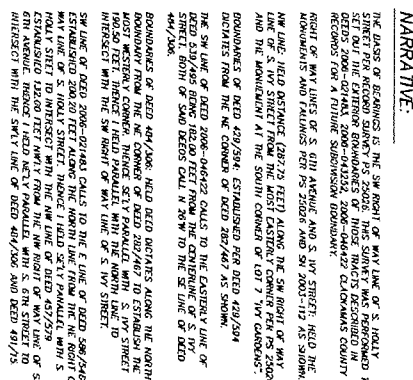






SITUATED IN THE NORTHEAST 1/4 OF SECTION 4,  
TOWNSHIP 4 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN  
CLACKAMAS COUNTY, OREGON

FOR: ALLEN MANUEL

[illegible]

NARRATIVE:

CLACKAMAS COUNTY SURVEYOR

RECEIVED:

ACCEPTED FOR FILING:

**SURVEY NUMBER:**

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON

JULY 29, 1985

KENNETH O. GRITTIN

2147

RDNEWS: 6/30/17

**GRIFFIN LAND SURVEYING INC.**  
6107 SW MURRAY BLVD. #409  
BEAVERTON, OR. 97008  
PHONE: (503)201-3116



## **CITY OF CANBY –COMMENT FORM**

If you are unable to attend the Public Hearing, you may submit written comments on this form or in a letter addressing the Planning Commission. Please send comments to the City of Canby Planning Department:

**By mail:** Planning Department, PO Box 930, Canby, OR 97013  
**In person:** Planning Department at 222 NE 2<sup>nd</sup> Ave, Canby, OR 97013  
**E-mail:** [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov)

Written comments to be included in the **Planning Commission's meeting packet are due by Noon on Wednesday, September 27, 2017.** Written comments to be included **City Council's meeting packet are due by Noon on Tuesday, October 10, 2017.** Written comments for the Planning Commission or the City Council can also be submitted up to the time of the Public Hearings, and may be delivered in person during the Public Hearings.

**Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel**

### **COMMENTS:**

16.10.070 Parking lots and access  
(B) Access:

(9) Maximum driveway widths and other requirements:  
b. No driveways shall be constructed within five (5) feet of an adjacent property line, except when two (2) adjacent property owners elect to provide joint access to their respective properties as provided by subsection 2

NAME: Rick + Jody Roggensack  
ADDRESS: 140 SW 6th Avenue Canby  
EMAIL: jody@mail.c.canby.or.us DATE: 9/25/17

**AGENCIES: Please check one box and fill in your Name/Agency/Date below:**

- ☐ Adequate Public Services (of your agency) are available  
☐ Adequate Public Services will become available through the development  
☒ Conditions are needed, as indicated  
☐ Adequate public services are not available and will not become available  
☐ No Comments

NAME: \_\_\_\_\_  
AGENCY: \_\_\_\_\_  
DATE: \_\_\_\_\_

**Thank you!**

## CITY OF CANBY –COMMENT FORM

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**Application:** CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

**COMMENTS:**

My comments are submitted along with the application  
for the subdivision.

NAME: Sarah Taylor  
ADDRESS: P.O. Box 1046 Canby, OR 97013  
EMAIL: \_\_\_\_\_ DATE: 8/29/2017

**AGENCIES:** Please check one box and fill in your Name/Agency/Date below:

- ☐ Adequate Public Services (of your agency) are available  
☐ Adequate Public Services will become available through the development  
☐ Conditions are needed, as indicated  
☐ Adequate public services are not available and will not become available  
☐ No Comments

NAME: \_\_\_\_\_  
AGENCY: \_\_\_\_\_  
DATE: \_\_\_\_\_

Thank you!

City of Canby ■ Community Development & Planning ■ 222 NE 2nd Avenue, Canby, OR 97013 ■ (503) 265-7001



**TOPIC: Planning Commission application CUP 17-05/ZC 17-02/SUB 17-04  
S Ivy Park Subdivision, Allen Manuel**

I received in the mail (in an envelope with no return address) a "Planning Meeting Notice" that indicated I was invited and encouraged to attend a meeting on Monday, the 28<sup>th</sup> of August, 2017 at 6:00pm to 7:30 pm at the Canby Public Library. I attended this meeting and met approximately 20 other concerned neighbors; unfortunately, Allen Manuel did not attend the meeting. The mailer had indicated a detailed handout would be available at the meeting, but this was also not provided.

## Planning Meeting Notice

You are invited and encouraged to attend.  
Your input is requested.

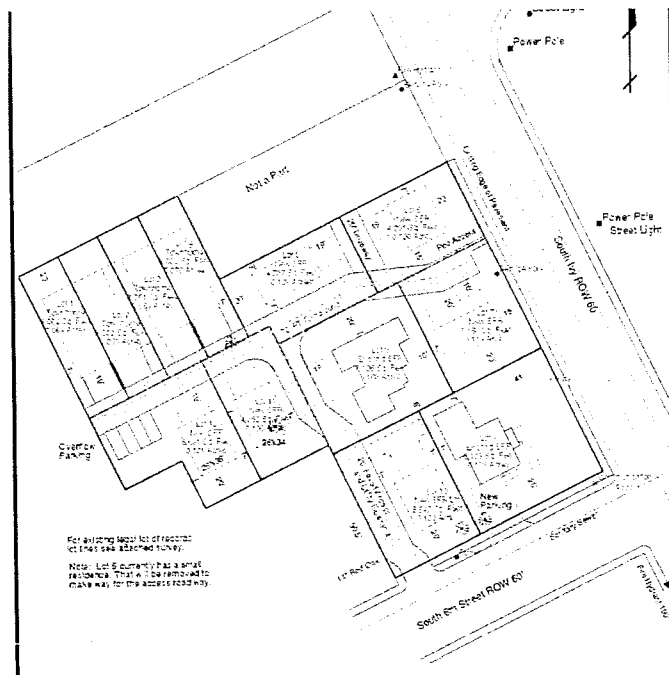
**When: Monday, 28 August 2017 at 6:00pm to 7:30 pm**  
**Where: Canby Public Library, Willow Creek Room**

The topic of discussion will be a proposed development in Canby at S. Ivy Street and S. 6<sup>th</sup> Avenue. The owner plans to develop ten new medium density lots on 1.3 acres that currently has three single family residences. Of the ten new lots four will be common wall construction and six will be single family detached residences. Two of the existing homes will be preserved.

Access to the new lots will be from a new private roadway that exits on to S. Sixth Ave. The four drive ways that currently serve the property exiting on to S. Ivy Street will be closed and only pedestrian traffic will be allowed directly on to S. Ivy Street.

This property is currently zoned low density residential. The comprehensive plan designation is CR, Residential Commercial. To accomplish this plan a zone change to CR is needed. Also, to include town homes requires a conditional use permit. Then of course the whole project requires a sub-division request.

The map on the reverse side shows the proposed project. Detailed handouts will be available at the meeting.



Location of my residence

On 28 August I also received a "Notice of Public Hearing & Request for Comments" from the City of Canby. By this correspondence I am providing my comments.

I understand the desire to develop land and to provide additional housing. If I owned that large piece of land, I would also want to develop it and reap the monetary reward for that effort.

The mailer from Allen Manuel includes a diagram showing the location of Ivy Street and SW 6<sup>th</sup> Ave in relation to the proposed subdivision. My residence is on SW 6<sup>th</sup> Avenue, and my driveway is directly across from the "14' Red Oak" and the entrance of the new private street to the proposed subdivision.

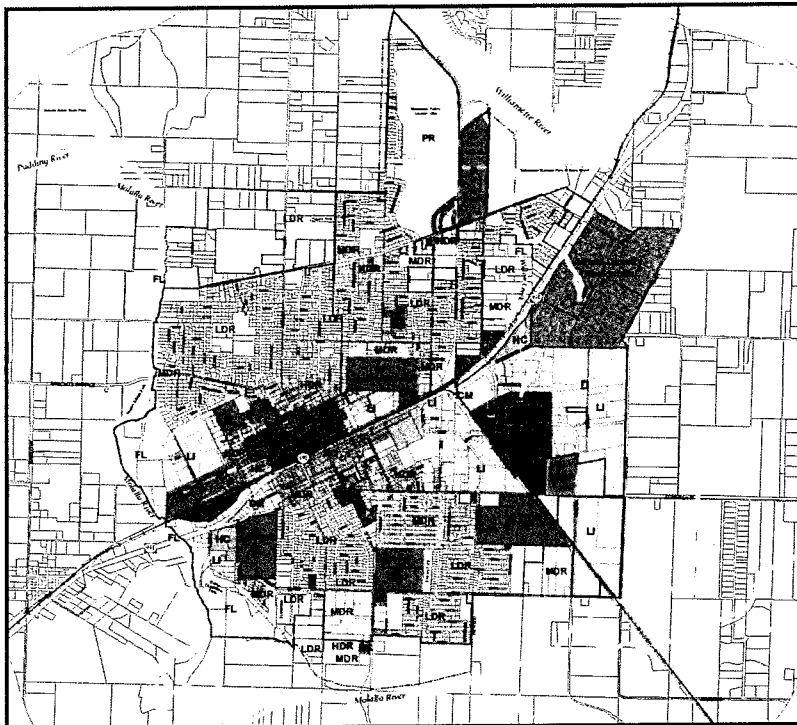
I have deep concerns regarding the amount of traffic that the 12 homes will generate from that one private street. In particular, as the cars exit the new private street, their headlights will flash directly into my home. The volume of traffic is also a concern since my mailbox is on the other side of the road from my home.

I am also concerned about the distance from the corner of Ivy/SW 6<sup>th</sup> Ave and the new proposed private street. Please be aware that the school buses use 6<sup>th</sup> Ave as a major route each day; it's a busy street, and those who are traveling on Ivy tend to take the corner onto SW 6<sup>th</sup> Ave without slowing down.

On Document #1, the topic of the discussion is the proposed development where the owner ***"plans to develop ten new medium density lots on 1.3 acres that currently has three single family residences. Of the ten new lots four will be common wall construction and six will be single family detached residences. Two the existing homes will be preserved."*** This means a total of 12 residences on 1.3 acres.

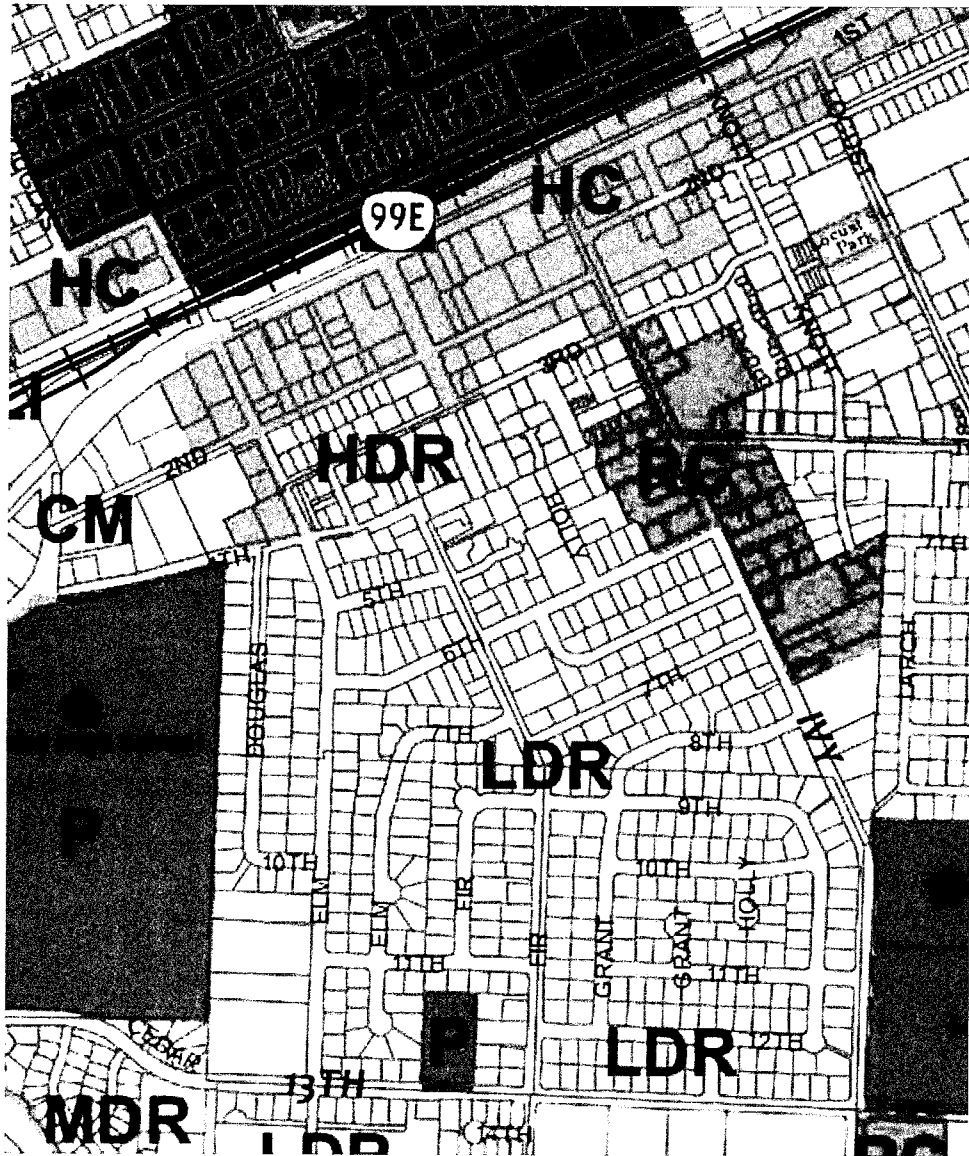
Additionally, ***"This property is currently zoned low density residential. The comprehensive plan designation is CR, Residential Commercial. To accomplish this plan a zone change to CR is needed. Also, to include townhomes requires a conditional use permit. Then of course the whole project requires a sub-division request."***

# City of Canby Comprehensive Plan Map



- City Limits
- Urban Growth Boundary
- Parks
- LDR-Low Density Residential
- MDR-Medium Density Residential
- HDR-High Density Residential
- Mixed Density Residential
- RC-Residential Commercial
- DC-Downtown Commercial
- HC-Highway Commercial
- CM-Commercial/Manufacturing
- LI-Light Industrial
- HI-Heavy Industrial
- P-Public
- PR-Private Recreation
- FL-Flood Prone/Steep Slopes

0 0.25 0.5 1 Miles  
May 2014  
The information depicted on this map is for general reference only. The City of Canby cannot accept any responsibility for errors, omissions, or positional accuracy. However, notification of errors would be appreciated.



TRAFFIC STUDY: If indeed this area is to be rezoned and redeveloped as a subdivision, then it would be necessary to perform a Traffic Impact Study (Municipal Code General Provisions 16.08.150).



**C. Determination.** Based on information provided by the applicant about the proposed development, the city will determine when a TIS is required and will consider the following when making that determination.

1. Changes in land use designation, zoning designation, or development standard.
2. Changes in use or intensity of use.
3. Projected increase in trip generation.
4. Potential impacts to residential areas and local streets.
5. Potential impacts to priority pedestrian and bicycle routes, including, but not limited to school routes and multimodal street improvements identified in the TSP.
6. Potential impacts to intersection level of service (LOS).

CITY OF CANBY  
February 2013  
Chapter 16.08 - Page 13

COMMERCIAL RESIDENTIAL: The Municipal Code Chapter 16.24 provides details on what uses are permitted in the CR zone; high density housing is not permitted. Municipal Code 16.24.030 provides the Development Standards for CR Zone including minimum lot area, minimum width and frontage, minimum yard requirements, maximum building height, max lot coverage, vision clearance and setbacks. (several of these appear to be violated in the diagram provided by the applicant. As example, Notice several of the proposed lots are less than 7,000 sq feet, and it is not stated if the townhouses will be higher than the allowed 35 feet tall).

If the High Density Residential Zone is contemplated, the proposal is in violation of Municipal Code 16.20. For instance the Development Standards in 16.20.030 indicate minimum residential density of 14 units per acre, and the minimum width and frontage, street yard, rear yard, interior yard, site obscuring landscaping, vision clearance, setbacks, required recreation space, and the 15-foot buffer area is not provided in the proposal by the developer. Again, the building height may be in violation, depending upon the configuration of the proposed townhouses.

Regarding Land Divisions, Municipal Code 16.56 provides details that show the proposal is in violation also. In fact, the entire published PURPOSE demonstrates that the proposal is not in the established interests of the city (and I can testify that it is not in the best interest of the immediate community):

Note below: *The purpose of the Planning Commission is to define and establish (and hopefully enforce) minimum requirements and standards necessary for efficient, safe and attractive land division and development consistent with the physical characteristics of the city.....Land division is the*

*most important factor in establishing the physical character of a growing community. ....It is hoped that these regulations and procedures will encourage the well-planned division of land while preventing land division with high future costs to all those who will occupy the land, their neighbors and the city as a whole.....5) To provide lots, parcels and development sites of a sufficient shape, size and character for the purpose for which they will be used.....7) To ensure adequate provisions for transportation....and which take into consideration anticipated usage, safety factors and impact on the neighboring area. 8) To ensure that the costs of developing roads (etc)...will be substantially absorbed by the benefited persons {the applicant} as opposed to the citizens of the city at large.”*

It is my contention that overloading the proposed parcel of land with an end-total of 12 homes on 1.3 acres is not in the best interests of the City of Canby, the neighborhood, or anyone but the developer. There are areas of the city where dense housing has been approved, in proper zones which have been established after long and thoughtful consideration. The quality of life for this neighborhood would be unjustly compromised for little civic gain. When the property is to be developed, it should be done in a reasonable manner and according to the established zones and guidelines; it appears the number of homes could be increased from the current 3 homes to perhaps 4 or 5 homes, but not the proposed 12 homes.

**16.56.010 Purpose.**

**A.** The purpose of this division is to define subdivision, partitions and related terms; to establish minimum requirements and standards necessary for efficient, safe, and attractive land division and development consistent with the physical characteristics of the city; to prescribe form, content, and procedures to be followed in the development and approval of land divisions and related maps and plats and to designate those authorized to give such approval; and to provide penalties and notice of violations. Authorization and minimum standards for this division are provided for by Oregon Revised Statutes Chapters 92 and 227.

**B.** Land division is the most important factor in establishing the physical character of a growing community. If improperly designed and executed, it wastes the intrinsic value of the land and can become a costly burden to the community. It is hoped that these regulations and procedures will encourage the well-planned division of land while preventing land division with high future costs to those who will occupy the land, their neighbors, and the city as a whole. It is further the purpose of this division:

1. To ensure that the public health, safety, convenience and general welfare be given due consideration in the division and development of land;
2. To help implement the Comprehensive Plan and elements thereof;
3. To provide a means to emphasize environmental protection and preservation of the historical and natural assets of the city by encouraging orderly development relating to location, number, design and distribution of lots and parcels;

5. To provide lots, parcels, and development sites of a sufficient shape, size, and character for the purpose for which they will be used;
6. To provide the establishment of adequate water supply, sewage disposal, surface water drainage and other utilities and facilities as needed for the public health, safety and convenience;
7. To ensure adequate provisions for transportation, including roads, bicycle ways and pedestrian ways which take into consideration anticipated usage, safety factors, and impact on the neighboring area;
8. To ensure that the costs of developing roads, utilities and public areas serving new developments will be substantially absorbed by the benefited persons as opposed to the citizens of the city at large.
9. To provide adequate light, air, open space and recreational areas, and to encourage better techniques and innovations in the arrangement of building sites and/or lots and parcels. (Ord. 740 section 10.4.10(A), 1984)

To continue the review of Municipal Codes, Chapter 16.64 indicates the requirement for the streets; the proposal submitted by Allen Manuel indicates the addition of a private street that is not a safe distance from the intersection with Ivy Street. Notice in D. of 16.64 regarding the Alignment requirements (the proposed private street creates a "T" intersection). The private street is in essence a Cul-de-sac and does not comply with paragraph I of Municipal Code 16.64 (not to exceed 400 feet, shall provide pedestrian connection to adjacent streets). Also review paragraphs J regarding Marginal Street Access (which addresses my earlier concern about adequate protection of residential properties and to afford separation of through and local traffic. In my personal situation, I would insist on protection from the onslaught of headlights beaming into my home from the new proposed private street, which provides no benefit to me).

**J. Marginal Access Streets.** Where a subdivision abuts or contains an existing or proposed arterial street, the commission may require marginal access streets, through lots with suitable depth, screen planting contained in a nonaccess reservation along the rear property line, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

Municipal Code 16.64.015 ACCESS is not adequately addresses by the applicant: The sight distance, driveway spacing and other related considerations (those headlights that I've mentioned more than once is one example), and d) The road system shall provide adequate access to buildings for residents, visitors, deliveries, emergency vehicles and garbage collection. How has the applicant addressed these for the 12 homes that are proposed to be situated on the 1.3 acres?

**16.64.015 Access**

- A.** Any application that involves access to the State Highway System shall be reviewed by the Oregon Department of Transportation for conformance with state access management standards (See appendix G of the Transportation System Plan).
- B.** All proposed roads shall follow the natural topography and preserve natural features of the site as much as possible. Alignments shall be planned to minimize grading.
- C.** Access shall be properly placed in relation to sight distance, driveway spacing, and other related considerations, including opportunities for joint and cross access.
- D.** The road system shall provide adequate access to buildings for residents, visitors, deliveries, emergency vehicles, and garbage collection.
- E.** Streets shall have sidewalks on both sides. Pedestrian linkages should also be provided to the peripheral street system.
- F.** Access shall be consistent with the access management standards adopted in the Transportation System Plan. (Ord. 1043 section 3, 2000)

Additional concerns are listed in Municipal Code 16.64; illumination (street lights), landscaping, surveillance opportunities, "exits shall be designed to maximize safety of users and traffic on adjacent streets (remember how I mentioned I was worried about being able to access my mailbox?)

Notice Municipal Code 16.64.040 LOTS: regarding the Size and Shape; it is my opinion the shape of the proposed subdivision does not provide realistic lot size, width, shape and orientation that are appropriate for this neighborhood with the constraints of Ivy and SW 6<sup>th</sup> Avenue traffic. A fewer number of homes (and larger lots) would be more appropriate.

**16.64.040 Lots.**

- A. Size and Shape.** The lot size, width, shape and orientation shall be appropriate for the location of the subdivision and for the type of development and use contemplated. To provide for proper site design and prevent the creation of irregularly shaped parcels, the depth of any lot or parcel shall not exceed three times its width (or four times its width in rural areas) unless there is a topographical or environmental constraint or an existing man-made feature such as a railroad line.

Notice what Municipal Code 16.64 B Minimum Lot Sizes indicates is the goal for the City of Canby: lot sizes can be "reduced to 5,000 feet.....) Please note that the applicant has proposed multiple lots that are less than 5,000, creating the need for numerous exceptions. The better plan by far is to reduce the

number of home, not to reduce the lot size. The land can be developed, but it needs to be developed in a sensible manner, and with regard to the existing, established neighbors and neighborhood, not just the immediate gain in the number of housing units in Canby plus the number of dollars lining the applicant's (and developer's) pockets. We should be building a long-lasting community, not a one-sided real estate empire. The applicant has provided no room for any greenspace, no room to exercise (certainly no room for a basketball hoop!!!)

**B. Minimum Lot Sizes:**

1. Lot sizes shall conform with requirements of Division III unless the applicant chooses to use an alternative lot layout per subsection (3) below to accommodate interconnected and continuous open space and or other natural resources. In this case, the average minimum lot size may be reduced by 5,000 square feet after subtracting access tracts. Overall development densities shall comply with the underlying maximum density allowed by the zone.

2. In areas that cannot be connected to sewer trunk lines, minimum lot sizes shall be greater than the minimum herein specified if necessary because of adverse soil structure for sewage disposal by septic systems. Such lot sizes shall conform to the requirements of Clackamas County for sewage disposal unless provisions are made for sanitary sewers.

3. Alternative lot layout. Applicants may deviate from standard lot setbacks and dimensions to accommodate dedicated interconnected open space or other natural areas. Clustered housing, lot-size averaging, and a mixture of approaches where building lots can be grouped into a smaller portion of the total development, reserving the remainder for open space or other natural areas. Alternative development layouts shall not exceed the underlying maximum density allowed by the zone.

4. When using the alternative lot layout option, the following must be met:

a. The arrangement of the alternative lot layout shall be designed to avoid development forms commonly known as linear, straight-line or highway strip patterns.

b. To the maximum extent possible, open space and natural areas, where used, shall be continuous, interconnected, and concentrated in large usable areas.

c. Where possible, open space shall be connected to adjacent off-site open space areas.

d. Open space and natural areas shall be maintained permanently by the property owner or the property owner's association.

In some interpretations, this proposed subdivision could be considered a flag lot. Consider what the Municipal Code 16.64 I Flag Lots or Panhandle Shaped Lots has to say (obviously this has been added to the code book due to past issues with these types of developments. )

**I. Flag Lots or Panhandle-shaped Lots.** The commission may allow the creation of flag lots provided that the following standards are met:

- 1.** Not more than one flag lot shall be created to the rear of any conventional lot and having frontage on the same street unless it is found that access will be adequate and that multiple flag lots are the only reasonable method to allow for development of the site. Every flag lot shall have access to a public street.
- 2.** The access strip is to be a minimum of twenty feet in width and shall be paved for its full width from its connection with the public street to the main body of the lot. Except, however, that the width requirement may be reduced to twelve feet, for accessing a single flag lot, where the total length of the access strip does not exceed one hundred feet. Access strips not less than ten feet in width may be permitted where two such drives abut and are provided with reciprocal easements for use. For drives accessing more than two flag lots, the access strip shall be a minimum of twenty feet with reciprocal access and maintenance agreements for all lots.
- 3.** For residential flag lots, a minimum building setback of five feet from the access strip shall be maintained where such buildings exist prior to the creation of the flag lot.

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February 2013  
Chapter 16.64 – Page 8

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- 4.** Design and locations of buildings on flag lots shall be such that normal traffic will have sufficient area to turn around, rather than necessitating backing motions down the access strip. The commission may establish special setback requirements at the time of approving the creation of flag lots.
- 5.** Flag lots shall not be permitted when the result would be to increase the number of properties requiring direct and individual access connections to the State Highway System or other arterials.
- 6.** The area of a panhandle shaped or flag lot shall be considered to be the rear or buildable portion of the lot and shall not include the driveway or access strip.
- 7.** For the purposes of defining setbacks, flag lots shall have three side yards and one rear yard. The rear yard may be placed on any side of the main dwelling.



The infill home requirements also need to be addressed, and the the requirements to Parks and Recreation that apply to subdivisions.

**J. Designation of Lots as 'Infill Home' Sites.** The Planning Commission may require that homes built on one or more lots adjacent to existing development be subject to any or all of the requirements of 16.21.050 - Infill Homes. Furthermore, for subdivisions where the parent parcel(s) is less than two acres in size, the Planning Commission may require that all homes built on lots in the subdivision be subject to any or all of the requirements of 16.21.050. These requirements are to be shown on the subdivision plat or included in the deed restrictions. (Ord. 740 section 10.3.05(F) and 10.4.40(C)(4), 1984; Ord. 890 section 54, 1993; Ord. 1043 section 3, 2000; Ord. 1107, 2002; Ord. 1111 section 6, 2003; Ord. 1338, 2010)

**16.64.050 Parks and recreation.**

Subdivisions shall meet the requirements for park, open space and recreation as specified in Division VI.

Notice how the Municipal Code addresses the subject of Streets and subdivision development: Again, a traffic impact report is required, and (#9), street improvements are to be burdened to the applicant/developer, caused by #8, sidewalks, bikeways, paths, access ways where the existing system will be impacted.

**C. Streets.**

**1.** All streets, including alleys, within the subdivision and streets adjoining, but only partially within the subdivision shall be improved.

**2.** All public and private streets shall be constructed to city standards for permanent street and alley construction. LID alternatives, such as permeable surfacing and integrated stormwater management facilities, are required where site and soil conditions make it a feasible alternative. Upon completion of the street improvement, monuments shall be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street centerlines as required by Oregon Revised Statutes Chapter 92.

**3.** Street Trees. Street trees shall be provided consistent with the provisions of Chapter 12.32.

**4.** Prior to city approval of the final subdivision plat, all perimeter and back lot line monumentation shall be installed and the installation of the front lot monumentation (along and within street rights-of-way) shall be guaranteed. Any monuments destroyed during improvement installation shall be replaced at the developer's expense.

**5.** If any lot abuts a street right-of-way that does not conform to the design specifications of this ordinance, the owner may be required to dedicate up to one-half of the total right-of-way width required by this ordinance.

**6.** The proposed use shall not impose an undue burden on the transportation system. The City may require the applicant to provide adequate information, such as a traffic impact study, to demonstrate the level of impact to the surrounding street system. The developer shall be required to mitigate impacts attributable to the project.

**7.** The determination of impact or effect and the scope of the impact study should be coordinated with the provider of the affected transportation facility.

**8.** Dedication of land for streets, transit facilities, sidewalks, bikeways, paths, or access ways shall be required where the existing transportation system will be impacted by or is inadequate to handle the additional burden caused by the proposed use.

**9.** Improvements such as paving, curbing, installation or contribution to traffic signals, construction of sidewalks, bikeways, access ways, paths, or streets that serve the proposed use where the existing transportation system may be burdened by the proposed use.

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Storm water is addressed by the Code; it must be treated on site. I do not see this addressed by the applicant. Is there room for storm water treatment and 12 houses on the 1.3 acres?

Regarding the situation of the new proposed subdivision; Municipal Code 16.86 Street Alignments, the code says the goal is safe utilization of streets and to encourage the efficient layout of streets; I again assert that the number of homes proposed is excessive to the established civic goals. The "T" shape private street is far from efficient (consider for a moment how many stop/start/forward/reverse maneuvers will occur in that short span of street. The image is far from efficient).

To continue on the thought of streets: Code 16.86.060 appears to indicate the proposed subdivision should exit onto Ivy instead of Sw. 6<sup>th</sup> Ave, per design and recommendation of some fine folks who took the time to create this manual for us to follow as we build our great city.

#### **16.86.060 Street Connectivity**

When developing the street network in Canby, the emphasis should be upon a connected continuous grid pattern of local, collector, and arterial streets rather than discontinuous curvilinear streets and cul-de-sacs. Deviation from this pattern of connected streets shall only be permitted in cases of extreme topographical challenges including excessive slopes (35 percent plus), hazard areas, steep drainage-ways and wetlands. In such cases, deviations may be allowed but the connected continuous pattern must be reestablished once the topographic challenge is passed. (Ord. 1340, 2011)

**MY CONCLUSION:** I am against the proposal as it is currently written. I feel it is more appropriate to develop the proposed property with a maximum of 5 homes (the 5 homes would be comprised of the two homes currently on the property, and adding 3 new additional homes), and utilizing the proposed new private street that will exit onto SW 6<sup>th</sup> Avenue. This maintains the current zone, and honors the intent of the civic leaders who created the Municipal Code while also providing economic stimulus and additional housing without compromising the integrity of the established neighborhood.

Below is a list of the attendees to the Planning Meeting Notice that was held on Monday, 28 August, 2017 at the Canby Library, which was not attended by the host.

The following people appeared for the meeting  
scheduled for Aug. 28, 2017 at 6 pm.

Robert Cooper 530 S Holly St 503 233 6773

Terry James 540 S Holly St 503-266-3405

CHARLIE YANKOS " " " "

Rick + Judy Reggensack 890 N Grant 266-1344

Jodymail C Canby - com

GREG LUNDY 577 S Ivy 503-266-1899

George Beaudoin 491 S Ivy St. 503-497-4337

Larry Griffith 580 S Ivy St. 503-266-1211

Mich Burger 590 S Ivy St.

WAYNE A FETERS 485 S. IUY ST 503-307-7685

Gwyn Benson 507 S 117 ST 503-263-8988

Jeanine Whitham 345 SW 6th Ave 503-266-4953

Bonnie Edwards 420 S Holly 503-266-4109

Clint BARBER 307 SW 6th Ave 503 951 2250

Jenni + Sam Driskill 249 SW 6th Ave 503 915-9751

Brian + Megan JANA 310 S Holly St. 360-807-2940

Robert T. Taylor + Gina 173 SW 6th AVE 503 989 7033

## David Epling

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**From:** Gina Taylor <reginaewood@yahoo.com>  
**Sent:** Monday, September 04, 2017 5:11 PM  
**To:** Bryan Brown  
**Subject:** Re: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel<<<< I would very much appreciate meeting with you as you have offered.

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Completed

Bryan,

I was delighted to receive your email, comments and the copy of the traffic analysis, as well as your offer to visit with you about some of the standards and concerns, prior to the hearing on October 9. I have continued to read the applicable criteria so that I can be informed, form comments and ask additional questions. There is a lot of information that I need to digest and try to understand how it applies to this proposed development.

I would like to schedule a time to visit with you. My schedule is very flexible but I assume yours is rather tight; perhaps it would be more convenient to have you choose a time for us to meet, after checking your calendar? I would be grateful if we could meet this week, or at least before the rescheduled developer's Planning Meeting on Wednesday, September 13. This would allow me time to collect questions to present to the applicant at his meeting plus, ideally, have the end result of having a shorter City Council meeting on October 18.

I do have something to bring to your attention at this time, however, and would like this added to the review of the Allen Manuel proposal. Regarding the letter you shared with me, from DKS dated August 10, 2017 who performed the analysis of the traffic; I am not feeling confident in their analysis for 3 reasons:

#1: An incorrect address appears in the first paragraph of their letter, (the analysis should be for S Ivy and SW 6th AVENUE, *not* South 6th Street). Canby has a 6th Avenue and a 6th Place, but no 6th Street. In addition, an unrelated address appears above the table on page one (what does 861 and 853 S Redwood Street have to do with the rezone proposal on S Ivy/S 6th Avenue? How do we know DKS analysed the correct location?). I felt this was a simple typographical error; but I had more questions the more I read.

#2: Regarding the chart on page 3: I would like a bit more information to explain why the current residents average 14 trips per day, while the new lots are projected to travel less? The occupants of the 4 townhouses travel an average of 9.75 trips per day and the occupants of the 8 new single family homes are projected to travel 12.87 trips per day. These are all single family residences (it is not a comparison against apartments or retail space). If each of the 12 lots averages 14 trips per day the total changes from 142 to 168, which is 19% more than DKS projected. They cited the source of Institute of Transportation Engineers (ITE). I visited the ITE website and found no data available without obtaining a subscription to the website. I would like to respectfully comment that I simply find the DKS report generates more questions than it answers.

#3: These first two concerns prompted me to review the DKS report in depth so I have begun to research what the Transportation Planning Rule provides. On the Canby city website I found the a link to the Canby Transportation System Plan at [http://canbyoregon.gov/Departments/develop\\_services/plan\\_forms/TSP12-10.pdf](http://canbyoregon.gov/Departments/develop_services/plan_forms/TSP12-10.pdf) and presume this to be the document DKS referenced. I am sure you are familiar with this 188 page document, but I want to urge you to review it with an emphasis on noting how frequently S Ivy, *and* the intersection of S Ivy with Township *and* the intersection of S Ivy with OR99E appear in the narratives of trouble spots needing improvements. Allen Manuel's proposed development is 60 feet from S Ivy (or about 100 feet from the proposed new street on 6th Ave, which intersects into S Ivy), it is 187 feet from the

intersection with S Township, and about two-tenths of a mile from the intersection of S Ivy and OR99E; I visualize and predict that likely half (if not the majority) of the automobile and pedestrian trips from this proposed development will enter and impact not just one, but ALL THREE of those trouble spots on EVERY trip out of their driveway. The Plan is illustrated with diagrams, charts and reports that identify these exact roads and intersections for high vehicle accidents, high pedestrian accidents, heavy large truck traffic, unacceptable queuing (long waits at intersections) and the report lists S Ivy as the route used by school children to walk to Ackerman and Lee Middle School and the Canby High School. In particular, as S 6th Avenue is an unusually wide residential street, it is a neighborhood route in that traffic is directed from other streets onto S 6th Ave and/or it is used to avoid the more narrow residential streets and/or used to gain access to Canby main arterials of Elm, S 13th, OR99E, and Township. You can verify all of this in the Plan.

I will add my comments here: When the proposed property is developed, having access via a private street will not prevent the additional traffic from impacting S Ivy Street; in fact it will likely cause a new set of problems via congestion at SW 6th Ave/S Ivy, encouraging traffic to detour thru the narrow SW 6th Place, where that avoidance technique will allow those clever drivers to enter S Ivy before those who are trying to do so on the wider collector street of SW 6th Ave, causing a bit of road rage I would imagine, and subsequent dare-devil antics to gain access between the cars already on Ivy. I can foresee motorists driving longer distances and cutting thru neighborhoods during high volume times/days, which the TSP indicates should be avoided (and can be controlled somewhat via density of the dwellings). 6th Avenue is a MAIN route for all the Canby school buses, and for vehicles leaving the High School at the end of the day. The track and field team jogs down SW 6th Ave. It is not a sleepy little street; we already have our share and more of issues that affect our neighborhood livability and to not want to see unnecessary additional impact. I know the land will be developed; my strong plea is to please keep the zoning as Low Density and the number of additional lots/homes to a bare minimum. We are going to need traffic control (perhaps right turn only signs on the Private Street and/or at the intersection of SW 6th/S Ivy although I would detest that last choice). I also urge the wider 30 ft intersection with the Private Street, as well as requiring the width of the Private Street to be generously wide enough for two-lane access to the lots, that is both an incoming lane and an outgoing lane and not just a one-lane street where only one motorist can enter/exit at a time.. I would also like to have suggestions on how to minimize the light pollution from the headlights that will beam through the homes across S 6th Avenue as the vehicles exit the private drive onto 6th Ave. I am dreading the days when the sun sets early, October thru April, with all those headlights in my bedroom, kitchen and living room. All additional traffic affects simple things like just accessing my mailbox, as I must cross SW 6th Ave to access it.

Can we preserve neighborhood livability, during the development of this property? (Livability holds such importance to the planning process, it merited location as Chapter 2 of the CTP, ahead of other topics).

I sincerely appreciate the work you are doing on the Planning Commission; I'm sure it often feels like a thank-less job. I also appreciate your comments regarding the 5,000 sq ft minimums and would like to have the opportunity to discuss what options can be researched, and then enforced or implemented, as well as the related topic of setbacks (yard size, distance to lot lines) and generally I am hoping to retain the low density rating, and not higher.

Regards,

Gina Taylor  
PO Box 1016  
173 SW 6th Ave,

Canby OR 97013  
reginaewood@yahoo.com  
503-989-9221

**From:** Bryan Brown <BrownB@canbyoregon.gov>  
**To:** 'Gina Taylor' <reginaewood@yahoo.com>  
**Sent:** Wednesday, August 30, 2017 10:50 AM  
**Subject:** RE: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

Hello Gina,

Thank you very much for your review and comments on the above submitted application. I wish to commend you for your grasp of the many review criteria and your conclusions. This has been a particularly difficult application for staff to guide toward something that could potentially comply with all standards. The applicable residential development standards if rezoned to the CR zone are found in the R 1.5 zoning standards. The density is very high as you point out, but technically at 10.8 units per acre for the 8 proposed single-family lots is still below the 14 unit maximum that puts it into the High Density R-2 zone territory. I would be happy to visit with you about some of the standards and your concerns if you like prior to the hearing on October 9. I will point out that I also am having trouble with the number of single-family lots of less than 5,000 square feet as the code only allows up to 10% of the total lots to be less than 5,000 sf in size without demonstrating "a public benefit".

Unfortunately, our current regulations do not have a limit on the number of homes that can be located on a "private roadway" that is not a part of a Planned Unit Development where they could be appropriate due to common open space standards. Please see attached minimum required traffic analysis primary triggered by the rezoning but includes a table on traffic generation to be expected.

The staff report will not be ready and available until Sept. 29 when it will be posted to the City's webpage for the Planning Commission as an agenda packet and available to citizens at that time.

Your comments will be included as part of the record and provided to the Planning Commission.

Respectfully,  
Bryan

**Bryan Brown | Planning Director**

City of Canby | Development Services

222 NE 2<sup>nd</sup> Avenue | PO Box 930

Canby, OR 97013

ph: 503-266-0702 | fax: 503-266-1574

email: [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov) ; website: [www.canbyoregon.gov](http://www.canbyoregon.gov)

Send applications to: [PlanningApps@canbyoregon.gov](mailto:PlanningApps@canbyoregon.gov)

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**From:** Gina Taylor [mailto:[reginaewood@yahoo.com](mailto:reginaewood@yahoo.com)]

**Sent:** Wednesday, August 30, 2017 3:40 AM

**To:** Bryan Brown <BrownB@canbyoregon.gov>

**Subject:** CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

City Council Packet 301 of 369

Attention: B Brown

Please find attached, my comment form regarding CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel. I attended the Planning Meeting at the Canby Library on 28 August 2017, however the developers did not show at the meeting.

I notice on the Notice of Public Hearing and Request for Comments letter which I received from the City of Canby, the documents and staff reports will be available online on the City of Canby website. I have searched that website and do not locate the area where this information is stored. Could you (or someone else) please send me the path or link to this information? I would greatly appreciate it!

Regards,  
Regina Taylor  
PO Box 1016  
Canby, OR 97013

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## Laney Fouse

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**From:** Hassan Ibrahim <hai@curran-mcleod.com>  
**Sent:** Monday, August 28, 2017 2:25 PM  
**To:** Bryan Brown  
**Subject:** RE: Request for Comments - S Ivy Subdivision

Right on. I would assume the county may have some requirements since it is a county street and may include the STIP improvements status or whether the developer will be responsible for them. The county may need temporary grading/slope easements?

-----  
Hassan Ibrahim, P.E.  
CURRAN-McLEOD, INC.  
6655 SW Hampton St, Ste. 210  
Portland, OR 97223  
Tel: 503-684-3478  
Fax: 503-624-8247  
Cell: 503-807-2737  
email: [hai@curran-mcleod.com](mailto:hai@curran-mcleod.com)

**From:** Bryan Brown [mailto:[BrownB@canbyoregon.gov](mailto:BrownB@canbyoregon.gov)]  
**Sent:** Monday, August 28, 2017 2:20 PM  
**To:** Hassan Ibrahim <hai@curran-mcleod.com>  
**Subject:** RE: Request for Comments - S Ivy Subdivision

Hassan,

Thank you. Only one question. On the half street improvements, if the timing works out, he may be hoping and planning that the S Ivy Street STIP Federal Funded Street Improvement project might provide the otherwise required street improvements. We will not know for a while what the engineered improvements design will be for that project. I would assume we will be accepting the STIP project as meeting necessary City standards? As soon as the project is complete the City is required to take over jurisdiction and control of S Ivy Street. I would anticipate a condition of approval that indicates your standards outlined unless the STIP project improvements are in place before his construction plans proceed.

Bryan

**Bryan Brown | Planning Director**  
City of Canby | Development Services  
222 NE 2<sup>nd</sup> Avenue | PO Box 930  
Canby, OR 97013  
ph: 503-266-0702 | fax: 503-266-1574  
email: [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov); website: [www.canbyoregon.gov](http://www.canbyoregon.gov)  
Send applications to: [PlanningApps@canbyoregon.gov](mailto:PlanningApps@canbyoregon.gov)

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**From:** Hassan Ibrahim [<mailto:hai@curran-mcleod.com>]  
**Sent:** Monday, August 28, 2017 12:33 PM  
**To:** Bryan Brown <[BrownB@canbyoregon.gov](mailto:BrownB@canbyoregon.gov)>  
**Cc:** Laney Fouse <[Fousel@canbyoregon.gov](mailto:Fousel@canbyoregon.gov)>  
**Subject:** RE: Request for Comments - S Ivy Subdivision

Hi Bryan,

Here are our review comments.

Thanks,

-----  
Hassan Ibrahim, P.E.  
CURRAN-McLEOD, INC.  
6655 SW Hampton St, Ste. 210  
Portland, OR 97223  
Tel: 503-684-3478  
Fax: 503-624-8247  
Cell: 503-807-2737  
email: [hai@curran-mcleod.com](mailto:hai@curran-mcleod.com)

**From:** Laney Fouse [<mailto:Fousel@canbyoregon.gov>]  
**Sent:** Friday, August 25, 2017 9:36 AM  
**To:** Bret Smith (PD) <[SmithB@canbypolice.com](mailto:SmithB@canbypolice.com)>; 'Canby Disposal ([customerservice@canbydisposal.com](mailto:customerservice@canbydisposal.com))' <[customerservice@canbydisposal.com](mailto:customerservice@canbydisposal.com)>; Curt McLeod <[cjm@curran-mcleod.com](mailto:cjm@curran-mcleod.com)>; Dan Murphy ([DMurphy@canbyutility.org](mailto:DMurphy@canbyutility.org)) <[DMurphy@canbyutility.org](mailto:DMurphy@canbyutility.org)>; 'Dinh Vu' <[dinhvu@canbytel.com](mailto:dinhvu@canbytel.com)>; 'Douglas Quan' <[dquan@canbyutility.org](mailto:dquan@canbyutility.org)>; 'Gary Stockwell' <[gstockwell@canbyutility.org](mailto:gstockwell@canbyutility.org)>; Hassan Ibrahim <[hai@curran-mcleod.com](mailto:hai@curran-mcleod.com)>; 'kenken@co.clackamas.or.us' <[kenken@co.clackamas.or.us](mailto:kenken@co.clackamas.or.us)>; 'Kizer, Daniel' <[Daniel.Kizer@nwnatural.com](mailto:Daniel.Kizer@nwnatural.com)>; Michael Hemelstrand <[mike.hemelstrand@gmail.com](mailto:mike.hemelstrand@gmail.com)>; [mindymonte@gmail.com](mailto:mindymonte@gmail.com); 'ODOT Development Review ([region1devrevapplications@odot.state.or.us](mailto:region1devrevapplications@odot.state.or.us))' <[region1devrevapplications@odot.state.or.us](mailto:region1devrevapplications@odot.state.or.us)>; Paul Belz-Templeman <[belz\\_templeman@yahoo.com](mailto:belz_templeman@yahoo.com)>; Renate Mengelberg <[mengelbergr@canbyoregon.gov](mailto:mengelbergr@canbyoregon.gov)>; Rick Robinson <[RobinsonR@canbyoregon.gov](mailto:RobinsonR@canbyoregon.gov)>; 'Robert Hixson' <[roberth@co.clackamas.or.us](mailto:roberth@co.clackamas.or.us)>; 'Scott Caufield' <[scottc@co.clackamas.or.us](mailto:scottc@co.clackamas.or.us)>; 'Tim Gettel' <[tgettel@wavebroadband.com](mailto:tgettel@wavebroadband.com)>; 'Todd Gary' <[tgary@canbyfire.org](mailto:tgary@canbyfire.org)>  
**Subject:** Request for Comments - S Ivy Subdivision

Hello,

Please find attached a Request for Comments for a zone change, conditional use permit, and subdivision at 533 553, and 583 S Ivy St. In addition, I've attached the application materials for your review. Please let me know if you need anything else.

Thank you, Laney

*Laney Fouse  
Development Services Department  
City of Canby  
222 NE 2<sup>nd</sup> Ave, 2<sup>nd</sup> Floor  
Direct Line: 503-266-0685*

Main Line: 503-266-7001  
Fax 503-266-1574  
[fousel@canbyoregon.gov](mailto:fousel@canbyoregon.gov)

Send Applications to: [PlanningApps@canbyoregon.gov](mailto:PlanningApps@canbyoregon.gov)  
City Website: [www.canbyoregon.gov](http://www.canbyoregon.gov)

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## **CITY OF CANBY –COMMENT FORM**

If you are unable to attend the Public Hearing, you may submit written comments on this form or in a letter addressing the Planning Commission. Please send comments to the City of Canby Planning Department:

**By mail:** Planning Department, PO Box 930, Canby, OR 97013  
**In person:** Planning Department at 222 NE 2<sup>nd</sup> Ave, Canby, OR 97013  
**E-mail:** [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov)

Written comments to be included in the **Planning Commission's meeting packet are due by Noon on Wednesday, September 27, 2017.** Written comments to be included **City Council's meeting packet are due by Noon on Tuesday, October 10, 2017.** Written comments for the Planning Commission or the City Council can also be submitted up to the time of the Public Hearings, and may be delivered in person during the Public Hearings.

**Application: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel**

### **COMMENTS:**

- 1- How will this subdivision impact my garage that was built 76 years ago and sits on or close to the property line?
- 2- Where will the run off water from the streets and driveways go? Since the subdivision slopes down toward my property, I am concerned that my basement may flood and that my back yard will become a swamp.
- 3- What about parking? From what I've seen at the subdivision across from Bethany Church that was built by Allen Manuel in 2001, there is very little to no parking. You look down the land and see cars parked half on the sidewalk and half on the road, and if they park on the road, there is very little room for the people in the back to get in and out safely.
- 4- What about emergency vehicles? Will there be room for the fire trucks and/or rescue trucks to get in and out safely?
- 5- What about fire hydrants? Will there be a fire hydrant within the subdivision? If not, how far away is the closest hydrant, and will hoses reach all buildings?
- 6- How will this impact the traffic on 6th street? It is already a busy street especially during the school year. How will people get in and out with the school buses backed up on 6th street.
- 7- How will this impact the neighborhood? Canby was a quiet community, will this change?

**NAME:** Gwyn Benson

**ADDRESS** 507 S. Ivy Street, Canby, OR

**EMAIL:** gwynbenson@hotmail.com **DATE:** 09/11/2017

**AGENCIES: Please check one box and fill in your Name/Agency/Date below:**

- ☐ Adequate Public Services (of your agency) are available
- ☐ Adequate Public Services will become available through the development
- ☐ Conditions are needed, as indicated
- ☐ Adequate public services are not available and will not become available
- ☐ No Comments

**NAME:** \_\_\_\_\_  
**AGENCY:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

**Thank you!**

## Laney Fouse

---

**From:** Gina Taylor <reginaewood@yahoo.com>  
**Sent:** Monday, September 04, 2017 5:11 PM  
**To:** Bryan Brown  
**Subject:** Re: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park  
Subdivision, Allen Manuel<<<< I would very much  
appreciate meeting with you as you have offered.

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Completed

Bryan,

I was delighted to receive your email, comments and the copy of the traffic analysis, as well as your offer to visit with you about some of the standards and concerns, prior to the hearing on October 9. I have continued to read the applicable criteria so that I can be informed, form comments and ask additional questions. There is a lot of information that I need to digest and try to understand how it applies to this proposed development.

I would like to schedule a time to visit with you. My schedule is very flexible but I assume yours is rather tight; perhaps it would be more convenient to have you choose a time for us to meet, after checking your calendar? I would be grateful if we could meet this week, or at least before the rescheduled developer's Planning Meeting on Wednesday, September 13. This would allow me time to collect questions to present to the applicant at his meeting plus, ideally, have the end result of having a shorter City Council meeting on October 18.

I do have something to bring to your attention at this time, however, and would like this added to the review of the Allen Manuel proposal. Regarding the letter you shared with me, from DKS dated August 10, 2017 who performed the analysis of the traffic; I am not feeling confident in their analysis for 3 reasons:

#1: An incorrect address appears in the first paragraph of their letter, (the analysis should be for S Ivy and SW 6th AVENUE, *not* South 6th Street). Canby has a 6th Avenue and a 6th Place, but no 6th Street. In addition, an unrelated address appears above the table on page one (what does 861 and 853 S Redwood Street have to do with the rezone proposal on S Ivy/S 6th Avenue? How do we know DKS analysed the correct location?). I felt this was a simple typographical error; but I had more questions the more I read.

#2: Regarding the chart on page 3: I would like a bit more information to explain why the current residents average 14 trips per day, while the new lots are projected to travel less? The occupants of the 4 townhouses travel an average of 9.75 trips per day and the occupants of the 8 new single family homes are projected to travel 12.87 trips per day. These are all single family residences (it is not a comparison against apartments or retail space). If each of the 12 lots averages 14 trips per day the total changes from 142 to 168, which is 19% more than DKS projected. They cited the source of Institute of Transportation Engineers (ITE). I visited the ITE website and found no data available without obtaining a subscription to the website. I would like to respectfully comment that I simply find the DKS report generates more questions than it answers.

#3: These first two concerns prompted me to review the DKS report in depth so I have begun to research what the Transportation Planning Rule provides. On the Canby city website I found the a link to the Canby Transportation System Plan at [http://canbyoregon.gov/Departments/develop\\_services/plan\\_forms/TSP12-](http://canbyoregon.gov/Departments/develop_services/plan_forms/TSP12-)

10.pdf and presume this to be the document DKS referenced. I am sure you are familiar with this 188 page document, but I want to urge you to review it with an emphasis on noting how frequently S Ivy, *and* the intersection of S Ivy with Township *and* the intersection of S Ivy with OR99E appear in the narratives of trouble spots needing improvements. Allen Manuel's proposed development is 10 feet from S Ivy (or about 100 feet from the proposed new street on 6th Ave, which intersects into S Ivy), it is 187 feet from the intersection with S Township, and about two-tenths of a mile from the intersection of S Ivy and OR99E; I visualize and predict that likely half (if not the majority) of the automobile and pedestrian trips from this proposed development will enter and impact not just one, but ALL THREE of those trouble spots on *EVERY* trip out of their driveway. The Plan is illustrated with diagrams, charts and reports that identify these exact roads and intersections for high vehicle accidents, high pedestrian accidents, heavy large truck traffic, unacceptable queuing (long waits at intersections) and the report lists S Ivy as the route used by school children to walk to Ackerman and Lee Middle School and the Canby High School. In particular, as S 6th Avenue is an unusually wide residential street, it is a neighborhood route in that traffic is directed from other streets onto S 6th Ave and/or it is used to avoid the more narrow residential streets and/or used to gain access to Canby main arterials of Elm, S 13th, OR99E, and Township. You can verify all of this in the Plan.

I will add my comments here: When the proposed property is developed, having access via a private street will not prevent the additional traffic from impacting S Ivy Street; in fact it will likely cause a new set of problems via congestion at SW 6th Ave/S Ivy, encouraging traffic to detour thru the narrow SW 6th Place, where that avoidance technique will allow those clever drivers to enter S Ivy before those who are trying to do so on the wider collector street of SW 6th Ave, causing a bit of road rage I would imagine, and subsequent dare-devil antics to gain access between the cars already on Ivy. I can foresee motorists driving longer distances and cutting thru neighborhoods during high volume times/days, which the TSP indicates should be avoided (and can be controlled somewhat via density of the dwellings). 6th Avenue is a MAIN route for all the Canby school buses, and for vehicles leaving the High School at the end of the day. The track and field team jogs down SW 6th Ave. It is not a sleepy little street; we already have our share and more of issues that affect our neighborhood livability and to not want to see unnecessary additional impact. I know the land will be developed; my strong plea is to please keep the zoning as Low Density and the number of additional lots/homes to a bare minimum. We are going to need traffic control (perhaps right turn only signs on the Private Street and/or at the intersection of SW 6th/S Ivy although I would detest that last choice). I also urge the wider 30 ft intersection with the Private Street, as well as requiring the width of the Private Street to be generously wide enough for two-lane access to the lots, that is both an incoming lane and an outgoing lane and not just a one-lane street where only one motorist can enter/exit at a time.. I would also like to have suggestions on how to minimize the light pollution from the headlights that will beam through the homes across S 6th Avenue as the vehicles exit the private drive onto 6th Ave. I am dreading the days when the sun sets early, October thru April, with all those headlights in my bedroom, kitchen and living room. All additional traffic affects simple things like just accessing my mailbox, as I must cross SW 6th Ave to access it.

Can we preserve neighborhood livability, during the development of this property? (Livability holds such importance to the planning process, it merited location as Chapter 2 of the CTP, ahead of other topics).

I sincerely appreciate the work you are doing on the Planning Commission; I'm sure it often feels like a thankless job. I also appreciate your comments regarding the 5,000 sq ft minimums and would like to have the opportunity to discuss what options can be researched, and then enforced or implemented, as well as the related

topic of setbacks (yard size, distance to lot lines) and generally I am hoping to retain the low density rating, and not higher.

Regards,

Gina Taylor  
PO Box 1016  
173 SW 6th Ave,  
Canby OR 97013  
reginaewood@yahoo.com  
503-989-9221

**From:** Bryan Brown <BrownB@canbyoregon.gov>  
**To:** 'Gina Taylor' <reginaewood@yahoo.com>  
**Sent:** Wednesday, August 30, 2017 10:50 AM  
**Subject:** RE: CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

Hello Gina,

Thank you very much for your review and comments on the above submitted application. I wish to commend you for your grasp of the many review criteria and your conclusions. This has been a particularly difficult application for staff to guide toward something that could potentially comply with all standards. The applicable residential development standards if rezoned to the CR zone are found in the R 1.5 zoning standards. The density is very high as you point out, but technically at 10.8 units per acre for the 8 proposed single-family lots is still below the 14 unit maximum that puts it into the High Density R-2 zone territory. I would be happy to visit with you about some of the standards and your concerns if you like prior to the hearing on October 9. I will point out that I also am having trouble with the number of single-family lots of less than 5,000 square feet as the code only allows up to 10% of the total lots to be less than 5,000 sf in size without demonstrating "a public benefit".

Unfortunately, our current regulations do not have a limit on the number of homes that can be located on a "private roadway" that is not a part of a Planned Unit Development where they could be appropriate due to common open space standards. Please see attached minimum required traffic analysis primary triggered by the rezoning but includes a table on traffic generation to be expected.

The staff report will not be ready and available until Sept. 29 when it will be posted to the City's webpage for the Planning Commission as an agenda packet and available to citizens at that time.

Your comments will be included as part of the record and provided to the Planning Commission.

Respectfully,  
Bryan

**Bryan Brown | Planning Director**  
City of Canby | Development Services  
222 NE 2<sup>nd</sup> Avenue | PO Box 930  
Canby, OR 97013  
ph: 503-266-0702 | fax: 503-266-1574  
email: [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov) ; website: [www.canbyoregon.gov](http://www.canbyoregon.gov)  
Send applications to: [PlanningApps@canbyoregon.gov](mailto:PlanningApps@canbyoregon.gov)

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**From:** Gina Taylor [mailto:reginaewood@yahoo.com]  
**Sent:** Wednesday, August 30, 2017 3:40 AM  
**To:** Bryan Brown <BrownB@canbyoregon.gov>  
**Subject:** CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel

Attention: B Brown

Please find attached, my comment form regarding CUP 17-05/ZC 17-02/SUB 17-04 S Ivy Park Subdivision, Allen Manuel. I attended the Planning Meeting at the Canby Library on 28 August 2017, however the developers did not show at the meeting.

I notice on the Notice of Public Hearing and Request for Comments letter which I received from the City of Canby, the documents and staff reports will be available online on the City of Canby website. I have searched that website and do not locate the area where this information is stored. Could you (or someone else) please send me the path or link to this information? I would greatly appreciate it!

Regards,  
Regina Taylor  
PO Box 1016  
Canby, OR 97013

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## Laney Fouse

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**From:** Bryan Brown  
**Sent:** Tuesday, September 19, 2017 5:29 PM  
**To:** 'Carol Hill'  
**Subject:** RE: City of Canby - Comment Form

Hello Carol,

Thanks you for your comments. We will be placing your comments as part of the record for the Planning Commission's review.

In regard to your questions:

- 1) A subdivision is necessary whenever more than 3 new lots are proposed at one time. The regulations pertaining to subdivisions help to assure that most basic design and service requirements are satisfactorily met.
- 2) In order to create the number of lots the applicant is proposing, he must rezone the property – in this case to the C-R residential-commercial zoning district where he is only planning residential uses – 8 detached single-family homes (saving 2 of the 3 existing) and 4 new townhomes which will be owner occupied sitting on their own lots but having a common wall on the common property line. The C-R zone allows an increase in density by allowing smaller providing him room to fit this many homes on 1.3 acres. He proposes a private roadway to provide access because a public street right-of-way is much wider so would not be suitable. There are obvious drawbacks with the use of private streets but nothing in the Code that prohibits their use when done in an appropriate manner.
- 3) The Traffic Analysis was a very focused one related to the proposed rezoning to satisfy that our adopted Transportation System Plan accounted for the amount of traffic that the C-R zoning on this property might generate. The determination is that it did, and projects identified to complete will address this anticipated additional traffic. They probably copied from another Memorandum they had done on N Redwood Street but the location is correct for the study.
- 4) I do not know the actual street width at this time and whether any existing no parking signage exists. If it is determined that parking should be restricted near the intersection due to the increase traffic turning right onto the street or out of the new access road it can be done to improve safety. This of course lessen the available parking in the area.
- 5) The increase in number of lots (subdivision) is a result of the rezone in order to redevelop and area that can be considered to potentially be ready for transition to a "highest and best use" which happens when the value of the land begins to exceed the value of homes that are on it.
- 6) You can view the applicable subdivision standards in the applicant's submittal and the staff report that will be available this Friday on the City webpage or in the Land Development and Planning Ordinance (Chapter 16 of the Municipal Code).
- 7) No open space, park or recreation areas are required unless the City determined that the area had been identified in the Master Park Plan for a possible park site. That is not the case so we did not ask for one. However, an alternative approach could have been a Planned Unit Development which does require a certain amount of open space be provided with any development proposal. They must be as good as or better than typical subdivisions in terms of amenities but allow them to very certain standards for flexibility in design.
- 8) It is not likely the volume of additional traffic would make this kind of restriction necessary. This was not specifically analyzed but if approved and built, it is a last resort if necessary to improve safety onto a busy street. We expect the situation will improve when a stop light is erected next year at Township & S Ivy Street intersection.

Bryan

**Bryan Brown | Planning Director**

City of Canby | Development Services

222 NE 2<sup>nd</sup> Avenue | PO Box 930

Canby, OR 97013

ph: 503-266-0702 | fax: 503-266-1574

email: [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov) ; website: [www.canbyoregon.gov](http://www.canbyoregon.gov)

Send applications to: [PlanningApps@canbyoregon.gov](mailto:PlanningApps@canbyoregon.gov)

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**From:** Carol Hill [mailto:[cjhill370@gmail.com](mailto:cjhill370@gmail.com)]

**Sent:** Saturday, September 16, 2017 4:27 PM

**To:** Bryan Brown <[BrownB@canbyoregon.gov](mailto:BrownB@canbyoregon.gov)>

**Subject:** City of Canby - Comment Form

**City of Canby – Comment Form**

By Mail: To the Planning Department PO Box 930, Canby, OR 97013

My name is Carol J. Hill and I am the Owner of a Property on 6th Avenue in Canby, OR 97013.

I do have some questions, input, thoughts, and comments concerning this project on **Tax Lots:**  
41E04AB7100, 7200, 6300

**Lot Size and Zoning:** 1.31 acres, R-1 Low Density Residential

**Owners:** Allen Manuel Living Trust Applicant.

**Applicant:** Allen Manuel

**Application Type:** Conditional Use Permit, Zoning Map

Amendment and Subdivision (Type 111)

**City File Number:** CUP 17-05/ZC 17-02/SUB 17-04

**Contact:** Bryan Brown at 503-266-0702 or by email [brownb@canbyoregon.org](mailto:brownb@canbyoregon.org)

**Comments:**

1. Why should a subdivision be allowed in a low density neighborhood?

2. Isn't the 1.3 acres, too small to handle 12 to 15 homes?
3. Did the traffic survey get the right address on Redwood?
4. Can 6<sup>th</sup> avenue have parking on both sides of the street and still have room for cars going up and down the road.
5. Why should we have an "island" with a subdivision in it, doesn't seem right.
6. Is there a Municipal Code for subdivisions and what are they?
7. Like if a subdivision followed some Municipal Codes would they have other needs, like a playground, or a recreational area in the subdivision also?
8. Furthermore, will this cause 6<sup>th</sup> Avenue at the Ivy St intersection to become a right hand turn only?

Carol Jane Hill 09-16-2017

## Laney Fouse

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**From:** Bryan Brown  
**Sent:** Tuesday, September 19, 2017 4:39 PM  
**To:** 'Jackie Jones' (jacqjones@msn.com)  
**Subject:** RE: Urgent (time sensitive) need to discuss 12-unit subdivision proposal for SW 6th AVE; City requires citizen comments by 9/29/2017 !!!!!

Hello Jackie,

For your information, City Code only requires notification to the Chair of any neighborhood association whose boundaries include the subject property. The intent is that the Chair then can utilize any mailing or mass email contact list that might have in place to let all members know of a proposed development request.

I am trying to put a staff report and recommendation together in the next two days. The request is to rezone 1.3 acres (3 Tax Lots) from R-1 Low Density Residential to C-R Residential-Commercial. This could allow some very limited commercial uses or residential uses in the form of detached single-family homes or one duplex or triplex on an individual lot. However, he has submitted an actual development plan at this time to create a subdivision containing 12 total lots – 2 existing homes, 6 new detached homes, and 4 townhomes with common walls on the property lines so all owner occupied. He clearly is trying to maximize the number of units but is also trying to save and work around 2 homes which are worth saving. County and City ordinance requires that access be placed on the lowest classification street when the option exists to reduce conflicts and help maintain the through aspect of the higher classification street – S Ivy Street in this case.

He is proposing a private roadway, as there is not option for an internal public street for which right-of-way would be take up way to much space and would not fit between homes that are proposed to be saved.

The #1 aspect that he has going for him is that the Comprehensive Plan Land Use Map indicates this designated Area of Special Concern (C) is suitable for rezoning to the C-R zone. The question is whether the timing is appropriate and whether his development plan safe guards the existing community adequately. There is some discretion with rezoning, even more discretion with approving a Conditional Use Permit to allow the 4 townhomes, and with regard to specifics in the proposed subdivision design layout. The Comprehensive Plan is actually very supportive of opportunities where redevelopment is suitable but does ask that quality of life factors be preserved in the area while doing so! Compromise is always necessary when an existing developed area has been designated on the future Land Use Map as suitable for transitioning over time to and increased density.

Bryan

***Bryan Brown | Planning Director***

City of Canby | Development Services

222 NE 2<sup>nd</sup> Avenue | PO Box 930

Canby, OR 97013

ph: 503-266-0702 | fax: 503-266-1574

email: [brownb@canbyoregon.gov](mailto:brownb@canbyoregon.gov) ; website: [www.canbyoregon.gov](http://www.canbyoregon.gov)

Send applications to: [PlanningApps@canbyoregon.gov](mailto:PlanningApps@canbyoregon.gov)

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**From:** Matilda Deas  
**Sent:** Friday, September 15, 2017 1:06 PM  
**To:** Bryan Brown <BrownB@canbyoregon.gov>  
**Subject:** FW: Urgent (time sensitive) need to discuss 12-unit subdivision proposal for SW 6th AVE; City requires citizen comments by 9/29/2017 !!!!!

I think this one if for you.....

**From:** Jackie Jones [mailto:[jacqjones@msn.com](mailto:jacqjones@msn.com)]  
**Sent:** Friday, September 15, 2017 12:59 PM  
**To:** Matilda Deas <[DeasM@canbyoregon.gov](mailto:DeasM@canbyoregon.gov)>  
**Subject:** Fw: Urgent (time sensitive) need to discuss 12-unit subdivision proposal for SW 6th AVE; City requires citizen comments by 9/29/2017 !!!!!

Hi Matilda

Not sure if I should be talking to Brian in the Planning Department or if your able to help me understand exactly what this is about?

Also, is it planned to tear down some houses? I drove by and didn't see anywhere where 12 housing units could go?

Thanks

Jackie

---

**From:** Gina Taylor <[reginaewood@yahoo.com](mailto:reginaewood@yahoo.com)>  
**Sent:** Thursday, September 14, 2017 6:36 PM  
**To:** [jacqjones@msn.com](mailto:jacqjones@msn.com)  
**Subject:** RE: Urgent (time sensitive) need to discuss 12-unit subdivision proposal for SW 6th AVE; City requires citizen comments by 9/29/2017 !!!!!

Jackie,

Hello, I am trying to contact the leaders and members of the SW Canby Neighborhood Association to notify them that they have been excluded from receiving official notification from Canby Planning Commission regarding a proposed subdivision on SW 6th Ave.

Allen Manuel, a realtor at Better Homes & Gardens Realty in Canby has proposed the development of 3 lots on the corner of SW 6th Avenue and S Ivy. There is a trick to this. Currently, the 3 lots exit onto S Ivy, putting them under the jurisdiction of a different neighborhood association. He has worked with the City planners and the Clackamas County Planners and he is being banned from using S Ivy for the exit of his proposed subdivision (because of traffic issues on S Ivy); so the city

and county planners are forcing him to put his new private road for 11 homes on SW 6th Ave, plus he must redirect an existing driveway off of Ivy onto SW 6th (for a total of 12 homes unless he decides to develop it more intensely, which is also allowed). The redirection of the traffic onto SW 6th Ave does affect the SW Canby Neighborhood Association.

The SW Canby Neighborhood Association has not been on the mailing list for the notices that have already been mailed, since the 3 lots currently have Ivy Street addresses. The Developer Meeting has already been conducted (last night, at the Canby Library) and we neighbors who attended that meeting determined we need to reach out to you (the Neighborhood Association) to notify you of these events, and attempt to include you in them. If the Neighborhood Association is unable to "officially" assist, we believe at minimum, your members may have insight or advice to give to us.

Can you help rally support for us?

I will attach a copy of the City of Canby Notice of Public Hearing for Comments, and also the Planning Meeting Notice from the developer.

Any advice you can give is greatly appreciated. Feel free to forward my email to anyone you think may have interest, insight, or be able to help.

I welcome contact from anyone regarding this.

I have done some research and believe I have found a previously unused City Policy which would prevent rezoning from the current R.1 to the developers R1.5, (meaning fewer homes, less impact on our neighborhood) but without the weight of the Neighborhood Association, I feel the planners will not take me seriously, and my findings will be swept under the rug. I am referring to the Comprehensive Plan, the Land Use chapter, pg 60 indicates the Land Conservation and Development Commission identified and labeled those lots on S Ivy as an "Area of Special Concern" (there are 10 of them in Canby, labeled A thru J), Area #C. It is the tiniest of all the Areas of Special Concern. It is very likely no development plans have been submitted to the City for review in this tiny Area C in decades (if ever!) so it is likely completely off their radar screen. I think they forgot about it. But I found out about it and I want it enforced or at least reviewed with as much attention as possible! I would be happy to show you my research, which I will be presenting to the Planning Council. Can you help?

Can you please let me know you have received my email? I could not find an active website for the SW Canby Neighborhood Association and wonder if it is still active?

Kind (but desperate) regards,

Gina Taylor  
173 SW 6th Ave  
Canby, OR 97013  
[reginaewood@yahoo.com](mailto:reginaewood@yahoo.com)  
503-989-9221

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#### PUBLIC RECORDS LEGAL DISCLOSURE

This email is a public record of the City of Canby, Oregon, and is subject to public disclosure unless exempt from disclosure under Oregon Public Records Law.  
This email is subject to the State Retention Schedule.

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# M E M O R A N D U M



**TO:** *Honorable Mayor Hodson and City Council*  
**FROM:** *Renate Mengelberg, Economic Development Director*  
**THROUGH:** *Rick Robinson, City Administrator*  
**DATE:** *December 6<sup>th</sup>, 2017*

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**Issue:** **Declare the former city Library property at 292 N. Holly not needed for public use after the public hearing.**

**Synopsis:**

The 10,961 square foot former city Library has been vacant since October 2016. The city abandoned the building when it consolidated its administrative offices and library at their new Civic Building at 222 NE 2<sup>nd</sup> Avenue. The city council wishes to return the former library 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.

City staff marketed the property aggressively for a three months this summer to potential buyers, tenants and developers. The city received three proposals. At their October 4th Executive Session, the city council selected the development firm, T-5 Equities, to continue exclusive negotiations with. T-5 Equities plans to invest in extensive renovations to the interior and exterior of the building. They will convert the east side of the building into eight creative offices, three meeting areas / workspaces and shared office services. The west side of the building will offer six market stalls for small retail / restaurant businesses. Renovations could begin this spring.

The Council directed staff to develop a contract based on the parameters in their proposal. A detailed agreement between T-5 Equities and the city will be presented to Council for their review in early January.

As part of the property transition process, the city must formally declare the library building surplus before a contract is approved. The process includes holding a public hearing and adopting a resolution to declare the property not needed for public use.

**Recommendation:** **Hold a public hearing to gather community input on declaring the former city Library property not needed for public use, and approve resolution 1277.**

**Attachments**

- Resolution 1277
- Property flyer promoting the former Library

## **RESOLUTION NO. 1277**

### **A RESOLUTION OF THE CANBY CITY COUNCIL DECLARING THE FORMER CITY LIBRARY BUILDING LOCATED AT 292 N. HOLLY STREET, NOT NEEDED FOR PUBLIC USE**

**WHEREAS**, the City of Canby owns the 10,961 square foot single story building located at 292 N. Holly; and

**WHEREAS**, the city vacated the building in October 2016 when it moved its library operations and administration offices to its new Civic Center at 222 NE 2<sup>nd</sup> Avenue; and

**WHEREAS**, the real property being vacated will no longer be required to house city services; and

**WHEREAS**, City Council wants to return this strategically located building in the heart of Canby's downtown to the tax rolls, bring new businesses to downtown that will generate jobs, attract shoppers and visitors and activate the district during the day, evenings and weekends; and

**WHEREAS**, City Council directed staff to attract developers, tenants and businesses interested in leasing or owning the vacated building; and

**WHEREAS**, City Council received and evaluated three proposals and selected Oregon City based developer T-5 Equities to enter into exclusive negotiations for the property; and

**WHEREAS**, the developer will invest 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 Canby City Council declares the real property described as 292 N. Holly, Tax Map 3S-1E-33CA, Tax Lot Number 7800, no longer needed for public use and authorizes the transfer of the City's fee simple interest in the real property.
2. The City Administrator and legal counsel are hereby authorized to take any and all actions necessary to facilitate the transfer from the city to a private developer.



This resolution will take effect on December 6, 2017.

ADOPTED this 6<sup>th</sup> day of December 2017 by the Canby City Council

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Brian Hodson  
Mayor

ATTEST:

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Kimberly Scheafer, MMC  
City Recorder

# **FOR SALE or LEASE**

## **10,961 SF Commercial Building**

292 N. Holly Street in Downtown Canby, Oregon

Proposals Due: September 22<sup>nd</sup>



- Large, flexible space accommodates a wide variety of uses
- In good condition with high ceilings and an open floor plan
- Centrally located downtown across from the popular Wait Park
- City of Canby seeking tenants/buyers to activate the space days, evenings and weekends
- Zoned Downtown Commercial that encourages retail, office, or commercial uses
- Two restrooms, two offices and ample storage
- Zoned HVAC system, suspended acoustic tile ceiling and florescent lighting.
- Constructed in 1973 on a 0.26 acre lot
- 13 on street parking spaces
- Drive-through alley access
- Appraised Value: \$952,000



**See Details and Application at [www.canbyoregon.gov](http://www.canbyoregon.gov)**

Contact: Renate Mengelberg at 503-266-0701 or [mengelberg@canbyoregon.gov](mailto:mengelberg@canbyoregon.gov)

Building tours available after August 7th

# Downtown Canby

## Location Highlights

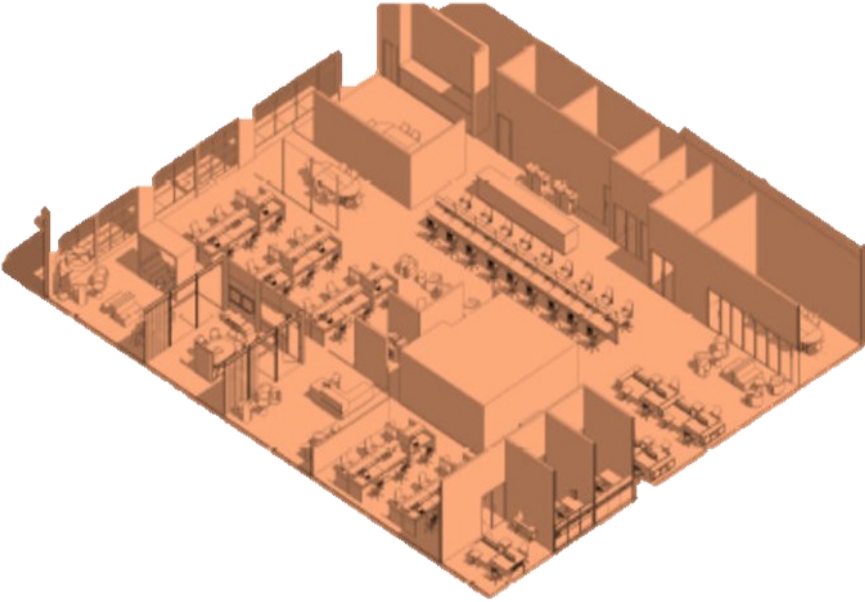
- Canby, Oregon is a successful, stable suburban community of 16,010.
- The community has ample small-town charm, with shops, restaurants, and cozy neighborhoods within close walking distance of downtown.
- Located within 10 miles of I-5 and I-205 and 28 miles south of downtown Portland, Oregon.
- \$100 million in public and private investment over the last five years. Significant new residential and apartment development is increasing demand for new businesses and services.
- The 10-mile radius market area contains about 50,000 potential customers. Household median income is \$61,023. Sixty-six percent are homeowners and 73% are family households with an average household size of 2.77. Extensive demographics found at <http://canbybusiness.com/about-canby/demographics/>.
- Canby has a thriving and diverse economy with 728 businesses and 8,312 employees. Major Canby industry clusters include advanced manufacturing, wholesale trade, high tech, agriculture and food processing.
- A recent retail study highlights compelling market opportunities at: <http://canbybusiness.com/wp-content/uploads/2017/02/2016RetailMarketAnalysis.pdf>.
- The 55-acre Clackamas County Events Center and Fairgrounds hosts hundreds of events a year, with a total attendance of nearly 300,000 annually.
- Frequent downtown events attract thousands of customers and visitors. Highlights include a weekly Summer Farmers Market, the Canby Independence Day Celebration, Junk Refunk Street Market, Big Night Out Street Dance, and Light Up The Night tree lighting ceremony. Small town parades include 4th of July, Halloween, Light Up the Night, and the Kiddie Caper parades. Canby's Big Weekend features the Big Night Out Street Dance, Swan Island Dahlia Festival & Cutsforth's Annual Cruise-In.





# Building Inspirations

292 N. Holly Street



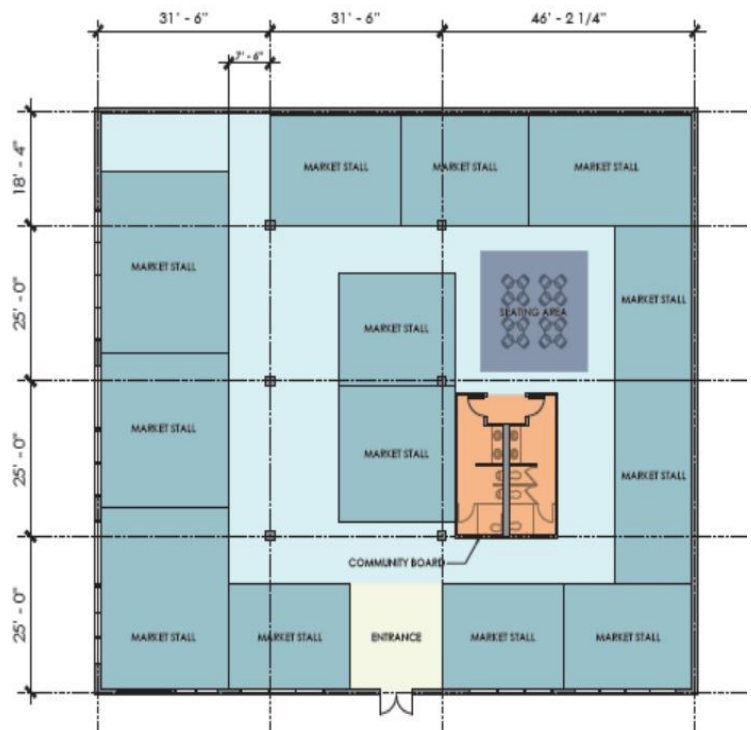
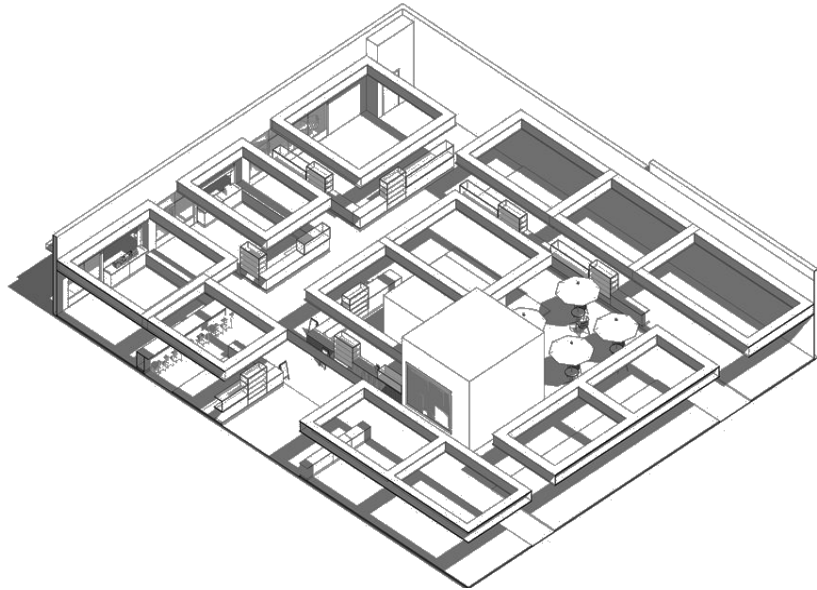
*Office Space*

*Possibilities*



# Building Inspirations

292 N. Holly Street



*Public  
Market  
Possibilities*



# City of Canby

## Building Sale or Lease

## Proposal Criteria and Process

### Goal:

To find the best buyer or tenant for this vacant building. The city hopes to attract a new business or use that adds to an economically vital and active Downtown; that attracts more businesses, residents, and visitors and preferably fills missing niches in the community. The City will enter into exclusive negotiation for the property. We are open to a broad range of deal structures – outright purchase, lease, lease with an option to purchase, and so forth.

### Selection Criteria:

- ✓ Brings uses that are active during weekdays, evenings, and weekends.
- ✓ A financially strong buyer, tenant or developer that has a record of success in the proposed use.
- ✓ A building renovation plan featuring high quality design and construction standards.
- ✓ Retains or helps a Canby business expand or brings in a new business that offers well-paying jobs, and/or fills a missing market niche.
- ✓ Capacity to have the project underway in a reasonable timeline.
- ✓ The level and nature of City participation needed in the project.

### Timeline:

- **June 20 - September 22, 2017** - Application window open.  
Businesses, developers, and others are encouraged to submit applications.  
Building and downtown tours provided after August 7, 2017 by calling 503-266-7001.
- **September 22, 2017 by 5 PM** - Applications due to [mengelberg@canbyoregon.gov](mailto:mengelberg@canbyoregon.gov).
- **October 4, 2017** - Canby City Council reviews proposals and selects the best option.
- **October 18, 2017** - City Council approves an Exclusive Negotiating Agreement.
- **Late Fall** - Buyer due diligence and/or lease or sale agreement development.
- **Once lease or sale agreement is approved by City Council** -  
The building is transferred to the new owner or tenant.

# Proposal Application

## Purchase or Lease of 292 N. Holly Street

Name: \_\_\_\_\_ Organization: \_\_\_\_\_

Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

Proposed Price or Lease Rate: \_\_\_\_\_

Preferred Deal Terms: \_\_\_\_\_

Target move in date: \_\_\_\_\_

Type of business or use (Description, hours of operation, typical clients or customers, etc.):

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Building changes, investments or tenant improvements needed: \_\_\_\_\_

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Describe the number, types and wages of jobs to be created: \_\_\_\_\_

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How does this proposal fit the selection criteria? Other additional details? \_\_\_\_\_

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*Please attach additional pages as needed.*

*Submit proposal via e-mail to [mengelberg@canbyoregon.gov](mailto:mengelberg@canbyoregon.gov)*

*Application Deadline: September 22nd, 2017 by 5 PM.*





# City of Canby

PO Box 930 Phone: 503.266.4021  
222 NE 2nd Ave Fax: 503.266.7961  
Canby, OR 97013 www.canbyoregon.gov

## MEMORANDUM

**TO:** *Honorable Mayor Hodson and City Council*  
**FROM:** *Kim Scheafer, MMC, City Recorder*  
**DATE:** *November 27, 2017*  
**THROUGH:** *Rick Robinson, City Administrator*

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**Issue:** Change to Public Records Law

**Synopsis:** Senate Bill 481 was signed on June 22, 2017 that made changes to the way cities handle public records requests. The effective date for these changes is January 1, 2018. The attached resolution updates the City's procedures so we are in compliance.

Resolution 1060 outlines how the City handles public records requests. It states that requests will be responded to as soon as practical. The new law requires that cities acknowledge the request within five business days and then complete the request no later than 10 business days of being acknowledged by the City. Other changes include a 60 day time limit for failure to pay for records or to respond to a request for clarification.

Another change that has been proposed by staff is to create three levels of requests. The first level does not require any forms to be completed. These are for documents that the City has electronically and require no staff time to be made available. The majority of requests the City currently receives are at this level. This will free up staff and citizens from emailing forms back and forth.

The other two levels require a Public Records Request form to be completed and usually have fees involved.

**Recommendation:** Staff recommends Council adopt Resolution 1278.

**Recommended Motion:** *"I move to adopt Resolution 1278, A RESOLUTION ADOPTING REASONABLE MEASURE OF PUBLIC RECORDS REQUESTS; AND REPEALING RESOLUTION 1060."*

**Attached:** Resolution 1278

## **RESOLUTION NO. 1278**

### **A RESOLUTION ADOPTING REASONABLE MEASURES FOR PUBLIC RECORDS REQUESTS; AND REPEALING RESOLUTION 1060.**

**WHEREAS**, according to ORS 192.420, every person has the right to inspect any nonexempt public record of the City of Canby subject to reasonable procedures; and

**WHEREAS**, the City of Canby recognizes and respects the public's right to public documents and the importance of maintaining orderly files to facilitate public access in an efficient and cost-effective manner; and

**WHEREAS**, the State Attorney General suggests that public bodies establish protective measures to maintain the integrity of public records or to prevent interference with the duties of the records custodians; and

**WHEREAS**, the State Attorney General recommends there be a process in which the public has an opportunity to comment on these measures; and

**WHEREAS**, on June 22, 2017 Governor Kate Brown signed Senate Bill 481 which amends ORS 192.410 and made an effective date for those changes of January 1, 2018; and

**WHEREAS**, due to the changes in ORS 192.410 the City of Canby's Public Records Policy needs to be amended.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Canby, Oregon, that:

Section 1: City Council Resolution 1060 is repealed.

Section 2: The City shall provide proper and reasonable opportunities for inspection and examination of the records during usual business hours if such request does not interfere with the regular discharge of duties.

Section 3. Levels of Requests and Staff Response. The purpose of this policy is to help provide accurate records to the public in a reasonable time. In order to accommodate the purpose of this policy, levels of requests have been established.

**A. Level 1 Request.**

Requested records must be current and readily available, require no duplication, may not be subject to the Public Records Fee Schedule, and must require no additional staff time or resources to be made available.

**B. Level 2 Request.**

Requested records are not immediately available, but can be made available with no more than 30 minutes of staff time. Requested records must be located in a single department, readily accessible and must not require attorney review prior to release.

- C. **Level 3 Request.** This type of request is complex, involving multiple staff and/or departments, or requires more than 30 minutes of staff time. It may involve extensive research or compilation of records, and may require legal review.

Section 4: All Level 2 and Level 3 requests to inspect or receive a public record shall be in writing with the date, name, address, and signature of the person making the request or sufficient e-mail address for the City to make an appropriate response.

Section 5: The request must contain, if known, a statement of sufficient specificity to determine the nature, content, and probable department in which the record is located.

Section 6: The City shall respond to a person who makes a written request for a public record within five business days. The response will acknowledge receipt of the request and include one of the following:

- A. Confirm that the City is the custodian of the requested record;
- B. Inform the requester that the City is not the custodian of the public record; or
- C. Notify the requester that the City is uncertain whether it is the custodian of the requested record.

Section 7: The City shall not create any new documents or customize any existing documents in response to a records request.

Section 8: If the public record is maintained in a machine readable or electronic form, the City shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the City shall make the public record available in the form in which it is maintained.

Section 9: A person making a public record request may personally inspect the requested document during normal business hours. A City staff member shall be present while any original public records are being inspected to insure protection of the documents.

Section 10: Providing nonexempt public records is a governmental activity covered by the Americans with Disabilities Act (ADA). The City will provide an opportunity for individuals with disabilities to request an alternative form.

Section 11: A staff member must review the requested document to make certain the record does not contain any exempt information before releasing the public record for inspection. If a document does contain exempt information, a copy, in lieu of the original will be provided for inspection with the exempt portion redacted. The cost of having legal assistance to redact material can be included in the fee charged.

Section 12: Original public documents may not be taken out of the City's custody.

Section 13: City records shall be released only under the conditions that the records are public and not exempt from disclosure under ORS 192.410 – 192.505.

Section 14: No later than 10 business days after the city acknowledges receipt of the request it shall complete the request.

- A. Time periods established by ORS 192.440 do not apply to the City if compliance would be impracticable due to:
  - 1. The staff necessary to complete a response to the public records request are unavailable. Staff who are on leave or are not scheduled to work are considered to be unavailable.
  - 2. Compliance would demonstrably impede the City's ability to perform other necessary services.
  - 3. The volume of the public records requests being simultaneously processed by the City.
  - 4. If the City cannot comply with the time periods established by ORS 192.440, it shall as soon as practicable and without reasonable delay, acknowledge a public records request and complete the response to the request.

Section 15: Fees

- A. The City will establish a fee in its annual fee resolution that is reasonably calculated to reimburse the City for the actual cost of making public records available, including locating the requested records, reviewing the records to delete exempt material, supervising a person's inspection of original documents to protect the integrity of the records, summarizing, compiling, or tailoring a record, either in organization or media, to meet the person's request. A request that is extraordinary and would significantly disrupt the regular discharge of duties will be charged whether copies are provided or not. The City may charge for search time even if it fails to locate any records responsive to the request or even if the records located are subsequently determined to be exempt from disclosure. Copies of documents provided by a routine file search will be charged at a copy rate established in the annual fee resolution.
- B. The City may include a fee established to reimburse for the costs of time spent by the city attorney in reviewing the public records, redacting materials from the public record into exempt and nonexempt records. The City fee may also include the cost of time spent by an attorney for the City in determining the application of the provisions of ORS 192.410 - 192.505.
- C. The City may not establish a fee greater than \$25 unless the requestor is provided with written notification of the estimated amount of the fee and the requestor confirms that he/she wants the City to proceed with making the records available.
- D. Prepayment shall be required if the amount of the request is greater than \$25. If the actual charges are less than the prepayment, any overpayment shall be promptly refunded.

- E. If the requester fails to respond within 60 days to a good faith request from the City for information, payment of fees, or clarification, the public body shall close the request.

Section 16: Fee Waivers or Reductions

- A. Copies of public records may be furnished without cost or at a substantial reduction if the City Recorder or designee determines the waiver is in the public interest because making the record available primarily benefits the general public.
- B. The department head will review the waiver or reduction request while also considering the requestor's ability to pay and any financial hardship on the City that might arise from granting the waiver. A three-part analysis will be used to evaluate fee waiver or reduction requests to determine (a) whether a waiver or reduction is prohibited by law, (b) whether the waiver meets the public interest test because making the record available primarily benefits the general public, and (c) whether to grant a fee waiver or reduction.
- C. Copies of routine materials personal to a requestor will be furnished without charge except for police reports. Any non-routine materials requested will be charged at the fee set by City Council resolution.
- D. Copies of routine materials requested by any Canby elected official or appointed advisory board will be furnished without charge if the request relates to information needed to act in one's official capacity. Any other materials requested will be charged at the fee set by City Council resolution.
- E. Routine materials are defined as those items already regularly produced.
- F. A person who believes there has been an unreasonable denial of a fee waiver or fee reduction may petition the district attorney.

Section 17: The City will periodically review and make available to the public a written procedure for making public records requests that includes:

- A. A person and address to which public records requests may be sent;
- B. The amounts and the manner of calculating fees that the City charges for responding to requests; and
- C. Any other information that will assist a person seeking public records of the City.

This resolution shall take effect on January 1, 2018.

ADOPTED this 6<sup>th</sup> day of December 2017 by the Canby City Council.

---

Brian Hodson  
Mayor

ATTEST:

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Kimberly Scheafer, MMC  
City Recorder

## **ORDINANCE NO. 1468**

### **AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A CONTRACT WITH MARK 43 INCORPORATED TO PROVIDE A RECORDS MANAGEMENT AND ANALYTICS SYSTEM AND RELATED PUBLIC SAFETY TECHNOLOGY SERVICES FOR THE CITY; AND DECLARING AN EMERGENCY**

**WHEREAS**, the City of Canby desires to have a records management and analytics system that coincides with its Clackamas County public safety neighbors and partners; and

**WHEREAS**, the current records management system is no longer being used by Clackamas County and other neighboring police agencies; and

**WHEREAS**, Clackamas County and other neighboring police agencies are contracting with Mark 43; and

**WHEREAS**, the Mark 43 cloud-based system looks to be more intuitive, user-friendly, and eventually less costly overall.

#### **THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:**

**Section 1.** The City Administrator is hereby authorized on behalf of the City to enter into a contract Agreement with Mark 43 Incorporated to provide a records management and analytics system and related public safety technology services for the City. A copy of the Technology Services Contract is attached hereto as Exhibit "A."

**Section 2.** Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to maintain public safety technology services in order to provide both essential and general services to the public, an emergency is hereby declared to exist and this ordinance shall take effect immediately upon its enactment.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, November 15, 2017, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, December 6, 2017, commencing at the hour of 7:30 p.m. in the Council Meeting Chambers located at 222 NW 2<sup>nd</sup> Avenue, 1<sup>st</sup> Floor, Canby, Oregon.

---

Kimberly Scheafer, MMC  
City Recorder

2nd Reading

**PASSED** on the second and final reading by the Canby City Council at a regular meeting thereof on December 6, 2017 by the following vote:

YEAS\_\_\_\_\_ NAYS\_\_\_\_\_

---

Brian Hodson  
Mayor

ATTEST:

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Kimberly Scheafer, MMC  
City Recorder



## Exhibit "A"

### Canby Police Department TECHNOLOGY SERVICES CONTRACT

This Technology Services Contract (this "Contract") dated as of \_\_\_\_\_ is entered into between Mark43, Inc. ("Contractor"), and Canby Police Department, a political subdivision of the State of Oregon ("City"). Contractor and City are each a "Party" and together the "Parties."

#### ARTICLE I.

**1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on December 31, 2022. However, such expiration shall not extinguish or prejudice the City's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

No later than sixty calendar (60) days prior to the expiration of the Contract term, Contractor shall provide annual renewal rates, to include the number of licenses, annual cost per license and annual total cost. If accepted by the City, up to three (3) annual renewals may be memorialized by the issuance of a purchase order generated by the City finance system (each, a "Renewal Term").

**2. Statement of Work.** Contractor will provide the following technology services: Public Safety Technology Solution ("Work"), further described in **Exhibit A**.

**3. Consideration.** The City agrees to pay Contractor, from available and authorized funds, a sum of \$122,181.60 for accomplishing the Work required by this Contract during the initial term, not including any renewal authorized by the City or any additional licenses purchased on the rates set forth herein. Contractor shall be paid in accordance with the following fee schedule:

Contract Year	Total No. of Licenses	Cost Per License per year	Annual Total
January 1, 2018 or Acceptance Date whichever is later –December 31, 2018	25	\$960.00	\$24,000.00
January 1, 2019 – December 31, 2019	25	\$960.00	\$24,000.00
January 1, 2020 – December 31, 2020	25	\$960.00	\$24,000.00
January 1, 2021 – December 31, 2021	25	\$988.80	\$24,720.00
January 1, 2022 – December 31, 2022	25	\$1,018.46	\$25,461.60

The "Annual Total" for each year is due in full in advance on the first day of the applicable Contract Year. The City may order additional licenses at the rates set forth in the then current fee schedule and shall be prorated based on a monthly cost at time of order. For example, the monthly cost for Contract years one (1) through three (3) would be \$80.00. The prorated annual fee for such additional license(s) is due in full in advance within thirty (30) days after the effective date of such additional license(s). Additional licenses must be submitted in writing to Contractor and signed by a duly authorized representative of the City.

Mark43 Pricing is based on the number of active users employed directly or indirectly by Subscriber at the time the Order Form is signed. In the event that Subscriber increases its number of employed active users during the Term by more than 10 percent (10%), then the annual fee shall increase by \$960 per sworn officer in excess of 25.

**4. Travel and Other Expense.** Authorized: ☐ Yes ☒ No

Travel expense reimbursement is not in excess of the not to exceed consideration.

**5. Contract Documents.** This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference: this base Contract, Exhibit A – Statement of Work, Exhibit B – Insurance, Exhibit C – Certification Statement, Exhibit D – Technical Requirements and Exhibit E – Insight Public Sector Price Quote. In the event of a conflict, the following order of priorities shall govern: (1) this base Contract, (2) Technical Requirements, (3) Statement of Work, (4) Insight Public Sector Price Quote and associated online terms of sale, (5) Insurance, and (6) Certification Statement. For the avoidance of doubt, the parties agree that the terms of the Insight Contract with Fairfax, Virginia No. 4400006644 and associated documents are not applicable to this Contract.

**6. Contractor Data.**

**Name:** Mark43, Inc.

**Address:** 28 E. 28<sup>th</sup> Street, 12<sup>th</sup> Floor, New York, NY 10016

**Contractor Contract Administrator:** David Jochim

**Phone No.:** 646-770-0412

**Email:** dave@mark43.com

**MWESB Certification:** ☐ DBE # ☐ MBE # ☐ WBE # ☐ ESB #

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

## ARTICLE II.

### 1. DEFINITIONS

- 1.1. Defined Terms.** Defined terms have the meanings set forth in this Article 1 (Definitions) and elsewhere in this Contract when capitalized, and may be read in singular, plural or an alternative tense as the context requires.
- 1.2. “Acceptance”** Means the City has determined that a Deliverable or a product requiring Acceptance Testing has met the Acceptance Criteria and the City has provided a Certificate of Acceptance to Contractor with respect to the Deliverable or Product, as applicable.
- 1.3. “Acceptance Criteria”** The functionality, performance, and reliability requirements as set forth in the Statement of Work.
- 1.4. “Acceptance Date”** The date on which the City issues a certificate of Acceptance for the Solution or a Deliverable, as applicable.
- 1.5. “Acceptance Test”** The evaluation and testing method, procedures, or both, acceptable to each Party in its reasonable discretion that are used to determine whether or not the Solution or a Product requiring Acceptance Testing operates in accordance with the Acceptance Criteria. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.
- 1.6. “Acceptance Test Plan (ATP)”** An Acceptance Test Plan (ATP) is written document acceptable to each Party in its reasonable discretion that contains the procedures that will be used to determine the Solution’s/System’s conformance to the City’s requirements. Acceptance Criteria.
- 1.7. “Affiliate”** means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.8. “Amendment”** A written document required to be signed by both Parties when in any way altering the Contract or Statement of Work, or any exhibit or attachment to any of the foregoing.
- 1.9. “Applications”** means the Records Management System and Evidence Management System, as described in the Statement of Work.
- 1.10. “Authorized User”** means an Affiliate, employee or independent contractor of City (solely to the extent such contractor is providing services to City), who has been authorized by City to use the SaaS Services.
- 1.11. “Business Day”** A calendar day of twenty-four hours, excluding weekends and public state or federal holidays, beginning at midnight and ending at midnight twenty-four hours later.
- 1.12. “Certificate of Acceptance”** A written instrument by which the City notifies Contractor that the Acceptance Criteria have been met or waived, in whole or in part.
- 1.13. “Change Order”** A document, agreed and signed by both Parties, that changes an existing Statement of Work. The Change Order process is outlined in the Statement of Work.
- 1.14. “City Data”** means all data, information, content and other materials stored or transmitted by City and any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Third Party Application, excluding any Third Party Data and any Contractor Data.

- 1.15. “Data Breach”** A security incident in which the Contractor transmits (or provides access to) data that is stored in the Services to an un-authorized person. A Data Breach does not include cases where the City transmits or otherwise provides access to data stored in the Services to un-authorized persons.
- 1.16. “Deliverable”** The Products, Services, Documentation, and tangible work products to be provided to the City by Contractor as described in the Contract or Statement of Work.
- 1.17. “Documentation”** means the user guides and user manuals for the SaaS Services that Contractor provides to City.
- 1.18. “Error”** Any defect, problem, condition, bug, or other partial or complete inability of the Solution to operate either (a) in accordance with the applicable Specifications and Documentation; or, (b) as to the Solution, in the same manner in which the Solution operated as of the Final Acceptance Date.
- 1.19. “Final Acceptance”** Means the City has determined that every Deliverable or Product in the Solution requiring Acceptance Testing has materially met the Acceptance Criteria and the City has provided a Certificate of Acceptance to Contractor.
- 1.20. “Integration Control Document”** means the agreement, if applicable, governing any integrations with Third Party Applications.
- 1.21. “Intellectual Property Rights”** means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
- 1.22. “Maintenance Request”** A request by the City to Contractor for maintenance.
- 1.23. “Product”** Means Software, Documentation and supplies which may include Updates, Upgrades, Customization, and training.
- 1.24. “Production Environment”** The operation portion of the Solution that is used on a daily basis to conduct the City’s business processes.
- 1.25. “Professional Services”** means the evaluation, consultation, implementation, customization, configuration, development of interfaces and other services provided by Contractor in connection with the SaaS Services.
- 1.26. “Project”** The Integrated Public Safety Technology System, all as described in the Statement of Work, comprising the Applications, and the work required to implement it, including the Professional Services and SaaS Services and any activities required for delivery and support of the Solution including, without limitation, design, development, integration, testing, support and maintenance, any of which Contractor may be providing in whole or in part.
- 1.27. “Project Manager”** Individual designated by the Canby Police Department to provide day-to-day operational oversight of the Contract.
- 1.28. “SaaS Services”** means the Applications, Software, and related software-as-a-service, hosting, maintenance and/or support services made available by Contractor for remote access and use by City, including any Documentation thereto.
- 1.29. “Services”** means the services provided or required to be provided by or through Contractor, including without limitation, SaaS Services and Professional Services.

- 1.30. **“Software”** means the object code version of Contractor’s computer software and all Updates made available by Contractor to City under this Contract.
- 1.31. **“Software License”** Means the license(s) of the Software provided to the City for use of the SaaS Services as authorized by this Contract.
- 1.32. **“Solution”** The complete integrated public safety technology solution to be provided by Contractor, including collectively the SaaS Services, the Professional Services, and all Products, and Software to be provided by Contractor to City under this Contract.
- 1.33. **“Source Code”** A complete copy, expressed in high-level (i.e., human readable; not machine language or object code) computer language, of the Software which, when assembled or compiled, becomes the executable object code of the Software. Source Code shall include all material including but not limited to design documentation, Software Documentation, reference manuals and documentation, libraries for the Software, and interface software (patch or whole programs), in any form (printed, electronic, or magnetic) and any other information necessary for a reasonable skilled programmer or analyst to understand, maintain, or modify the Software/Solution.
- 1.34. **“Statement of Work”** means a detailed plan of work to be agreed by the Parties in conjunction with this Contract.
- 1.35. **“System Administrator”** An Authorized User with specific administrative system configuration privileges.
- 1.36. **“Term”** means the Initial Term and any Renewal Term.
- 1.37. **“Testing Environment”** The Testing Environment is that portion of the System that is used by System Administrators to test the Solution (e.g., new version releases, problem data sets, new configuration parameters, etc.). Actions taken and transactions completed in the Testing Environment must not affect the Production Environment.
- 1.38. **“Third Party Application”** means a third-party service approved by Contractor to which City and any Authorized User facilitates Contractor’s access to, and use, of the SaaS Services, via an application programming interface or other means.
- 1.39. **“Third Party Components”** means any components of the SaaS Service from time to time that are provided by third parties (e.g., Google Maps).
- 1.40. **“Third Party Data”** means any data owned by a third party or provided by a Third Party Provider that Contractor provides to City via the SaaS Service.
- 1.41. **“Third Party Provider”** means third parties, including other vendors, state agencies and local agencies that control products and/or databases with which Contractor SaaS Services are to be interfaced.
- 1.42. **“Third Party Software”** Third Party Software means computer software or other technology in which any person or entity, other than Contractor, has any right, title, or interest, including any restrictions or obligations (such as obligations to obtain consent or approvals and restrictions that may be eliminated only by obtaining such consent or approvals) applicable to the Solution.
- 1.43. **“Updates”** means any and all new releases, new versions, patches and other updates for the SaaS Services that Contractor makes generally available without additional charge to its other City’s of the SaaS Services.
- 1.44. **“Upgrade”** A newer, better version, change, modification, or enhancement to the Software (including Third Party Software), and related Documentation, which incorporates major new features or increases the core functionality of the Software and may be considered a new

version. Software Upgrades may include Error correction, bug fixes, additions to, or patches to the Software.

**1.45. “Vendors”** means third parties with whom Contractor contracts to provide components of the SaaS Services, and includes without limitation, Amazon Web Services (for platform hosting) and Google (for Google Maps).

**1.46. “Website”** means any Internet website through which Contractor provides the SaaS Services under this Contract.

- 2. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs anticipated to be incurred in the performance of this Contract. Upon not less than 14 days’ advance notice, Contractor, at its place of business or, at its option, electronically, shall provide to City and their duly authorized representatives access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 3. AVAILABILITY OF FUNDS.** City certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the City’s reasonable administrative discretion, to continue to make payments under this Contract.
- 4. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 5. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate City official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor’s surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor’s employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee’s wages to provide such services.
- 6. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

7. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Contractor consents to jurisdiction of the Circuit Court for Clackamas County, in the State of Oregon for any claim, action, or suit between City and Contractor that arises out of or relates to the performance of this Contract. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
8. **HAZARD COMMUNICATION.** Contractor shall notify City prior to using products containing hazardous chemicals to which City employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon City's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
9. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.**

**9.1. Indemnification by Contractor**

**9.1.1. Indemnity for Data Breach.** Contractor will indemnify, defend and hold City and its officers, elected officials, directors, employees and agents, harmless from and against any and all losses, damages, liability, costs and expenses arising out of any third party claim to the extent such claim is the result of a Data Breach resulting from Contractor's breach of its obligations in Article III, Section 2.1. For the avoidance of doubt, "third party" includes City officers, elected officials, agents, and employees but solely to the extent that such claim is made in their personal capacity.

**9.1.2. IP Indemnity.** Contractor will indemnify, defend and hold City and its officers, elected officials, employees and agents, harmless from and against any and all Losses resulting from, arising out of or relating to any third party claims that the deliverables or the System, or use thereof, infringe or violate any Intellectual Property Rights of any third party. If Contractor believes at any time that the Deliverables or the System infringe a third party's Intellectual Property Rights, Contractor may: (i) upon receipt of City's prior written consent, which City will not unreasonably withhold, replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for City the right to continue to use the infringing item; or (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the System continues to function in material conformance with the specifications set forth in this Contract. Contractor's failure or inability to accomplish any of the foregoing, within a reasonable period of time, will be deemed a material breach of this Contract, and City may pursue any rights and remedies available to it under this Contract, including termination.

**9.1.3. Damages to City Property and Employees.** Contractor shall be liable for all claims, suits, actions, losses, damages, liabilities, costs and expenses (collectively, "Damages") for personal injury, including death, damage to real property and damage to tangible personal property of the City or any of its employees proximately caused by the negligent, physical acts or omissions of Contractor, its officers, employees, subcontractors, or agents ("Contractor Personnel") under this Contract while performing Professional Services on premises that are owned or controlled by the City ("City Premises"). For the avoidance of doubt, the foregoing provision will not apply to any Damages resulting from the failure of any Software, SaaS Services or Third Party Materials, even if such failure is the result of negligent acts or omissions of Contractor Personnel while on City Premises (e.g., negligent code development performed on City Premises). "Third Party Materials" means

collectively, Third Party Applications, Third Party Components, Third Party Data and Third Party Software.

## **9.2. Exclusions**

**9.2.1.** Contractor shall not be liable under Section 9.1 for any claim based on the following:

- 9.2.1.1.** City's modification of the Deliverables or the SaaS Services other than as contemplated by this Contract or a Deliverable's or the specifications; or, as otherwise authorized by Contractor in writing.
- 9.2.1.2.** Use of the Deliverables or the SaaS Services in a manner other than as contemplated in this Contract or a Deliverable or the System specifications; or, as otherwise authorized by Contractor in writing.
- 9.2.1.3.** Use of the Deliverables or the SaaS Services in combination, operation, or use of with other products other than as contemplated by this Contract or a Deliverables or the specifications; or, as otherwise authorized by Contractor in writing.
- 9.2.1.4.** claims brought by: (a) City or any Affiliate or (b) Authorized Users, City officers and employees or elected officials (other than claims by Authorized Users, City officers and employees, and elected officials making such claims in their personal capacity);
- 9.2.1.5.** claims arising from the use of old versions software after receipt of modified or updated versions of software;
- 9.2.1.6.** claims arising from the use of Third Party Applications or Third Party Data; and
- 9.2.1.7.** Losses attributable to the acts or omissions of City and its officers, employees or agents or for which City owes Contractor an indemnification obligation pursuant to Section 9.4.

**9.2.2.** Contractor shall not be liable under Section 9.1.2 for any claim arising from any data, product specifications, information or materials provided by City hereunder, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service proposed by or provided by City under a Statement of Work.

**9.3. Control of Defense and Settlement.** Contractor's obligation to indemnify City as set forth in Section 9.1 is conditioned on City providing to Contractor notification within thirty (30) days of any claim or potential claim of which City becomes aware that may be the subject of those Sections. Contractor will have control of the defense and settlement of any claim that is subject to Section 9.1; however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the City, nor purport to act as legal representative of the City without the approval of the City, nor will Contractor settle any claim on behalf of the City without the prior approval of the City.

**9.4. Indemnification by City.** To the extent permitted by Article XI Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 – 30.300), City will defend, indemnify and hold harmless Contractor and its Affiliates, and each of their officers, directors, managers, shareholders, members and employees from any and all claims, liabilities, costs and expenses in connection with (I) any third party claim arising from or relating to (i) any allegation that any data, product specifications, information or materials provided by City hereunder, including, without limitation, the City Data and Third Party Applications, when used in connection with the SaaS Services or any customization or configuration made to the SaaS Service proposed by or provided by City under a Statement of Work that: (a) infringes or misappropriates any Intellectual Property Rights of a third party, or (b) violates any Applicable Laws; (ii) the actual violation of Applicable Law by City, any Authorized User, or any Affiliate, employee, agent or independent contractor of City; or (iii) City's breach of this Agreement; provided, however, that the foregoing obligations shall be subject to Contractor



promptly notifying City of the claim, (y) providing City with reasonable cooperation in the defense of the claim and (z) providing City with sole control over the defense and negotiations for a settlement or compromise; provided, however, that City shall not enter into any such settlement without Contractor's prior written consent, which consent will not be unreasonably withheld, and that Contractor shall be permitted to participate in the defense of any such claim, at its own expense, with counsel of its choosing; (II) disabling a connection to a Third Party Application at City's request; (III) City's actions or failure to act, resulting in any third-party claim for personal injury or death, damage to personal property or reputation, environmental damage, interference with contract or employment, or violation of privacy.

- 10. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the City reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, City cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of City for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to City employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, City or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

- 11. INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by reference is incorporated herein. Insurance policies cannot be excess to a self-insurance program and are to be issued on a policy that covers claims in the State of Oregon.

**12. LIMITATION OF LIABILITIES.**

- 12.1.** Except for Contractor's liability for obligations pursuant to Section 9.1.2 (Indemnity for IP Infringement), Contractor's aggregate liability for damages to the City for any cause whatsoever will not exceed the aggregate amount of the fees paid and payable to Contractor by City during the six (6) month period preceding the date on which the claim arises. Contractor shall have no liability arising out of or relating to the Third Party Components or the Third Party Data.
- 12.2.** Except for Liability arising out of or related to Section 9.4, and except for any liability arising in tort, City's liability for damages to the Contractor for any cause whatsoever will not exceed the aggregate amount of the fees paid and payable to Contractor by City during the six (6) month period preceding the date on which the claim arises. For the avoidance of doubt, nothing in this section 12 shall limit the City's responsibility to pay for services provided by Contractor hereunder.
- 12.3.** Except for liability to third persons arising out of or related to Section 9.1.2 (Indemnity for IP Infringement) or Section 9.4, neither party will be liable to the other for any lost profits, lost savings, punitive, indirect, exemplary, consequential or incidental damages.

**13. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the City at: Canby Police Department, 1175 NW 3<sup>rd</sup> Ave., Canby, Oregon, 97013, [smithb@canbypolice.com](mailto:smithb@canbypolice.com) or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to City that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**14.1. Service Warranty.** For Professional Services, Contractor warrants that the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with applicable industry standards. Except as provided for herein, Contractor's liability and City's remedy under this Section 14.1 are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the City to Contractor. The City agrees to provide Contractor reasonable access to its facilities and third party vendor software for purposes of repair or replacement under this services warranty.

**14.2. Warranty Against Infringement.**

Contractor warrants that to its knowledge, the Deliverables will be free of the rightful claim of any third party by way of infringement or misappropriation of patent, copyright, trade secret, trademark or other rights arising under the laws of the United States. Contractor further warrants that to its knowledge, no act or omission of the Contractor will result in a third party holding a claim that interferes with the City's use and enjoyment of the Deliverables.

Contractor warrants that it owns or possesses the necessary rights, title and licenses necessary to perform its obligations hereunder. Notwithstanding the forgoing, the forgoing warranty does not extend to: (i) use of the SaaS Services, Software, Services or Products in combination with modules, apparatus, hardware, software, or services not authorized by the Contractor or contemplated for use with the Software, Services or Products; (ii) use of the SaaS Services, Software, Services or Products in a manner that is not in accordance with this Contract or (iii) the alteration or modification of the SaaS Services, Software, Services or Products by a party other than the Contractor, unless such alterations and modifications were authorized by the Contractor or contemplated for use with the SaaS Services, Software, Services or Products.

**14.3. No Other Warranties.**

Contractor cannot guarantee that every error in the SaaS Services or problem raised by City will be resolved. THE SERVICES, THE THIRD PARTY COMPONENTS, AND THE THIRD PARTY DATA ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT NEITHER PARTY MAKES ANY WARRANTY IN CONNECTION WITH THE SERVICES, THE THIRD PARTY COMPONENTS, THE THIRD PARTY DATA OR THIS CONTRACT AND HEREBY DISCLAIMS ANY AND ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, ERROR-FREE OR UNINTERRUPTED OPERATION AND

ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. To the extent that a party may not as a matter of Applicable Law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

**14.4. Responsibility for Correction.**

Except with respect to any Third Party Application, Contractor shall make any correction, replacement, or modification necessary to bring the Software, Services, Products and Equipment into compliance with the Statement of Work, the documentation, and applicable law, solely to the extent detailed in the service level provisions contained in Sections 1.3.1 and 1.3.2 of Article IV below. Contractor's responsibilities for any corrections, replacements, modifications or repairs relating to any Third Party Application are outlined in Section 1.3.3 of Article IV below.

**14.5. Liens.**

Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or its subcontractors in the performance of the Work required under this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 7, 9, 12, 13, 14, 15, 16, 18, 21, 22, 23, 24, 28, 30.

**16. SEVERABILITY** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the City. In addition to any provisions the City may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. City's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. For the avoidance of doubt, the use of Vendors shall not be subject to this Section.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle City to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to City's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. City shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not

limited to; direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**20. TERMINATIONS.** This Contract may be terminated for the following reasons:

- 20.1.** This Contract may be terminated at any time by mutual consent of the parties, or by either party upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.
- 20.2.** City may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the City, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the City is prohibited from paying for such Work from the planned funding source; or (ii) any material license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
- 20.3.** This Contract may also be immediately terminated by the City for default (including breach of Contract) if (i) Contractor materially fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor materially fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, (iii) and after receipt of notice from the City, materially fails to correct such failure within thirty (30) business days.
- 20.4.** If sufficient funds are not provided in future approved budgets of the City (or from applicable federal, state, or other sources) to permit the City in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, City may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.
- 20.5.** If Contractor reasonably determines that City's use of the Services either: (i) fails to comply with the Restrictions on Use in Article III, Section 1.5; (ii) poses a security risk to the Services or any third party, (iii) creates or is likely to create an adverse impact on Contractor's systems, the Services, or the systems or content of any other subscriber; or (iv) subjects Contractor or its Affiliates to possible liability, then Contractor may immediately upon notice temporarily suspend City's and any Authorized User's right to access any portion or all of the Services, pending remedial action by City, or after a period of 30 days, terminate the Services.

**21. EFFECT OF TERMINATION.** In the event of any termination or expiration of this Contract:

- 21.1.** City will pay all Contractor invoices for Services that were provided up to the termination date. The termination date is the later of (a) the date when Contractor receives a written termination notice from the City or (b) the date on which the City stops using the Services.
- 21.2.** All rights and licenses granted hereunder to City (as well as all rights granted to any Authorized Users of City) will immediately cease, including but not limited to all use of the SaaS Services;
- 21.3.** Contractor will provide records to City in accordance with its transition assistance services (“**Transition Assistance**”) as set forth in Section 23 below; and
- 21.4.** The Parties will, upon written request of the other Party, either return to the requesting Party or destroy any information of requesting Party that are in other Parties possession or control.

## **22. REMEDIES.**

- 22.1.** In the event of termination pursuant to Article II Sections 20.2(i) or 20.4, Contractor’s sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the City, less previous amounts paid and any claim(s) which the City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section 21.1, Contractor shall pay any excess to City on demand.
- 22.2.** In the event of termination for any other reason, each party shall have any remedy available to it in law or equity.
- 22.3.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice of termination or as required for Transition Assistance.

## **23. TRANSITION ASSISTANCE.**

Upon termination of the Agreement for any reason, and subject to all Fees due being paid in full, Contractor will return City’s data in a CSV, PDF or other mutually agreeable format for each record (“**Record**”) and provide them to the City for download. Records can be uploaded to City’s new records management system by the City or its new vendor.

Transition Assistance as outlined in this Section 23 is included in the Fees charged to City for the Services. Fees are due and payable up to the Cutoff Date. In the event that any Fees, not contested by the City, have not been paid as required in this Contract, Contractor may retain all Records and decline to provide the support outlined in this Section 23 until such uncontested Fees are paid in full.

### **23.1. Preparation.**

- 23.1.1.** The City will provide the desired cutoff date of the SaaS Services (the “Cutoff Date”), at which time all existing user accounts will be terminated.
- 23.1.2.** Contractor will provide one (1) account for the City to access a web-based storage platform to retrieve City documents and Records (the “Transition Account”). The Transition Account will be available to City for thirty (30) days prior to the Cutoff Date.

### **23.2. Content.**

- 23.2.1.** Each Record in the RMS will be submitted to the City in a CSV format or other mutually agreed to format as described above.

**23.2.2.** All archive files will be accessible via the internet on the Cutoff Date.

**23.3. Support.**

**23.3.1.** Contractor will maintain City data in the RMS for up to 1 year following the Cutoff Date.

**23.3.2.** Contractor will maintain City archives for up to 2 years following the Cutoff Date.

**23.3.3.** Contractor will resolve any issues deemed to be the result of errors in the RMS platform or export process for a period of six (6) months after the Cutoff Date.

**23.3.4.** At City's written request, no less than 2 years after the Cutoff Date, and upon the City's receipt of all City Data, Contractor will delete City Data from all Contractor online systems (e.g. primary database, replica databases, search databases, application caches, etc.) other than database backups, audit logs and server system logs.

**23.3.5.** Within 6 months from the date of deletion of City Data from all Contractor online systems, all City Data will be erased from database backups.

**23.3.6.** Notwithstanding the foregoing, Contractor reserves the right to retain City Data on audit logs and server system logs and in support tickets, support requests and direct communications with Contractor.

**24. NO THIRD PARTY BENEFICIARIES.** City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**25. [Reserved].**

**26. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**27. FORCE MAJEURE.** Neither City nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, City's or Contractor's reasonable control. Contractor shall, however, make reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**28. WAIVER.** The failure of a Party to enforce any provision of this Contract shall not constitute a waiver by such Party of that or any other provision.

**29. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:

- 29.1.** Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished.
- 29.2.** If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
- 29.3.** The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which by reference is incorporated herein . All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- 29.4.** The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

### **30. CONFIDENTIALITY.**

- 30.1. Definition of Confidential Information.** For the purposes of this Contract, “**Confidential Information**” means:

**30.1.1.** With respect to Contractor, the Product and SaaS Services and any and all Source Code relating thereto as well as Documentation and non-public information or material regarding Contractor’s legal or business affairs, financing, customers, properties or data, and;

**30.1.2.** With respect to the City, any non-public information or material regarding the City’s legal or business affairs, financing, customers, property or data. Notwithstanding any of the forgoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by or involvement of, the party to which the Confidential Information is disclosed (the “Receiving Party”); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the “Disclosing Party”); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the Disclosing Party.

- 30.2 Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the effective date: (i) use such Confidential Information only in connection with the Receiving Party’s performance of this Contract; (ii) subject to Section 30.4 below, restrict disclosure of such Confidential Information within the Receiving Party’s organization to only those of the Receiving Party’s employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party’s performance of this Contract; and (iii) except as provided herein, not disclose

such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.

**30.3 Protection of Confidential Information.** The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care). Each Party shall notify the other Party as soon as reasonably practicable in the event that Confidential Information of the Party is believed to have been compromised.

**30.4 Employee and Independent Contractor Compliance.** The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations under this Contract with respect to such Confidential Information.

**30.5 Required Disclosures.** In the event that either Party is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or similar process or by any law, rule or regulation of any governmental agency or regulatory authority) (for the purposes of this paragraph, each, a "Request") to disclose any of the Confidential Information of the other Party, such Party shall provide the other Party with prompt written notice of any such request or requirement so that such other Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Contract. If, in the absence of a protective order or other remedy or the receipt of a waiver, and if one Party is nonetheless, legally compelled to disclose Confidential Information, such Party may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which such counsel advises it is legally required to be disclosed, provided that such Party shall use its best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the other Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded the Confidential Information by such tribunal.

**30.6** Contractor acknowledges and agrees that Oregon Public Record Law may apply to certain information disclosed hereunder and that City will promptly comply with such disclosures. City acknowledges that certain exemptions to the Oregon Public Record Law may apply to information disclosed hereunder. Accordingly, City will contact Contractor within 3 business days after City receives a public records request for Contractor records. Once the City identifies records it is prepared to release in response to the request, the City will notify the Contractor and provide copies of the documents the City plans to release. The City will provide the Contractor with an opportunity to object to the release of the Contractor information, providing sufficient time to review the documents in light of the volume of responsive documents. If City chooses to release the Contractor's information over the objection of the Contractor, then City will provide written notice to the Contractor. The written notice must be received by the Contractor at least ten calendar days before the date the City intends to release the Contractor's records.

**30.7** The Parties agree that a violation of this Section 30 shall be deemed to cause irreparable harm justifying injunctive relief in court, without waiving any additional rights or remedies available at law or in equity or by statute.

## **31. CRIMINAL BACKGROUND CHECK REQUIREMENTS.**



31.1 Contractor personnel requiring physical access to any City facility or remote access to any criminal justice information processing systems shall complete a background check conducted by the Clackamas County Sheriff's Office, which will include a local and notational fingerprint check (remote personnel may obtain fingerprints at their local law enforcement agency and mail or electronically transmit them to the representative identified by the City). Personnel not meeting Clackamas City Sheriff's Office standards will be removed from the project. Contractor further agrees that all workers and subcontractors (collectively "Contract Worker(s)") that Contractor furnishes to the City pursuant to this Contract shall be subject to a background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense.

**31.2 Terms Applicable to All Contractor's Contracts and Subcontracts.**

Contractor shall include the terms of this Section 31 for Contract Worker background screening in all contacts and subcontracts for services furnished under this Contract including, but not limited to, supervision and oversight services.

**31.3 Materiality of Background Screening Requirements.**

The Background Screening requirements of this Section 31 are material to the City's entry into this Contract and any breach by Contractor shall be a material Breach of this Contract.

**31.4 Continuing Duty; Audit.**

Contractor's obligations and requirements that Contract Workers satisfy this Background Screening Section 31 shall continue throughout the entire term of this Contract. Contractor shall notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with all Background Screenings and requirements of Section 31.

**31.5 Criminal Justice Information/CLETS Training.**

The City shall be responsible for providing CJI or CLETS – related training to Contractor personnel and/or obtaining any certifications for Contractor personnel who may have access to CJI data of the City.

**31.6** Contractor shall be required to have criminal background checks (and in certain instances specified by the City, fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the City may perform services under this Contract or be given access to Personal Information, Confidential Information or access to City facilities.

**32 KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the City is entering into this Contract is because of the special qualifications of certain key persons set forth in the Contract. Under this Contract, the City is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the City provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the City with such Key Person's services unless the Contractor provides prior written notice of such reassignment or transfer.

**33 THIRD PARTY PROVIDERS.** The City understands that it is responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers, and for paying any

Third Party Provider costs and expenses in connection with the interfaces to be developed by Contractor.

- 34 Acceptance Testing.** Prior to accepting the Solution, the City and Contractor shall perform Acceptance Testing in accordance with the Statement of Work. Acceptance by City shall not relieve Contractor from its responsibility under any warranty. Payment for Products, Services, or the Solution does not constitute Acceptance, nor does it constitute a waiver of any applicable warranty.
- 35 Changes to Services.** Contractor may make changes and Updates to its Services, provided that it does not materially derogate the overall quality of the Services. Unless otherwise specified in the Scope of Work, Contractor does not guarantee that the Services are or will remain compatible with any particular third party software or equipment, and may, upon written notice, terminate its support for, any software or equipment of City that Contractor determines are incompatible with the operation of the Services.

## **ARTICLE III.**

### **1. SOFTWARE LICENSE PROVISIONS**

- 1.1. License.** During the Term of this Contract, Contractor hereby grants a non-exclusive, non-transferable, non-sublicensable license to City and its Authorized Users to access and use the SaaS Services through the Website for City's business purposes and in accordance with the terms and conditions of this Contract. Contractor will be responsible for hosting the Website, and City and its Authorized Users will be responsible for obtaining internet connections and other third party software and services necessary for it to access the Website. City will be responsible to Contractor for compliance with the restrictions on use and other terms and conditions of this Contract by any of its Authorized Users.
- 1.2. Professional Services.** Contractor offers Professional Services in connection with the SaaS Services as further described in the Statement of Work. To the Extent any Professional Services involve the development of any Customization to the SaaS Services, all Intellectual Property Rights to such Customization to the SaaS Services, all Intellectual Property Rights to such Customization will be solely owned by Contractor and will be deemed to be included in the definition of SaaS Services and licensed to City on the terms set forth herein.
- 1.3. Copies of Documentation.** Contractor will provide City via the Website or other means with access to the Documentation, as may be updated from time to time. The City may reproduce the Documentation, and any web-based or computer-based training materials, if applicable, provided that each copy thereby produced shall be marked with Contractor's proprietary markings as delivered to the City. City may use the Documentation solely in connection with the use of the SaaS Services.
- 1.4. Title.** As between Contractor and City, Contractor retains title to and ownership of the SaaS Services, Software, Source Code, Services, Products, and Documentation, including all Intellectual Property Rights relating thereto (collectively, "Contractor Intellectual Property"). Contractor's licensors retain title to and ownership of the Third-Party Data and the Third-Party Components, including all copyrights and other Intellectual Property relating thereto. City will have no rights with respect to the SaaS Services, Software, Source Code, Services, Products, and Documentation, the Third-Party Data or the Third-Party Components other than those expressly granted under this Contract. Any suggestions for changes or improvements to Services that City provides to Contractor, whether solicited by Contractor or not, shall be

owned by Contractor and Contractor hereby irrevocably assigns, and shall assign, to Contractor all right, title, and interest in and to such suggestions. Contractor shall have no obligation to incorporate such suggestion into its products or Services.

**1.5. Restrictions on Use.** City and its Authorized Users will not (and will not permit any third party to), (i) share City's or any Authorized User's login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the Source Code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services, Software, Services or Products or of any files contained in or generated by the SaaS Services; (iii) copy, modify adapt or translate the SaaS Services, Software, Services or Products, or otherwise make any use, resell, distribution or sublicense the Software, Services, Third-Party Data, or Products other than in connection with this Contract; (iv) make the SaaS Services, Software, Services, or Products available on a "service bureau" basis or allow any third party to use the Software, Services or Products; (v) disclose the SaaS Services, Software, Services or Products or any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive legends placed on the SaaS Services, Software, Services, Third-Party Data, or Products; (vii) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (viii) create or augment any mapping-related dataset including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Services; (ix) use the SaaS Services or the Third Party Data in violation of any Applicable Law; (x) introduce into the Services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (xi) use the Services to post advertising or listings; (xii) use the Services to defame, abuse, harass, stalk, or threaten others; (xiii) permit access or use of the Services by any individual outside the United States; (xiv) hide or obscure any Authorized User's location; (xv) permit access or use of the Services, for any activities other than to enhance City's own services, where reliance solely on, or failure to use, the Services could lead to death, personal injury, or property damages. City and its Authorized Users will not access the SaaS Services if in direct competition with Mark 43, and will not allow access to the SaaS Services by any party who is in direct competition with Contractor, except with Contractor's prior written consent.

**1.6. Third Party Applications.** If City installs or enables a Third Party Application for use with the SaaS Services, Software, Services or Products, City grants Contractor permission to access City Data stored on that Third Party Application as required for the interoperation of that Third Party Application with the SaaS Services, Software, Services or Products. In no event will Contractor be responsible for any Third Party Application, or any failure of a Third Party Application to properly interoperate with the Software, Services or Products. If Contractor receives information that a Third Party Application may violate any applicable laws or third-party rights, City will, promptly upon receiving notice of the foregoing from Contractor, disable any connection between such Third Party Application and the Software, Services or Products to resolve the potential violation (and if City fails to promptly disable such connection, Contractor shall have the right to do so). In addition, in the event that City fails to properly obtain the grant of rights to Contractor to access and use Third-Party Data as required for the interoperation of that Third-Party Application, City shall defend, indemnify, and hold harmless Contractor from any and all claims based on Contractor's use of such Third-Party Application. City, and not Contractor, is solely responsible for establishing any required agreement(s) and/or statement(s) of work with Third Party Providers in connection with the interfaces, and for paying all fees, costs and expenses of Third Party Providers.

**1.7. Third Party Components.**

1.7.1. **Usage of Third-Party Components.** If any of the licensors of the Third-Party Components require Contractor to flow down any terms and conditions to City (“Additional Terms”), City’s use of such Third-Party Components, as incorporated into the SaaS Services, shall be subject to such Additional Terms, which Contractor shall provide to City in writing. In the event of any inconsistency or conflict between the Additional Terms and the terms of this Contract, such Additional Terms shall govern with respect to the City’s use of the applicable Third-Party Component.

1.7.2. **DISCLAIMER REGARDING THIRD-PARTY COMPONENTS.** CONTRACTOR NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD-PARTY COMPONENTS, NOR THE PROVIDERS; OR MANUFACTURERS’ AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD-PARTY COMPONENTS AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

**1.8. Third-Party Data.** City shall access and use the Third-Party Data in accordance with the terms and conditions of the agreement between the City and the provider of such Third-Party Data. CONTRACTOR, NOT BEING THE PROVIDER OR MANUFACTURER OF THE THIRD-PARTY DATA, NOR THE PROVIDERS OR MANUFACTURES’ AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE THIRD-PARTY DATA AND DISCLAIMS ANY SUCH WARRANTIES THAT MIGHT OTHERWISE EXIST.

**1.9. City Data.** As between Contractor and City, City owns and shall retain all rights, title, and interest, including, without limitation, all Intellectual Property Rights, in and to City Data. City shall have the sole responsibility for the accuracy, quality, and legality of the City Data, including obtaining all rights and consents necessary to share the City Data with Contractor as set forth in this Contract. Contractor shall not access City user accounts or City data, except; (i) in the course of data center operations, (ii) in response to services or technical issues, (iii) as required by the express terms of this Contract, (iv) at City written request. Contractor shall not collect, access, or use user-specific City information except as strictly necessary to provide the Services to the City. Notwithstanding anything to the contrary contained herein, City hereby grants to Contractor an irrevocable, worldwide, royalty free, non-exclusive license to use the City Data to: provide the SaaS Services to City and other Contractor subscribers; analyze the City Data in anonymized and/or aggregate form in order to operate, maintain, manage, and improve the SaaS Services, create new products and services; and for Contractor’s internal purposes to improve the Applications, Software, and related services.

**1.10. Export of City Data.** The City will have ability to directly query a near-live copy of their database in order to extract City Data stored in the Applications. Furthermore, the City will have the ability to export common datasets directly from the Contractor user interface.

## **2. SECURITY**

**2.1. Data Protection.** Protection of personal privacy and data shall be an integral part of the business activities of the Contractor, who shall use reasonable commercial efforts to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of City information by complying with the following conditions:

2.1.1. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures designed to safeguard against unauthorized access,

disclosure or theft of CJI and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own CJI and non-public data of similar kind.

2.1.2. All City Data obtained by the Contractor in the performance of the Contract shall become and remain the property of the City.

2.1.3. All City Data (including CJI) stored in the Applications shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the Statement of Work, or otherwise made a part of the Contract.

2.1.4. Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to Contractor.

2.1.5. Except as otherwise provided herein, Contractor shall not use any information collected in connection with the services issued from this Contract for any purpose other than fulfilling the services; provided, however, City understands and agrees that when it uses certain features of the SaaS Services, certain information and data may be collected from Authorized Users, including monitoring and recording activity, and tracking physical location, which may include personal identifying information. City agrees that Contractor may use such information to (i) provide more effective Services, or (ii) to develop and test its Services.

## **2.2. Data Location.**

Contractor shall store City Data in data centers in the U.S. Contractor shall permit its personnel and contractors to access City Data remotely from the U.S. as required to perform services or provide technical support.

## **2.3. Security Incident or Data Breach Notification.**

2.3.1. City agrees it and its Authorized Users shall securely manage their respective password(s) for access to the SaaS Service. City agrees it shall notify Contractor promptly in the event it becomes aware of any unauthorized access or use of the SaaS Service, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. City shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Service, including all those related to data privacy and the transmission of technical or personal data. City agrees to (a) provide true, accurate, current and complete registration data for each account it creates via the SaaS Service, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.

2.3.2. **Incident Response.** Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law, contained in the contract or as otherwise determined by the Contractor. Discussing security incidents with the City should be handled on an urgent as needed basis, as part of Contractor's communication and mitigation processes as mutually

agreed upon, defined by law or contained in the Contract or as otherwise determined by the Contractor.

- 2.3.3. **Security Incident Reporting Requirements.** Each Party shall report a security incident to the other Party's identified contact immediately, as soon as possible, or promptly without out reasonable delay, or as defined in the Contract.

2.3.4. **Breach Reporting Requirements.**

- 2.3.4.1. Each Party shall promptly notify the other Party of any such security breach that materially compromises the City systems and/or data. Both Parties agree to cooperate in any investigation of such a security breach.

- 2.3.4.2. Contractor shall promptly notify City of any unauthorized access or unauthorized disclosure or use by a third party of the CJI collected or obtained by the Contractor under this Contract. Contractor shall provide such notice following discovery and without unreasonable delay.

**2.4. Criminal Justice Information Data Breach Responsibilities.**

This section only applies when a Data Breach occurs with respect to CJI data within the possession or control of the Contractor.

- 2.4.1. Contractor, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a Data Breach with respect to CJI data.
- 2.4.2. Contractor, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a Data Breach. Contractor shall (i) cooperate with the City as reasonably requested by the City to investigate and resolve the Data Breach, (ii) promptly implement necessary remedial measures, if necessary, and (iii) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- 2.4.3. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt CJI data, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for Data Breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

**2.5. Security Precautions.**

- 2.5.1. CJI, whether in electronic format or hard copy, must be secured and protected in a manner that complies with the most recent version of the FBI's Criminal Justice Information Systems (CJIS) Security Policy.

- 2.5.2. When CJI, regardless of format, is subject to permanent deletion under Article II, Section 22, the information must be redacted or destroyed through appropriate and secure methods that are designed to ensure the information cannot be viewed, accessed, or reconstructed.
- 2.5.3. As requested by the City, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and Contractor. For example: virus checking and port sniffing.
- 2.5.4. Contractor agrees that it will use commercially reasonable efforts to ensure that the requirements of this Section 2.5 shall be incorporated into all subcontractor contract/agreements entered into by the Contractor. It is further agreed that a violation of this Section 2.5 shall be deemed to cause irreparable harm justifying injunctive relief in court.

## **2.6. Access to Security Logs and Reports.**

Contractor shall provide security reports upon City's reasonable written request. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all public jurisdiction files related to this Contract.

## **2.7. Encryption of Data at Rest.**

Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless the City approves in writing for the storage of CJI on a Contractor portable device in order to accomplish work as defined in the Statement of Work.

# **ARTICLE IV.**

## **1. SERVICE LEVEL AGREEMENT**

The following provisions shall apply to all maintenance and repairs to the System, including any software, equipment, and Product(s). Should any ambiguities or conflicts arise between this section and the balance of the Contract, this section shall prevail over all other in matters of maintenance and repair.

### **1.1. Maintenance Requests.**

**1.1.1. Coverage Hours.** Email support shall be available twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year.

**1.1.2. Telephone Helpline/Staffing.** Between 7:00 AM and 7:00 PM PT, Contractor shall maintain a telephone hotline at no cost to the City. Contractor shall staff the hotline with competent technical consultants who shall be trained in and thoroughly familiar with the Solution and with the City's applicable configuration. Telephone support and all communication shall be delivered in English from within the United States.

**1.1.3. Response.** Contractor's support specialists shall respond to a Maintenance Request from the City within the times specified in this Contract. Such response times shall be measured from the time the City contact requests support in writing or by phone.

**1.2. Training.** Contractor shall offer, in its sole discretion, written instructions or telephone training in connection with Upgrades or major repairs that change the functional operation of the Solution/system or any custom software or component whether repair or alteration is a permanent or interim modification. Training may be offered to a subset of Authorized Users who can then go on to train additional Authorized Users.

### **1.3. Service Levels for RMS.**

#### **1.3.1. RMS Availability.**

During any calendar month of a Regular Usage Period, the RMS shall be available to users no less than 99.9% of the time on a 24x7 basis, excluding scheduled maintenance of the RMS (“RMS Scheduled Downtime”); provided, however, that Contractor is not responsible for any downtime of the RMS caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), or Third Party Components, and such Third Party downtime will not count against the service levels promised herein; provided, further, that Contractor shall be responsible for any downtime of RMS caused by Integrated Third Party Software (as defined below) solely to the extent specified in Section 1.3.3 below (“Service Levels for Integrated Third Party Software”). Contractor shall provide City with prompt notification as soon as it becomes aware of any actual or potential unscheduled downtime (defined below) of the RMS, as well as continual periodic updates during the unscheduled downtime regarding Contractor’s progress in remedying the unavailability and the estimated time at which the RMS shall be available.

#### **1.3.2. RMS Service Credits.**

In the event that Contractor fails to make the RMS available at least 99.9% of the time in any given month during the Regular Usage Period due to RMS Unavailability (as defined below), Contractor will credit the City’s account for the unavailable RMS as follows:

RMS Availability (Monthly)	Credit Percentage
Above 99.9%	0%
99.8 – 99.0%	10%
98.9 – 98.0%	20%
Below 97.9%	30%

“**RMS Unavailability**” is defined as the percentage of minutes per month in which the RMS is completely and generally unavailable for City’s use (but not the use of any one Authorized User), provided that RMS Unavailability does not include any unavailability attributable to: (a) RMS Scheduled Downtime for maintenance (whether by Contractor, by a vendor, or by City); (b) acts or omissions of City or any City user of the RMS; (c) server downtime related to connectivity issues resulting from Third Party-managed VPN access to hosted server or City internal network problems; (d) defects or bugs in the Applications or Software caused by City, any Authorized User, or any Affiliate, employee, agent or independent contractor of City; or (e) any other cause(s) beyond Contractor’s reasonable control, including but not limited to those caused by Third Party Data services (e.g. Department of Motor Vehicles license plate database), Third Party Components, overall internet congestion or a force majeure. City will be responsible for immediately notifying Contractor of all Third Party-managed VPN access and internal or external (e.g. internet service provider) network problems that arise.



**“Credit Percentage”** means the applicable percentage of the portion of the Fees attributable to Services in the calendar month in which the RMS Unavailability occurs. For example, if City has paid Contractor \$1,000 for one year of a Regular Usage Period, and the RMS Availability falls to 99.5% during any calendar month in that year, then Contractor will owe City a 10% credit on that month’s portion of the Fee, or:  $\$1,000/12 = \$83.33$  per month, and 10% of  $\$83.33 = \$8.33$ . In this example, Contractor would owe City \$8.33 in credit for the month in which RMS Availability fell to 99.5%.

In order to receive this credit, City must notify Contractor in writing within fifteen (15) days following the end of the month the RMS Unavailability occurred. All claims are subject to review and verification by Contractor prior to any credits being granted. Contractor will acknowledge credit requests within fifteen (15) business days of receipt and will inform City whether such claim request is approved or denied. The issuance of RMS Service Credit by Contractor hereunder is the City’s sole and exclusive remedy for any failure by Contractor to satisfy the service levels set forth in this Section 1.3.2.

**1.3.3. Service Levels for Integrated Third Party Software.** Notwithstanding anything else to the contrary contained herein, Contractor shall be responsible for any downtime of or related to the Applications or Integrated Third Party Software (as defined below) that is caused by Integrated Third Party Software solely to the extent specified in this Section 1.3.3. Credit Percentages Service Credits referenced elsewhere in this Contract shall not apply to downtime caused by Integrated Third Party Software or the integrations or connections to Integrated Third Party Software.

**1.3.3.1. Availability of Third Party Applications.** The Statement of Work will outline specific Third Party Application integrations (the **“Integrated Third Party Software”**) to be performed by Contractor during the Professional Services Period, and the City’s and Contractor’s respective rights regarding acceptance of those Services. During the Regular Usage Period, the Integrated Third Party Software shall be operational no less than 99.9% of the time on a 24x7 basis, excluding any scheduled maintenance of the Integrated Third Party Software (whether scheduled by Contractor or by the third party provider, the **“Integration Scheduled Downtime”**); provided, however, that Contractor shall not be responsible for downtime caused by upgrades or updates to Integrated Third Party Software of which Contractor does not receive the requisite advance notice, and such downtime will not count against the service levels promised herein. Contractor agrees that it shall schedule any Integration Scheduled Downtime on minimal traffic days whenever possible. The Parties further agree that Contractor shall not schedule in excess of 90 minutes of Integration Scheduled Downtime in during any 30-day period. Contractor shall provide City with immediate telephone notification to the point of contact set forth in the Contract as soon as it becomes aware of any actual or potential unavailability of an Integration other than Integration Scheduled Downtime (**“Integration Unscheduled Downtime”**), as well as continual periodic updates during the Integration Unscheduled Downtime regarding Contractor’s progress in remedying the unavailability and the estimated time at which the Integration shall be available.

**1.3.3.2. Responsibilities for Planned Updates.** City shall provide Contractor with prompt notice, and in no case fewer than forty-five (45) days’ advance notice, of any update by the Third Party provider of Integrated Third Party Software. Contractor shall undertake commercially reasonable efforts to patch, repair or update the Software in order to integrate it with the updated Integrated Third Party Software.

**1.3.3.3. Responsibilities for Planned Upgrades.** The City shall provide Contractor with prompt notice, and in no case fewer than ninety (90) days' advance notice, of any planned upgrade by the Third Party provider of Integrated Third Party Software. The Contractor shall evaluate the time and resources required to patch, repair or update the Software in order to integrate it with the upgraded Integrated Third Party Software. The Parties shall engage in good faith negotiations to agree on the terms (including, without limitation, schedule and price) on which Contractor would develop a patch, repair, update or Upgrade to integrate the Software with the Integrated Third Party Software.

**1.3.4. Access to City Facilities.**

Contractor agrees that Contractor's physical or remote access to the City facilities shall be subject to the security interests and controls necessary to protect public property.

- 2. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Mark43, Inc.

City of Canby

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard Robinson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Approved as to Form:

\_\_\_\_\_  
Oregon Business Registry #

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Entity Type / State of Formation

**EXHIBIT A  
STATEMENT OF WORK**

Attached.

## **EXHIBIT B INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

**1. Required by City of Contractor with one or more workers, as defined by ORS 656.027.**

**Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.**

**2. ☒ Required by City    ☐ Not required by City**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

**Technology Errors & Omissions.** The Contractor agrees to furnish the City evidence of Technology Errors & Omissions insurance coverage including Professional Liability, Risk, Data Breach and Privacy/Cyber in the amount of \$1,000,000 in the aggregate.

At Contractor's election, (i) the policies must provide extending reporting period coverage for claims made within two years after the contract is completed or (ii) Contractor will renew professional liability insurance and technology errors & omissions for two years after contract is completed or (iii) Contractor will purchase a two-year extended reporting period in the event the insurance is not renewed.

**3. ☒ Required by City    ☐ Not required by City**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

**4. ☒ Required by City    ☐ Not required by City**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for hired, or non-owned vehicles, as applicable.

**5. Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the City, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to City acceptance. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

- 6. Notice of cancellation or change.** There shall be no cancellation or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the City at the following address: Canby Police Department, 1175 NW 3<sup>rd</sup> Ave, Canby, Oregon, 97013, smithb@canbypolice.com.

**EXHIBIT C**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**  
(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the City to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an "independently established business."

To qualify under the law, an "independently established business" must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the City; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

## EXHIBIT D TECHNICAL REQUIREMENTS

### Workstation Requirements

	RMS Dispatch Workstation
Operating Systems Supported	Windows 7 and higher
Processor	Single, quad-core Intel processor
Memory	4 GB
Network Card Speed	2 Mbps
Screen Resolutions Supported	1024x768
Hard Disk Space Required	80GB
Monitor	Dual 24 inch, flat panel, monitors
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.
Graphics Card Recommended	2, 512 MB NVIDIA Quadro NVS 310, 4MON

	RMS Non-Dispatch Workstation
Operating Systems Supported	Windows 7 and higher
Processor	Single, quad-core Intel processor
Memory	4GB
Network Card Speed	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.
Screen Resolutions Supported	1024x768
Hard Disk Space Required	80GB
Monitor	24 inch, flat panel, monitors
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.
Graphics Card Recommended	2, 512 MB NVIDIA Quadro NVS 310, 4MON

	RMS Non-Dispatch Mobile Laptop
Operating Systems Supported	Windows 7 and higher
Processor	Single, quad-core Intel processor
Memory	4GB
Network Card Speed	1 Mbps or above internet connection. Lower speeds are possible but will result in degraded service.



Screen Resolutions Supported	1024x768
Hard Disk Space Required	80GB
Monitor	13"
Additional Applications Software and Versions	Mark43 systems do not require any 3rd party software or plugins.

### Browser Requirements

Mark43 RMS is web-based, and requires a modern web browser to access the system. Mark43 RMS supports all versions of Microsoft Internet Explorer and Google Chrome that receive technical support and security updates from the browser vendor. Mark43 requires Subscriber to upgrade to a supported browser version at least 3 months before the browser vendor stops technical support and security updates. Mark43 recommends using Google Chrome as it updates to the latest version automatically and is proven high performance.

### Interface Server Requirements

If 3rd party integrations are required, an interface server may be installed on site. The requirements of this server are:

	Requirements
Sever Purpose	Servers only required for interfacing with 3rd party applications. Mark43 systems are cloud based and require no server hardware on premise.
Operating System	RHEL 7, CentOS 7
Processor speed & quantity	3.1 Ghz
Cores per processor	2
Memory	8GB
Network Card Speed	2 Mbps
Network Card Quantity	1 NIC (2 NICs at 1 GBPS or greater preferred)
Screen Resolution	1024x768
Hard Disk Space Required	250GB
Hard Disk Space Drive Configuration	500GB

### Networking/Firewall:

Inbound	Outbound	VPN	User Accounts
SSH over client VPN	All	Mark43 needs ability to SSH to the interface server over our client VPN	Admin user accounts for personnel with client VPN access.

### Internet Connectivity Requirements

Mark43's software-as-a-service platform is accessed via web browser and requires Subscriber to connect via an active internet connection.

In office, Mark43 requires a 1 GB internet connection along with a backup internet service provider line for redundancy purposes. In the field, Mark43 recommends a 4G LTE connection for best performance.

**Mark43 Evidence**

Operating Systems Supported	Android 5+	
Android Phone	Galaxy S7 (Suggested)	
Zebra Printer (Required: 1)	Desktop: GK420t, GX420t, GX430t (Suggested) ZD500	Industrial: 110Xi4, 140Xi4, 170Xi4, 220Xi4, ZT220, ZT230, ZT410 ZT420
Additional Information	Printer must support: - Prints 4" x 2" labels horizontally - Thermal transfer - Zebra Programming Language (ZPL) - Web connectivity (Ethernet or USB)	

**EXHIBIT E**  
**INSIGHT PUBLIC SECTOR PRICE QUOTE**

Attached.