AGENDA



CANBY CITY COUNCIL REGULAR MEETING

July 18, 2012 7:30 PM Council Chambers 155 NW 2nd Avenue

Mayor Randy Carson

Council President Walt Daniels Councilor Richard Ares Councilor Tim Dale Councilor Traci Hensley Councilor Brian Hodson Councilor Greg Parker

WORK SESSION 6:30 PM City Hall Conference Room 182 N Holly

This Work Session will be attended by the Mayor and City Council to discuss the Clackamas County fiber project.

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CITY COUNCIL REGULAR MEETING

1. CALL TO ORDER

- A. Pledge of Allegiance and Moment of Silence
- B. Disability Awareness Month Proclamation

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2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

(This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Each citizen will be given 3 minutes to give testimony. Citizens 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.)

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

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

A. Approval of Minutes of the June 20, 2012 City Council Work Session & Regular Meeting

7. PUBLIC HEARING

A. ANN 12-01/CPA 12-01/ZC 12-01 Hope Village Annexation

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8. RESOLUTIONS & ORDINANCES

- A. Res. 1137, Granting Consent & Approval of the City of Canby to Change of Control Transaction from WaveDivision Holdings LLC to Oak Hill Capital Partners III,
 L.P. Pg. 129
- B. Res. 1138, Codifying and Compiling Certain Existing General Ordinances Pg. 139
- C. Res. 1139, Approving Comprehensive Plan Land Use Map Amendment to the HDR Designation and Annexation of 0.79 Acres of Land Which Shall be Zoned R-2 High Density Residential, Pending Annexation Approval by the Canby Electorate Pg. 122
- D. Ord. 1360, Declaring City's Election to Receive State Revenue for FY 2011-2012 (2nd Reading)
 Pg. 167
- E. Ord. 1361, Authorizing Contract with Ken Robinson dba KR Maintenance to Provide Services at the City Owned Zion Memorial Cemetery
 Pg. 168
- F. Ord. 1362, Amending the Comprehensive Plan Land Use Map from residential-Commercial to High Density Residential for Tax Lot 1100 and 1101 of Tax Maps 4S-1E-4D Located Adjacent to and on the West Side of the 1600 Block of S Ivy Street

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9. NEW BUSINESS

A. ANN 12-01/CPA 12-01/ZC 12-01 Findings, Conclusions & Order

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10. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

- 11. CITIZEN INPUT
- 12. ACTION REVIEW
- 13. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation
- 14. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer, MMC, City Recorder at 503.266.4021 ext. 233. A copy of this Agenda can be found on the City's web page at www.ci.canby.or.us. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.



lu 10, 2012 faster higher farther

July 10, 2012

Todd J. Zinser Inspector General United States Department of Commerce 1401 Constitution Avenue N.W. Washington, D.C. 20230

Subject: Formal Complaint, Request for Immediate Action

Re: Round 2 BTOP Award Number NT10BIX5570079, Easygrants ID # 5884, "Clackamas County Broadband Innovation Initiative"

Dear Inspector General Zinser,

The purpose of this letter is to notify the Office of the Inspector General of several violations of state and federal law, and wasteful misappropriation of Federal and County funds in the Clackamas Broadband Innovation Initiative (CBII), also known as the Clackamas Broadband Express (CBX), and to request that the OIG direct Clackamas County to immediately cease any construction of last mile connections to any site located in the Canby Telephone Association (dba Canby Telcom) serving area, in accordance with the Special Award Conditions, the BTOP Statutory Purposes, and the specific intent of the BTOP program. In addition, this letter requests the OIG direct Clackamas County to immediately cease its discriminatory pricing for leased middle mile dark fiber.

Canby Telcom has raised these issues on several previous occasions in meetings with Clackamas County's CBII Project Manager, yet Clackamas County continues to ignore these complaints as well as the formal complaints from other interested parties, and the County continues to act in direct violation of the terms of the County's Broadband Technology Opportunities Program (BTOP) application and grant award, the requirements set forth in the BTOP Notice of Funding Availability (NOFA), and contrary to prudent fiscal management. All of these actions demonstrate willful disregard and / or gross negligence by Clackamas County in its management of its BTOP grant.

This letter is another in a series of complaints regarding Clackamas County's misappropriation of funds related to the CBII and allegations of malfeasance by the County in its implementation of the project. The County's implementation of the CBII project has included numerous conflicts and controversies, including issuance of cease and desist orders by municipalities for violating rights of way / legal franchise requirements, unlawful appropriation / occupation and damage of privately owned underground conduit, and multiple complaints by other communications providers regarding Clackamas County's misappropriation of BTOP funds. In every case, Clackamas County's reckless approach has created controversy after controversy with multiple entities the County is expressly charged with partnering with instead. It is worth noting that two years into the project, it appears that Clackamas County has yet to obtain a single formal commitment or a signed agreement from any anchor site, public service agency, community institution, or service provider to use any portion of the County's last mile facilities, yet the County continues to ignore the growing opposition and complaints while continuing to violate the NOFA, the terms of its grant, state law, and requisite fiscal oversight as will be demonstrated below.

Using Clackamas County's budget data, the County's planned construction of last mile facilities to the 15 sites in the City of Canby (including the Carus School) represents a wasteful and abusive misappropriation of between \$146,328 and \$208,125 of combined Federal BTOP and County matching funds

Canby Telcom is not challenging the BTOP award to Clackamas County. Canby Telcom is identifying several violations of the ARRA, NOFA, state law, and the fiscal responsibility in Clackamas County's implementation of specific parts of the last mile portion of the project, specifically in Canby.

This letter formally requests that the NTIA and the Department of Commerce OIG require Clackamas County to immediately cease any activities related to the specific violations cited in this letter, and to heed the multiple requests to the United States Department of Commerce to open a formal investigation into the many complaints.

This letter is organized into four sections:

- The list of violations and complaints regarding Clackamas County's implementation of specific elements of the last mile portion of the project, specifically in Canby
- Relevant background facts and BTOP definitions
- Details of each violation / complaint
- Summary and request for immediate action and further investigation

This letter documents the following violations:

- 1. Clackamas County's planned use of funding to construct "last mile" connections to any addresses in Canby or to the Carus School in Oregon City constitutes a violation of the stated terms of Clackamas County's BTOP <u>application</u>
- 2. Clackamas County's planned use of funding to construct "last mile" connections to any address in Canby or to the Carus School in Oregon City constitutes a direct violation of the statutory intent of the BTOP
- 3. Clackamas County's planned use of funding to construct "last mile" connections to any addresses in Canby or to the Carus School in Oregon City constitutes a direct violation of the Comprehensive Communities Infrastructure (CCI) Policy Rationale.
- 4. Clackamas County's planned use of funding to construct "last mile" connections to any addresses in Canby constitutes a direct violation of the <u>Special Award Conditions</u> set by the National Telecommunications and Information Administration (NTIA), explicitly prohibiting use of any BTOP funds to construct last mile connections in Canby Telcom's serving area
- Clackamas County's documented intention to offer access to "middle mile" dark fiber at disparate pricing constitutes a violation of the NOFA requirement to provide non-discriminatory access to infrastructure constructed using BTOP funding
- 6. Clackamas County's intent to offer "lit" broadband services to non-educational entities via Clackamas County Education Service District (ESD) is in violation of Oregon statutes, and is therefore also a violation of the NOFA requirement to comply with all Federal and state laws
- 7. Clackamas County's / Clackamas ESD's intent to offer "lit" broadband service to any non-educational entity in direct competition with multiple private enterprises and several member-owned not-for-profit co-operatives creates direct economic harm in Canby, in direct opposition to the purpose of the ARRA and specifically the BTOP

- 8. Duplicating the existing last mile broadband infrastructure to the anchor sites in the City of Canby and the Carus School represent a wasteful expenditure of \$208,125 of combined Federal BTOP and County funds to overbuild multiple existing last mile broadband service provider networks
- 9. Clackamas County used false and anecdotal information to misrepresent the state of broadband availability and adoption in Clackamas County, and specifically in Canby, in order to obtain BTOP funding for last mile construction in areas which clearly do not meet eligibility under the NOFA definitions or the ARRA Five Statutory Purposes. The complete, factual data demonstrates that Clackamas County's last mile project to any site in Canby constitute a wasteful duplication of existing last mile networks from multiple service providers, based upon patently false information

Background Facts and Definitions

The section detailing each complaint references the following background facts and definitions.

Canby Telephone Association (dba Canby Telcom), is a member-owned telecommunications cooperative serving all anchor institutions in the City of Canby and surrounding area, including the Carus School, which is part of the Canby School District. As members of Canby Telcom, every customer, including every one of the anchor sites on the Clackamas County list, already owns and maintains Canby Telcom's state-of-the-art \$40-million last mile broadband communications network, including fiber connectivity directly to Clackamas Community College, the Pittock Exchange in downtown Portland, and to Clackamas ESD.

Regarding each of the anchor sites on Clackamas County's list for last mile construction:

- Every anchor site in the City of Canby already has last mile broadband connectivity available from a minimum of 8 (and as many as 11) broadband service providers offering speeds of up to 1000 Mbps, and two of these providers have the ability to provide last mile connections of up to 1000 Mbps per location
- Every school in the Canby School District and the District Office is currently served with
 individual 1000 Mbps connections, and is currently served by a 1000 Mbps dedicated fiber
 connection to Clackamas ESD, which provides services to the school district
- The Canby School District recently signed a lengthy multi-year agreement with Canby Telcom to continue their existing 1000 Mbps services to each site and to Clackamas ESD, after receiving the County's presentation regarding the CBII
- Every anchor site is currently served by at least one, and as many as two existing broadband connections of 3 Mbps or greater, with some anchor sites currently having service from two different service providers
- NTIA data shows that the average measured broadband speed of schools, libraries, and community centers (i.e. anchor sites) in Canby is 33.7 Mbps. Test results are from the NTIA's independent end-user testing of actual broadband connection speeds
- NTIA data also shows that 99.9% of Clackamas County has access to broadband speeds of 768 kbps downstream and 200 kbps upstream
- NTIA data shows that 79.9% of Clackamas County has access to broadband from 3 or more (and as many as 8) wireline broadband service providers, and 93.6% of the Count also has access to

- broadband services from 5 or more wireless providers (with 44.0% having access to 7 wireless broadband service providers).
- NTIA data shows that 99.8% of Clackamas County has access to broadband speeds of 3 Mbps downstream and 768 kbps upstream.
- The Oregon Public Utilities Commission (OPUC) November 2011 report on broadband adoption confirms that broadband adoption throughout the region which includes all of Clackamas County is 86%, which is "significantly higher" than the national average and among the highest in the state.
- Canby Telcom maintains its own middle mile network that currently runs at 10 Gbps, and has
 the capacity to expand to 80 Gbps. Western Independent Networks also has a 10 Gbps middle
 mile network that Canby Telcom uses for survivability. Both networks connect to multiple Tier I
 and Tier II Internet backbone providers.

NOFA Definitions:

• Underserved area means a Last Mile or Middle Mile service area, where at least one of the following factors is met: (i) No more than 50 percent of the households in the Last Mile or Middle Mile service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed (768 kbps downstream and 200 kbps upstream); (ii) no fixed or mobile terrestrial broadband service provider advertises to residential end users broadband transmission speeds of at least three megabits per second downstream in the Last Mile or Middle Mile service area; or (iii) the rate of terrestrial broadband subscribership in the Last Mile or Middle Mile service area is 40 percent of households or less. An underserved area may include individual Census block groups or tracts that on their own would not be considered underserved.

Using NTIA data for the City of Canby and each individual anchor site:

- 100% of the addresses in the City of Canby and the Carus School have access to facilities-based, terrestrial broadband service at speeds greater than 3 Mbps from no fewer than two terrestrial broadband service providers. Since 100% of the addresses have access to broadband at speeds greater than 3 Mbps, there are no census blocks or census tracts that qualify as "unserved." Therefore, none of the anchor sites in Canby meet the first criteria to qualify as "underserved."
- O 100% of the addresses in the City of Canby and the Carus School have access to no fewer than 5 fixed or mobile terrestrial broadband service providers, each of which advertise broadband speeds greater than 3 Mbps. Since 100% of the addresses have access to broadband at speeds greater than 3 Mbps from multiple providers, there are no census blocks or census tracts that qualify as "unserved." Therefore, none of the anchor sites in Canby meet the second criteria to qualify as "underserved."
- The rate of terrestrial broadband subscribership in Canby is estimated at 86%, not including satellite broadband penetration. Canby Telcom's documented broadband penetration is 55% of the total addressable market, with concentration far higher inside the City limits. In addition, Wave Broadband's penetration rate is estimated to be 31%. This data is supported by the 2011 OPUC broadband availability study which found that 86% of the households in the region which include Canby and Clackamas County currently have broadband. Therefore, none of the anchor sites in the City of Canby meet the third criteria to qualify as "underserved."

- The NTIA data for broadband availability for the county also shows that Clackamas County's claims that "the county as a whole" qualifies as "underserved" according to any of the three criteria is a mathematical impossibility.
- Last Mile means those components of a CCI project that provide broadband service to end-user devices through an intermediate point of aggregation. That is, in most cases, the Last Mile connection goes from the end-user device through and intermediate point of aggregation (i.e. a remote terminal, fiber node, wireless tower, or other equivalent access point) to a primary IP routing entity in a centralized facility. The Last Mile also includes equivalent services that, solely because of close proximity between the customer and centralized facility, are routed directly to the centralized facility. The Last Mile will terminate, and include, the initial customer-facing router or aggregation switch in the centralized facility (e.g. a DSLAM, CMTS, RNC, or equivalent) that is utilized to deliver Last Mile broadband service.
 - olt is important to note that in order to construct last mile connectivity to each of the 160 anchor sites specified in the Clackamas County BTOP project, the County will have to install electronics to aggregate traffic from multiple last mile sites, or else the County will run out of fiber pairs on the 216-fiber middle mile ring (108 pairs) to transport the end-user traffic back to the centralized switching facility (Clackamas ESD). This is important because either Clackamas County has failed to engineer remote aggregation points and to account for the cost of remote aggregation equipment (e.g. a remote terminal, remote access gateway) in its construction budget, or the County has failed to adequately size the middle mile ring to transport all of the traffic from 160 anchor sites. In the former case, if the County has neglected to engineer and fund aggregation equipment, then the entire 216-fiber ring becomes "last mile" fiber according to the NOFA definition.
- Nondiscrimination and Interconnection. The NOFA requires that "all CCI applicants must commit to the following Nondiscrimination and Interconnection Obligations." Item (v) requires CCI funding recipients to "offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, at reasonable rates and terms to be negotiated with requesting parties" (emphasis added).
- Statutory Purposes of the BTOP program. Section 6001 of the American Recovery and Reinvestment Act of 2009 (ARRA) defines five Statutory Purposes of the BTOP grants (emphasis added):
 - To provide access to broadband service to consumers residing in unserved areas of the country"
 - 2. To provide <u>improved</u> access to broadband service to consumers residing in <u>underserved</u> areas of the country"
 - 3. To "facilitate greater use of broadband of broadband services by vulnerable populations"
 - 4. "To improve access to, and use of, broadband service by public safety agencies"
 - 5. "To stimulate the demand for broadband, economic growth, and job creation"

The following section provides specific details regarding each violation / complaint.

1. Clackamas County's planned use of funding to construct "last mile" connections to any addresses in the City of Canby or to the Carus School in Oregon City constitutes a violation of the stated terms of Clackamas County's BTOP application.

Clackamas County's BTOP application stated the CBII project "either includes a Last Mile infrastructure component in *unserved* or *underserved* areas, or has received *commitments from one or more Last Mile broadband service providers* to utilize the Middle Mile components."

As the background data above unequivocally demonstrates, 100% of the addresses in the City of Canby and within each of the Census blocks and Census tracts which comprise Canby, have access to broadband services from a minimum of 8 (and as many as 11) existing broadband service providers, three of which offer broadband speeds of up to 1000 Mbps. In addition, broadband adoption in Canby is estimated at 86% based on factual broadband subscribership by Canby Telcom subscribers (55% of all addresses) and market estimates of Wave Broadband's (Canby Telcom's cable competitor) subscribership. The OPUC data validates this estimate. Broadband adoption in Canby far exceeds the national average, and therefore far exceeds the limits of eligibility for the use of BTOP funds. This broadband availability and adoption includes every one of the anchor sites in Canby (and the Carus School) identified in Clackamas County's list of anchor sites for Last Mile construction.

According to every one of Clackamas County's quarterly and annual reports to NTIA, the County has yet to obtain a single commitment or signed agreement from any broadband service providers to utilize the Middle Mile components of its network.

Under the stated terms of its own application, the County may not utilize any BTOP funding to construct last mile facilities to any site in Canby, including the Carus School in Oregon City.

Clackamas County's original 2010 list of anchor sites it was planning to construct last mile connectivity to included 25 sites. Among these sites were a vacant lot, two locations with nothing but water storage tanks, one address listed twice, and two locations with incorrect addresses. Canby Telcom has repeatedly advised the Clackamas County BTOP project manager that every anchor site listed in Canby (excluding the vacant lot and the two water tanks) already has broadband service and is ineligible for use of BTOP funds.

Clackamas County has subsequently modified its list of anchor sites for last mile construction, removing some of the Canby sites and adding others. Of the remaining 15 sites in Canby on Clackamas County's list of anchor sites the County plans to construct last mile facilities to, every single site *currently has* broadband service from at least one broadband service provider, with the exception of the new Police Department building which is under construction. Of these 15 sites, 10 are currently connected with 1000 Mbps connections.

Canby Telcom has repeatedly inquired of the County's BTOP project manager why the County continues to move forward with plans to construct last mile connections to these sites when *none* have made a commitment nor have any signed any agreements to purchase services from the County and when these planned overbuilds constitute unnecessary and wasteful duplication of multiple existing service provider networks. The only response from the County's BTOP

project manager is that the County is not providing services to any anchor site, but he has acknowledged that the County's partner, Clackamas ESD, will.

The OPUC data shows 86% of Oregonians in the four metro counties, which includes Clackamas County, have broadband access at home, which is a significantly higher percentage than the national average of 65%. It is also important to note that a sizeable majority of the households in Clackamas County are in cities which comprise the Portland metropolitan area, including the cities of Milwaukie, Oregon City, Clackamas, and Gladstone. This data is significant because it factually disproves the County's assertion in its application that "each Census Tract [in Clackamas County] was determined to be underserved or unserved by applying anecdotal information on which areas of the County are the least served by a broadband provider" (emphasis added). In the application process, NTIA challenged this claim, stating "Item 4: Discrepancy in Level of Service Classification. You state throughout your application that your PFSA is underserved, but on page 40 you also stated that the area is 'served above the minimum thresholds spelled out in the NOFA.' Please account for this discrepancy" (emphasis added). The County responded by acknowledging that it had provided false information in is application: "We are conceding that the first criteria (50% of households have access to broadband) may be true based on the information provided by the providers. However, we are contending . . . 3 Mbps service is not advertised throughout the county and the rate of subscribership to broadband is less than 40%" (emphasis added).

The County went on to claim, "In that section [Section E, Service Area Details] we classified the area [Clackamas County] as Underserved with an estimated percentage of households with access to broadband of 70% and an estimated percentage of households subscribing to broadband equal to 35%." You will note from the OPUC data that broadband adoption in the region which includes Clackamas County is 86%, nearly 2 ½ times the adoption rate claimed by Clackamas County. Moreover, even in the rural areas of Clackamas County, including Canby, Molalla, Beavercreek, and Clear Creek, broadband service providers have invested tens of millions of dollars broadband infrastructure over the past 6 years to deploy Fiber to the Premises, xDSL, and cable modem facilities. These rural areas now offer some of the fastest broadband speeds available in the state.

Clackamas County failed to win a Round 1 BTOP grant, due in large part to the fact that nearly every single existing broadband service provider (including all area telephone cooperatives and WAVE Broadband) in Clackamas County filed documents and data in opposition funding the County's project on the grounds that broadband was widely available and adoption rates were high in those service providers' service areas, in direct contradiction to the County's unsupported claims. The NTIA's own data, gathered and validated by an independent third party, and the OPUC survey strongly supports that opposition and the facts that there are significant areas of Clackamas County, and specifically anchor sites, which do not meet the criteria for use of BTOP funds to construct last mile connections. This specifically includes Canby.

2. Clackamas County's planned use of funding to construct "last mile" connections to any address in Canby or to the Carus School in Oregon City constitutes a direct violation of the <u>statutory intent</u> of the BTOP.

Section 6001 of the ARRA specifies five Statutory Purposes of the BTOP grants, and construction of last mile connections to anchor institutions violates two of these Statutory Purposes, and fails to meet the other three. The five Statutory Purposes of the BTOP funding are:

- "To provide access to broadband service to consumers residing in <u>unserved</u> areas of the country" (emphasis added). As already demonstrated by the NTIA and OPUC data above, none of the anchor sites in Canby (or the Carus School in Oregon City) are located in areas which meet the BTOP definition of unserved. Construction of any last mile connections directly to any anchor site in Canby constitutes a wasteful, unnecessarily redundant, and grossly inefficient misappropriation of BTOP funds in direct violation of the ARRA Statutory Principles.
- "To provide <u>improved</u> access to broadband service to consumers residing in <u>underserved</u> areas of the country" (emphasis added). As documented above (and in the attachment to this letter), 100% of the anchor sites in Canby and on the Clackamas County list are *currently served* by broadband services greater than 3 Mbps, and the vast majority are currently served with 1000 Mbps services. Therefore, none of the anchor sites in Canby (or the Carus School in Oregon City), meet the ARRA definition of "underserved." With 100% availability of broadband access from multiple service providers, it is impossible to provide "improved access" to any of these addresses, and use of BTOP funding would violate this Statutory Purpose of the ARRA / BTOP funding.
- To "facilitate greater use of broadband or broadband services by vulnerable populations" (emphasis added). The OPUC survey of 4,022 households to determine the rate of broadband penetration by throughout the state determined that broadband adoption across all areas of Oregon was "significantly higher" than the US average, including broadband adoption among traditionally vulnerable groups. Since 100% of the anchor sites in Canby already have broadband connections (see attached spreadsheet), it is impossible to facilitate greater access or use of broadband or broadband services by constructing duplicate last mile connections to those same anchor sites in Canby (or the Carus School). The OPUC report also directly contradicts Clackamas County's unsupported claims and instead demonstrates that broadband access is "more widespread among other traditionally underserved demographic and socioeconomic groups in Oregon than nationwide."
 - Incomes below \$50,000 71% of Oregonians in this group currently have broadband access, compared to 53% nationally
 - High school education 50% of Oregonians in this group currently have broadband access, compared to 46% nationally
 - Disabled 67% of disabled Oregonians have broadband access, compared to 42% nationally
 - African-Americans 77% of Oregonians in this category have broadband access, compared to 59% nationally
 - Hispanic 81% of Oregonians in this category have broadband access, compared to 49% nationally

It is also important to note, according to the most recent 2009 data from City-data.com, the median household income in Canby (\$58,892) and Clackamas County (\$59,875) is

approximately 125% of the state average (\$48,457). This data further indicates that broadband adoption in Canby (and throughout Clackamas County) is statistically likely to be higher than the state average because broadband adoption correlates very closely to median household income. This data also provides concrete evidence that Clackamas County's plans to duplicate the multiple existing broadband networks in Canby constitute an unnecessary and grossly wasteful misuse of BTOP funds in an area that is 100% "served" according to NTIA, State of Oregon, and service provider data.

- "To improve access to, and use of, broadband service by public safety agencies" (emphasis added). As noted above, every public safety agency in Canby currently has broadband connectivity of 1000 Mbps to each site, and has access to additional broadband services from multiple other wireline and wireless broadband service providers. The Canby police department also owns a microwave broadband system donated by Canby Telcom. This system is capable of delivering a fully meshed point to multipoint wireless broadband network. Since 100% of the public safety entities in Canby already have broadband access and are able to obtain speeds up to 1000 Mbps at each location, the Clackamas County project does not provide any improved access to broadband, nor does it increase use of broadband.
- "To stimulate the demand for broadband, economic growth, and job creation" (emphasis added). Canby Telcom is a member-owned cooperative and a not-for-profit entity. Each of the anchor institutions are, therefore, member-owners of the extensive, state-of-the art Canby Telcom broadband infrastructure, and have an inherent incentive to continue to choose broadband service from Canby Telcom, rather than to abandon their equity interest in an existing network infrastructure. The "buy local" mentality is extremely strong in Canby, especially given the fact that every Canby Telcom customer / member owns a stake in a broadband service provider with a state of the art network that offers some of the most advanced services and fastest speeds in the state. Furthermore, Canby Telcom employs more than 60 employees, local contractors, and multiple other service businesses within Canby. Canby Telcom is in the middle of an approximately 15 year, \$40 million project to expand its fiber to the premises network. Conversely, the Clackamas County CBII project will employ no one in Canby beyond the initial construction which will last for less than 90 days in Canby. By constructing a duplicate last mile network in Canby, Clackamas County will instead take away jobs from within Canby and shift them to entities like Clackamas ESD in Oregon City. More importantly, the Clackamas County BTOP application states that Clackamas ESD will utilize existing employees to manage the CBII middle mile and last mile network. By competing with the existing broadband service providers in Canby, the net result will be a net loss of jobs in Canby and Clackamas County as a direct result of the construction of last mile connections in Canby. That will also result in a corresponding shift of the "multiplier effect" of local spending by the resulting fewer Canby Telcom employees out of Canby and into Oregon City. The net effect is no change in the provision of broadband services to the same anchor sites, but rather facilitates a transfer of jobs and local spending out of Canby. The only possible, factual outcome, if Clackamas County is permitted to construct last mile connectivity directly to any anchor institutions, will be a temporary (less than 90 day) increase in contract activity by a non-local (from outside of Clackamas County) contractor, and then a net decrease in revenue, reinvestment, and employment in Canby. Clackamas County's plan to construct last mile facilities in Canby

to compete directly with a truly locally-owned and operated cooperative will cause direct, irreparable economic harm to Canby rather than stimulate it.

- 3. Clackamas County's planned use of funding to construct "last mile" connections to any addresses in Canby or to the Carus School in Oregon City constitutes a direct violation of the Comprehensive Communities Infrastructure (CCI) Policy Rationale.
 - The Comprehensive Communities policy rationale requires CCI projects to include the construction of "Middle Mile broadband facilities and the provision of new or substantially upgraded connections to community anchor institutions as its centerpiece," and which will "provide a number of benefits to the public and taxpayers," and that the project will provide "end-user broadband services in unserved and underserved communities." With respect to these CCI requirements:
 - Since every anchor site in Canby is already connected (see attachment) with state of the art fiber optic or cable modem broadband services with every site having access to speeds of up to 1000 Mbps symmetrical, it is impossible to provide new or upgraded connections, let alone "substantially upgraded" connectivity to any of the anchor sites in Canby, even by constructing an overlapping network.
 - As customers of a member-owned telecommunications cooperative, the public and taxpayers of Canby, including each anchor institution, have already build and currently maintain a state of the art fiber-optic broadband network. There are at least seven additional for-profit wireline and wireless broadband service providers which also offer competitive broadband services to each and every anchor site in the City of Canby. The use of additional Canby residents' / Canby Telcom ("CTA") members' Federal and local tax dollars to fund a duplicate public network, constitutes a wasteful use of public funds. Moreover, CTA has expended more than \$15,000,000 over the past 6 years to build a fiber-to-the-premises (FTTP) network and to offer gigabit services its members. CTA anticipates continued capital investment for the next 6-10 years to continue to extend higher bandwidth speeds to each address in CTA's serving area. Clackamas County's desire to over-build CTA members' network and to compete directly to provide services will only serve to reduce CTA's capital investment in the Canby and surrounding area, thereby causing direct, measurable long-term economic harm to the City of Canby. Furthermore, whereas CTA's fiber and bandwidth expansion construction is a 12-16 year, \$40,000,000 project which uses local employees and local contractors and generates substantial local tax and franchise revenues, Clackamas County's project involves less than 90 days of construction in Canby, utilizing non-local contractors, and which "exports" local jobs from Canby Telcom, local expenditures for contractor and supplier services from Canby Telcom out of the rural Canby portion of the County to the metropolitan portion in Oregon City. In addition, the competition to overbuild to a select few addresses not only means a new, unnecessary, and added cost to provide service on a per address basis than CTA's project which serves all addresses in a contiguous area, Clackamas County's limited connectivity to a handful of addresses in Canby could very well reduce the tax revenue and franchise revenue CTA pays to the City of Canby.

- The NTIA grant awarded funds to Clackamas County for the CBII project with a requirement that construction of last mile infrastructure is limited to "unserved or underserved areas," or in areas where the County has "commitments from one of more Last Mile broadband service providers to utilize the Middle Mile components." According to the County's most recent quarterly and annual reports to the NTIA, Clackamas County has no signed agreements or commitments from any last mile broadband service providers to utilize any portion of the CBII network (letters of support included during the application process are not signed contracts). Given the already highly competitive and heavily saturated availability of broadband services from multiple wireline and wireless broadband service providers in Canby, there is no viable economic sense for any entity to construct additional last mile infrastructure in Canby (or to the Carus School). Given that the Canby School District recently signed a lengthy multi-year extension of its existing contract with Canby Telcom for 1000 Mbps connectivity to each school and to Clackamas ESD, there is limited chance that any new entrant would win a contract from the Canby School District. This is especially true given the recent extensive cuts to the Canby School District budget for the 2012-2013 school year. As already noted above, Canby Telcom is a member-owned association, and every customer / member already owns a portion of Canby Telcom's extensive state-of-the art fiber-optic broadband network, and the potential for a new entrant to draw anchor institutions away from "their" network is also unlikely because it directly conflicts with their own interests.
- 4. Clackamas County's planned use of funding to construct "last mile" connections to any addresses in Canby constitutes a direct violation of the <u>Special Award Conditions</u> set by the National Telecommunications and Information Administration (NTIA).
 - The NTIA attached unique Special Award Conditions to the Clackamas County BTOP award, explicitly prohibiting use of any BTOP funds to construct last mile connections in Canby Telcom's serving area. Section 9 ("Last Mile Overlap") of these Special Award Conditions state:

"Specifically, the recipient shall not use BTOP funds to construct customer laterals in the service areas funded for Round 1 BIP recipients EGID #702 City of Sandy Oregon and EGID #4142 Canby Telephone Association [dba Canby Telcom]. The recipient must provide a detailed, street-level network map confirming there is no duplication of construction. If it is determined by NTIA that there is overlap, the recipient must submit a revised budget and associated documentation that removes the costs associated with the duplication or reallocates costs to allowable activities within the same proposed funded service area. The detailed, street-level network map must be submitted no later than six months after the award date unless a formal request for extension is submitted and approved by the Grants Officer. Due Date: 01/02/2011."

Clackamas County was obligated to provide a detailed, street-level network map showing the original 25 anchor sites in Canby where the County planned to construct last mile laterals. To be in compliance with these special Award Conditions, the County must have either:

- Provided a map by the deadline. The map would have shown there was an overlap at every one of the Canby anchor sites, or
- Provided a map which fraudulently indicated there was no overlap, or

- Requested an extension of the 01/02/2011 deadline and provided a subsequent map, which either showed there was duplication or fraudulently indicated there was no duplication
- Not provided a map in violation of the Special Award Conditions

Even if the County did submit an initial map, the County is presumably obligated to provide an updated map to NTIA at the same time as it added or removed anchor sites in Canby. Canby Telcom can find no indication in any of the County's quarterly or annual reports to NTIA that it has complied with the requirement to provide the map, or that it has provided any maps corresponding to the updated list. It is conceivable that the County might have requested a waiver of these special conditions, but there is also no specific information in the County's quarterly or annual reports to indicate that it has requested a waiver for any of the Canby sites. If the County did submit a valid waiver and the NTIA did approve it, any construction of last mile facilities to anchor sites in Canby Telcom's serving area would still constitute a gross waste of Federal taxpayer dollars to construct overlapping last mile facilities in an area already heavily served by multiple service providers, and which does not meet any of the BTOP criteria for use of last mile funds.

- 5. Clackamas County's documented intention to offer access to "middle mile" dark fiber at disparate pricing constitutes a violation of the NOFA requirement to provide non-discriminatory access to infrastructure constructed using BTOP funding.
 - Clackamas County has documented in its quarterly and annual reports to NTIA that is intends to offer interconnection / access to the BTOP funded middle mile fiber ring at pricing that gives preferential pricing to "government entities," such as Clackamas County's "partner" Clackamas ESD. Clackamas ESD will pay far below market rates to lease dark fiber from Clackamas County (\$250 per pair), whereas all other entities, including not-for-profit co-operatives like Canby Telcom, will be required to pay (\$1,000) four times as much for the access to the same pairs. This means that Clackamas ESD will have an inherently unfair cost advantage over commercial broadband service providers to compete with existing commercial broadband service providers, including the multiple not-for-profit cooperatives like Canby Telcom. As Clackamas ESD seeks to offer Last Mile services to a school district, as an example, the discriminatory price advantage that Clackamas ESD obtains from Clackamas County means that it can provide the exact same service over the exact same fiber network and using the exact same equipment, but at a fraction of the cost that any of the existing broadband service providers could. In effect, Clackamas County is forcing non-governmental lessees to subsidize the middle mile operating expenses of a competitor whose last mile capital construction is already funded with public tax dollars. This is a clear and significant violation of the Nondiscrimination and Interconnection requirement which has the potential to cause irreparable harm to all other broadband service providers.
 - O In a September 19, 2011 E-mail, David Soloos, the Clackamas County Broadband Project Manager, confirmed the County's BTOP obligation to provide uniform pricing for access to the County's middle mile ring being constructed with BTOP funding. In that E-mail to Keith Galitz, President of Canby Telcom, and others, Mr. Soloos stated, "The County's fiber pricing is pretty well set at \$1,000/mo per pair of fibers per ring. Though the rate needs to be the same for everyone (federal non-discrimination/equity requirements,

plus just good public policy so we can't be accused of playing favorites in the marketplace) . . ." (emphasis added). By Mr. Soloos', and thereby the County's own admission, by applying disparate pricing for access to its middle mile fiber ring, Clackamas County is engaging in bad public policy by knowingly and actively supporting discriminatory pricing in direct violation of the NOFA.

- Section D.1.b ("Nondiscrimination and Interconnection") of the NOFA also warns,
 "Awardees that fail to accept or comply with the terms listed above [nondiscriminatory
 interconnection, rates, and terms] may be considered in default of their grant
 agreements. NTIA may exercise all available remedies in the event of a default,
 including suspension of award payments or termination of the award."
- Clackamas County's intent to offer "lit" broadband services to non-educational entities via Clackamas County Education Service District (ESD) in violation of Oregon statutes, and is therefore also a violation of the NOFA requirement to comply with all Federal <u>and state</u> <u>laws</u>.

Section X of the NOFA requires recipients of BTOP grants to "comply with all applicable Federal and State laws." The provision of any technology services to municipal governments, utilities, private healthcare facilities, police and fire departments by an ESD are in explicit violation of state law governing Education Service Districts. Specifically, Oregon Revised Statutes, Chapter 334, section 175 defines the services Education Service Districts are required and permitted to provide under state law. ORS 334.175 only permits ESDs to provide "core services to component school districts" and defines the goals of those services as:

- Assist component school districts in meeting the requirements of state and federal law;
- Improve student learning
- Enhance the quality of instruction provided to students;
- Enable *component school districts and the students* who attend schools in those districts to have equitable access to resources; and
- Maximize operational and fiscal efficiencies for component school districts

Section 175 further specifies each ESD to develop a "local service plan" and defines the required services an ESD is mandated to provide, none of which include the provision of any form of services to any non-education related entity. Providing broadband services to municipal government, utilities, private healthcare facilities, police departments, and fire departments are clearly unrelated and extend far beyond the statutory responsibilities and authority of an Education Service District. Section 185 of ORS 334 permits ESDs to provide "entrepreneurial services and facilities to public and private entities and to school districts" if "the primary purpose of the services is to address a need of the component school districts," and only with the approval of the ESD's component school districts, and must include "an explanation of whether any moneys received from the State School Fund or local revenues of the education service district . . . may be required to finance the services or facilities." Given the extreme state of underfunded education in the State of Oregon and the ongoing budgetary reductions required by school districts in Clackamas County, including the Canby School District, the expenditure of any ESD funds to subsidize non-educational services to multi-million dollar private healthcare businesses, utilities, unmanned water tanks, and other non-education

entities constitutes an inappropriate and irresponsible misappropriation of ESD funding and revenue.

7. Clackamas County's / Clackamas ESD's intent to offer "lit" broadband service to any non-educational entity in direct competition with multiple private enterprises and several member-owned not-for-profit co-operatives creates direct economic harm in Canby, in direct opposition to the purpose of the ARRA and specifically the BTOP

As demonstrated above, the use of tax payer dollars to construct duplicate, overlapping, and economically unjustifiable last mile infrastructure to anchor sites in Canby in order to permit Clackamas ESD, or any other entity, to utilize publicly subsidized capital funds and operating expense to compete with local not-for-profit member-owned associations like Canby Telcom cause direct, measurable economic harm in Canby. Specifically, Clackamas County's overbuild jeopardizes \$15 million of current investment and more than \$25 million of future capital investment over the next 6-12 years. This has the potential cascading effect of dramatically reducing not only Canby Telcom jobs in Canby, but also spending on construction contractors, electrical contractors, and dozens of other suppliers that Canby Telcom currently utilizes in Canby. This direct, measurable economic harm is in the form of:

- Migration of high-paying, technical jobs from Canby Telcom and out of rural Canby to the metropolitan areas of the County (Oregon City and Clackamas ESD). Specifically, the impact is to jobs in Customer Care / call center, installation and repair technicians, network operations center (NOC), IP network engineering, and facilities construction and engineering.
- Loss of "multiplier effect" spending in Canby for services from other local Canby businesses which directly supply / support Canby Telcom, and other local businesses used by Canby Telcom and its employees and sub-contractors, such as grocery stores, gas stations, automotive repair and maintenance shops, etc.
- Reduction of contractor work from Canby Telcom, including high paying, long-term construction, electrical contractors, etc.
- Stranded capital investment. Canby Telcom has already invested more than \$15 million over the past 6 years to construct state-of-the art last mile fiber optic broadband infrastructure to every one of the anchor sites in Canby. Any business cannibalized by Clackamas County and/or its BTOP partner Clackamas ESD results in immediate interruption on the return on Canby Telcom members' equity. This causes direct harm to every one of Canby Telcom's roughly 8,000 members, and diminishes Canby Telcom's ability to continue its substantial capital investment in the extreme rural areas of its serving area.
- 8. Duplicating the existing last mile broadband infrastructure to the anchor sites in Canby and the Carus School represent a wasteful expenditure of \$208,125 of combined Federal BTOP and County funds to overbuild multiple existing last mile broadband service provider networks.
 - The Clackamas County CBII project is a \$11.1 million project

- 20% of the total project cost may be utilized for construction of last mile infrastructure (\$2.2 million) is eligible for construction of last mile infrastructure to the 160 anchor sites identified by Clackamas County
- This is an average of \$13,875 per site
- There are 15 anchor sites on the Clackamas County list of anchor sites which are located in Canby Telcom's serving area, plus the Carus School. 15 sites times \$13,875 per site equals \$208,125
- 9. Clackamas County used false and anecdotal information to misrepresent the state of broadband availability and adoption in Clackamas County, and specifically in Canby, in order to obtain BTOP funding for last mile construction in areas which clearly do not meet eligibility under the NOFA definitions or the ARRA Five Statutory Purposes.

The complete, factual data demonstrates that Clackamas County's last mile project to any site in Canby constitute a wasteful duplication of existing last mile networks from multiple service providers, based upon patently false information. The County cannot claim that adequate data was unavailable at the time of its application, because the County acknowledged, and summarily dismissed, the multiple broadband service providers had provided opposing data showing the availability and adoption of broadband in Clackamas County was substantially higher than the County claimed, and did not meet the definitions of unserved or underserved. It is worth pointing out that Clackamas County applied for, but failed to obtain, Round 1 BIP funding in the face of widespread opposition and data showing the County's proposed serving area did not meet those requirements.

The County's BTOP application states that the County will use BTOP funds to construct last mile facilities to sites where the County has an agreement with a broadband service provider to provide services to the anchor site. To our knowledge, none of the broadband service providers serving Canby have signed any agreement with the County to use its planned last mile facilities because each service provider already owns and maintains its own last mile access network to each of those locations, and would merely strand its own capital investment were any of them to take service from Clackamas County. In short, there is no viable economic reason for any broadband service provider to utilize the County's last mile duplicate facilities in Canby, even if the County were permitted to construct last mile facilities in Canby.

Clackamas County's BTOP application used patently false, and self-admitted "anecdotal" information to grossly misrepresent broadband availability and adoption in Clackamas County "as a whole." In the Due Diligence phase, the NTIA challenged the County's claims of broadband availability and adoption and the County's use of "anecdotal" information to arrive at that conclusion. In its response, the County admitted that it had failed to perform any survey of broadband availability and adoption in the County. Instead, the County merely asserted, without any supporting data, that "the county as a whole will qualify as Underserved as defined in the NOFA." The NTIA and OPUC data, as well as the data from the broadband service providers factually disprove this claim.

Furthermore, in the response to the NTIA's challenge to the County's claims, the county cited a manager of a County cable TV commission who has "knowledge of the cable companies' service offerings" of the cable franchise holders in the County. Without providing any data, but acknowledging information from the broadband service providers themselves which

contradicted the County's claims, the County concluded that broadband was neither widely available nor adopted. It is extremely important to note that the County excluded any data about the extensive broadband service offerings by telcos, fixed wireless broadband service providers, and mobile wireless broadband service providers in the County, none of whose service offerings the manager of the cable TV commission would have had any knowledge.

In summary, Canby Telcom supports the goals of BTOP. However, Canby Telcom actively opposes any deviation by Clackamas County from the statutory intent and requirements of the BTOP program, unilateral changes to the County's grant application, and any wasteful use of BTOP funds to overlap multiple existing broadband service provider last mile networks in Canby or any other area which fails to meet the BTOP definition of "unserved" or "underserved." The facts demonstrate quite clearly that none of the anchor sites in Canby meet that definition, and every site is therefore ineligible for use of BTOP funds for duplicating last mile infrastructure.

Canby Telcom also fundamentally objects to a public entity using taxpayer dollars to overbuild multiple existing broadband service provider networks with no signed agreements to utilize that infrastructure. Canby Telcom finds it extraordinarily unlikely for any broadband service provider to strand its own capital investment to utilize the County's last mile infrastructure, and no additional commercial entity would enter a highly competitive and highly commoditized marketplace as a ninth or tenth broadband service provider. The only viable conclusion is that the County's unwavering intent to overbuild last mile infrastructure is because of an ulterior motive to subsidize another government entity's (Clackamas ESD) entrance into a market where no sound business logic would support a new entrant. Canby Telcom adamantly opposes Clackamas County's violation of the nondiscrimination requirement, and contends that the County has acknowledged it has no legal or ethical grounds to offer discriminatory pricing that would directly benefit its BTOP partner, Clackamas ESD. The discriminatory pricing constitutes a direct subsidy from the commercial entities to government entities, such as Clackamas ESD, for the sole purpose of enabling the use of public funding to compete against private enterprise.

There are additional anchor sites in Clackamas County, beyond the current list of 160, that currently lack last mile connectivity to broadband services, which have requested connectivity as part of the Clackamas County CBII. In the "Project Indicators" section of its Q4 2011 report to NTIA, Clackamas County states: "Anchor sites are now requesting additional sites be connected, and we are working with our budget and theirs to plan connections as we find it prudent to do so." Since Clackamas County did not include those anchor sites in its original March 2010 list of "Last Mile Anchor Sites" nor on its January 2011 approved list of modified sites, and since the County acknowledges there are additional anchor sites in other areas of the County which it does not have the budget to reach, Canby Telcom would like to highlight that BTOP funds would be more appropriately and more effectively applied to serve those sites rather than over-building the anchor sites in Canby which do not meet BTOP criteria, nor the County's last mile objectives stated in its BTOP application.

Clackamas County has already made at least two major changes to the list of CAIs it plans to build overlapping last mile infrastructure to connect. In the County's Q4 2011 quarterly report to NTIA, the County states that it "deleted 9 anchor sites in Estacada to resolve [the] overlap issue" (emphasis added). By acknowledging that it could not overbuild last mile infrastructure to anchor sites which already had broadband access or connectivity, the County properly re-aligned its project to remain consistent with the BTOP requirements and the County's own intent as documented in its

BTOP application. The situation is no different in Canby. The County would be wastefully overbuilding extensive existing last mile broadband availability by constructing last mile facilities to the anchor sites in Canby.

Canby Telcom formally requests that NTIA immediately compel Clackamas County to remove all anchor sites in Canby, and the Carus School in Oregon City from the list of sites to which the County plans to construct last mile infrastructure. In addition, Canby Telcom requests that the NTIA immediately compel Clackamas County to cease its discriminatory middle mile dark fiber lease pricing for commercial entities relative to governmental entities.

Sincerely

Keith Galitz President

CC: Clackamas County Board Of Commissioners
U S House Commerce Oversight Committee
Rep. Cliff Stearns, Chair
City of Canby, City Administrator
David Soloos, Broadband Project Manager

Enclosure

CBX Site	Туре	Name	Address	City	Zip	Fiber to the premesiss (FTTP) Already Available?	Hybrid Fiber Coax / DOCSIS 3 Cable Modem Available?	Digital Subscriber Line (xDSL) Available?	Other Wireline Broadband Services Available	Currently Served by?	Broadband Services Available	Mobile Wireless Broadband Available?	Fixed Wireless Broadband Available	Satellite Broadband Available?	Broadband at this Address (According to the Oregon state broadband mapping project):	Notes:	Removed from Original List?	Meets ARRA / NOFA definition of "unserved" or "underserved?"	Is Site Eligible to Use ARRA Funds for Last Mile Construction?
10		Ackerman Middle School	350 SE 13th Ave	Canby	97013		Yes, up to 50 Mbps downstream / 5 Mbps upstream	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps downstream / 1.5 Mbps upstream	Yes, including T-1, DS-3 / OC-3	Fiber to the premesis,	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850	l Yes, up to 1Gbps symmetrical		AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters, Sprint, Starband Communications, T Mohle, Verizon Wireless, Wave Broadband, Wildblue Communications,	Note: All of the Canby School District Buildings are already connected via Fiber to the premesis and a 1Gbps symmetrical - network provided by Canby Telcom, and all locations already receive broadband services from Clackamas Eductation Service District.		No	No
11		Baker Prairie Middle School		Canby	97013		Yes, up to 50 Mbps a downstream / 5 Mbps upstream		Yes, including T-1, DS-3 / OC-3	Fiber to the premesis, 1Gbps. Two copper DS-1 (1.54 Mbps each).	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 MHz, 1900 MHz, 1,7GHz, 2.1 GHz,		Yes, 12 Mbps downstream / 3 Mbps upstream	AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters, Sprint, Starband Communications, T Mobile, Verizon Wireless, Wave Broadband, Wildblue Communications,			No	No
		Canby High School	721 SW 4th Ave			Yes, GPON, and Point-to	Yes, up to 50 Mbps o downstream / 5 Mbps upstream	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps	Yes, including T-1, DS-3 / OC-3	Fiber to the premests, 1Gbps. One copper DS-1 (1.54 Mbps).	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 MHz, 1900 MHz, 1,7GHz, 2,1 GHz,			AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters, Sprint, Starband Communications, T Mobile, Verizon Wireless, Wave Broadband, Wildblue Communications,	the premesis and a 1Gbps symmetrical		No	No
13				Canby			Yes, up to 50 Mbps o downstream / 5 Mbps	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps	Yes, including T-1, DS-3 / OC-3		Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 MHz, 1900 MHz, 1,7GHz, 2,1 GHz,			AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters, Sprint, Starband Communications, T Mobile, Verizon Wireless, Wave Broadband, Wildblue Communications,	the premesis and a 1Gbps symmetrical		No	No
14		Eccles Elementary School	562 NW 5th Ave				Yes, up to 50 Mbps o downstream / 5 Mbps	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps	Yes, including T-1, DS-3 / OC-3	Fiber to the premesls,	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 p MHz, 1900 MHz, 1.7GHz, 2.1 GHz,		Yes, 12 Mbps	AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters,	Note: All of the Canby School District Buildings are already connected via Fiber to the premesis and a 16bps symmetrical - network provided by Canby Telcom, and all locations already receive broadband services from Clackamas Eductation Service District.		No	No
15		Knight Elementary	501 N. Grant				Yes, up to 50 Mbps o downstream / 5 Mbps	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps	Yes, including T-1, DS-3 /	Fiber to the premests,	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 p MHz, 1900 MHz, 1.7GHz, 2.1 GHz,		Yes, 12 Mbps	AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters, Sprint, Starband Communications, I Mobile, Verizon Wireless, Wave Broadband, Wildblue Communications,	Note: All of the Canby School District Buildings are already connected via Fiber to the premesis and a 1Gbps symmetrical		No	No
17		Lee Elementary Trost Elementary	800 S. Redwood St				Yes, up to 50 Mbps to downstream / 5 Mbps	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps	Yes, including T-1, DS-3 /	/ Fiber to the premesis,	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 p MHz, 1900 MHz, 1.7GHz, 2.1 GHz,		Yes, 12 Mbps	AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters, Sprint, Starband Communications, 1 Mobile, Verizon Wireless, Wave Broadband, Wildblue Communications,	the premesis and a 1Gbps symmetrical		No	No
	Law Enforce-		122 N. Holly St.	Canby			Yes, up to 50 Mbps to downstream / 5 Mbps	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps	Yes, including T-1, DS-3 ,	/ Two ADSLZ+ 10Mbps/1Mbps.	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 p MHz, 1900 MHz, 1,7GHz, 2,1 GHz,	4 Yes, up to 1Gbps	downstream	Broadband, HughesNet, Skycasters,	Note: This location will also have Fiber to the premesis in July 2012. Construction of the fiber has already started. The police department is moving from this location in summer 2012 (see below). Clackamas County removed this location from the Last Mile Anchor Sites list in April 2012.	Yes	No	No
119		FD62 Canby	221 S. Pine St.	Canby	97013	Yes, GPON, and Point-Point Active Ethernet	Yes, up to 50 Mbps to downstream / 5 Mbps upstream	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps downstream / 1.5 Mbp. upstream	s Yes, including T-1, DS-3 , OC-3	Fiber to the premesis, / 20 Mbps/5Mbps.	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 p MHz, 1900 MHz, 1,7GHz, 2,1 GHz,	4 Yes, up to 1Gbps		AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters, s Sprint, Starband Communications, I Mobile, Verizon Wireless, Wave Broadband, Wildblue Communications,		Yes	No	Na
128		Canby City Hall	182 N, Holly St,	Canby	97013	Yes, GPON, and Point	Yes, up to 50 Mbps to downstream / 5 Mbps upstream	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps downstream / 1.5 Mbp upstream	s Yes, including T-1, DS-3, OC-3	/ Fiber to the premesls, 40Mbps/10Mbps	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 p MHz, 1900 MHz, 1,7GHz, 2,1 GHz,	4 Yes, up to 1Gbps		AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters, s Sprint, Starband Communications, 1 Mobile, Verizon Wireless, Wave Broadband, Wildblue Communications,		Yes	No	No
		Canby Public Library	292 N. Holly St				Yes, up to 50 Mbps to downstream / 5 Mbps	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps		Fiber to the premesis, 60Mbps/30 Mbps	to 100 Mbps	Yes, 800MHz, 850 p MHz, 1900 MHz, 1,7GHz, 2,1 GHz,	4 Yes, up to 1Gbps		AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters, Sprint, Starband Communications, Mobile, Verizon Wireless, Wave Broadband, Wildblue Communications,			No	No
136		Willamette Falls Pediatric Group				Yes, GPON, and Point	Yes, up to 50 Mbps	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps		Fiber to the premesis 20Mbps/5Mbps. Fiber OC-3/DS3 (44.74/ Mbps).	Wireless: Any speed u	Yes, 800MHz, 850 MHz, 1900 MHz, 1.7GHz, 2,1 GHz,						No	No

				0															
167		Canph Office Tagge 19	154 NW 1st Ave	Canby		Yes, GPON, and Point-to Point Active Ethernet		Yes, ADSL, SDSL, ADSL2+, up to 10Mbps downstream / 1.5 Mbps upstream	Yes, including T-1, DS-3 / OC-3	1Gbps. Fiber to the premesis 20Mbps/10Mbps	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream		Yes, up to 1Gbps symmetrical	downstream / 3 Mbps		Note: Clackamas County removed this location from the Last Mile Anchor Sites list in April 2012.	Yes	No	No
170	Utility	Canby Utility - Water Treatment	591 N. Cedar St.	Canby	97013	Yes, GPON, and Point-to Point Active Ethernet		Yes, ADSL, SDSL, ADSL2+, up to 10Mbps downstream / 1.5 Mbps upstream	Yes, including T-1, DS-3 / OC-3	ADSL2+ 10 Mbps x 2 Mbps	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream		Yes, up to 1Gbps symmetrical	downstream / 3 Mbps		Note: Clackamas County removed this location from the Last Mile Anchor Sites list in April 2012.	Yes	No	No
171	Utility	Canby Utility - Future Main Office	S. Pine St / SE 3rd Ave	Canby		Yes, GPON, and Point-to Point Active Ethernet		Yes, ADSL, SDSL, ADSL2+, up to 10Mbps downstream / 1.5 Mbps upstream	Yes, including T-1, DS-3 / OC-3	See Note	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream		Yes, up to 1Gbps symmetrical	Yes, 12 Mbps downstream / 3 Mbps	Broadband, HughesNet, Integra Telecom, Skycasters, Sprint, Starband Communications, T-Mobile, Verizon	Note: This site is an undeveloped lot, and the City of Canby does not have definitive plans nor budget to develop this site. Clackamas County removed this location from the Last Mile Anchor Sites list in April 2012.	Yes	No	No
172	Utility	Canby Utility - Waste Water Treatm	1480 NE Territorial Rd	Canby	97013	Yes, GPON, and Point-to Point Active Ethernet			Yes, including T-1, DS-3 / OC-3	Fiber to the premesis, 1Gbps.	Wireline: Any speed up to 1 Ghps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream		Yes, up to 1Gbps symmetrical		Communications, T-Mobile, Verizon	Note: The address to this facility is actually 1470, not 1480. Clackamas County removed this location from the Last Mile Anchor Sites list in April 2012.	Yes	No	No
173	Utility	Canby Utility - Water Reservoir	SW corner of NW 4th	Canby	97013	No	Unknown	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps downstream / 1.5 Mbps upstream	Yes, including T-1, DS-3	Dry copper pair telemetry circuit.	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream		Yes, up to 1Gbps symmetrical		Communications, T-Mobile, Verizon	Note: This site is an unstaffed water tower, which only requires a 56kbps dry copper pair telemetry circuit. Clackamas County removed this location from the Last Mile Anchor Sites list in April 2012.	Yes	No	No
174	Utility	Canby Utility - Water Reservoir	440 SW 13th Avenue	Canby	97013	Yes, GPON, and Point-to Point Active Ethernet			Yes, including T-1, DS-3 / OC-3	Dry copper pair telemetry circuit.	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream		Yes, up to 1Gbps symmetrical	downstream / 3 Mbps	Communications, T-Mobile, Verizon	Note: This site is an unstaffed water tower, which only requires a 56kbps dry copper pair telemetry circuit. Clackamas County removed this location from the Last Mile Anchor Sites list in April 2012.	Yes	No	No
175	Community	Clackamas County Fairgrounds	694 NE 4th Ave	Canby	97013		downstream / 5 Mbps	Yes, ADSL, SDSL, ADSL2+, up to 10Mbps downstream / 1.5 Mbps upstream	Yes, including T-1, DS-3 / OC-3	modem, speed unknown.	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	MHz, 1900 MHz, 1.7GHz, 2.1 GHz,	Yes, up to 1Gbps symmetrical	downstream / 3 Mbps	AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Integra Telecom, Skycasters, Sprint, Starbani Communications, T-Mobile, Verizon Wireless, Wave Broadband, Wildblud Communications,			No	No
176	w Enforceme	Canby Police	1175 NW 3rd Ave	Canby	97013	Yes, GPON, and Point-to Point Active Ethernet	Yes, up to 50 Mbps o downstream / 5 Mbps upstream		Yes, including T-1, DS-3 / OC-3	See Note	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	MHz, 1900 MHz, 1.7GHz, 2.1 GHz,	Yes, up to 1Gbps symmetrical	downstream / 3 Mbps	Broadband, HughesNet, Integra Telecom, Skycasters, Sprint, Starband Communications, T-Mobile, Verizon	Note: The Police Department will occupy this site in summery 2012, and will have service from Canby Telcom, including Fiber to the premesis broadband of at least 10Mbps/5Mbps. Canby Telcom also offered to provide Clackamas County redundant, physically diverse conduit to this site at significantly below-market rate, but the County declined. The Police Department also has its own Motorola Canopy microwave broadband system donated by Canby Telcom, and has the ability to provide high bandwidth point-to-point and point-to-multipoint broadband services.		No.	No
177		Canby Library - Future Site	TBD	Canby	97013	See Note	See Note	See Note	See Note	See Note	See Note	Yes, 800MHz, 850 MHz, 1900 MHz, 1.7GHz, 2.1 GHz, and unlicensed 2.4 GHz and 5 GHz	Yes, up to 1Gbps symmetrical	downstream / 3 Mbps		Note: Clackamas County removed this location from the Last Mile Anchor Sites list in April 2012.	Yes	No	No
178	City Hall	Canby City Hall - Future Site	ТВО	Canby	97013	See Note	See Note	See Note	See Note	See Note	See Note	Yes, 800MHz, 850 MHz, 1900 MHz, 1.7GHz, 2.1 GHz, and unlicensed 2.4 GHz and 5 GHz	Yes, up to 1Gbps symmetrical	downstream / 3 Mbps		Note: Clackamas County removed this location from the Last Mile Anchor Sites list in April 2012.	Yes	No	No

New		nucil Backet Bage 20 o.	1250 N' Hollin 24'	Canby	Yes, GPON, and Point-to Point Active Ethernet		Yes, including T-1, D5-3 / OC-3		Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream		Yes, up to 1Gbps symmetrical		AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters, Sprint, Starband Communications, T- Mobile, Verizon Wireless, Wave Broadband, Wildblue Communications,	Note: This location is actually part of Canby United Methodist Church. It is unclear whether or when this site was added to Clackamas County's list of anchor institutions or whether NTIA has approved it.	No	Na
204	School	A section and	1110 S. Ivy St (see note)	Canby	 Yes, GPON, and Point-to Point Active Ethernet	Yes, up to 50 Mbps downstream / 5 Mbps upstream	Yes, including T-1, DS-3 / OC-3	Fiber to the premesls,	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream		Yes, up to 1Gbps symmetrical	Yes, 12 Mbps downstream	AT&T Mobility, Canby Telcom, Crickett Communications, Freewire Broadband, HughesNet, Skycasters,	Note: Clackamas County has incorrectly listed this address as 1110 5, lwy. It is actually 1130 5, lwy. Clackamas County indicates that it added this site to the list of anchor institutions it plans to build last mile facilities to in a January 2011 revision approved by NTIA. All of the Canby School District Buildings are already connected via Fiber to the premesis and a 1Gbps symmetrical network provided by Canby Telcom, and all locations already receive broadband services from Clackamas Eductation Service District.	No	No
226		Clackamas County Medical Office - C		Canby	Yes, GPON, and Point-to	Yes, up to 50 Mbps downstream / 5 Mbps upstream	Yes, including T-1, DS-3 / OC-3	Fiber to the premesis,	Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 MHz, 1900 MHz, 1.7GHz, 2.1 GHz,	Yes, up to 1Gbps symmetrical		Broadband, HughesNet, Skycasters,	Note: This is the same location as Canby High School. It is not a separate "anchor institution." All of the Canby School District Buildings are already connected via Fiber to the premesis and a 1Gbps symmetrical network provided by Canby Telcom, and all locations already receive broadband services from Clackamas Eductation Service District.	No	No
Not on List	School	Carus School	14412 South Carus Ro	Dregon Cit	Yes, GPON, and Point-to Point Active Ethernet	The state of the s	Yes, including T-1, DS-3 / OC-3		Wireline: Any speed up to 1 Gbps symmetrical Wireless: Any speed up to 100 Mbps downstream/50 Mbps upstream	Yes, 800MHz, 850 MHz, 1900 MHz, 1.7GHz, 2.1 GHz,	Yes, up to 1Gbps symmetrical			Note: All of the Canby School District Buildings are already connected via Fiber to the premesis and a 1Gbps symmetrical network provided by Canby Telcom, and all locations already receive broadband services from Clackamas Eductation Service District.	No	No



June 22, 2012

SENT VIA EMAIL AND U.S. MAIL

Stephen L. Madkour Office of County Counsel 2051 Kaen Road Oregon City, OR 97045

Re: Oregon City Franchise for County Fiber Facilities

Dear Stephen:

I received your letter dated April 14, 2012, detailing the County's basis for its latest offer. I appreciate your patience in awaiting a reply. As you know, I was unavailable for the month of May.

The most recent offer, as with the County's previous offers, includes no actual payment of franchise fees to the City. While the offer purports to impose a fee, it is unlikely the per foot fee, which would be assessed only on facilities installed after April 1, 2012, would result in any revenue to the City. Perhaps more importantly, this approach creates a significant risk of litigation and loss of franchise fees for the City, as on its face it would allow the County to install virtually all of its facilities for free and it also ignores the fact that thousands of feet of fiber were installed by the County without permits. There is no reasonable way for the City to defend such an approach when compared to the fees paid by other entities with facilities in the right of way. Further, the proposed revenue-based fee, which excludes public entities, would not likely yield much if any revenue, and is not consistent with other City telecommunications franchises.

The fundamental issue is that the County does not want to pay any franchise fees to the City for use of the City's right of way. While the City understands the County's need to run the system at cost, the cost of franchise fees should have been included in the County's planning and budgeting process from the beginning, just as the private entities requesting to use City right of way have done. Had the County coordinated with the City in this process, there would have been an open discussion of the fact that the City does not allow revenue-producing entities to use the right of way for free. This is true of the City's own utilities, which pay franchise fees to the City.



¹ In your March 27, 2012 letter you state that the County received written assurances from the City that permits would be needed only for underground work. City staff is not aware of any such document. I would appreciate it if you could forward that to me.

Further, given the County's assurance in the grant application that "all necessary permits, agreements, approvals, etc., related to the CBII's construction have already been, or would be readily, obtained" (grant application, p. 32) and its certification that it would comply with all "local laws, rules, regulations, ordinances [and] codes" (grant certification #3, executed by County Finance Manager), it is surprising that the County apparently did not contact any cities to discuss the project in advance of submitting the application. I understand that neither you nor much of the County staff now working on this project was involved in drafting the grant application, but nonetheless it falls to you to comply with the assurances made in it, which have been incorporated into the grant award from the Department of Commerce.

I appreciate your efforts in the letter to explain the County's position on payment of franchise fees. Respectfully, however, I think the County's position is based on a misunderstanding of or disregard for City home rule authority, the litigious nature of telecommunications providers and the limitations telecommunications laws impose on the City's franchising decisions. I will attempt to address these issues below with the hope that a better understanding of the City's position will lead to a resolution of this matter.

Application of the Municipal Code and Home Rule Authority

In your letter, you reiterate an issue the County has raised throughout this process, namely that the City's position is "without legal support" because the County is not a "person" thus the City's telecommunications code does not apply. Your letter also raises the argument that the County's project may not meet the definition of "telecommunications carrier" in the Code.

As I've stated several times in the course of this negotiation, these arguments are incorrect² and, more importantly, irrelevant. Even if the telecommunications code did not apply, that does not mean the County is free to use the City's right of way without compensation. The City Code reserves City authority over the right of way and requires franchises and permits to occupy the right of way. OCMC 12.04.005. The Code does not expressly require non-telecommunications entities to pay a franchise fee for use of the right of way. Nevertheless, no entity has ever taken the position that this means these entities can use the right of way without payment.



² Even if the County is not a person, the franchise and franchise fee obligations apply to "telecommunications carriers," not a "person." It is unclear why the County now believes it may not be a telecommunications carrier. That definition applies to "any provider of telecommunications services," which again does not rely on or refer to "person." OCMC 13.24.070. Telecommunications services means "any service provided for the purpose of transmission of information." OCMC 13.24.030. It does not require the service provider actually transmit the information.

The City has clear home rule authority over its right of way except to the extent that authority has been preempted by state or federal law. The County has not pointed to any such preemption, nor is the City aware of any. The City can and does interpret its telecommunications code to apply to the County, and even if it did not the City can manage its right of way through its existing non-telecommunications franchise requirements or future Code amendments. Continued discussion about the text of the City's telecommunications code simply is not productive. The County could challenge in court the City's interpretation of its telecommunications code, but even if the City lost—and I do not think they would—the City continues to have the authority to require a franchise and franchise fee.

Calculation of the Franchise Fee

Your letter also asserts that "the City's effort to impose the disparate lineal foot franchise fees on the County are contrary to Oregon's privilege tax statute, ORS 221.515, and Article I, § 32 of Oregon's Constitution." ORS 221.515 does not apply because the County is not a "telecommunications carrier" as defined in that statute, which is different from the City's definition of that term. ORS 221.515 is relevant only to explain the City's franchise fee imposed on CenturyLink, which is 7% of revenue from exchange access services. That is the maximum amount the City can charge CenturyLink for use of the rights of way. Even if the City charged CenturyLink \$2.75 per foot, as it does most competitive local exchange carriers, the maximum CenturyLink would have to pay is capped at 7% of revenue from exchange access services.

With respect to your reference to Article I, § 32 of the Oregon Constitution, I assume you are implying that the City's proposed lineal foot fee is not uniform. It is not clear why requesting the County to pay franchise fees comparable to that paid by other entities with communications facilities in the City would violate this provision. It is the County that is asking the City to waive its fees, thereby putting the City at risk of violating Article I, § 32 with respect to the fees paid by these other entities.

The County has also taken the position that any facilities installed pursuant to a City-issued permit are exempt from the franchise requirement. In this context, you have implied that the City implemented a new Code provision aimed at the County's project, after which the City issued a stop-work order. Though the Code change was proximate to the stop-work order, it was not the basis for the stop-work order. The stop-work order was issued because the City encountered contractors installing facilities for which there was no permit. This is a standard procedure in the City when unpermitted work is discovered, and would have happened regardless of the Code amendment.

Nor was the amendment made to force the County to obtain a franchise. The Code amendment had been discussed for some time for reasons unrelated to the County's work. As already discussed, the City did not need to amend the Code to require the County to get a franchise. In any event, County staff had agreed to negotiate an agreement with the City long before the Code amendment. It was



because of that agreement that the City, in good faith, issued permits to the County for a small portion of the work prior to entering into a franchise, and at least one of the permits issued in the spring of 2011 expressly states that a franchise must be addressed. Attached is an email dated September 13, 2011, from County staff reiterating this agreement following the City's stop work order:

I thought we had agreed that we could proceed with our fiber project as long as the facilities would fall under whatever future MOUs or franchises or whatever we negotiate in the future. In that spirit and understanding, for months we have been requesting and receiving other permissions and permits and built miles of aerial and underground fiber in Oregon City.

The Code amendment you reference passed September 7, 2011. By that time, as County staff acknowledged, "for months" the County had indicated it would enter into an agreement with the City to use the right of way. Though the Code amendment makes the telecommunications code applicable to the County's project, it did not alter the County's preexisting obligation and commitment to get a franchise and pay a franchise fee for use of the City's right of way.

Even if the preexisting obligation did not exist, issuing a permit does not grant a perpetual right to maintain facilities in the right of way without regard to future changes in law. The City retains the authority to require franchises and franchise fees from entities even if they previously obtained a permit to use the right of way. I would think the County would agree with this position. I understand some Oregon counties are lobbying to remove the state preemption on County franchise fees. To maintain that all previously permitted facilities would be exempt from any future franchise fee obligation would significantly harm Clackamas County's ability to receive such fees if the preemption is removed.

In addition to the mistaken assumptions regarding the Code amendment and stop-work order, I would like to clarify another misstatement on this issue. Your letter states that the County installed 18,000 feet of backbone "with the City's express approval." The City's records show it issued permits to the County's contractor for a total of 8,655 feet, not 18,000 feet. If the County has permits from the City for a total 18,000 feet, I would appreciate it if you could provide those to me.

With respect to the fee itself, the County asserts that it "is not subject to the lineal foot franchise fee, but rather to the percentage of gross revenue fee." This statement is factually and legally incorrect. As a factual matter, most telecommunications carriers in the City pay the greater of \$2.75 per foot or 5% of gross revenue from customers in the City. No telecommunications carrier gets to choose one or the other to reduce its franchise fees. As explained below, any variation in this fee is based on legal constraints with which the City must comply.



As for the law, the City Code requires telecommunications carriers to pay any "fair and reasonable" franchise fee set by the City Commission, or such other fee agreed to in the franchise. OCMC 13.24.070.H. Currently, there is no set fee. Rather, the City has always negotiated franchise fees with telecommunications carriers. The City has proposed the same path here by attempting to negotiate with the County rather than imposing a fee unilaterally.

In agreeing to a franchise fee with a provider, the City is careful to take into account limitations and restrictions imposed by state and federal law (such as ORS 221.515 and the Telecommunications Act of 1996). These laws require the City to agree to different types of fees for different entities to assure that the City receives fair and reasonable compensation within the confines of the law. For example, the federal Cable Act limits the franchise fee a franchising jurisdiction can charge a cable operator to 5% of gross revenue earned within the jurisdiction. ORS 221.515 limits the franchise fee on incumbent telephone companies to 7% of gross revenue from exchange access services provided to customers in the city imposing the fee. The City has followed these preemptions in its franchises with cable operators and CenturyLink, the incumbent telephone provider in the City.

As another example, Section 253(a) of the Telecommunications Act prohibits cities from either prohibiting or effectively prohibiting the provision of telecommunications services within the city. 47 U.S.C. § 253(a). This law impacted several franchise negotiations in which competitive telephone providers planned to serve only one customer in the City. The City requested the same franchise fee paid by other competitive providers noted above. The franchise applicants noted that the per foot fee would be greater than 5% of the revenue from the single customer, but given the lineal feet of facilities in the City, the per foot fee would far exceed the companies' revenue from that customer. These companies took the position that such a franchise fee violates Section 253(a) because imposing a fee that is greater than their revenue in the City effectively prohibits them from providing service because they could not make money. To address this issue, the City and these companies agreed to a more complicated fee structure in which they agreed to pay the greater of the revenue from the customer in the City or a minimum annual fee. In addition, they agreed that any facilities in the City that did not serve that customer would be subject to the per foot fee.

These examples demonstrate not only the legal framework in which the City must negotiate its franchises, but also the flaw in assuming there is a "one or the other" approach to the per foot fee verses the revenue-based fee. Again, the City and telecommunications providers, except where prohibited by law, have agreed to pay the greater of 5% of gross revenues from customers in the City or \$2.75 per foot of facilities in the City. It is my understanding that under this definition the County would be subject to the lineal foot fee because that would be greater than a percentage of its revenue. The County strenuously objected to paying \$2.75 per foot on all its facilities, and thus the City looked for an alternative franchise fee. As an alternative, the City suggested a model similar to the one mentioned above that differentiates between facilities that serve customers and those that do not, with



the laterals to public facilities or other customers considered the former and backbone considered the latter. It is disappointing that the County chose to dismiss this suggestion as "neither fair nor reasonable" without explanation or a full understanding of the City's franchises with other providers.

You also note that any franchise fee would be passed through to the customers in the City. The City is fully aware that the County will likely choose to do this. This is typical of the other franchised entities in the City and throughout Oregon. Though this will result in slightly higher costs to customers, it is not unexpected. These customers currently pay franchise fees for telecommunications and other services they purchase and will not likely be surprised if that practice continues.

Application to Public Entities

Your letter states the County's position that public entities should not be subject to local franchise costs. The County must understand that many other cities collect franchise fees from public entities. The most relevant example is the City of Eugene, which informed the City that the Lane Council of Governments, which also received a BTOP grant to construct fiber communications facilities, will be paying fees to the City for use of the right of way just like the other telecommunications companies in the City. The City of Portland has franchises with its own Integrated Regional Network Enterprise and Portland State University, both of which include franchise fees. Salem receives a per foot fee from Willamette University and Salem Hospital. These are just a few examples of franchise fees applied to communications facilities serving government, public or educational institutions. Many Oregon cities, including Oregon City, also charge franchise fees to their own water and sewer utilities. While the County may believe that public entities should not be subject to local franchise costs, this does not reflect the reality in Oregon. Nor does this belief reflect city home rule authority, which includes the City's authority to manage its right of way and charge reasonable fees for such use. Finally, the City takes seriously its legal and fiduciary responsibility to ensure that facility owners—private and public—pay for revenue-generating use of the right of way, which is a public asset.

Your letter references purported exemptions for public entities in the Comcast cable franchise and City Code. These references appear to be based on a misunderstanding of the franchise and the Code. With respect to the Comcast franchise, it does not "specifically exempt[] public entity revenue from the franchise fee calculation," as you state. The franchise excludes from gross revenues any taxes levied by a government entity directly on a subscriber (as opposed to Comcast), which tax is merely collected by Comcast. This is not the same as exempting revenue from public entities from the franchise fee. It should be noted that Comcast provides free basic cable to public buildings, and thus there may not be any revenue from public entities to include in the franchise fee calculation. Again, this is not the same as exempting public entities from the fee.



The Comcast franchise also excludes from gross revenues any revenue received from institutional networks, but expressly reserves the City's right to negotiate a fee on those services if they are provided in the future. Here again, the reason for this language is rooted in federal law. The Cable Act permits only revenue from cable services to be included in the franchise fee base of a cable franchise. As a result, the City could not lawfully include non-cable institutional network services in the franchise fee base of the cable franchise. Hence, it made provisions for charging fees on those services (and therefore on itself and other public entities) should Comcast provide institutional network services in the future. In short, the Comcast franchise does not represent a City policy decision to exempt public entities, but rather it reflects the limitations imposed on the City by the Cable Act.

With respect to OCMC 13.24.040(D), which you cite as exempting public users from franchise fees, here again this is based on a misunderstanding. That section exempts from the registration requirement (which is not the same as the franchise requirement or the franchise fee) only those public entities with telecommunications facilities that solely provide internal communications. This is consistent with the City's policy of requiring franchises and franchise fees from entities with facilities that are revenue-generating as opposed to public internal communications, such as traffic and safety systems.

Potential Loss of City Franchise Fees

Finally, your letter references the City's concern over lost franchise fees. Certainly this is a significant issue for the City. However, as I've tried to explain in prior meetings, the City's concern is not so much the potential for immediate loss of franchise fees from customers who purchase the County's dark fiber who may then switch to non-franchised service providers for services that are currently subject to franchise fees. What is more of a concern is the potential long-term loss in franchise fees if the City sets the precedent that broadband infrastructure may be installed in the City without payment of franchise fees. The telecommunications companies with current franchises in the City could simply reclassify their systems as broadband or internet systems and demand the same treatment as the County received. In that case, the City could lose significant franchise fees. Similarly, new providers could come into the City and demand free space in the right of way for their broadband networks. While the City welcomes more competition for these services, it cannot sacrifice its right of way and long-standing franchise fee structure to achieve that end.

There is also a risk that a current service provider could lose a customer to the County's lower cost fiber system and view the lack of franchise fee as one factor in the County's ability to offer that lower price. Such a provider could choose to take legal action against the City, which would result in significant legal fees borne by the City, let alone potential lost franchise fees should that provider prevail.



These concerns—not the "money grab" referenced at a previous negotiation session—compel the City to require a franchise and franchise fee from the County that maintains a level playing field among revenue-generating communications entities with facilities in the City right of way. The City already has agreed to incur some additional risk by reducing its usual franchise fee by half. The City has also suggested a dual franchise fee calculation (per foot for some facilities, revenue-based for others) that would further reduce the total lineal foot franchise fee. In return, the County effectively has not moved from its original position that it would not pay any franchise fees to the City and has not been willing to shoulder any of the risk such a waiver would entail. I appreciate your efforts in the most recent draft to quantify the benefits and cost savings of the County system, but the underlying franchise fee is, on its face, not defensibly comparable to that of other providers.³

Revised Proposal

The County's most recent proposal has been presented to the City Commission. For the reasons explained above, the City cannot accept it. The City would like to see the County's project succeed in the City and County-wide and is still willing to agree to a significantly reduced franchise fee of \$1.37 per foot of the County's facilities in the City. As you will see in the attached offer, the City is also offering a percentage of revenue (5%) that is less than that proposed by the County (7%), and has altered its offer to require payment of the greater of these amounts (the per foot amount or 5% of gross revenue), rather than its previous proposal that the County pay both. The City is offering this reduced rate in recognition of the public benefits and other unique aspects of the County's project, and on the condition that the County agrees to indemnify the City should this reduced fee lead to litigation or a loss of franchise fees.

In the attached draft, the City also has agreed to the County's request for a 20 year term. Please note that the Agreement has an effective date of August 1, 2012, and there is no provision for retroactive franchise fees. While the City historically has insisted on payment of unpaid fees prior to entering into a franchise, it is willing to make this concession in an effort to settle this dispute with the County.



³ For example, as discussed above, excluding all facilities installed prior to April 1, 2012 is arbitrary and unreasonable. Further, by limiting the application of the per foot fee to facilities that do not serve customers and simultaneously exempting public entities from the revenue-based calculation, which will be most if not all of the County's customers, the County would pay no fees on a large portion of its facilities. These significant gaps in the franchise fee calculation would not be overlooked by competing entities and put the City at significant risk of litigation and/or loss of franchise fees in the future.

June 22, 2012 Page 9

It is my sincere hope that the County will accept this franchise, which is the City's final offer as further negotiations are not likely to be fruitful. It is in both parties' best interest to put this matter behind us, whatever the outcome. To that end, the City requests a response by July 20, 2012. If there is no agreement on a franchise by that date, the City will arrange a meeting to discuss permits and timelines for the County to promptly remove all fiber facilities from the City's right of way.⁴

Please feel free to contact me if you have any questions or would like to discuss this offer.

Sincerely,

Nancy L. Werner

cc: David Frasher, City Manager (via email only)

Enclosure

⁴ Note that the Code provides 30 days for such removal. Nevertheless, the City would work with the County to extend the timeline to accommodate the County's construction schedule, but would expect work to start within 30 days.

Kristen Ketchel - Bain

From:	Soloos, David <dsoloos@co.clackamas.or.us></dsoloos@co.clackamas.or.us>
Sent: To:	Tuesday, September 13, 2011 8:37 AM 'Bob Cullison'; 'Dold, Eric'
Cc:	John M. Lewis; Nancy Kraushaar; Nancy Ide; Nancy Werner; David Knoll
Subject:	RE: Fiber to Prov Hospital
Importance:	High
would fall under whatever future understanding, for months we ha aerial and underground fiber in C backbone (aka Middle Mile) and medical facilities, library, commu	ight we had agreed that we could proceed with our fiber project as long as the facilities MOUs or franchises or whatever we negotiate in the future. In that spirit and eve been requesting and receiving other permissions and permits and built miles of Oregon City. Did something change? We are placing or ready to place additional Lateral (aka Last Mile) fiber to the public schools, fire stations, South Fork Water, unity college, etc. in Oregon City. In the immediate future our contractor was to proof et a 12-count fiber for you, but I guess we need to suspend that until this is cleared up,
Thank you,	
David Soloos Broadband Project Manager Clackamas County Technology Se Tel 503-722-6656	ervices
President, Oregon Association of	f Telecommunications Officers and Advisors
From: Bob Cullison [mailto:bcull Sent: Monday, September 12, 2 To: Soloos, David; 'Dold, Eric' Cc: John M. Lewis; Nancy Krausi Subject: Fiber to Prov Hospital	
David S/Eric,	
The City respectfully declines to issupplice and approved by the City Con	we a ROW permit for conduit from $16^{\rm th}$ and Division to the Prov Hospital until we get a franchise in mission.
Thanks.	



Bob Cullison, E.I.T.
Development Services Manager
Public Works Department
City of Oregon City
PO Box 3040
625 Center St.
Oregon City, Oregon 97045
503.496.1561 phone
503.657.7892 fax
bcullison@ci.oregon-city.or.us
www.orcity.org

Public Records Law Disclosure

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

Right of Way Use and Franchise Agreement for Broadband Infrastructure between City of Oregon City and Clackamas County

This Right of Way Use and Franchise Agreement ("Agreement") is made and entered into by and between the City of Oregon City, Oregon, an Oregon municipal corporation ("City"), and Clackamas County, Oregon, a political subdivision of the State of Oregon ("County").

RECITALS

WHEREAS, the County received an \$11.1 million federal grant to construct an open Broadband infrastructure network throughout the County and to connect about 160 public buildings on a route that is generally represented on the map attached as Exhibit A; and

WHEREAS, the County desires to construct the advanced Broadband infrastructure in the form of a dark fiber optic network through the City, and to connect to public buildings in Oregon City including schools, fire stations, medical facilities, social services, and libraries, on a route that is generally represented on the map attached as Exhibit B; and

WHEREAS, the City acknowledges the significant benefits the County's fiber optic communications facilities will bring to the City and its residents, which benefits are unique among entities that own facilities in the City as of the effective date of this Agreement; and

WHEREAS, the City has reviewed Clackamas County's request and finds that it has the requisite authority to install facilities in the City and that the level of impact on the City's rights of way will be acceptable, and the City therefore agrees to allow the County the right to use and occupy the rights of way within the City of Oregon City.

NOW THEREFORE, the City and the County agree as follows:

1. Rights Granted

a. Subject to the terms and conditions contained herein, the City authorizes the County to construct, operate, repair and maintain its fiber optic communications facilities within the rights of way of the City. For purposes of this Agreement, the fiber optic communications facilities ("Facilities") means those facilities installed in the City by or on behalf of the County solely to provide public institutions and private service providers access to dark fiber as set forth in the Financial Assistance Award to the County from the United States Department of Commerce, Award No. NT10BIX5570079, and the documents incorporated therein by reference ("Grant").

- b. The County agrees to comply with all applicable City, state and federal laws, ordinances, rules and regulations in existence as of the effective date of this Agreement or hereafter enacted. Except as expressly set forth herein, the County agrees to comply with the terms and conditions Chapter 13.24 of the Oregon City Municipal Code ("Code") as though fully set forth herein.
- c. This Agreement does not create or vest in the County or any other party any right, title or interest in City easements or rights-of-way, nor does this Agreement create or vest in the City or any other party any right, title or interest in the Facilities.

2. Construction standards

The construction standards of Title 13 of the Oregon City Municipal Code, as well as any other applicable construction standards in existence at the time of this Agreement or hereafter enacted, shall apply to all work performed on or installation of Facilities by or on behalf of the County in City rights of way.

3. Franchise Fees

- a. Except as set forth in Section 3b, the annual franchise fee payable to the City shall be the greater of five percent (5%) of the County's gross revenues earned or derived from the Facilities in the City or two dollars and seventy-five cents (\$2.75) per lineal foot of the Facilities located within City rights of way. "Gross revenues" shall mean any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitations imposed by federal or state law. The per lineal foot rate set forth herein shall be adjusted annually based on the consumer price index for the Portland Metropolitan Area for January 1st of that year.
- b. The City recognizes the unique and substantial public benefits derived from the Facilities, including rates for public and governmental customers designed only to cover operating costs, affordable rates for private customers, and an open access, nondiscriminatory network the County will provide and maintain pursuant to the Grant. So long as the County continues to comply with all terms and conditions of the Grant and this Agreement, the per foot franchise fee set forth in section 3a shall be reduced by fifty percent (50%).
- c. The franchise fee required in this Agreement shall be paid quarterly, in arrears, for each quarter during the term of the franchise. The franchise fee shall be due and payable within forty-five (45) days of the end of each calendar quarter.

4. County's Continuing Obligation

a. The County intends to make the installed Facilities available to other telecommunications carriers. In the event that the County allows another telecommunication carrier to use the Facilities, the County will inform the City of the use and provide assistance to the City in securing any necessary franchise or license from

the telecommunications carrier.

- b. The County shall instruct all private users of the Facilities to comply with the City's Municipal Code. The County shall provide the City with the names of all private users of the Facilities in the City, subject to any confidentiality or nondisclosure agreement reasonably required by the County.
- c. In the event that the County desires to offer telecommunications services other than use of dark fiber as set forth in the Grant, the County agrees to notify the City and obtain any additional authority, including additional franchises and payment of applicable taxes and fees, as lawfully required by the City.

5. Term and Termination

The term of this Agreement shall be twenty (20) years from the effective date of this Agreement, which shall be August 1, 2012. This Agreement may be amended by mutual consent of the parties in writing. The City and County agree to review this Agreement in the 5th, 10th, and 15th year of its term to ensure compliance with applicable law changes and to reaffirm that the Agreement is still mutually beneficial and is not resulting in material loss to either party.

6. Indemnification

- a. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the County shall indemnify, defend and hold harmless the City, its commissioners, employees and agents from and against any and all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorneys fees, arising out of or resulting from the acts of the County, its officers, employees, and agents in the performance of this Agreement or arising out of or resulting from the construction, operation, repair and/or maintenance of the Facilities.
- b. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the County shall indemnify, defend and hold harmless the City, its commissioners, employees and agents from and against any and all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorneys fees, arising out of or resulting from any reasonable third party claim that the franchise fee in section 3b of this Agreement violates or causes a violation of applicable federal or state law, including the federal and state constitutions, with respect to the franchise fee or privilege tax paid by that third party. In lieu of the obligations set forth in the preceding sentence, the County may agree to amend section 3b of this Agreement provided that the third party agrees in writing that such amendment resolves all claims against the City that are subject to this paragraph.

7. Authority

The parties acknowledge that the persons executing this Agreement on behalf of each

Page 3 of 4 - Right of Way Use and Franchise Agreement

entity have the legal power, right, and actual authority to bind their respective entities to the terms and conditions of this Agreement

8. Entire Agreement

The parties agree and acknowledge that this Agreement and its incorporated Exhibits A and B, is a complete, integrated agreement that supersedes any prior understandings related to implementation of the Facilities and that it is the entire agreement between them relative to the Facilities, and the City's rights-of-way, and easements.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

Clackamas County	
By:	Dated: July, 2012
County Administrator	
City of Oregon City	
By: City Manager	, 2012



Office of the Mayor

Proclamation

Disability Awareness Month

WHEREAS, the month of July is hereby designated as Disability Awareness Month to affirm our commitment in ensuring that people with disabilities enjoy full participation in the mainstream of the City of Canby; and

WHEREAS, the American with Disabilities Act (ADA) was passed on July 26, 1990 to ensure the civil rights of citizens with disabilities; and

WHEREAS, the City of Canby affirms the principals of equality and inclusion for persons with disabilities as set forth for the State of Oregon and is embodied in the ADA, the laws of the State of Oregon and ordinances of the City of Canby; and

WHEREAS, the City of Canby is fully committed to the provisions of the ADA because we need the skills, talents and abilities of every one of our citizens; and

WHEREAS, disability is a natural part of the human experience and in no way diminishes the rights of people who have them to live independently, enjoy self-determination, make choices, and contribute to society; and

WHEREAS, many of the barriers facing persons with disabilities are being knocked down, thereby opening up new avenues and providing opportunities for advancement; and

WHEREAS, the City of Canby is committed to the empowerment, integration, employment, and full inclusion of every one of our citizens with disabilities; and

NOW THEREFORE, I, Randy Carson, by virtue of the authority vested in me as Mayor of the City of Canby, do hereby proclaim the month of July as:

DISABILITY AWARENESS MONTH

in the City of Canby and do urge all those in the Canby area to support and promote this observance.

Given unto my hand this 18th day of July 2012 in the City of Canby, Oregon.



Randy Carson Mayor



MEMORANDUM

TO: Honorable Mayor Carson and City Council

FROM: Bryan Brown, Planning Director
THROUGH: Greg Ellis, City Administrator

DATE: July 10, 2012

RE: Annexation, Comprehensive Plan Amendment, & Zone Change

Application (ANN 12-01/CPA 12-01/ZC 12-01)

Summary

Hope Village has submitted an application to the City of Canby to annex 0.79 acres of property located adjacent to the existing Hope Village senior housing complex, more particularly located adjacent and west of the 1600 Block of S. Ivy Street in the southwesterly portion of Canby. The site contains an unoccupied manufactured residential home. (See Attachment 1 – Locator Map).

The property is designated as Residential-Commercial (RC) on the City of Canby Comprehensive Plan Map as a result of a multiple property approved Comprehensive Plan Amendment (CPA 03-03) in 2003. This application is requesting a Land Use Plan Map Amendment to High Density Residential (HDR) to adequately accommodate the likely number of dwelling units of senior housing planned. An area annexed to the city shall be classified in the zone which best conforms to the land use map designation of the Comprehensive Plan, pursuant to Canby Municipal Code (CMC) 16.08.040. With approval of the Comprehensive Plan Land Use Map Amendment requested; if the property is annexed, the zone which best conforms to the amended land use map of the Comprehensive Plan is High Density Residential (R2).

In January, 2012 Hope Village approached the City Council pursuant to CMC 16.84.090 to request an exemption from the Development Concept Plan process for which a waiver was granted, similar to the adjacent 4 acre track which was annexed into the City last year.

Upon receipt of the Planning Commission's recommendation on this application, and after conducting a second public hearing to receive any additional testimony on the application the City Council may vote to either approve or deny the application. If the City Council approves the annexation and Comp Plan Amendment application, the City Recorder will return to Council with a ballot title appropriate to forward the question to Canby voters for the general election to be held on November 6, 2012.

Staff has prepared a suggested approval resolution (see Attachment 4) and Council Final Order (see Attachment 5) for your information based on the staff and Planning Commission recommendation and to facilitate continued timely processing of this request to a November vote should the Council look favorably on this request at this time.

Recommended Council Action

The Planning Commission forwarded the following recommendation to City Council with a staff recommended motion: I move that -

• The City Council approve ANN 12-01/CPA 12-01/ZC 12-01; submitting this annexation to

the electorate for a vote on the November 6, 2012 general election, that upon annexation the land use plan map be changed from Residential-Commercial (RC) to High Density Residential (HDR) designation, and that the zoning of the property be designated High Density Residential (R2) based on the facts, findings, and conclusions presented in the June 25th staff report and supporting findings from the July 9th Planning Commission and Council public hearings held.

Background

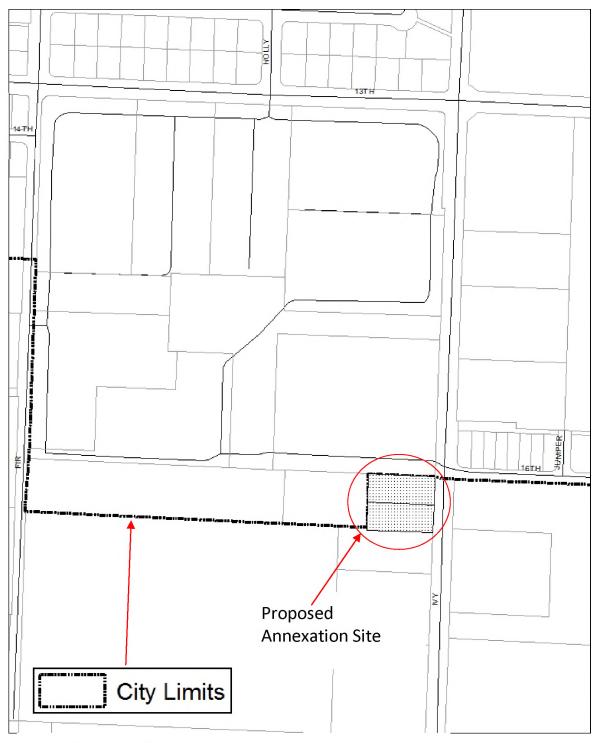
The Planning Commission held a public hearing on July 9, 2012 concerning this annexation, comprehensive plan amendment, and zone change application. The Planning Commission found that the applications meet all of the approval criteria set forth in Canby Municipal Code (CMC) 16.84, 16.88, and 16.54 respectively based upon information presented in the applicant's submittal, testimony presented at the public hearing, Commission deliberations (*Attachment 2 - Planning Commission draft minutes*), and the findings presented in the prepared June 25th, 2012 staff report (*Attachment 3 - Planning Commission staff report*).

Alternatives

1. As an alternative to the recommended action, the City Council may choose to deny the annexation application based upon modified findings, in which case the annexation will not be submitted to the voters of Canby and the Comprehensive Plan Amendment and zone change will not occur.

Attachments

- 1. Locator Map
- 2. Planning Commission Minutes (Draft) of July 9, 2012 (to be delivered separately after prepared prior to the hearing)
- 3. Planning Commission Staff Report and Exhibits Dated June 25, 2012
- 4. Prepared Approval Resolution
- 5. Prepared Council Final Order



CITY FILE #: Hope Village ANN 12-01; CPA 12-01; ZC 12-01 PROPERTY SIZE: The site is approximately 0.79 acres

TAX LOT: Map 4S-1E-4D **Lot #'s** 1100 & 1101

OWNER/APPLICANT: Hope Village, Inc.; Robert Price, Representative

MINUTES PLANNING COMMISSION

July 9, 2012 City Council Chambers – 155 NW 2nd Avenue

PRESENT: Chair Dan Ewert, Vice Chair Randy Tessman, Commissioners Sean Joyce, Charles

Kocher, John Proctor, Misty Slagle and Tyler Smith

ABSENT:

STAFF: Bryan Brown, Planning Director and Laney Fouse, Planning Staff

OTHERS: City Councilor Brian Hodson, Robert Price, Ron Berg and Craig Gingerich

1. CALL TO ORDER

Chair Ewert called the meeting to order at 6:00 pm.

2. CITIZEN INPUT ON NON-AGENDA ITEMS: None

3. PUBLIC HEARING:

a. Consider a request from **Hope Village**, **Inc.** for approval to: (1) Annex 0.79 acres of land in two tax lots owned by Hope Village; (2) Amend the Comprehensive Plan Land Use Map from Residential-Commercial (RC) to High Density Residential (HDR) to accommodate planned senior housing; and (3) Change the zone district from Clackamas County Exclusive Farm Use (EFU) to City of Canby High Density Residential (R-2).(ANN 12-01/CPA 12-01/ZC 12-01) Staff: Bryan Brown, Planning Director

Chair Ewert read the public hearing format. Commissioners stated they had no conflict of interest. Commissioners stated they had no exparte contact.

Bryan Brown, Planning Director entered his report into the record for the annexation of .79 acres of land in two tax lots owned by Hope Village. He said in order to get the high density zoning for this property the Comprehensive Plan needed to be amended. A zone change is also needed because the property is currently designated Clackamas County Exclusive Farm Use and needs to be designated City of Canby High Density Residential.

Mr. Brown said there will be no major issues with traffic. He also stated that a Development Concept Plan exception/waiver was granted by Council. This site, he said, can adequately be served by the utilities near the site and there are no adverse impacts or a need for traffic mitigation.

Mr. Brown said South Ivy Street should stay under the county's jurisdiction. He said the Annexation Land Supply analysis indicates need for R-2 zoning; public input supports application; the project seems to be noncontroversial; a neighborhood meeting was held and questions that were raised were adequately addressed, and staff received input from the City Engineer and utility agency.

Mr. Brown said there were no conditions placed on this project and staff recommends that the Planning Commission recommend the Council approve this for submission to electorate for a vote of the people.

Commissioner Joyce asked about the rezoning and if what utilities would impacted going further south.

Bryan - Any development

Lift station and where it's going to go.

Chair Ewert ask how many landowners are there in the 65 acres.

Mr. Brown explained how the annexation is set up - address the 65 acres and how the infrastructure is going to be handled

Chair Ewert asked at what point do we pull South Ivy St under our wing.

Mr. Brown said, when the other property is annexed we might consider it.

Chair Ewert asked about the county's regulations for sidewalks, etc., and would we be following City standards or county standards.

Mr. Brown said we were not certain at this point because the County didn't voice anything at this time, we don't know if it will be our standards or theirs and the City was not interested at this time.

Commissioner Kocher asked if any other driveway access was planned.

Mr. Brown said no driveway is planned at this time.

Applicant Robert Price, Hope Village representative said Mr. Brown's staff report and verbal deliver pretty much covered everything. Mr. Price explained that Hope Village was out of room and space to expand and this is what they anticipated doing. Mr. Price said the existing utilities will be able to serve this area. Mr. Price said there are sixteen property owners left to deal with that DCP issue.

Commissioners had no questions.

Chair Ewert closed the public hearing.

Commission Proctor moved the Planning Commission recommend to the City Council that:

- 1. ANN 12-01 be approved for submission to the electorate for a vote of the people;
- 2. That the accompanying Comprehensive Plan Amendment changing the Land Use Plan Map from the RC Residential Commercial designation to the HDR High Density Residential designation be approved; and,
- 3. Upon annexation, the zoning of the subject property be designated as R-2 High Density Residential.

Commissioner Joyce seconded the motion. Motion passed 5/0.

- 4. NEW BUSINESS None
- 5. FINAL DECISIONS NONE

6. MINUTES

a. Approval of June 4,2012 Special Planning Commission Minutes

Commissioner Kocher moved to adopt the June 4, 2012 minutes as written. The motion was seconded by Commissioner Proctor. The motion passed 4/0 with one abstention.

7. ITEMS OF INTEREST/REPORT FROM STAFF

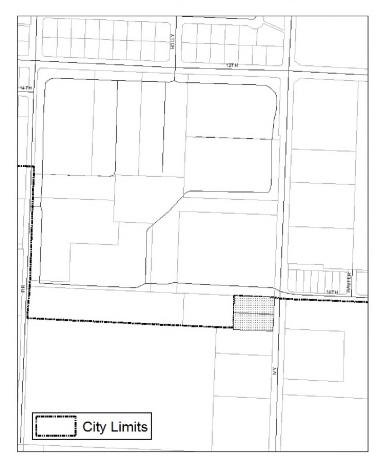
- a. Fred Meyer Fuel Station on next meeting agenda. Mr. Brown said there has been a lot of interest.
- 8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION None
- 9. ADJOURNMENT: 6:45p.m.



City of Canby

STAFF REPORT TO THE PLANNING COMMISSION FILE #: ANN 12-01/CPA 12-01/ZC 12-01

LOCATION: Adjacent and to the south of Hope Village fronting on S. Ivy Street (see map below)



PROPERTY SIZE: The site is approximately 0.79 acres

TAX LOT: Map 4S-1E-4D Lot #'s 1100 & 1101

<u>COMPREHENSIVE PLAN DESIGNATION</u>: Residential-Commercial (RC) <u>ZONING DESIGNATION</u>: Clackamas County Exclusive Farm Use (EFU) <u>OWNER/APPLICANT</u>: Hope Village, Inc.; Robert Price, Representative

<u>DATE OF REPORT:</u> June 15, 2012 <u>DATE OF PUBLIC HEARING</u>: June 25, 2012

I. PROJECT OVERVIEW & EXISTING CONDITIONS

The applicant is requesting to annex approximately 0.79 acres of property that was recently purchased by Hope Village with expansion of their senior housing campus in mind. They intend to combine this tract with their successful annexation last year of 4 acres contiguous to the west of this tract. The zoning needed to accommodate the density of development contemplated and to match that approved for the contiguous property in last year's annexation, calls for the assignment of High Density Residential (R-2) zoning. This zone change from the existing Exclusive Farm Use (EFU) county designation is not possible without also amending the City of Canby Comprehensive Land Use Plan Map from its current Residential-Commercial (R-C) designation to the High Density Residential (HDR) designation. The concurrent request for a Comprehensive Plan Amendment will allow the desired zoning map amendment that will allow designation of high density residential zoning to the property.

Hope Village intends to combine the previously annexed 4-acre tract with this 0.79 acre to develop senior housing at the required minimum of 14-units per acre or more with the requested zoning. No development proposal or site plan is submitted for review or approval at this time. Therefore, for purposes of analysis, only the effects of the annexation, comprehensive plan amendment and zone change should be considered with this application. A specific development proposal for this property will come later if this proposal is approved and recommended to be placed on the November 2012 ballot for voter approval.

II. ATTACHMENTS

- A. Applicant Submitted Application containing:
 - a. Application forms 3
 - b. Introduction
 - c. Introduction of the Site and Surrounding Area
 - d. Approval Criteria
 - e. Neighborhood meeting summary
 - f. Engineers Statement Regarding Adequacy of Infrastructure Services
 - g. Legal Description of Property, Tax Lot Maps
 - h. Conceptual Development Plan for Illustration Only
 - i. Council Approved Annexation Development Concept Plan Waiver Applicant Letter Dated 11.20.2011 and Staff Report for 1.04.12 Council Mtg.
- B. Staff's Annexation Land Supply Analysis (Utilized with This and Last Year's Request)
- C. Traffic Impact Study contracted by applicant with the City's Consulting Traffic Engineer
- D. Citizen Comments
- E. Comprehensive Plan Land Use Map Existing and Proposed
- F. Zoning Map Existing and Proposed

III. Applicable Review Criteria & Findings

Major approval criteria used in evaluating this application include the following Chapters from the *City of Canby's Municipal Code including the Land Development and Planning Ordinance*(Title 16):

- 16.84 Annexations
- 16.88 Comprehensive Plan Amendments
- 16.54 Amendments to Zoning Map
- 16.89 Application and Review Procedures

Staff Report Approach: This staff report incorporates and references the findings within the applicant's narrative submittal to describe compliance with most applicable approval criteria. The applicant submitted aland supply analysis which was produced by staff in conjunction with their prior application made last year which was deemed to be equally applicable for this request.

Excerpts from the code are highlighted below in *gray*, with findings and discussion after the code citations within a red box. If not discussed below, other standards from the Code are either considered to be fully met by the applicants submittal and findingsand/or do not warrant discussion.

Chapter 16.84Annexation Compliance

16.84.040.A.1.b. Annexation Development Map.

- A. The following criteria shall apply to all annexation requests.
 - **1.** The City of Canby Annexation Development Map shall determine which properties are required to submit either (See Figure 16.84.040):
 - a. A Development Agreement (DA) binding for all properties located within the boundaries of a designated DA area as shown on the City of Canby Annexation Development Map. The terms of the Development Agreement may include, but are not limited to:
 - 1. Timing of the submittal of an application for zoning
 - Dedication of land for future public facilities including park and open space land
 - 3. Construction of public improvements
 - 4. Waiver of compensation claims
 - 5. Waiver of nexus or rough proportionality objections to future exactions
 - 6. Other commitments deemed valuable to the City of Canby

For newly annexed properties that are within the boundaries of a DA area as designated on the City of Canby Annexation Development Map: A Development Agreement shall be recorded as a covenant running with the land, binding on the landowner's successors in interest prior to the City Council granting a change in zoning classification.

- **b.** A Development Concept Plan (DCP) binding for all properties located within the boundaries of a designated DCP area as shown on the City of Canby Annexation Development Map. A Development Concept Plan shall address City of Canby infrastructure requirements including:
 - 1. Water
 - 2. Sewer
 - 3. Storm water
 - 4. Access
 - 5. Internal Circulation

- 6. Street Standards
- 7. Fire Department requirements
- 8. Parks and open space

For newly annexed properties that are within the boundaries of a DCP area as designated on the City of Canby Annexation Development Map: A Development Concept Plan shall be adopted by the Canby City Council prior to granting a change in zoning classification. (Ord 1294, 2008)

<u>Findings</u>: The 2 tax lots which are a part of this annexation do not lie within a defined Development Agreement Area so are exempt from those provisions so this criterion is not applicable. The subject property is within a Development Concept Area. However, CMC 16.84.090 Exceptions – allows the City Council to authorize an exception to any of the requirements of the annexation chapter. The applicant made a request to the Council to waive the requirement to submit and gain approval of a concept plan for the larger area containing this property and the City Council exempted the applicant from this requirement at its January 4, 2012 regular meeting. Therefore, this criterion has been exempted and is not applicable.

<u>Criteria 16.84.040.A.2</u> Analysis of the need for additional property within the city limits shall be provided. The analysis shall include the amount of developable land (within the same class of zoning — low density residential, light industrial, etc.) Currently within the city limits; the approximate rate of development of those lands; and how the proposed annexation will affect the supply of developable land within the city limits. A supply of developable residential land to provide for the anticipated population growth over the following three years is considered to be sufficient.

Findings: A land needs analysis is required with all annexations to assess the current amount of developable land within the same class of that proposed. The applicant submitted an analysis performed by staff and utilized with their contiguous annexation application made last year. It has been determined that the same study is applicable to for this request. It demonstrates that there is less than a three-year supply of High Density Residential (R-2) zoned land. There is a High Density Residential (R-2) zone deficiency within the City Limits and a long-term High Density Residential HDR) designation deficiency within the UGB. Therefore, the supply does not exceed a three-year supply so a "need" for high density residential land exists. A 3-year supply of HDR land at the estimated consumption rate is not available. Staff concurs and incorporates the applicant's narrative as findings with the exception that the "Growth Priorities" map on page 32 of the Comp Plan is no longer applicable since the Land Development Code was amended to alter the annexation section eliminating priority areas in favor of the Concept Development Plan and/or Development Agreement areas.

<u>Criteria 16.84.040.A.3</u> Statement of potential physical, aesthetic and related social effects of the proposed development on the community as a whole and on the neighborhood of which it will become a part; and proposed actions to mitigate

identified concerns, if any. A neighborhood meeting is required as per Table 16.89.020 of the City of Canby Land Development and Planning Ordinance.

<u>Findings</u>: This staff report incorporates the relevant section of the applicant's narrative as findings. Future development is anticipated to develop the site at a density of 16 units per acre. This development will be residential, better matching the area than what would be possible under the existing RC Comp Plan designation. Potential traffic generation has been shown to likely be less than that allowed under the current designation. Staff does not foresee any significant impacts from the proposal or need to mitigate any concerns. This applicable criterion has or can be met at the time of development.

<u>Criteria 16.84.040.A.4</u>Statement of availability, capacity and status of existing water, sewer, drainage, transportation, park and school facilities.

<u>Findings</u>: This staff report incorporates the relevant section of the applicant's narrative as findings. The applicant included a report by John Middleton, P.E. with ZTec Engineers to demonstrate that utility infrastructure will be available, with adequate capacity to serve the eventual planned development. Staff agrees that park and school facilities will not be significantly impacted if developed as senior housing. The chance this annexation will not develop as senior housing is insignificant. This applicable criterion has or can be met at the time of development.

<u>Criteria 16.84.040.A.5</u>Statement of increased demand for such facilities to be generated by the proposed development, if any, at this time.

<u>Findings</u>: Staff accepts the relevant section of the applicant's narrative as findings. The demand for senior housing expansion is evident from the applicant and for high density housing in Canby. Staff finds that the applicant narrative is sufficient and the applicable criteria are or can be met.

<u>Criteria 16.84.040.A.6</u> Statement of additional facilities, if any, required to meet the increased demand and any proposed phasing of such facilities in accordance with projected demand.

<u>Findings</u>: This staff report incorporates the relevant section of the applicant's narrative as findings. According to ZTec's report and utility provider statements, utility capacity is available, and no facilities need increasing as a result of this proposal. Staff finds that the applicant narrative is sufficient and this criterion is or can be met.

<u>Criteria 16.84.040.A.7</u> Statement outlining method and source of financing required to provide additional facilities, if any.

<u>Findings</u>: This staff report incorporates the relevant Section of the applicant's narrative as findings. No financing is needed as Hope Village will pay for necessary costs of its own development, and normally associated adjacent street and sidewalk improvements and utility extension connections which are nearby.

<u>Criteria 16.84.040.A.8</u> Statement indicating the type and nature of any comprehensive plan text or map amendments or zoning text or map amendments that may be required to complete the proposed development.

<u>Findings</u>:Staff finds a misstatement in the first sentence of the applicant's narrative. The correct response indicated elsewhere in the application is that a Comprehensive Plan Amendment is requested and needed with this application in order to amend the current RC land use designation to the HDR land use designation which would then align with the applicant's desired R-2 High Density Residential zoning assignment upon annexation. This zoning is more in keeping with the residential use planned and will allow the potential residential density that is likely to exceed that allowed by the current Comprehensive Plan land use designation. Staff accepts and incorporates the remaining relevant section of the applicant's narrative as findings. With this supplemental finding along with the applicant's finding the criteria is met.

Criteria 16.84.040.A.9 Compliance with other applicable city ordinances or policies.

<u>Findings</u>:Staff incorporates the relevant section of the applicant's narrative as applicable findings that would indicate compliance with all city ordinances and policies.

<u>Criteria 16.84.040.A.10</u>Compliance of the application with the applicable sections of Oregon Revised Statutes Chapter 222.

<u>Findings</u>:Staff incorporates the relevant section of the applicant's narrative as findings. The application complies with all applicable Oregon Revised Statutes. The applicable criteria can be met.

Chapter 16.88Comprehensive Plan Amendment Analysis

16.88.180.C Comprehensive Plan Amendments In judging whether or not a legislative plan amendment shall be approved, the Planning Commission and City Council shall consider:

1. The remainder of the Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, in order to preserve functions and local aspects of land conservation and development;

<u>Findings</u>: Staff incorporates the relevant section of the applicant's narrative as sufficient findings to show this criterion has been met.

2. A public need for the change;

<u>Findings</u>: Staff incorporates the relevant section of the applicant's narrative as sufficient findings to show this criterion has been met.

Whether the proposed change will serve the public need better than any other change which might be expected to be made; <u>Findings</u>: Staff incorporates the relevant section of the applicant's narrative as sufficient findings to show this criterion has been met.

4. Whether the change will preserve and protect the health, safety and general welfare of the residents in the community;

<u>Findings</u>: Staff incorporates the relevant section of the applicant's narrative as sufficient findings to show this criterion has been met.

5. Statewide planning goals.

<u>Findings</u>: Staff incorporates the relevant section of the applicant's narrative as sufficient findings to show this criterion has been met.

Chapter 16.54Amendments to the Zoning Map Analysis

The assignment of an appropriate zoning district is a part of any annexation application within the City of Canby. The approval criteria are similar to that for approval of an annexation.

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;

<u>Findings</u>: Staff incorporates the relevant section of the applicant's narrative as sufficient findings to show this criterion has been met. We supplement the applicant's findings in relation to the applicability of Policy 6 of the Land Use Element of the Comprehensive Plan in regard to "Areas of Special Concern". This policy mentions the need for special access considerations and treatment for all property shown on the Land Use Map within the "Residential-Commercial" category having frontage on S. Ivy Street. Staff has determined this concern is not really applicable to this request since the Comp Plan designation is requested to be changed away from the RC designation and this particular property is not shown on the "Areas of Special Concern" map within the Comprehensive Plan. It is understood that direct access is not

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)

<u>Findings</u>: Staff incorporates the relevant section of the applicant's narrative as sufficient findings to show this criterion has been met. There will be necessary infrastructure improvements which will be applicable at the time of development of the annexed property. No special utility extension or capacity issues were noted in the report prepared by ZTec Engineers or from the

City Engineers review of this application. Additionally, the application was forwarded to all public facility and service providers for comment and to date no responses of any concern with future service provision have been noted. This criterion is judged to be satisfied.

16.08.150 Traffic Impact Study (TIS)

- A. <u>Determination.</u>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 Comp Plan Map Amendment or Zoning Map Amendment. Therefore, staff required that a Traffic Impact Study be prepare for this application. The TIS is included as attachment C to this staff report. The findings of the TIS determined that the Comp Plan Amendment and zone change from the proposed annexation would not have any significant effect on the surrounding transportation network, and no mitigation measures would be required to satisfy TPR requirements. The P.M. peak hour trip potential under the reasonable worst-case development scenario would be less under the proposed HDR Comp Plan designation than the existing RC designation. The increase in traffic over the existing EFU zoning from one P.M. peak hour trip to 14 would not significantly affect the surrounding transportation system and the TSP anticipated and took into account a reasonable worst case traffic generation scenario greater than the HDR Comp Plan Amendment proposed. This review criterion is met.

Chapter 16.89.060 Process Compliance

16.89.060 Type IV Decision.

For certain applications, 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.**<u>Pre-application conference.</u> 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.**<u>Application requirements.</u> 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.**<u>Public notice and hearings.</u> 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:

- 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)

<u>Findings</u>:Annexations are processed as a Type IV "quasi-judicial" process which is considered through a public hearing with a recommendation made by the Planning Commission and decision by the City Council if they determine to set the request for a voter approval on the

November, 2012 general ballot. The notice requirements are the same as for Type III applications. Notice of this application and the Planning Commission and Council Hearing dates to be held was made to surrounding property owners on June 1, 2012, at least 20-days prior to the hearing. The applicant provided prior notification and held a neighborhood meeting on February 20, 2012 and provided a summary of that meeting as attachment A.e to this report. The site was posted with a Public Hearing Notice sign on June 15, 2012. A notice meeting ordinance requirements of the public hearings was published in the Canby Herald on June 20, 2012. The Planning Director waived the requirement for a pre-application meeting for this request. The Planning Commission submits a recommendation to the City Council for a decision to refer the annexation to the voters for a general election. These findings indicate that all processing requirements have been satisfied with this application.

Neighborhood Meeting Held.

The applicant held a neighborhood meeting on February 20, 2012 after sending a postcard to neighboring property owners and residents within a 500 foot radius of the property to be annexed. Questions that were raised appear to have been adequately addressed at that meeting.

<u>Findings</u>: The holding of the informative neighborhood meeting satisfies this applicable criterion.

Public Testimony Received

Notice of this application and opportunity to provide comment was mailed to owners of lots within 500 feet of the subject properties and to all applicable public agencies and City departments on June 1, 2012. As of the date of this Staff Report, the following comments were received by City of Canby from the following persons/agencies:

Agency/City Department Comments.

Comments were received from the following agencies/city departments:

· Hassan Ibrahim, City Engineers Office

June 1, 2012

MEMORANDUM

Mr. Bryan Brown City of Canby Planning Director

FROM: Hassan Ibrahim, P.E. Curran-McLeod, Inc.

CITY OF CANBY HOPE VILLAGE EXPANSION (ANN 12-01)

We have the following comments and recommendations on the above mentioned annexation:

- Half street improvements along the entire site frontage with S. Ivy Street will be required and constructed to City or Clackamas County Street Standards to include curbs, sidewalks, street lights, landscaping and utilities extended to the project boundary as necessary. The applicable standards will be as agreed upon by both municipalities.
- Access spacing shall meet the City or Clackamas County Access Management Standards as determined.
- All private storm drainage must be retained on-site to City Standards and in accordance with DEQ guidelines using acceptable disposal means.
- Sanitary sewer service connection to this parcel is available at the intersection of S. Ivy Street and SE 16th Avenue.

We have no concerns about the proceedings with this project subject to the above stated comments.

General Public Input.

- Letter from Robert & Miriam Kinder in support of this application.
- Letter from Scott Gustafson in support of this application.
- Letter from Bob Kauffman in support of this application.
- Letter from Clayton & Jean Metzger in support of this application.
- Letter from Buzz Weygandt in support of this application.

Conclusion Regarding Consistency with the Standards of the Canby Municipal Code

Staff concludes, as detailed in the submittal from the applicant and as detailed herein 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 all of the conditions contained in this staff report are applied.
- 2. The requirement for submittal and approval of a Development Concept Plan in conjunction with this annexation request was provided an exception through a formal waiver by the City Council prior to the application being submitted.
- 3. The proposed annexation meets the approval criteria set forth in CMC 16.84.040.A.
- 4. The Comprehensive Plan Amendment meets the approval criteria set forth in CMC 16.88.180.C, making the requested change in the Land Use Plan Map designation from RC to HDR appropriate.
- 5. The zoning of the property, if annexed, should be R-2 pursuant to the approval criteria set

- forth in CMC 16.54.040.
- 6. The proposed annexation's desired zoning district of R-2 is in conformance with the concurrent requested ComprehensivePlan Land Use Plan Map Amendment.
- 7. The application complies with all applicable Oregon Revised Statutes.
- 8. There are sufficient public and private utility and service capacity to serve the site at the minimum and anticipated development intensity.
- 9. The "County Maintained Roads within the City of Canby " map shows S. Ivy as a County Maintained Arterial Road which should currently stay under the County's jurisdiction and not be annexed at this time.
- 10. If in the unlikely event this property is developed as non-senior residential units as currently planned, there would be school enrollment impacts.
- 11. It has been determined there is currently less than a three-year supply of High Density Residential (R-2) zoned land within the City limits a policy set by the Canby City Council to guide decisions on annexation requests. There is a High Density Residential (R-2) zone deficiency within the City Limits and a long-term High Density Residential (HDR) designation deficiency within the UGB. Therefore, the supply does not exceed a three-year supply and there is a "need" for high density residential zoned land at this time.

16.89 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:

- 1. ANN 12-01 be approved for submission to the electorate for a vote of the people;
- 2. That the accompanying Comprehensive Plan Amendment changing the Land Use Plan Map from the RC Residential Commercial designation to the HDR High Density Residential designation be approved; and,
- 3. Upon annexation, the zoning of the subject property be designated as R-2 High Density Residential.



City of Canby Planning Department 170 N. 2nd Avenue P.O. Box 930 Canby, OR 97013 Ph: 503-266-7001 Fax: 503-266-1574

LAND USE APPLICATION:

ANNEXATION – Process Type IV

APPLICANT INFORMATION (Check ONE box below for		pers	on regar	ding this a	oplication)	
Applicant Name: Hope	Village Inc.				Daytime Phone	:503-266-9810
Mailing Address: 1535	S. Ivy St.				Fax Number:	503-263-7854
City/State: Canby, OR		Zip	97013		_Email:	craig@hopevillage.org
Representative Name:	Robert Price				Daytime Phone	: 503-807-4009
Mailing Address: 3935 N	IE 72 nd Avenue				Fax Number:	503-281-1447
City/State: Portland, Of	₹	Zip _	97213		Email:	rprice5956@comcast.n
Property Owner Name: _ Signature:	Hope Village Inc.		***		_Daytime Phone	: 503-266-9810
Mailing Address: 1535 S	S. Ivy St.				Fax Number:	503-263-7854
City/State: Canby, OR		Zip	97013		Email:	criag@hopevillage.org
Property Owner Name:	N/A	_			_Daytime Phone):
Signature:	Falight S				- N	
Mailing Address:				·	Fax Number:	
City/State:		Zip			_Email:	
 NOTE: Property owners or contract purchasers are required to authorize the filing of this application and must sign above All property owners represent that they have full legal capacity to and hereby do authorize the filing of this application and certify that the information and exhibits herewith submitted are true and correct. All property owners understand that they must meet all applicable Canby Municipal Code (CMC) regulations, including but not limited to CMC Chapter 16.84 Annexation standards. All property owners hereby grant consent to the City of Canby and its officers, agents, employees, and/or independent contractors to enter the property identified herein to conduct any and all inspections that are considered appropriate by the City to process this application. 						
PROPERTY INFORMATIO	<u>N</u> :					
1665 S. Ivy St.				0.79 acre	T4S,	R1E, Section 4, TL 1100
(Street Address or Location	of Subject Property)	-	(Total Size	e of (Asse	ssor Tax Lot Numbers)
Rural res. modular dwell	ing			EFU (ClackCo		esource (ClackCo)
(Existing Use, Structures, C	Other Improvements	on S	Site)	(Zoning)		Plan Designation)
PROPOSED PROJECT INFORMATION:						
The site will be part of Hope Village's future growth. See attached narrative.						
(Describe the Proposed Development or Use of Subject Property)						
STAFF USE ONLY – DO NOT WRITE BELOW – STAFF USE ONLY						
ANN /2-01 CPA 12-01 2C 12-01 2	28.12	Z	CB/C	erla	9272	
FILE# D	ATE RECEIVED	R	ECEIVED	BY	RECEIPT#	DATE APP COMPLETE

COMPREHENSIVE PLAN AMENDMENT APPLICATION

Fee \$3,220.00 Process Type IV

OWNERS					APPLICANT*			
Name <u>Hope Village</u>	Inc.			Name	Robert Price			
Address 1535 S. Iv	y St.			Addre	ss <u>3935 NE 72</u>	nd Aver	nue	
City <u>Canby</u>	State 9	OR Zip <u>9701:</u>	3	City P	ortland	State	OR Zip <u>97213</u>	
Phone <u>503-266-98</u>	10	Fax <u>503-2</u>	63-7854	Phone	503-807-4009		Fax <u>503-281-14</u>	47
E-mail craig@hopevillage.org			E-mai	E-mail rprice5956@comcast.net				
Please indicate who is to receive correspondence (i.e. staff reports etc) and what format they are to be								
sent Owner Applicant	\boxtimes	Email Email	\boxtimes	US Postal US Postal		Fax Fax		
OWNER'S SIGNA	TURE	Jungs	Hange !	5_				
		DES	CRIPTION	OF PROP	ERTY			
Address 1665 S. Ivy. St.								
Tax Map T4S, R1 0.79 ac.	E, Section	<u>14</u>		Tax Lot	(s) <u>1100 & 110</u>		Lot Siz Acres/Sq.Ft.)	ze
Existing Use Rura	res.					(4	Acres/04.1 t.)	
Proposed Use senior housing								
Existing Structures modular res. plus outbuildings								
Zoning <u>EFO (Cla</u> (ClackCo)	ckCo)			Comp	rehensive Plan	Design	nation <u>Ag. Resour</u>	ce
Previous Land Use Action (If any)								
	File #:	CPA 12-0		USE ONI	_Y			

Date Received: 2.28-12 By: BCB/CA

Hearing Date: 6.23.12 fc + 7.18.12 CC

Completeness:
Pre-App Meeting:

^{*}If the applicant is not the property owner, he must attach documentary evidence of his authority to act as agent in making this application.

CITY OF CANBY ZONE MAP CHANGE APPLICATION

Fee \$2,640

OWNERS

APPLICANT**

Name <u>Hope Village I</u>	nc.	Name Robert Price						
Address <u>1535 S. lvy</u>	St.	Address 3935 NE 72 nd	Avenue					
City <u>Canby</u>	State OR Zip 97013	City Portland.	State OR Zip 97213					
Phone <u>503-266-9810</u>	Fax <u>503-263-7854</u>	Phone <u>503-807-4009</u>	Fax <u>503-281-1447</u>					
E-mail <u>craig@hopevi</u>	illage.org	E-mail rprice5956@comcast.net						
✓ Owner✓ Applicant	☐ Email ☐ US	staff reports etc) and what Postal Postal	at format they are to be sent Fax Fax					
OWNER'S SIGNATU		S	*					
	DESCRIPTION OF PROPERTY							
Address 1665 S. Ivy	St.							
Tax Map <u>T4S, R1E,</u>	Section 4 T	Tax Lot(s) 1100 & 1101 Lot Size 0.79 a						
Existing Use Rural res. (Acres/Sq.Ft.)								
Proposed Use senion	r living							
Existing Structures modular home and outbuildings								
Zoning EFU (ClackCo) Comprehensive Plan Designation Ag. Resource								
Project Description Annexation, Comp Plan Amend (to High Den Res), and Zone Change (to R-2)								
Previous Land Use A	ction (If any)							
	FOR CITY	USE ONLY						
File #: 2C12-01								
Date Received: 2.28-12 By: BcB/CA								
	Completeness:							
	Pre-App Meeting: Hearing Date: 4 2 6 /1 AC	~ 1/8 to 00						
	Hearing Date: 4 26 /X /fC	P 1,10,17 (C)	1					

^{**}If the applicant is not the property owner, they must attach documentary evidence of their authority to act as agent in making this application.

Introduction

Hope Village, Inc. ("Hope Village") has recently acquired a parcel of land that adjoins the existing Hope Village campus and the 4-acre parcel that was recently approved for annexation to the city by the Canby voters in November 2011. Because the timing of this current acquisition did not coincide with the process for applying to the city for annexation of the 4-acre parcel, Hope Village wishes to annex to the City of Canby this current site of 0.79 acre adjacent to the existing Hope Village campus in the southeasterly portion of the Canby urban area. The purpose of the annexation is to allow further expansion of the Hope Village campus to include an additional not less than 14 units per acre designed for senior adult living.

Hope Village is a retirement community that is well established in Canby and is a viable and active participant in the Canby community. The existing 33-acre campus is located at the southeast corner of 13th Avenue and Ivy Street and the southern boundary has been the Canby city limits. Hope Village is firmly established in Canby, and wishes to remain a part of the community for many, many years to come. And with the coming peak of the "baby boomer" generation where many more citizens will be coming of retirement age, the future for Hope Village is bright. However, in order for Hope Village to be a participant in providing additional retirement facilities for the coming wave of "boomers", some expansion will be necessary. Already filled to capacity and with a waiting list, Hope Village wishes to take this opportunity to expand further onto this adjacent site.

Hope Village recently succeeded in annexing a 4-acre site that is contiguous to the current parcel on the westerly side, as shown on the accompanying maps. That recent application was unanimously approved by both the Canby Planning Commission and the Canby City Council, and was placed on the November 2011 ballot for approval by the Canby voters.

Hope Village purchased this 0.79 acre site recently from the owners (Robert Pendell) with the idea of expansion. In actual fact, Hope Village has been investigating the opportunities for expansion for several years, and came to a successful agreement with the Pendells to acquire this final site in the east-west strip between Fir and Ivy Streets. The potential addition of 0.79 acre would provide for approximately 14 additional units would provide Hope Village with even more opportunities to serve a greater population of residents. To this end, this annexation is applied for.

As part of the annexation process, Hope Village must request a Comprehensive Plan Amendment to the Canby Comprehensive Plan to change the designation of the site to High Density Residential from the current Residential-Commercial designation. Although the site is within the Canby Urban Growth Boundary, Clackamas County's Comprehensive Plan has the subject site designated for Agricultural Resource.

In addition, an amendment to the city's zoning map is required. Because the site is currently zoned Exclusive Farm Use (EFU) in Clackamas County, it must be zoned differently once it is annexed. The city's designation on it's Comprehensive Plan is Residential-Commercial. This designation does not provide quite enough flexibility for higher density residential development for senior living. Thus, the High Density Residential designation is appropriate, necessitating a change to the zone that matches

this Comprehensive Plan designation. This would be the R-2 (High Density Residential) zone. Therefore, this application also requests a zone map amendment to R-2.

No other regulatory actions are requested, whether conditional use, variance, or other action. The development proposed by Hope Village can be accommodated in the subject site without any other regulatory actions. No specific site development plan is proposed at this time, simply because Hope Village has to be sure the site will be annexed by a vote of the citizens of Canby on the November 2012 ballot. Once the annexation is approved by the voters, and the Comprehensive Plan designation is set at High Density Residential, and the zoning is R-2 (High Density Residential), Hope village may then proceed with planning for the future development of the total 4.79 acre site.

Description of the Site and Surrounding Area

The 0.79 acre site is a rectangular piece of property, comprised of two tax lots, one 0.40 acre in size and the second is 0.39 acre in size. The legal description of the two parcels is Tax Lots 1100 and 1100, of Tax Map 4S-1E-4D. These two tax lots comprising the total 0.79 acre parcel are oriented in an east-west direction. See attached copy of the Assessor's map, surveyor's legal description and surveyor's map.

The site is adjacent to and abuts the Hope Village campus for approximately 234 feet at the southeasterly corner of the Hope Village campus. The entire 234 feet (+/-) makes up a portion of the southerly boundary of the Marquis Care site, which Hope Village owns but does not operate. Marquis Care operates the Assisted Living & Skilled Nursing and Rehabilitation facilities on the Hope Village campus. The subject parcel is approximately 165 feet in uniform width (see map).

The site is basically flat and level, and is currently occupied by one manufactured residential structure, a detached shop building, and one or more worn out storage structures. The residence is currently vacant of owner-occupants or renters. The site is served by an onsite subsurface septic system and a well.

The site is similar in character to most of the surrounding area in the southwesterly Canby area. The area is currently rural in nature and contains larger lot single-family and agricultural uses. The land is generally flat and level, but slopes gently off to the south near the Molalla River. Development is limited in this area, with Hope Village being the greatest level of urban development. The area is served by Fir and Ivy Streets, both of which are north-south streets. The most significant east-west street is 13th. However, the city's Comprehensive Plan identifies another future east-west street at approximately equivalent to 17th that will connect Fir and Ivy. The location of this extension of 17th is not part of Hope Village's site.

The area south of Hope Village is outside the city's corporate limits, but within the Urban Growth Boundary (UGB) south to the crest of the bluff overlooking the Molalla River. Land south of Hope Village, including the proposed annexation site, is zoned Exclusive Farm Use (EFU) by Clackamas County.

There continues to be considerable farming activity in the immediate vicinity, and most is outside the city limits. Urban development is gradually increasing in this neighborhood area, while there are several farm and non-farm related dwellings on various properties in this local area. It appears that most urban infrastructure has been extended south in this area to be very near most properties that may wish to be annexed. As such, local services and facilities should not be a problem for the proposed annexation, or for other smaller scale annexations in the future.

Current access to Hope Village is via Ivy Street on the easterly side of the campus. Access to the 0.79 acre site is currently via two driveways on Ivy Street. This additional 0.79 acre site will be combined with the recent four acre site approved for annexation, and it is likely that the entire 4.79 acre site will be developed as a unit by Hope Village. At this time, it is not possible to determine if access directly onto Ivy Street will continue. That decision will be made as part of the future site development process. All streets within the Hope Village campus are private streets, not under the jurisdiction of the City

of Canby. Fire access will remain as it is at the present time, via Ivy Street with individual access via the internal private streets.

Approval Criteria

There are a number of approval criteria contained in the Canby Municipal Code that must be addressed as part of the application for annexation. As part of the annexation process, an amendment to the Canby Comprehensive Plan is required to provide a designation to the properties to be annexed, which were previously (prior to annexation) designated "Agricultural Resource" by Clackamas County. In addition, a zone change must also be requested concurrently with the annexation. The bulk of the criteria are contained in CMC 16.84 Annexations and CMC 16.54 Amendments to Zoning Map, although there are other criteria to address including Policy 6, and others, of the Canby Comprehensive Plan; any criteria and/or requirements contained in the Urban Growth Management Agreement with Clackamas County; and State Statutes, ORS 195.065 and 222. Finally, we have addressed CMC 16.20, High Density Residential Zone because the R-2 zone is what Hope Village requests as part of the zone map amendment process.

CMC 16.84, Annexations

The specific criteria under which the City will consider the annexation request are contained in <u>CMC 16.84.040 Standards and criteria</u>. These criteria are addressed as follows:

- A. The following criteria shall apply to all annexation requests.
 - 1. The City of Canby Annexation Development Map shall determine which properties are required to submit either (See Figure 16.84.040):
 - **a.** A Development Agreement (DA) binding for all properties located within the boundaries of a designated DA area as shown on the City of Canby Annexation Development Map.

<u>Finding:</u> Because the subject 0.79 acre site is not within a designated Development Area on the City's Annexation Development Map, this particular criterion is not applicable to the proposed annexation by Hope Village.

- **b.** A Development Concept Plan (DCP) binding for all properties located within the boundaries of a designated DCP area as shown on the City of Canby Annexation Development Map.
- Finding: The subject 0.79 acre site is located within the Southwest Canby DCP Area and would be subject to the requirements of a Development Concept Plan. However, as part of this current annexation application, Hope Village has requested that the Canby City Council exempt Hope Village's proposed 0.79 acre annexation from the DCP. After due consideration of the facts and the issues, on January 4, 2012 the Canby City Council voted unanimously to exempt Hope Village's proposed 0.79 acre annexation from the requirement for preparation of a DCP. Therefore, this criterion will not be applicable to the proposed annexation by Hope Village.
- 2. Analysis of the need for additional property within the city limits shall be provided. The analysis shall include the amount of developable land (within the same class of zoning low density residential, light industrial, etc.) currently within the city limits; the approximate rate of development of those lands; and how the proposed annexation will affect the supply of developable land within the

city limits. A supply of developable residential land to provide for the anticipated population growth over the following three years is considered to be sufficient; The applicant has reviewed available data and determined that Findina: the City currently is deficient in its supply of high density residential land within the City limits due to the influx of new housing starts that have occurred over the last 10 to 15 years.

Data on buildable lands includes the City Comprehensive Plan updated in 2007, a 1999 Land Needs Study prepared by OTAK Inc. and a School District Enrollment forecast prepared by Portland State University Population Research Center dated February 2009, and recent analysis by city staff for the previous four acre annexation request by Hope Village. Although the Comprehensive Plan was updated in 2007, the populations and buildable lands component of the plan were not updated and the data dates back to 1980. The 1999 Buildable Lands Analysis is now over 10 years old. Therefore the most useful data includes the 2009 PSU School District Enrollment Study as well as available GIS information, and the city staff's analysis of Hope Village's previous annexation application of earlier in 2011 for the 4.0 acre Scott parcel.

The criterion calls for two parts: 1) to identify buildable lands within the City, and 2) Identify the rate of development of those lands. The analysis completed by city staff for the 4-acre annexation is reflected in the Staff Report on pages 8 through 15, inclusive. Those pages have been appended to this application narrative.

The result of that analysis is that there is less than a three-year supply of High Density Residential (R-2) land within the city's buildable and developable inventory. The City Council has determined that such deficiency can be addressed through annexation of lands that are appropriate to be zoned R-2, as is the case for this 0.79 acre site. Adding 0.79 acre to the numbers provided by the staff analysis would result in a continuing deficiency of R-2 lands, improved only by adding this small 0.79 acre parcel.

If the city maintains 3,428 total acres within its city limits and its UGB, the 47.53 acres of High Density Residential land (including the recently approved 4-acre parcel) represents 1.4% of the total land area. The subject site, at 0.79 acre, represents 0.023% of the total. This is an extremely small percentage, and overall amount of land to be annexing to the city and developing as originally envisioned when the High Density Residential designation was applied.

According to the "Growth Priorities" map on page 32 of the Plan, the subject site is within Priority Area "A", which is seen as the area where growth will take place initially. The annexation of the subject site certainly falls within the first priority to preserve and protect agricultural land and to provide area efficiently for urbanizable land, fulfilling this element of the Plan. This conversion of land from rural (agricultural) to urban (residential, senior living) is an orderly means of development in Canby.

While the Comprehensive Plan suggests a growth in the city to a population of approximately 20,000 by the year 2000, the current economic downturn has derailed that expectation. Nevertheless, it is important that Canby continue its

Approval Criteria 02-10-12 City Council Packet Page 63 of 217 growth in a means other than the red-hot single family process that occurred in the first half of the first decade of the new millennium. The annexation and development of the site for senior living as part of an expansion of Hope Village will help the city to grow, but in a different manner than in the recent years.

With development of approximately 11 units on 0.79 acre at a density of 14 units per acre, a growth of approximately 17 persons based on a conservative household size of 1.5 persons. This growth will benefit the city because of the economic support that senior citizens will provide to the community. It is likely, however, that this level of growth may be higher than what will occur in the single family residential zones.

According to the staff analysis, the City of Canby has 47.53 acres of developable high density land within its total UGB. Adding 0.79 acre to this overall total will result in a new total of 48.32 acres of land for high density residential use. The calculated deficiency of High Density Residential designated land is now 52.2 acres (after deducting the 4-acre site recently approved for annexation). With the addition of this 0.79 acre site, the deficiency will still be 51.41 acres. As such, the addition of this 0.79 site will do little to significantly improve the city's position relative to the deficiency of high density residential lands. Nevertheless, it is an improvement that will serve a significant purpose for the provision of senior housing at Hope Village.

The first two Goals of the *Urban Growth Element* identify the need to preserve and protect agricultural lands that are outside the city's UGB. Because the subject site is within the UGB, and is directly contiguous to the existing city limits, the annexation of the subject site is a natural step in the development of Canby. In addition, the site is to be part of Hope Village, and cannot be developed by Hope Village in any other alternative location. But because the proposed development is on land that would eventually be annexed, its use as agricultural land is limited in scope and time frame. Further, this 0.79 acre site is not in agricultural use, but rather, is in rural residential use by virtue of the existence of a single family dwelling on the site.

While particular attention is paid to Policy No. 6 of the Land Use Element through this review process, other Policies are also just as important. The first Policy, "Canby shall guide the course of growth and development so as to separate conflicting or incompatible uses while grouping compatible uses", serves to describe perfectly the proposed annexation and development of the subject four acre site. The specific development of senior housing as an expansion of Hope Village could occur practically no where else in Canby. Grouping compatible uses is exactly what Hope Village is proposing. The annexation is supported by Implementation Measure H which states, "Continue to work towards a gradual increase in the density and intensity of development allowed within the City, discouraging wasteful development practices and designs." Fulfillment of this Policy and Implementation Measures is the goal of Hope Village's expansion plans.

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.", and <u>Implementation Measures A and C</u> support that proposed annexation and

subsequent development, seeking to increase the range of housing opportunities and diversity of housing types, as well as allowing the use of density bonuses (such as the senior living bonus) as a means of encouraging development.

Policy No. 3 states "Canby shall discourage any development which will result in overburdening any of the community's public facilities and services." Information is available, and an engineer's report indicates that adequate infrastructure is available to allow development of the subject site as proposed by Hope Village. Therefore, the proposed annexation and subsequent development is in compliance with this Policy and its implementation measures.

Policy No. 4 states "Canby shall limit development in areas identified as having an unacceptable level of risk because of natural hazards." The subject site is not within any area identified as a natural hazard area, and is no less developable than any other similar site that is not within a natural hazard area, regardless of location within the city. Because this site does not have an "H" overlay on it, this Policy is not specifically applicable to this site.

Finally, Policy No. 5 states "Canby shall utilize the land use map as the basis of zoning and other planning or public facility decisions." The High Density Residential Comprehensive Plan designation, and the commensurate R-2 zoning, allow for annexation and development in keeping with the city's Comprehensive Plan, with no further changes, variances, revisions or etc.

Because the subject site fronts on and has direct driveway access to Ivy Street, it may be likely that any development by Hope Village may continue to use Ivy Street as a point of access. However, it is also likely that the subject site will be integrated into the existing Hope Village Development, as well as any proposed development of the recently approved 4-acre annexation site directly adjacent to the west. However, traffic concerns may be allayed when a traffic analysis should indicate that the developed site will have a minimal impact on Ivy Street.

With regard to the "loss" of 0.79 acre of land designated "Residential Commercial" on the Canby Comprehensive Plan, the amount of land is so small in the overall context of the types of land designated on the Canby Comprehensive Plan that the "loss" of such land will not have a significant impact on the balance of land use types in the Canby Comprehensive Plan. The calculations of the "loss" of 0.79 acre of "Residential Commercial" land would result in a conclusion that there may continue to be enough "Residential Commercial" land in the Canby Comprehensive Plan.

In addition, because most land designated "Residential Commercial" and zoned C-R (Commercial Residential) has been developed for residential purposes, the true value of the C-R zoning may be somewhat diluted. While this type of development is consistent with the intent and purpose of the C-R zone, it inhibits potential development of small scale neighborhood commercial development. As such, the overall usefulness of the C-R zone in this location may be questioned.

Finally, the location of the lands designated "Residential Commercial" along lvy Street may not be the best possible location for local neighborhood commercial development. This site, plus two additional properties directly adjacent to the

south, comprise the entire "Residential Commercial" designated lands (and to be zoned C-R) in this immediate vicinity. Discussions with Clackamas County staff indicate a significant concern for site generated traffic should this small area be developed for local neighborhood commercial use under the C-R zoning. On the other hand, high density residential development of the 0.79 acre site as part of a larger overall master plan for Hope Village will provide opportunities to mitigate any potential impacts from site generated traffic.

3. Statement of potential physical, aesthetic, and related social effects of the proposed development on the community as a whole and on the neighborhood of which it will become a part; and proposed actions to mitigate identified concerns, if any. A neighborhood meeting is required as per Table 16.89.020 of the City of Canby Land Development and Planning Ordinance.

<u>Finding:</u> The R-2 district was formulated to promote and allow high density residential development at a density of not less than 14 units per acre. The 0.79 acre site would allow a minimum of 11 units, but may likely provide a somewhat greater density, perhaps up to 16 units based on a site master plan prepared by Hope Village for the entire 4.79 acre area.

Because this site is currently developed for single family rural residential use, the physical impacts of development could be somewhat significant for this local neighborhood area, given the fact that there will be a more intensive scale of high density residential development in the immediate area. Virtually all development in this neighborhood area is residential development, largely dominated by the existing Hope Village senior living development, at 33 acres in size for the developed campus, and not including the recently annexed 4.0 acres.

Considering that Hope Village proposes to develop the site with not less than 14 units per acre, in keeping with the established character of the current Hope Village, residential development would appear to have less impact on the local neighborhood. Additional development similar to the existing Hope Village character would definitely "fit in" with the character of the area to the extent that mitigation would not be necessary. Assuming that the expansion area would be required to do site landscaping, its aesthetic value as a senior housing community would be a "plus" to any neighborhood. Any expansion of Hope Village would likely hardly be noticeable once construction is completed and the units are occupied.

From the aesthetic perspective, residential development as proposed by Hope Village would have the least amount of impact because the design of the units, the materials used, the colors used, and the patterns of development would certainly be the least intrusive and most compatible. They would virtually match the existing Hope Village development and would require no mitigation. Even single family detached dwelling development would have more aesthetic impact because it is not of the same character as the adjacent existing Hope Village development, with a lower density.

There are social differences between urban residential development, and between types of residential development. Residential development usually tends to have fewer peaks and valleys, and continues to have that "in use" appearance. The proposed development of senior housing by Hope Village will

result in perhaps the most continuous "in use" appearance, because seniors move around somewhat less and stay closer to home. Thus the community's residents become better acquainted with each other, resulting in a more closely knit neighborhood with greater social connections. While this closer connection occurs with single family dwellings, it tends to be invisible with commercial development where people focus on the commercial area simply for jobs and business, leaving out most social aspects of development.

Overall, residential development, and particularly the type proposed by Hope Village for this site, will have more significant positive impacts on the local neighborhood from the physical, aesthetic, and social perspectives. These positive impacts also require fewer mitigation measures, and measures that are less measurable.

Statement of availability, capacity and status of existing water, sewer, 4. drainage, transportation, and school facilities.

For analysis of water, sanitary sewer, storm water management, local surface water drainage, and other necessary utilities, please see the attached report by John Middleton, P.E. of ZTec Engineers. Mr. Middleton has worked closely with city staff and outside utility providers to establish the response to this criterion. This document indicates that future expansion of infrastructure and utilities will not be inhibited by the proposed annexation and subsequent development.

With regard to park and school facilities, the proposed annexation is not of sufficient size to create significant additional demand for local park facilities, regardless of whether the site were to be developed for commercial use or residential use. While some open space and/or small "vest pocket" park development would be possible with commercial development, any such open space and/or park development would be relatively very small scale and would add relatively little to the local neighborhood. The final site plan will provide landscaped areas between and around the new buildings, for the benefit of all. However, it must be kept in mind that the site, at 0.79 acre, is small enough that a park feature is not likely to be possible when considering higher density residential development.

For this area of southwest Canby, creation of additional open space and/or parks will likely be a consideration as future development takes place on a larger scale. The opportunity for additional open space and/or park development will present itself when a full scale DCP is prepared for this area and additional larger areas of land are annexed into the city.

With regard to schools, the development proposed by Hope Village for senior housing will have no adverse impact on schools, primarily because senior communities add zero (0) students to the existing student population, thus creating no pressure on existing school facilities. Further, taxes paid by the residents of Hope Village help with school funding. And finally, seniors are often good partners with the schools when it comes to tutoring, reading, and other useful activities, especially for the younger aged students. There really is no downside to having senior housing in Canby.

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Single family housing, on the other hand, puts significant pressures on the local schools. While single family dwellings pay property taxes to help support schools, they usually house the students who require these schools. Multifamily housing, because of its density of development, provides more students to the system than any other form of housing. Again, senior housing provides no students to the system.

Statement of increased demand for such facilities to be generated by the 5. proposed development, if any, at this time:

If referring to a specific use as proposed for the subject site, should annexation take place, the proposed Hope Village expansion will take place on this site. There will be not less than approximately 11 new units for seniors, in keeping with the existing Hope Village facilities. These additional units are needed already, as Hope Village has maintained a continuous waiting list for those who seek senior housing in a community setting. Because the previously annexed four acre site and this 0.79 acre site are contiguous and will be developed as a unit, there is the possibility that the 0.79 acre site will have more than 11 units. A site master plan will be prepared in the future by Hope Village, showing how the total 4.79 acre growth area will be developed in a single process.

As the "baby boomers" come of retirement age, senior living has virtually become a whole new way of life. Continuing Care Retirement Communities (CCRC) provide care in many ways and CCRC's are springing up in many locations. While Hope Village, Summerfield in Tigard, Summerplace in east Portland, Laurel Parc in the Bethany area of Washington County, plus King City and Charbonneau to name a few, all provide for senior living, but they do it in a variety of ways. Hope Village is not a CCRC, but plans to do it "their way", following a successful formula that has worked for many years. As we know, a certain "aging of America" is well underway, and the need for senior housing becomes more acute. The demand for senior housing is greater than the supply. While approximately 11 additional units will not solve any significant problems with regard to senior housing, the added units will help Hope Village and will add even more to the City of Canby.

There is less need for new single family dwellings at the present time, given the current economic situation and the lack of construction that is happening. Generally speaking, this also applies to multifamily housing and certainly for commercial office space. In Canby, at the present time, there is little to no demand for new single family housing. However, some multifamily projects continue in spite of the economy, but there are few of those projects under construction, especially in Canby.

We believe the best project for this site is for senior living as an expansion of Hope Village. Once annexation is completed Hope Village will continue forth with plans for this new senior housing units.

Statement of additional facilities, if any, required to meet the increased demand and any proposed phasing of such facilities in accordance with projected demand:

<u>Finding:</u> Indications thus far are that the proposed annexation and development as visualized by Hope Village would not require increased demand for any facilities, services, or utilities. The site could be developed by Hope Village without any changes to the city systems.

7. Statement outlining the method and source of financing required to provide additional facilities, if any:

Finding: Hope Village will pay the necessary costs of its own development. Beyond that position, and because no additional facilities will be required as a result of the development proposed by Hope Village on the subject site, this requirement will be satisfied.

8. Statement indicating the type and nature of any comprehensive plan text or map amendments or zoning text or map amendments that may be required to complete the proposed development;

Finding: No comprehensive plan text or map amendment is being requested. In conjunction with the request for annexation to the City, Hope Village is requesting a zone map amendment to rezone this property upon annexation and provide the site with the proper zone, which would be R-2, High Density Residential (Section 16.20). This is the zone identified by the Comprehensive Plan as being the appropriate zone for this site. This R-2 zoning would be compatible with the R-2 zoning on the recently annexed 4.0 acre site directly adjacent to the west. The existing zone, Exclusive Farm Use (EFU) in Clackamas County, would become R-2 upon annexation to Canby based on Hope Village's application.. All of Hope Village's planning has been based on the R-2, High Density Residential zone being applied to the site upon annexation. Hope Village is very agreeable to having the R-2 zone applied to its site. The application for this zone map amendment accompanies the application for annexation in order that both be acted upon in due process.

- 9. Compliance with other applicable city ordinances or policies;

 Finding: Other official documents that are applicable to the requested annexation include Policy #6 of the of the land use element of the Comprehensive Plan; two state statutes (ORS 195.065 and ORS 222); and the Urban Growth Management Agreement (UGMA) between Clackamas County and the City of Canby. These documents are addressed in other parts of this application narrative.
- **10.** Compliance of the application with the applicable sections of Oregon Revised Statutes, Chapter 222.

 <u>Finding:</u> Compliance with ORS222 is addressed in another section of this application narrative.

There are no additional criteria in this section of the Canby Code that are applicable to the annexation application.

CMC 16.88, Comprehensive Plan Amendments

Chapter 16.88 of the Canby Municipal Code (CMC) relates to Comprehensive Plan Amendments. Because an amendment to the adopted Canby Comprehensive Plan will be required to achieve the High Density Residential designation instead of Residential-

Commercial, the criteria contained in this chapter must be addressed. The criteria are contained in CMC 16.88.180, Comprehensive Plan Amendments.

- C. <u>Legislative Plan Amendment Standards and Criteria</u>. In judging whether or not a legislative plan amendment shall be approved, the Planning Commission and City Council shall consider:
 - The remainder of the Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, in order to preserve functions and local aspects of land conservation and development; The Comprehensive Plan Amendment is proposing a designation of High Density Residential in place of Residential-Commercial on two tax lots totaling 0.79 acre. No other changes, other than the corresponding zone change, are being proposed to any other documents, plans, policies, etc. of any other jurisdiction than the City of Canby. This includes Clackamas County, State of Oregon, and any other special, service, or utility district. In the greater context of the proposed annexation, Comprehensive Plan Amendment, or zone change, and the future plans of Hope Village, this proposed amendment from Residential-Commercial to High Density Residential will be relatively insignificant which will have no adverse impacts. Because the site has long since been included in the Canby Urban Growth Boundary, the proposed annexation plus the Comprehensive Plan Amendment and zone change, the ultimate development of the 0.79 acre site has been anticipated. The annexation, and the future
 - 2. A public need for the change;
 <u>Finding:</u> The public need for such change has been fully discussed and supported in the text of this narrative, plus the **ANNEXATION ANALYSIS** prepared by city staff as part of the Staff Report, on pages 8-15. No further justification of the public need is necessary.

development of the subject site with the Comprehensive Plan designation of High Density Residential will only be an advantage and asset to the City of Canby.

- Whether the proposed change will serve the public need better than any other change which might be expected to be made; Considering that the entire purpose of the annexation, Finding: Comprehensive Plan Amendment, and zone change is to position the property to allow Hope Village to expand its campus and offerings for senior living, there is no other feasible and practical location for this proposed land use action. At 33 acres, the Hope Village campus is built out and the only way to expand the campus and Hope Village's offerings in senior living is to look outside at adjacent properties. After review, the only real direction for Hope Village's expansion is to the south. With the four acre site acquired from the Scott family, the "strip connection" between Fir and Ivy Streets can be completed only by acquiring the 0.79 acre subject site from the Pendells and including it as the final piece in Hope Village's expanded campus. The annexation of the 0.79 acre site, plus the Comprehensive Plan Amendment and the zone change, will fill in the strip connection. In fact, no other piece of property in the entire world will be suitable for the intended purpose.
- **4.** Whether the change will preserve and protect the health, safety and general welfare of the residents in the community;

Finding: In the public hearings for the four acre annexation that took place in 2011, it was recognized by the city's decision makers that Hope Village is a significant asset to the City of Canby. In explaining Hope Village's future goals for growth, both the Canby Planning Commission and Canby City Council supported the future goals of Hope Village to provide more senior living opportunities, specifically, by expanding on the four acres that were to be annexed. The same should apply to the 0.79 acre Pendell site, which will assist Hope Village in achieving it goals. Future growth by Hope Village onto the total 4.79 acre expansion area will help to preserve and protect the overall health, safety and general welfare of the entire City of Canby, as well as the current and future residents of Hope Village.

5. Statewide Planning Goals.

The proposed annexation, Comprehensive Plan Amendment, and Finding: zone change will go through the full public process, satisfying Goal 2. Because the site is within the Canby Urban Growth Boundary, the regulatory process will not be approving the loss of farm and/or timber land under Goals 3 and 4. There is no identified Goal 5 natural resource on the site, and the site will not have any adverse impacts on Goal 6 air, water and land resources. The site is subject to the same Goal 7 natural hazards as the balance of the Canby urban area. The site is not now nor never has been, and will not be in the future, a designated Goal 8 recreational site. Development of the subject site, as part of a larger 4.79 acre annexation and future growth area for Hope Village will provide an additional economic boost to the Canby area, through construction jobs and possible additional employment at Hope Village to manage the new senior living units. Further, the additional residents of Hope Village will contribute to the local and regional economy as new residents of Canby, thus satisfying Goal 9. The proposed growth of Hope Village will provide additional senior living opportunities in support of Goal 10. Senior housing is becoming a major element of housing as the "boomers" enter retirement and seek other living arrangements. The proposed growth by Hope Village onto the 4.79 acre area will result in a "unit plan" for the entire site, not just for the 0.79 acre parcel. Allowable development will utilize existing local services and facilities, and will be within the capacities of the existing systems, satisfying Goal 11. A traffic study for the proposed annexation should result in a finding that there will be no adverse impact as a result of senior housing being developed on the subject site, thus satisfying Goal 12. All new development will achieve the requirements of energy conservation in effect at the time of development, in keeping with Goal 13. Because the site is not within the Willamette River Greenway, Goal 14 will not apply. Similarly, because the site and the City of Canby is not within the coastal zone, Goals 15-19 will not apply.

With regard to the Statewide Planning Goals, the bottom line is that the proposed Comprehensive Plan Amendment from Residential-Commercial to High Density Residential will not cause the Canby Comprehensive Plan to fall out of compliance with the Statewide Planning Goals. Because the Residential-Commercial designation allows residential development at nearly the same densities as the High Density Residential designation, the impacts will be approximately the same with regard to the individual Statewide Planning Goals.

CMC 16.54, Amendments to the Zoning Map

As part of the overall process, the zone must be changed on the site once the annexation and Comprehensive Plan Amendment are completed. This would be the final step in the process. Chapter 16.54, Amendments to the Zoning Map, contain the criteria for review and the process that is to be followed for the zone change. Section 16.54.040, Standards and Criteria, contain two (2) specific criteria that must be addressed and satisfied in order for the requested zone change to be approved. In this case, the zone change will be from Exclusive Farm Use (EFU) in Clackamas County to High Density Residential (R-2) in Canby. The zone that might have been applied to the site, Commercial-Residential (C-R), will not be applied because the process goes directly from annexation to the final designation on the Comprehensive Plan of High Density Residential as part of this application package. The proposed zone under the Residential-Commercial Plan designation will not be applied because the Plan designation will be changed before any zone designation is applied. Therefore, the process will skip the C-R zoning designation on the site in favor of the R-2 zoning designation.

As part of the annexation of any land area to the City of Canby, an Amendment to the Zoning Map of the City of Canby is required in order to delete the existing zoning applied by Clackamas County and to apply the zoning as designated by the city's Comprehensive Plan, or other zone as requested. Currently, the zoning of the 0.79 acre site is Exclusive Farm Use (EFU) by Clackamas County. However, the site will be designated High Density Residential by the city's Comprehensive Plan once the application is approved. The corresponding zone district is R-2, High Density Residential.

The proposed development plan by Hope Village for the subject 0.79 site will be not less than 14 units per acre, or approximately 11 senior housing units based strictly on size. This allowance for senior housing is provided as a permitted use by the R-2 zone at the density required by Hope Village. As such application for an Amendment to the Zoning Map for the planned R-2 zone suits Hope Village just fine. No other variances, conditional uses, or other dispensations for the provisions of the Canby Municipal Code are necessary for Hope Village to accomplish its stated goal for this site. Assuming R-2 zoning is applied to the subject site, multiple family residential and senior housing uses are permitted as they are permitted outright in the R-2 zone which is the basis for residential development.

16.54.010, Authorization to initiate amendments

<u>Finding:</u> In this case, the application is initiated and submitted by the property owner, Hope Village, Inc. After the application has been deemed complete, it will be scheduled for a public hearing before the Canby Planning Commission. Therefore, this criterion will be fulfilled.

16.54.020, Application and fee

<u>Finding:</u> The application for an amendment to the zoning map to apply the designated R-2 zone is submitted to the City along with the required fee of \$2,640. The city will follow the procedures set forth in CMC 16.89. Therefore, this criterion is satisfied.

16.54.030, Public hearing on amendment

<u>Finding:</u> The Planning Commission will schedule a public hearing once the application is deemed complete. Following the Planning Commission's public hearing and recommendation, the City Council will hold its own public hearing to make a final decision. By holding these public hearings, this criterion will be fulfilled.

16.54.040. Standards and criteria

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;

<u>Finding:</u> The zone change to R-2 (High Density Residential) on the 0.79 acre portion of the 4.79 acre total parcel will allow Hope Village to plan and develop the site in uniformity and consistency. With the plan to develop this total site for senior housing, and the adjacent 4.0 acre site already zoned R-2, the subject site would be out of "kilter" if it were to be zoned anything else.

Policy 6 is addressed below and demonstrates that Hope Village is an integral part of the Canby community and demonstrates an important element of growth and development that is desirable in Canby. Development for senior housing will be consistent with plans, goals and policies of the city, county, state and local districts. And will preserve functions and local aspects of sensible and practical land conservation and development. Any individual plans prepared by these jurisdictions and agencies will continue to be consistent with the newly annexed 4.79 acre parcel. Therefore, this criterion will be satisfied.

B. Whether all required public facilities and services exist or will be provided concurrent with development to adequately meet the needs and any use or development which would be permitted by the new zoning designation.

Finding: The subject 0.79 acre site is currently served by subsurface septic system and a well. These facilities will not be suitable for the senior level housing proposed by Hope Village. When planned and developed as a unit, the total 4.79 acre site will require full services and facilities. As part of the previous annexation of the 4.0 acre parcel, services and facilities were reviewed and it was determined that such new development would be blended in to the existing city systems. The same applies to this 0.79 acre site. An initial review of services and facilities by John Middleton, P.E. of ZTec Engineers indicates that accommodations can be made for this 0.79 acre site within the framework of the city's existing systems.

As noted in the summary of services and service requirements for the proposed development as prepared by ZTec Engineers, Inc. and also attached, it appears that all services required for development of the subject site (i.e., water, sanitary sewer, surface water drainage and management, fire and police protection, etc.) are all in place and can provide the proposed development with an adequate level of facilities and services. Some improvements may be made, such as the half street improvement of Ivy St. for the entire frontage of the subject site, and the extension of water and sanitary sewer service, in order for the site to become fully developable. However, it has been noted that there are no unforeseen problems or issues in the extension of those services at the time of development.

As such, development of the site under the proposed R-2 (High Density Residential) zone will fulfill this criterion.

16.54.060, Improvement conditions

<u>Finding:</u> Any reasonable requirements for improvement of public and private facilities and services in order to effect the proposed development of the subject site by Hope Village will be undertaken by Hope Village. Where required, Hope Village will pay for those improvements. Where possible, and where a "late comers agreement" is appropriate, Hope Village would request that some recapture of funds expended for expansion of facilities and services whose scope is beyond that of just the development of the subject site be provided back to Hope Village.

Under subsection **B.**, any required improvements should not reduce housing densities below those anticipated by Hope Village in its calculations of the number of units to be built.

Compliance with both A. and B. of this criterion will have been satisfied with the application of specific improvement conditions as imposed by the City.

16.54.070, Record of amendments

<u>Finding:</u> Appropriate and applicable records must be kept by the City. This particular criterion is not the responsibility of the applicant.

City of Canby Comprehensive Plan Policies and Implementation Measures

Policy No. 6 of the Canby Comprehensive Plan states,

"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."

<u>Finding:</u> Hope Village is fast becoming, or perhaps already has become a unique area of Canby which has been recognized by the City. Hope Village is the uppermost example of senior living in Clackamas County. Hope Village is a viable and valuable part of the community. Hope Village residents give to the city, the local schools, and they support local businesses. Hope Village provides a perfect example of senior living in a time when senior living has become virtually a separate category of "residential development and living". Providing Hope Village the opportunity to expand by annexing 0.79 acre to the city will help the community recognize the value of Hope Village.

In recognition of the Hope Village area of southwestern Canby, the City should recognize and encourage the type of growth, stability, and character that Hope Village already brings to Canby. Allowing Hope Village to expand modestly will provide more options in senior housing, not only in Canby but throughout the Willamette Valley.

Implementation Measure 3 found on page 61 of the Canby Comprehensive Plan states "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. Ever-increasing (sic) traffic on S. Ivy Street necessitates special treatment for

access, especially where commercial or multi-family residential development occurs. . . . "

Finding:
A traffic study, commissioned by the City of Canby and paid for by Hope Village, may conclude that development as part of Hope Village may have impacts on S. Ivy Street that are somewhat different than impacts resulting from development of the subject site for neighborhood commercial purposes. However, the Residential-Commercial designation currently identified on the Canby Comprehensive Plan does allow for higher density residential development, including multi-family development, at nearly the same densities as the High Density Residential designation. Because Ivy Street is a Clackamas County facility with a Minor Arterial designation, the County will determine the impacts on Ivy Street and call for any necessary measures to mitigate an y potential adverse impacts resulting from use of the subject site for higher density residential development.

Clackamas County/City of Canby Urban Growth Management Agreement (UGMA)

The UGMA is codified as part of Resolution 519, dated Sept. 23, 1992, and requires certain actions and procedures for a variety of action relative to lands within the Urban Growth Management Boundary area. The UGMA contains seven (7) specific issues on which the City of Canby and Clackamas County agree. Those sections are identified and addressed as follows:

- Boundary
- <u>Finding:</u> The subject site is within the Urban Growth Boundary of Canby, thus satisfying this criterion.
- 2. Comprehensive Planning, Plan Amendments and Public Facilities Planning for Lands in Unincorporated UGMB;

Finding: The subject site is within the UGB, and has been included in long range planning for land use, traffic, services and facilities, utilities, and all similar and appropriate elements. The planning designation proposed for this site is consistent with the designated on the Canby Comprehensive Plan map (High Density Residential). Finally, zoning is proposed to be consistent with what the city foresees as being appropriate for this site (R-2). Upon annexation, the city will assume all planning responsibilities for the subject site. Once the site is annexed to the city by final legislative action, Clackamas County will have no further jurisdiction over or interest in the subject site. Therefore, this criterion is fulfilled.

- 3. Development Proposals for Unincorporated UGMB Areas; <u>Finding:</u> This criterion does not apply because the development proposal by Hope Village will be presented to the city once annexation has become effective, following regular city procedures.
- 4. County Notice to and Coordination with the City;
 <u>Finding:</u> This criterion is not applicable because any development action will take place within the City of Canby, once annexation is effected, not within the jurisdiction of Clackamas County.
- 5. City Notice to and Coordination with the County;

Finding: Because this is a proposed annexation, the City is required under **A.** to notify Clackamas County of the impending action. This notification may also apply to **B.**

6. City Annexation and Sewer, Water and Road Service;

Finding: Under A. of this criterion, the City agrees to undertake any annexations in accordance with process and procedures agreed to by the County. In B., The only public roadway that is affected is a portion of Ivy Street that is directly adjacent to the easterly property line of the subject site. As such, the applicant may be require to construct a "half street improvement" along the frontage of Ivy Street to current Clackamas County standards. It should be noted that Ivy Street is a Minor Arterial as designated by Clackamas County, and that the County may not surrender jurisdiction to the City of Canby upon annexation of the subject 0.79 acre site. A final determination will likely take place after discussions between the County and the City once the annexation is approved by the voters of Canby.

In **B.** on page 4 of the UGMA, all required facilities, services and utilities will be within the limits of the long range planning studies and tools for such public infrastructure. Please see the report by John Middleton, P.E. of ZTec Engineers, Inc. for this 0.79 acre parcel.

For C. on page 4 of the UGMA, Public water and sanitary sewer are not currently available to the site for use in site development, but will be available upon approval of the annexation application. This subject site is not, however, a health hazard. And for D. on page 4, the purpose of the proposed annexation is to obtain city services and facilities, and to develop under the jurisdiction of the City of Canby.

7. Terms of Agreement

Finding: This UGMA is between the City of Canby and Clackamas County. However, no part or measure of the proposed annexation of the subject four acre site, nor the subsequent development for approximately 11 senior living units, violates or otherwise circumvents the measures required under this UGMA.

Therefore, all criterion of this UGMA have been satisfied and/or fulfilled.

State Statutes - ORS 195 and ORS 222

• ORS 195.065 requires various agreements between jurisdictions when urban services are to be provided. The Clackamas County Urban Growth Management Agreement (UGMA) states what agency will provide which services. While Hope Village will benefit from the existence of such an agreement, the proposed annexation will not create any special or heretofore unforeseen circumstances where the provisions of the UGMA will not apply. Hope Village's proposed annexation is exactly in keeping with what the City of Canby envisioned within its urban growth area. No new agreements, or any deviation from the provisions of the existing UGMA, will be required for this proposed annexation of this 0.79 acre site.

• ORS 222 requires several issues be considered prior to an annexation becoming effective. For example, <u>ORS 222.040</u> provides that an annexation shall become effective until an election has been conducted. Part of the process of applying for an annexation is meeting the application deadline in order that internal actions by the Planning Commission and City Council take place prior to the election. The city will provide proper notice as required, and agreements with local service providers will be enacted regarding inclusion of the subject site for service purposes after annexation (<u>ORS 222.005</u>). The procedures specified under <u>ORS 222.111</u> will be followed by the city, which is the city's duty rather than one assigned to the applicant. Other sections such as <u>ORS 222.130</u> (Annexation election; notice); <u>ORS 222.150</u> (Election results); <u>ORS 222.160</u> (Procedure when annexation is submitted to city vote); <u>ORS 222.177</u> (Filing of annexation records with Secretary of State); and <u>ORS 222.180</u> (Effective date of annexation) are all parts of the process the city must follow for any annexation.

Sections ORS 222.510 through ORS 222.830, as applicable, deal with the change of service jurisdiction for properties that will be serviced with urban services (water, sanitary sewer, fire protection, etc.) that may have been provided by other non-urban area providers while within the jurisdiction of Clackamas County. The heading of this section of the ORS Chapter is "Annexation of Public Service Districts" and deals with the transfer of service rights and obligations once a property is annexed. Whatever is required under these sections will be accomplished as part of the city's annexation process.

This annexation does not involve a merger of cities, an "island" annexation, or any health abatement, as included in sections included in ORS 222.700's; ORS 222.800's; or ORS 222.900's. Therefore, the proposed annexation complies with, meets, or otherwise fulfills all specific requirements contained in the appropriate and applicable sections of ORS, Ch. 222.

Neighborhood Meeting

A requirement of the annexation process is the holding of an informative neighborhood meeting. The purpose is to inform neighbors within 500 feet of any point of the subject site of the proposal to annex the site to the city. This meeting is not limited to neighbors, but any interested party may attend. A mailing list was prepared and a post card was sent by Hope Village to every name and address on the Clackamas County Assessor's records within 500 feet of any part of the 0.79 acre site.

The neighborhood meeting was held on Monday, February 20, 2012 at Hope Village in the cafeteria/community room. Six (6) neighbors and/or interested individuals attended this open meeting. Those names are on the sign-in sheet that accompanies this application. In addition, a summary of the meeting was prepared and also accompanies the application for annexation.

With the holding of the informative neighborhood meeting, this requirement has been fulfilled.

Notes of the Neighborhood Meeting - February 20, 2012

What: Neighborhood information meeting to discuss the annexation application

sponsored by Hope Village, Inc. for the 0.79 acre Pendell property, located at

1665 S. Ivy St.

Where: Hope Village Cafeteria/Community Room, 1535 S. Ivy St.

When: Monday, February 20, 2012, 7:00 PM.

Why: Such neighborhood meeting as a requirement by the City of Canby for an

annexation application.

Who: Jerry and Brenda Mootz, Travis McRobbie, Bob Kaufman, Sandra McMartin,

and Beverly Gornich (see attached sign-in sheet for public sign in). Craig Gingerich, Executive Director of Hope Village and Robert Price, Consultant to

Hope Village were also in attendance.

Craig opened the meeting at 7:05 PM by welcoming all six (6) visitors. Craig should a slide show of Hope Village, including several shots of the Pendell property which comprises the proposed 0.79 acre annexation area, plus the recently annexed 4.0 acre Scott parcel. Together, the two site total 4.79 acres and will be the basis of the future growth plans for Hope Village.

Bob Price then gave an overview of the Hope Village process to date, including the attempts at preparing a Development Concept Plan and the requests made of the Canby City Council to exempt Hope Village from the DCP requirement for both the 4.0 acre Scott parcel and the 0.79 acre Pendell property as part of the annexation process. Mr. Price showed the sketch plan prepared by Hope Village's architect illustrating the possible means by which the total 4.79 acre growth site might be developed with senior housing units. It was emphasized that senior housing is the only way that Hope Village will develop this site. There will be no commercial development.

Following Mr. Price's discussion several questions were raised.

- 1. Sandra McMartin asked if Hope Village needed to comply with the DCP process Mr. Price explained that Hope Village had requested, and were granted exemptions from the city's DCP requirement for both of the annexation applications (4.0 acre Scott parcel in 2011 and 0.79 acre Pendell parcel in 2012). These exemptions were granted on the basis that the sites (4.0 acre Scott parcel in 2011 and 0.79 acre Pendell parcel in 2012) were relatively very small sites in the greater context of the 64 acre Southwest Canby DCP area;
- 2. Jerry Mootz asked if Ivy Street would need to be widened Mr. Price explained that while Fir Street would be widened because the city made that a requirement of annexation, Ivy Street is under the jurisdiction of Clackamas County and no final input from the county on the widening/half street improvement requirement would be provided until an actual site development proposal is presented to the city subsequent to approved annexation;
- 3. Brenda Mootz asked is Canby Utilities plan to extend services down Fir Street Mr. Price responded that Fir Street is the likely route for extended services to serve an expansion project proposed by Hope Village, but a decision would not

- be made until a site development proposal is presented by Hope Village. It may be possible that services and utilities could be extended along Ivy Street as well;
- 4. Sandra McMartin asked if the existing sanitary sewer system is larger enough to handle Hope Village's planned expansion – We believe it is based on preliminary reviews by Hope Village's consulting engineer and reviews by city engineering staff:
- 5. Sandra McMartin asked if there will be a street along the south boundary of the 4.79 acre expansion site Mr. Price responded that it is very unlikely such a street will be needed, or useful given the shape of the site and the fact that Hope Village's current campus utilizes an internal network of private streets to serve all units and functions. A street on the southerly border of the expansion site would probably not make much sense for Hope Village. Hope Village's existing streets will likely be adequate for the new facilities;
- 6. Sandra McMartin asked about a proposed street bisecting their property between Fir and Ivy Streets Mr. Price responded that Hope Village has no interest or concerns about such a through street to connect Fir and Ivy at about the alignment of a future 17th Street. That will be a decision to be made by the McMartins and the city:
- 7. Sandra McMartin stated that the McMartin family was told they would have to add at least one sanitary sewer pump station somewhere in the area of their property when development takes place. Will the McMartin family have to pay that entire bill? Mr. Price responded that it is difficult to predict what the city might require. It was agreed that Hope Village would add the McMartins to their database and assist in providing notification when any discussion of sanitary sewers in the area would be publicly discussed. Craig Gingerich promised to make sure the city staff has Sandra's contact information on record. Her phone number is 702-202-6185 and he e-mail address is funsand@msn.com.

After some additional light and neighborly talk amongst the people in attendance, coffee and cookies were consumed and the meeting was adjourned at 7:55 PM.

Robert Price

Monday, Febraury 20, 2012 Neighboohood Informational Meeting Sign in Sheet

Vame 1		Address	Phone Number	Comment
	DRENDA MOC		503-266-9837	
Travis M	10 Policia	1550 5 INY ST	7	
	2 Memartin	Las Degasacanhy	702-202618	funsand amon cos
Danas	Sound	Origin City One	<	
Dever	Siffman	1491 5 Ivy #102	503-266-1306	
1006 y	SULT MI DIA			
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ZTec Engineers, Inc.

Civil ◆ Structural ◆ Surveying 3737 SE 8th Ave.

John McL. Middleton, P.E. Chris C. Fischborn, P.L.S.

Portland, OR 97202 (503) 235-8795

FAX: (503) 233-7889

E-mail: john@ztecengineers.com

HOPE Village 0.8 Ac. parcel Annexation

Infrastructure Availability and Needs

The 0.8 Ac. Annexation site at 1665 S. Ivy St., TL 1100 and 1101 map 4 1E 4D, will require sewer, water, power, communications and natural gas facilities to serve the parcel. These facilities are all available adjacent to the site.

Sewer: The existing residence is not connected to the public sewer since it is outside the City limits. There is a functioning septic tank, drainfield system but this will need to be abandoned in accordance with State regulations. Future development on the property, when annexed into the City of Canby, will require connection to the City of Canby public sewer system.

Public Sewer service is available near the NE corner of the property at the intersection of S. Ivy St. and SE 16th Ave. A new gravity sewer line can be installed from the existing 8.8' deep sewer manhole to provide sewer service to the 0.8 Ac. site.

An alternative sewer service route can be provided from the existing public sewer in S. Fir St. via the 4 Ac. parcel to the west owned by Hope Village and recently approved by the City of Canby to be voted on for annexation to the City in November 2011. The starting point for the sewer in S Fir St. is shallow and the on-site grades are not yet determined so it cannot be confirmed that gravity sewer service is available to the entire 4 Ac. site, but, if it is, the sewer can be extended to serve this 0.8 Ac. Parcel. If gravity service is not possible from S. Fir St. for the 4 Ac. parcel then a private sewage pump station will be required to provide service for the site. This station would be installed, owned and maintained by Hope Village. The station would be sized to accommodate the maximum development possible on the 4 Ac. annexation site based on the requested C-R, Commercial Residential Zoning. Service to this 0.8 Ac. site from the same pump station could easily be accommodated. The station capacity would simply be increased to serve 4.8 Ac instead of just 4 Ac at the C-R, Commercial Residential Zoning.

The annexation sites, both the 4Ac. parcel and this 0.8Ac. parcel, are a portion of the Southwest Canby Development Concept Plan (DCP) area. The future annexation plans for the DCP area will need to address how sewer service will be provided to the rest of the area. The proposed sewer connection to the S Fir St public sewer can serve both

Ronald B. Sellards, P.E.

the future development of the 4 Ac. annexation site and this 0.8Ac. parcel, or the parcels can have separate services to the S. Fir St. and the S. Ivy St. public sewers respectively. The connection or connections will not adversely impact service delivery to the rest of the DCP area. There are several sewer service options available to serve the rest of the DCP area: gravity sewer service in S. Fir St., S. Elm St. and S Ivy St., and a possible public sewage pump station associated with future annexation of property between S. Ivy St and S. Redwood St. A combination of these options could provide sewer service to the rest of the DCP.

<u>Water</u>: A public 10" water line is available in S. Ivy St. at the NE corner of the parcel. This line will need to be extended south across the street frontage of this parcel to the SE corner. In the future this line will extend through the rest of the DCP area to form a loop with the public water main in S. Fir St. The extension of water line across this parcel's frontage will provide a source for domestic and fire suppression water services to the property.

The existing residence on the site, 1665 S. Ivy St. has water service from a private onsite well. The well will need to be abandoned in accordance with State and County regulations or, possibly, retained for landscape irrigation service only, if desired by the property owner.

<u>Power, Communications and Natural Gas:</u> Power, communications and natural gas facilities are all available adjacent to the site.

Power and communications: Power and communications underground facilities are adjacent to the site on the north side. Currently service to the property is by overhead service. When the site is developed the overhead will services will be removed and underground facilities extended on the frontage to the south property line. Services to the buildings in the new development will all be underground.

Natural Gas: The existing residence is not connected to the natural gas line but there is a 4" line across the frontage that can be used for future development on the property. It is reasonable to assume there is sufficient capacity in the adjacent power communications and gas facilities to service this relatively small site. If additional facilities are required to meet the anticipated demand they can be provided by the utility company in conjunction with the property developer.

Storm Drainage: There is no public storm drainage collection system in the area. It is anticipated that on-site treatment and disposal facilities for storm water runoff will be included in the development plans for this site. Surface treatment swales and planters can be incorporated into the grading and landscape design to provide water quality treatment, storage and disposal. When required, filter catch basins and drywells can be part of the treatment and disposal system. Building roof runoff can be disposed of directly to onsite drywells. All drywells will need to be registered with the DEQ's UIC program.

<u>Public Improvements:</u> The frontage on S Ivy St. will need to be improved to City of Canby and Clackamas County standards for the west half of the right of way as part of the development of the annexation site. The improvements will probably include a roadside swale or planter for storm water treatment and disposal.

Page 5 of 5

Exhibit "A"

Real property in the County of Clackamas, State of Oregon, described as follows:

PARCEL I:

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 4 SOUTH, 1 EAST, OF THE WILLAMETTE MERIDIAN, OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4, SAID POINT BEING THE SOUTHEAST CORNER OF THAT TRACT CONVEYED TO CHARLES C. AND MABEL L. FRAZIER BY DEED RECORDED JULY 23, 1969 AS FEE NO. 69 12642, DEED RECORDS. THENCE NORTH 0°28'21" EAST ALONG THE EAST LINE OF SAID TRACT, 79.00 FEET; THENCE NORTH 88°55'08" WEST PARALLEL WITH THE NORTH LINE OF SAID FRAZIER TRACT, 234.98 FEET TO A POINT ON THE WEST LINE OF SAID TRACT; THENCE SOUTH 0°23'54" WEST ALONG SAID LINE, 88.00 FEET TO THE SOUTHWEST CORNER OF THAT TRACT AS DESCRIBED IN FEE NO. 84-1881, DEED RECORDS; THENCE SOUTH 89°24'26" EAST ALONG THE SOUTH LINE OF SAID TRACT, 234.84 FEET TO A POINT 7.00 FEET SOUTH OF THE POINT OF BEGINNING; THENCE NORTH 0°28'21" EAST 7.00 FEET TO THE POINT OF BEGINNING.

PARCEL II:

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 4 SOUTH, 1 EAST, OF THE WILLAMETTE MERIDIAN, OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4, SAID POINT BEING THE SOUTHEAST CORNER OF THAT TRACT CONVEYED TO CHARLES C. AND MABEL L. FRAZIER BY DEED RECORDED JULY 23, 1969 AS FEE. NO. 69 14642, DEED RECORDS. THENCE NORTH 0°28'21" EAST ALONG THE EAST LINE OF SAID TRACT, 79.00 FEET TO THE POINT OF BEGINNING OF THE TRACT TO BE DESCRIBED; THENCE CONTINUING NORTH 0°28'21" EAST ALONG SAID LINE, 86.00 FEET TO THE NORTHEAST CORNER OF SAID FRAZIER TRACT; THENCE NORTH 88°55'08" WEST 234.98 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 0°23'54" WEST ALONG THE WEST LINE OF SAID FRAZIER TRACT, 86.0 FEET; THENCE SOUTH 88° 55'08" EAST PARALLEL WITH THE NORTH LINE OF SAID FRAZIER TRACT, 234.98 FEET TO THE POINT OF BEGINNING.

NOTE: This legal description was created prior to January 01, 2008.

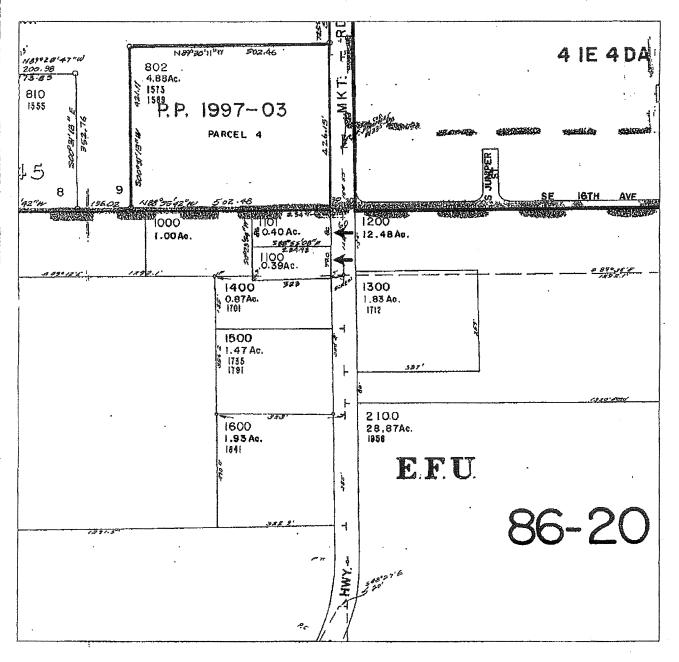
Tax Parcel Number: 01002569 and 04000262 and 01002578

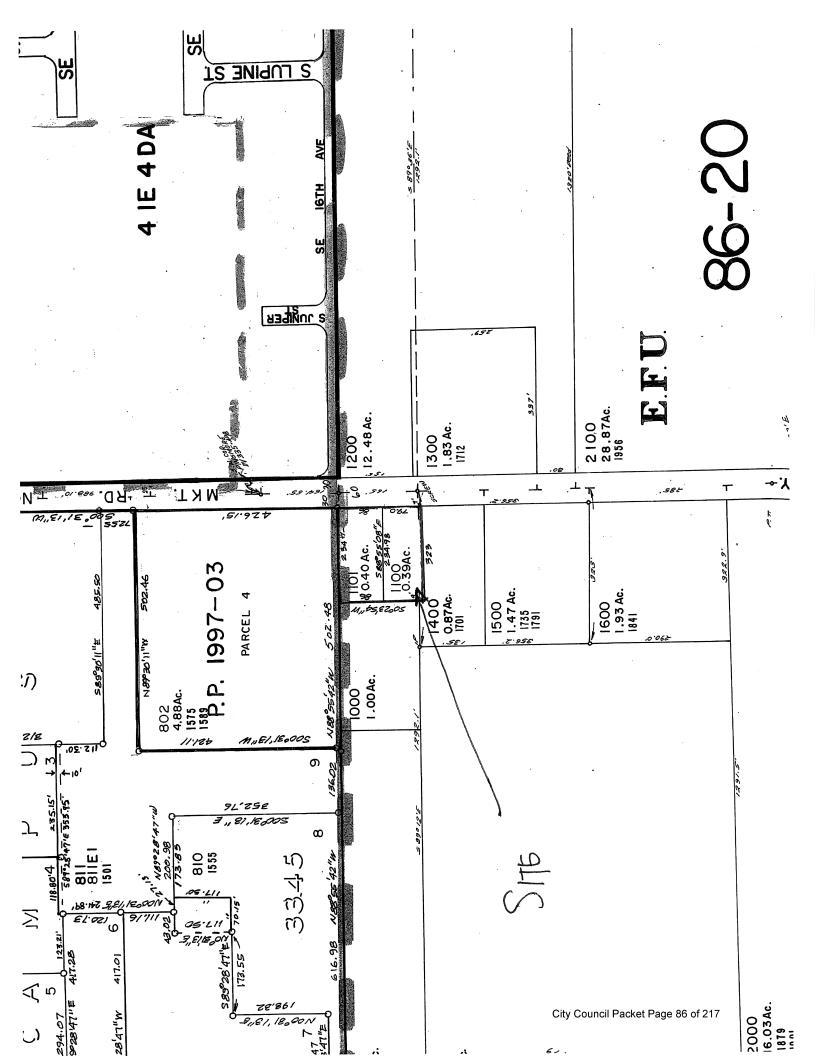


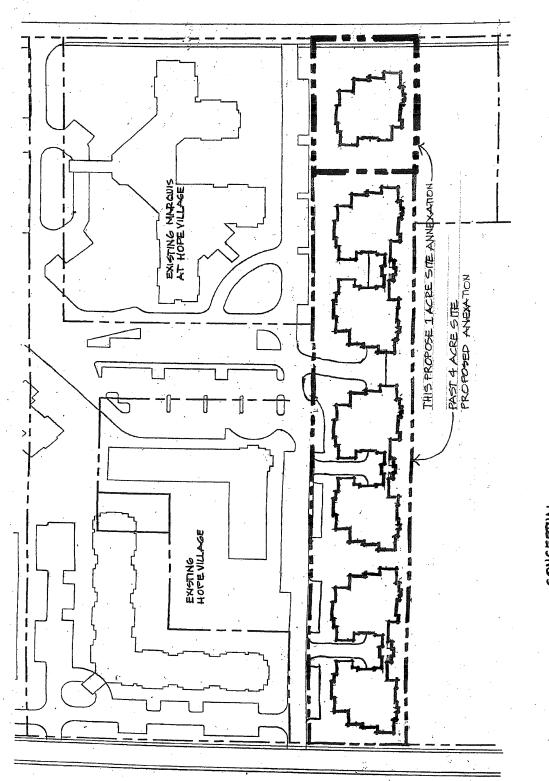
First American Title Insurance Company of Oregon An assumed business name of TITLE INSURANCE COMPANY OF OREGON

This map is provided as a convenience in locating property First American Title Insurance Company assumes no liability for any variations as may be disclosed by an actual survey

Reference Parcel Number 41E04D 01100







HOPE VILLAGE SITE

MEMORANDUM

TO:

Honorable Mayor Carson and City Council

FROM:

Bryan C. Brown, Planning Director

DATE:

December 14, 2011 for January 4, 2012 Council Agenda

THROUGH:

Greg Ellis, City Administrator

SUBJECT:

Development Concept Plan Exception for Hope Village Annexation

Issue/Objective:

The applicant is requesting an exception from CMC 16.84.040 which requires that a property located within the boundaries of a designated Development Concept Plan area, as shown on the City of Canby Annexation Development Map, prepare and gain Council adoption of a DCP for the larger defined area prior to a change of zoning being granted. This is request is authorized for Council consideration by CMC 16.84.090.

Synopsis/Rationale:

Hope Village is in the process of preparing an additional annexation application and request for a ballot vote for the November, 2012 general election. They recently purchased two additional tax lots at 1665 S. Ivy Street adjacent to and southeast of the Hope Village campus. This 0.79 acre property aligns with the 4 acre tract recently approved for annexation by Canby voters in November, 2011.

Hope village successfully made a case for an exception for the adjacent 4 acre tract with a similar request in January, 2011. Negotiations for this property had not progressed enough to allow them to include this parcel in the previous annexation and exception application. The reasoning for this request as identified in the applicant's attached letter is identical to that presented with the previous request

Staff supported the findings presented by the applicant with the previous request and continues to support the same findings associated with this request. The Development Concept Plan requirement has value but its development by the applicant and adoption by the Council can present a burden and present significant difficulties in certain situations such as this Hope Village annexation request.

Recommendation: Staff recommends Option #1 with the following suggested motion: Based on the findings submitted, I move to exempt Hope Village's newly acquired 0.79 acre site area (Tax Lots 1100 and 1101 in T4S, R1E, SE 1/4 of Section 4) from the requirements of Chapter 16.84 requiring a Development Concept Plan prior to possible action by the City Council to move the associated annexation forward to a future ballot before the citizens of Canby.

Options:

1. Approve Hope Village's request for an exception from the Development Concept Plan requirements of CMC 16.84.040.

2. Deny the request and instruct Hope Village to prepare a Development Concept Plan for adoption with their proposed annexation application.

Attachments:

- 1. Hope Village letter dated 11.20.2011 with findings to support exception request.
- 2. Vicinity Map
- 3. Conceptual Site Development

Robert Price

3935 N.E. 72nd Avenue Portland, OR 97213-5711

Planning Consultant

503-281-1037 rprice5956@comcast.net Fax 503-281-1447

HVI-02

November 29, 2011

Honorable Randy Carson,
Mayor of the City of Canby
and Canby City Councilors
% Bryan Brown, Planning Director
182 N. Holly St.
P.O. Box 930
Canby, OR 97013

Subject:

Hope Village Expansion and Annexation - Request for Exemption from the Development Concept Plan (DCP) Requirement

Dear Mayor Carson and members of the City Council:

As a representative of Hope Village, Inc., through this letter we request an exemption to the requirement for a "Development Concept Plan" (DCP) for specific property to be proposed for annexation to the City of Canby. Under Title 16 of the Canby Municipal Code, Chapter 16.84 would require annexation to the City by a vote of the people. Prior to a vote of the people, Section 16.84.040.A.1.b requires a "Development Concept Plan" be prepared illustrating all of the elements identified in 16.84.040.A.1.b, 1 through 8, with review and approval by the Canby Planning Commission and Canby City Council.

Over the past 3 years, Hope Village has been working on a future plan for the Hope Village campus, with the idea that properties which Hope Village would acquire would be annexed to the City of Canby. Originally, Hope Village was looking at a considerably larger area for annexation. However, Hope Village's goals have changed to the point where the land needs have been significantly reduced. At this point in time, Hope Village is anticipating the annexation of Tax Lots 1100 and 1101 (T4S, R1E, Section 4, SE ½) which are directly adjacent to and on the southeasterly corner of the existing Hope Village campus. These two tax lots are 0.79 acre in total size and both have a Comprehensive Plan designation of "RC", or "Residential-Commercial". The address of this developed site is 1665 S. Ivy. Hope Village recently purchased this property from Mr. and Mrs. Bob Pendell.

Geographically, this small parcel completes the connection between Fir Street on the west and Ivy Street on the east. As can be seen on the accompanying map and sketch

plan, it fits perfectly with the recent 4-acre annexation of property purchased from the Scott family. Unfortunately, this purchase from the Pendells was not as timely as the purchase from the Scott family, and we were unable to complete the transaction by the annexation petition deadline this past year, as we had hoped to do.

Because this less-than-one-acre site area is small in comparison to the overall 60+ acre DCP that would be required, and because the site is contiguous to and will be served by the existing Hope Village campus, Hope Village seeks an exemption to the requirements of Section 16.84.040 through an exemption under the provisions of Section 16.84.090 of the Municipal Code. Section 16.84.090 states:

The City Council may authorize an exception to any of the requirements of this chapter.

An exception shall require a statement of findings that indicates the basis for the exception. Exceptions may be granted for reasons including, but not limited to: identified health hazards, limited development potential, or administrative error. An exception to referring an annexation application that meets the approved criteria to an election cannot be granted except as provided in the Oregon Revised Statutes.

Section 16.84.040 requires that the first to annex property into the City that is within a DCP area complete a plan for the entire DCP. We believe this is overly burdensome given the limited site area and the limited development potential of the proposed annexation that makes up only 1.3% of the entire 60+ acre DCP area. Therefore, we request an exemption under the provisions of Section 16.84.090 of the Canby Municipal Code. The specific reasons or findings for this exemption request are as follows:

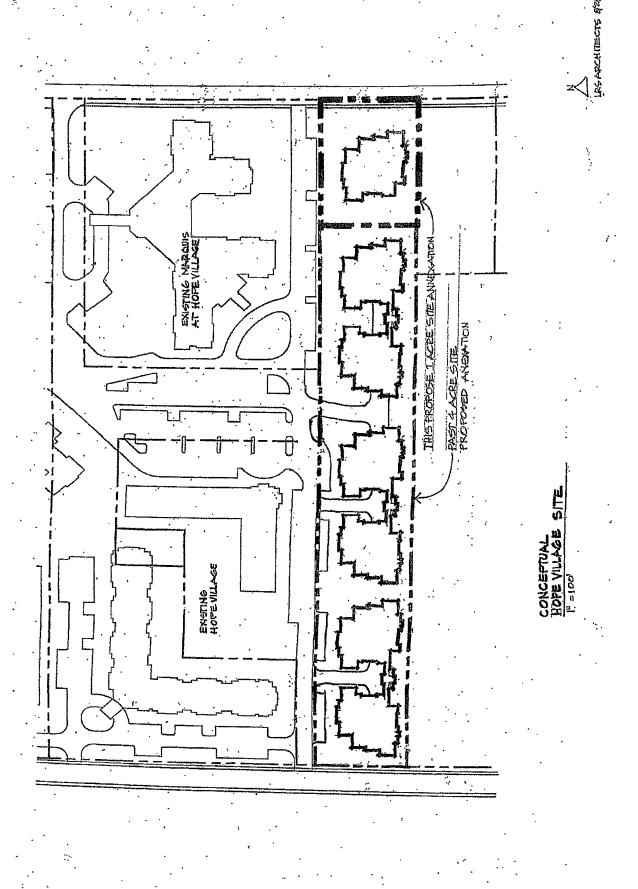
- This less-than-one-acre site area is of limited development potential because it is limited in size and access, and has limited serviceability based on sanitary sewer and surface water drainage capacities. It may be possible, depending on the scale of development proposed by Hope Village, that a sanitary sewer connection to the east across Ivy Street may be the best alternative for servicing this property. However, when combined with the previous 4-acre annexed area in a single development plan for Hope Village, services and facilities may be made to work together because of the unified development scheme. In addition, since there is no public storm drainage system in the area, all storm drainage will be through on-site disposal systems:
- 2. This site area is directly adjacent to and at the southeasterly corner of the existing Hope Village campus, meaning that Hope Village is able to propose a very specific site development plan that will involve only the uses appropriate to Hope Village on this 0.80-acre site;
- 3. While Hope Village had numerous discussions regarding a sale with the McMartin family, owners of the 32 +/- acre property to the south of the Scott property, no suitable sale agreement was reached;
- 4. The McMartin family already has a master plan for their approximately 32 acres to the south of the Hope Village site area, and are not willing to see that plan changed. While no city approval has been given to the McMartins for their master plan, this would make Hope Village responsible for the DCP that would include all of the McMartin property, a situation that neither Hope Village nor the McMartin family are comfortable with;
- 5. Further, the McMartin family does not want its properties included in a DCP over which they have little to no control.

Based on these findings, Hope Village requests that the Canby City Council exempt Hope Village's newly acquired 0.79 acre site area (Tax Lots 1100 and 1101 in T4S, R1E, SE ¼ of Section 4) from the requirements of Chapter 16.84 requiring a Development Concept Plan prior to approval by the City Council that this proposed annexation be moved forward to a future ballot before the citizens of Canby.

We would be happy to answer any questions, or have any discussion with city staff regarding this request. Thank you for your consideration.

Sincerely,

Robert Price



ANNEXATION ANALYSIS

Criteria 16.84.040.A.2 Analysis of the need for additional property within the city limits shall be provided. The analysis shall include the amount of developable land (within the same class of zoning – low density residential, light industrial, etc.) Currently within the city limits; the approximate rate of development of those lands; and how the proposed annexation will affect the supply of developable land within the city limits. A supply of developable residential land to provide for the anticipated population growth over the following three years is considered to be sufficient.

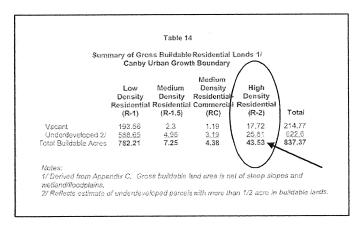
Findings: This criterion has essentially three analysis elements:

- 1. Developable land supply (within the same class of zoning)
- 2. Rate of development
- 3. Proposal effects.

Analysis Element 1: amount of developable land (within the same class of zoning within the City Limits. The three data sources for this data are the City's Comprehensive Plan and the 1999 Land Needs Analysis which describe land supply for the UGB and subdivision tracking spreadhsheets used for land consumption that are updated with each relevant staff report.

UGB Land Supply

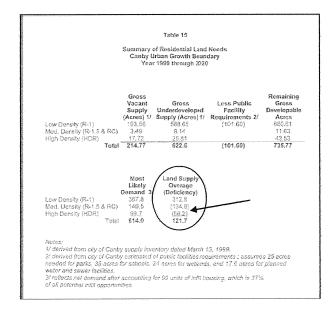
The Comprehensive Plan has not been updated to include any development projections for any subsequent period of time. Although portions of the Comprehensive Plan have been updated in 2007, the buildable lands analysis has not been substantially updated since approximately 2000. Thus, the Land Needs Analysis is used to reference land supply within the UGB. This is used as a reference for projected land need and available supply. According to Table 14 of the Land Needs Analysis below, there are 43.53 gross acres of buildable (vacant and underdeveloped) High Density Residential (R-2) designated land within the Urban Growth Boundary (UGB). (The number of acres within the city limits is described below.)



Staff Report ANN11-01: Hope Village Annexation June 30, 2011

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According to Table 15 of the Land Needs Analysis below, there is a 56.2 acre deficiency between the UGB supply and the demand within the planning period (to 2020).



Three-Year Land Supply

Canby generally considers a 3-year supply of buildable lands (for each residential zoning district) to be sufficient; The City Council has determined that only platted lots and/or approved units should be included in the calculations; annexed land that has not been subdivided will not be included in the analysis. The Council has also determined that annexations that will significantly exceed the 3-year supply would not meet the annexation criteria for need.

The latest figures available from the most recent R-2 annexation staff report in 2006 indicate there are 137 units of un-used capacity in high density residential, or a projected 2.66 years of land inventory in this category. This supply is less than the three year supply desired by Council and less than the five years cited in ORS 197.296(5(b)) This analysis identified no unplatted lots. The only high density residential that has been realized since the May 2006 Buildable Lands Analysis is in a 2008 annexation proposal ANN08-03 for 2 acres of land developing 22 dwelling units maximum. The subdivision has not been platted. Although this staff report found very similar figures to those of the 2006 staff report, data was not cited and confirmation of its numerical inputs could not be found. Thus, the 2006 data was used because of the relatively small number of dwelling units of the 2008 annexation and the inability to confirm the 2008 data as well as the unplatted status of this annexation. The 2006 supply is analyzed and the 22 units are added to the final calculations as they have not been platted.

Staff Report ANN11-01: Hope Village Annexation June 30, 2011 The 2.66 year supply as of May 2006 would have, in theory and on average been consumed by approximately the end of the 2008 calendar year; which was approximately 2.5 years ago. Although the housing market has significantly decreased by nearly every metric, there is still housing demand and it is likely that some of the available/constructed units have been occupied. This is seen in Figure 1 below which shows 38 available R-2 zoned units which is a 0.73-year supply at the average consumption rate of 51.6 units/acre. Thus, the 2006 2.66 year supply below would have been exhausted and replaced with a 0-year supply approximately 2.5 years ago. With no new supply (platted parcels) in the interim, there would be approximately a 2.5-year need, combined with the existing supply would yield a -1.75-year (2.5 year supply + 0.73 year capacity) supply deficit of R-2-zoned land.

Platted Lots:

Buildable Lands Inventory May 29, 2006 R-2 High Density Residential

Property Owner	Tax Map	Tax Lot	Size (acres)	Zoning	Units	Units Built	Units Available
Marnella - Garden Crossing	3 1E 34B	200	4,67	R-2	55	55	0
Valentine Meadows				R-2	16	16	0
Apollo Homes	4 1E 05	401	14.21	R-2	136	32	104
Pine Place				R-2	4	0	4
Bristol			0,3	R-2	4	0	4
Pine Station			0.97	R-2	11	0	11
Territorial Road Townhomes			0.91	R-2	14	. 0	14
R-2 Total Lats			21.06		240	103	137

5 year average 51.6 units/year = 2.66 years

Figure 1: Source City of Canby Density 2011 (Updated from 2010)

		Pre-			
Year .	and the second second	Existing	4.00		ercent
male de la companie	ed Developments	Units	Units	Built	Built
	Family Attached				
1995	Mahor on the Green	0	30	24	80%
1996	T&J Meadows	1	8	8	100%
1997	Forsythe Field	1	18	16	94%
1997	Edeen's Acres	2	6.	6	100%
2001	Redwood Corner	0	12.	10	83%
2002	My Gardens (Row Houses)	0	5	5	100%
2003	Valentine Meadows	Û	16	16.	100%
2004	Apollo Homes (townhomes)	0	62	58	94%
2004	Knotty Pine - R2	0	4	4	100%
2005	Pine Station - R2	0	11	11	100%
2005	Brown Bark Estates - R2	0	14	14	100%
2006	Knott Commons - R2	0	10	5	50%
2005	Woody - R2	1	4	1	50%
	Apollo (Darcy's Country) R2 -				
	Attached and detached homes				
2004	see file	0	136	132	97%
-	Subtotal	4	336	310	92%
	Units Available			26	
Multit		-	oranel taxon points		
1989	N. Knott Apartments	0	10	10	100%
1990	Maple Terrace Apartments	0	28	28	100%
1992	Redwood Terrace Apartments	0	57	57	100%
1994	Marion South Apartments	0	92	32	100%
1995	Pine Terrace Apartments	0	40	10	1005
1995	Canby Apartments	0	76	76	100%
1997	Walt West Apartment	0	8	8	100%
1999	Casa Verde Apartments	0	26	26	1009
2000	Meyer	12	12	0	100%
2001	Canby Grove Apartments	0	86	36	1009
2003	hy Gardens (MF - Complete)	0	2	2	100%
	Subtotal	12	437	425	97%
	Units Available			12	

Units Available:

38

5 year average 51.6 units/year = 0.73 years

Staff Report ANN11-01: Hope Village Annexation June 30, 2011

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Supply conculsions from the 1999 Land Needs Analysis:

- There are 43.53 gross acres of buildable (vacant and underdeveloped) High Density Residential (R-2) designated land within the Urban Growth Boundary (UGB).
- There is an anticipated 56.2 acre deficiency in High Density Residential land witihin the City's Urban Growth Boundary.
- At the time of the Land Needs Analysis, the proposal area was designated Residential-Commercial. CPA03-03 added this four acres and an additional parcel of 11 acres to the HDR designation. Including the ANN08-03 two acres, the deficiency is (56.2-(11+4+2))=38.2 acres of deficiency within the UGB.

Supply conclusions from the Buildable Lands Inventory May 29, 2006

- There was a 2.66 year supply of high density residential units that have been platted within the City limits that equates to 137 units or 18.88 acres.
- There is one unplatted lot remaining within Canby's City Limits which is approximately 2
 acres and 22 units. Thus, nearly all remaining High Density Land available to be platted
 is outside the City Limits and within the UGB.

Supply conclusions from City of Canby Density 2011; Subdivision tracking

- There are 38 Units currently Available within the City Limits. This equates to 0.73 years of high density residential units available.
- Using an average consumption rate stated in the Comprehensive Plan, and adjusting for interim time interval, there is a deficiency of 1.77 years of residential units.

There is less than a three-year supply of High Density Residential (R-2) zoned land as desired by the Canby City Council. There is a High Density Residential (R-2) zone deficiency within the City Limits and a long-term High Density Residential (HDR) designation deficiency within the UGB. Therefore, the supply does not exceed a three-year supply and there is a "need" for high density residential land.

Staff Report ANN11-01: Hope Village Annexation June 30; 2011

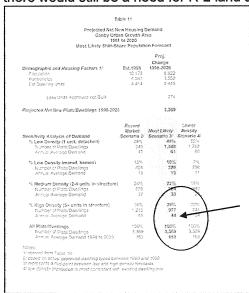
Page 11 of ZI

Criterion 2; Approximate Rate of Development and Criterion 3: How The Proposed Annexation Will Affect The Supply Of Developable Land Within The City Limits

Two rates are described in two documents; a previous measured rate in Staff's subdivision tracking sheet and a forecasted rate in the Land Needs Analysis. The documented rate is shown above and is 51.6 units/year. The current housing market is an anomalous situation and the years since 2006 have not been added to this to reduce the consumption. In table 11 below, the Land Needs Analysis forecasted annual need of 44 units of consumption per year.

Based on the number of vacant platted lots in the R-2 zoning district, the total supply of buildable lands available for high density residential development equals a -1.77 year supply. There are 38 Units currently Available within the City Limits and no R-2-zoned unplatted land within the UGB. The proposed annexation would at a minimum add 56 and potentially add 66 new units and 4.0 acres into the City Limits. This 66-unit addition to the 38 units equals 104 available units within the City Limits. This equates to a 2.015-year supply at 51.6 units per year of average consumption. Thus, this addition would bring the buildable lands supply total to a 0.25-year supply; which is still less than the desired three years.

The Land Needs Analysis forecasted annual need of 44 units of consumption per year. This consumption demand would yield a -0.02-year existing supply and with the proposed 66-units, yield a 1.27-year supply. (demand: 44 units * 3 years =132 units; and supply: (38 existing+66proposed =104 = 132/104=1.27). Although this would gain a larger land supply, there would still be a need for R-2 land as it is less than the desired three-year supply.



Staff Report ANN11-01: Hope Village Annexation June 30, 2011 <u>Criteria 16.84.040.A.3</u> Statement of potential physical, aesthetic and related social effects of the proposed development on the community as a whole and on the neighborhood of which it will become a part; and proposed actions to mitigate identified concerns, if any. A neighborhood meeting is required as per Table 16.89.020 of the City of Canby Land Development and Planning Ordinance.

Findings: This Staff Report incorporates the relevant Section of the applicant's narrative as findings. The applicant's narrative describes the potential impacts and mitigation measures. Staff does not identify any significant impacts that are not described in the applicant's narrative and agree that the physical aesthetic and related social effects of annexation and zoning R2 are not significant. Additionally, the neighborhood meetings are described in other sections of this report. Staff finds that the applicant narrative is sufficient for the purposes of this staff report and the applicable criteria are or can be met.

<u>Criteria 16.84.040.A.4</u> Statement of availability, capacity and status of existing water, sewer, drainage, transportation, park and school facilities.

Findings: This Staff Report incorporates the relevant Section of the applicant's narrative as findings. The applicant's narrative describes the potential impacts and mitigation measures. Staff does not identify any significant impacts that are not described in the applicant's narrative and agree that, according to utility provider statements, utility capacity is available, drainage and transportation are sufficiently available and that park and school facilities would not significantly impacted if developed as senior housing. However, if developed as medium or high-density residential units, there would be school enrollment impacts. Staff has considered the potential for this annexation to develop as non-senior housing and determined the possibility to be insignificant. A condition of approval has been proposed that should non-senior housing be developed that this criterion be re-evaluated.

Transportation capacity is the service for which there was any possible limitation. With the R-C Comp. Plan designation and a commercial use, there would have been many more trips than with high density residential and many more than with high density senior-specific housing (see Exhibit B). The City's Traffic Engineer proposed a 60-trip "cap" to limit potential commercial trips within existing system capacity. However, under R-2 zoning, even at likely maximum development of 80 apartment units, the total PM Peak trips would only be 50 trips; under the trip-cap threshold. The City's Traffic Engineer performed a Transportation Impact Study (TIS) for the R-C designation, but revised the trip estimations in subsequent correspondence (see Exhibit C). The TIS is still valid because the potential trips generated by maximum R-C commercial development intensity would be greater than the minimum residential intensity under R-2. Additionally, the R-2 likely maximum density would not break that cap threshold. Lastly, other components of the TIS that reviewed adequacy of the public facilities to serve the site (sight access and connectivity) are still valid.

Staff finds that the applicant narrative is sufficient for the purposes of this staff report and the applicable criteria are or can be met.

Staff Report ANN11-01: Hope Village Annexation June 30, 2011

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<u>Criteria 16.84.040.A.5</u> Statement of increased demand for such facilities to be generated by the proposed development, if any, at this time.

Findings: This Staff Report incorporates the relevant Section of the applicant's narrative as findings. The applicant narrative describes the facility demand by proposed development. However, this application is not for concurrent development and the minimum and likely development should be considered for the purposes of this report. The applicant describes the need for high density housing in Canby and also specifically for senior housing. Criterion A.2 describes there is a need for high-density residential development. Thus, there is a demand for high-density housing and, as the applicant states, for this specific type of housing. Staff finds that the applicant narrative is sufficient for the purposes of this staff report and the applicable criteria are or can be met.

<u>Criteria 16.84.040.A.6</u> Statement of additional facilities, if any, required to meet the increased demand and any proposed phasing of such facilities in accordance with projected demand

Findings: This Staff Report incorporates the relevant section of the applicant's narrative as findings. According to utility provider statements, utility capacity is available, no facilities need increasing as a result of this proposal. Staff finds that the applicant narrative is sufficient for the purposes of this staff report and the applicable criteria are or can be met.

<u>Criteria 16.84.040.A.7</u> Statement outlining method and source of financing required to provide additional facilities, if any.

Findings: This Staff Report incorporates the relevant Section of the applicant's narrative as findings. No financing is needed. Staff finds that the applicant narrative is sufficient for the purposes of this staff report and the applicable criteria are not applicable or can be met.

<u>Criteria 16.84.040.A.8</u> Statement indicating the type and nature of any comprehensive plan text or map amendments or zoning text or map amendments that may be required to complete the proposed development.

Findings: This Staff Report incorporates the relevant Section of the applicant's narrative as findings. Staff finds that the applicant narrative is sufficient for the purposes of this staff report and the applicable criteria can be met.

Staff Report ANN11-01: Hope Village Annexation June 30, 2011 <u>Criteria 16.84.040.A.9</u> Compliance with other applicable city ordinances or policies.

Findings: This Staff Report incorporates the relevant Section of the applicant's narrative as findings. As stated in the conclusions section of this report, this application complies with all applicable city ordinances and policies. Staff finds that the applicant narrative is sufficient for the purposes of this staff report and the applicable criteria can be met.

<u>Criteria 16.84.040.A.10</u> Compliance of the application with the applicable sections of Oregon Revised Statutes Chapter 222.

Findings: This Staff Report incorporates the relevant Section of the applicant's narrative as findings. As stated in the conclusions section of this report, this application complies with all applicable Oregon Revised Statutes. Staff finds that the applicant narrative is sufficient for the purposes of this staff report and the applicable criteria can be met.

Staff Report ANN11-01: Hope Village Annexation June 30, 2011



MEMORANDUM

DATE:

March 14, 2012

TO:

Bryan Brown, City of Canby

FROM:

Chris Maciejewski, PE, PTOE

Steve Boice, EIT

SUBJECT:

Hope Village Phase II Rezone Traffic Impact Study

OREGON OF MACIEJE

P11010-014

This memorandum evaluates the transportation impacts associated with the proposed Comprehensive Plan Amendment and land use rezone of the 0.79 acre Hope Village site (consisting of tax lots 1100 & 1101 in T4S, R1E, Sec. 4, SE/4) in Canby, Oregon. Our understanding is that the applicant does not intend to obtain land use development approval for a specific development at this time. Therefore, this evaluation is focused on evaluating the adequacy of existing public facilities to satisfy Oregon Transportation Planning Rule (TPR) requirements for the Comprehensive Plan Amendment and rezone (OAR 660-12-0060) based on consistency with the City's Transportation System Plan (TSP) in the future horizon year. This analysis does not satisfy City of Canby regulations for a specific development under a near-term year of opening. Land use approval for a specific development would be addressed through subsequent applications and may require additional traffic impact evaluation depending on the proposed use and its unique site plan.

The following sections summarize the project site, proposed Comprehensive Plan Amendment, proposed rezone, and site access and connectivity review.

Project Site

The project site consists of two parcels (approximately 0.79 acre) located on the southwest quadrant of the intersection at South Ivy Street/Southeast 16th Street as shown in Figure 1. This site is immediately south of the existing Hope Village development and is adjacent to the four-acre parcel to the west that was recently approved for annexation and rezoning (Exclusive Farm Use to R-2 High Density Residential)¹. The site is located outside of the current City limits, but within the City's Urban

1400 SW Fifth Avenue Suite 500 Portland, OR 97201

(503) 243-3500 ((503) 243-1934 fax www.dksassociates.com

¹ Hope Village Rezone Traffic Impact Study, DKS Associates, March 2011, amended via email June 29, 2011.



Hope Village Phase II Rezone Traffic Impact Study

> March 14, 2012 Page 2 of 8

Growth Boundary (UGB). The City's current Comprehensive Plan designation of the site is Residential Commercial (RC)². The current zoning of the site is EFU (Exclusive Farm Use) by Clackamas County³. Currently the site has one residential unit.

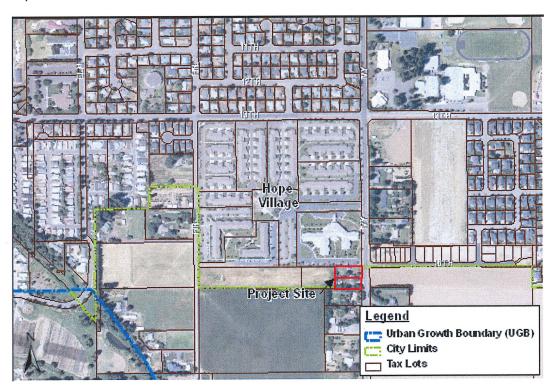


Figure 1: Proposed Project Site

Proposed Comprehensive Plan Amendment

The proposed land use action would annex the two properties into the City of Canby and change the Comprehensive Plan designation from RC (Residential-Commercial) to HDR (High Density Residential). A change to the Comprehensive Plan designation is required due to the proposed zone change of the properties from EFU to R-2 (High Density Residential), as the rezone land use needs to be compliant with Comprehensive Plan zoning. The proposed Comprehensive Plan designation and zoning would be consistent with the four-acre parcel located to the west that was recently annexed into the City. Transportation Planning Rule (TPR) evaluation is needed for the proposed Comprehensive Plan amendment and the zone change to determine if there is significant effect on the surrounding transportation network.

² Email from Byran Brown, City of Canby, November 30, 2011.

³ Clackamas County Comprehensive Plan, Map IV-07 Non-Urban Area Land Use Plan, <u>www.co.clackamas.or.us</u>, accessed February 29, 2012.



Hope Village Phase II Rezone Traffic Impact Study

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To determine the potential transportation impacts associated with the Comprehensive Plan Amendment, trip generation estimates were performed for reasonable worst case developments assuming the existing and proposed Comprehensive Plan designation. If the site developed consistent with existing Residential-Commercial (RC) Comprehensive Plan designation, a reasonable worst-case development would be a 13,000 square-foot office building. Under the proposed High Density Residential (HDR) Comprehensive designation, a reasonable worst-case development could be 20 apartment units. Trip generation rates published by the Institute of Transportation Engineers (ITE) for each respective development type were used to estimate potential trips for the site during the P.M. peak hour. The comparison is listed in Table 1.

Table 1: Comprehensive Plan Designation Change Trip Generation Comparison

Trip Generation Description	Reasonable Worst Case Development (ITE Code)	P.M. Peak Hour Trips	
Existing Comprehensive Plan Designation			
Residential-Commercial (RC)	13,000 ft ² Office (ITE 710)	45	
Proposed Comprehensive Plan Designation			
High Density Residential (HDR)	20 Apartment Units (ITE 210)	12	

As listed, the proposed Comprehensive Plan Amendment would reduce the reasonable worst-case trip potential for the site during the P.M. peak hour. Therefore, the proposed Comprehensive Plan Amendment would have no adverse impact on the surrounding transportation system and no mitigation measures would be required to satisfy TPR requirements.

Proposed Rezone

Assuming the approval of the proposed Comprehensive Plan Amendment, the two parcels could then potentially be rezoned from EFU to R-2 consistent with the four-acre parcel located to the west. The proposed rezone would allow more intense uses to develop on the site compared to the existing zoning. Therefore, TPR evaluation is required to determine if this increase creates significant effect.

Trip generation estimates for reasonable worst-case development assuming the proposed land use zoning were compared to trip generation estimates under the existing zoning. Trip generation rates developed by the Institute of Transportation Engineers (ITE) were used to estimate trips for the site during the P.M. peak hour. A single family detached dwelling unit was assumed to be a reasonable worst-case development scenario under the existing zoning (EFU). Under the proposed zoning, 20

5 Ibid

⁴ Trip Generation, 8th Edition, Institute of Transportation Engineers, 2008



Hope Village Phase II Rezone Traffic Impact Study March 14, 2012

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apartment units were assumed to be a reasonable worst-case development scenario. The comparison is listed in Table 2.

Table 2: Land Use Zone Change Trip Generation Comparison

Trip Generation Description	Land Use (ITE Code)	P.M. Peak Hour Trips
Existing Zoning Scenario		
Exclusive Farm Use (EFU) Zoning	1 Single-Family Detached Dwelling Unit (ITE 210)	1
Proposed Zoning Scenario		
Reasonable Worst-Case Development of Proposed High Density Residential (R-2) Zoning	20 Apartment Units (ITE 210)	12

As listed in Table 2, the proposed zone change has the potential to increase P.M. peak hour trip generation of the site by approximately 11 trips. This level of trip generation increase is below impact thresholds established by ODOT⁶ and would not likely create sigificant effect at nearby City intersections. Furthermore, under the original Comprehensive Plan designation, the site was assumed to develop under RC conforming zoning as part of the City's adopted Transportation System Plan (TSP), which based on average rates allocated approximately 14 trips for the site. Therefore, the proposed zone change would not significantly affect the surrounding transportation system and no mitigation measures would be required to satisfy TPR requirements.

Site Access and Connectivity

South Ivy Street along the project site frontage consists of two 12-foot travel lanes with a four-foot shoulder. The roadway is under the jurisdiction of Clackamas County and is classified as a major arterial⁷. It has a posted speed of 40 miles-per-hour (mph) in the area. The speed reduces to 30 mph approximately 850 feet to the north and increases to 55 mph approximately 175 feet to the south. There is also a school zone located directly to the north. Along the north project frontage is the existing parking lot serving the existing Hope Village site.

The following sections summarize site access to the property, intersection sight distance, and multi-modal connectivity for the project site to determine the adequacy of public facilities serving the site.

⁶ Oregon Highway Plan - Policy Intent Statements, Matthew Garret, ODOT Director, May 25, 2011. The impact threshold is identified as 400 daily trips. Applying ITE Trip Generation Daily rates, a 20 unit development would generate approximately 133 daily trips.

⁷ Clackamas County Comprehensive Plan, Map V-2b Function Classification, http://www.clackamas.us, accessed March 8, 2012.

DKS Associates TRANSPORTATION SOLUTIONS

Hope Village Phase II Rezone Traffic Impact Study

March 14, 2012 Page 5 of 8

Site Access

The existing site currently features two accesses onto South Ivy Street, which serve as loop around for the existing single family household. Based on the site's location there are three potential site access options:

- Providing a new consolidated access onto South Ivy Street (combining the two existing access points into one).
- Connecting to the existing Hope Village network and sharing the existing Hope Village access to South Ivy Street (inbound only) and South Fir Street (full access).
- Connecting to the existing Hope Village network, revising the existing Hope Village access to South Ivy Street for full access, and sharing the Hope Village accesses to South Ivy Street and South Fir Street

The last two options assume that the proposed site be developed as part of Hope Village⁸. Importantly, the County's access spacing requirement for major arterial roadways (e.g., South Ivy Street) is 400 feet to the nearest intersection⁹. The spacing between the existing Hope Village access (Southeast 16th Avenue) and the existing two access locations at the proposed site are listed in Table 3. The distances shown are from access center to center.

Table 3: Existing Access Spacing from Existing Access (Southeast 16th Avenue)

0.14	Distance to Access		
Criteria	Access Point #1	Access Point #2	
Field Measurement (feet)	120	170	
Clackamas County Standard (feet)	400	400	
Standard Met?	NO	NO	

⁸ It is our understanding that the proposed site would be combined with the four acre parcel to the west and be developed as part of Hope Village.

⁹ Clackamas County Comprehensive Plan, Table V-05, Clackamas County Access Requirements by Functional Classification.

DKS Associates TRANSPORTATION SOLUTIONS

Hope Village Phase II Rezone Traffic Impact Study

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The County's access spacing requirement would not be met as indicated in the table; therefore a shared access driveway to the existing Hope Village site to the north would be recommended.

By closing the existing site access points to South Ivy Street, it is likely that the existing entrance-only driveway to Hope Village could be modified to provide full access. This could be accomplished by removing the existing curb extension shown in Figure 2 and modifying the driveway width to meet Clackamas County standards.



Figure 2: Existing Hope Village Access to South Ivy Street

Intersection Sight Distance

As mentioned in the previous section, access spacing standards would not be met along South Ivy Street if the proposed project sought to provide access from the proposed site directly to South Ivy Street. It is therefore recommended that the proposed site share the access driveway to the existing Hope Village site directly to the north. Since this existing driveway currently serves entering vehicles only, intersection sight distance was reviewed to ensure that adequate sight distance would be provided for exiting vehicles. The existing intersection sight distance measurements are provided in Table 4 and are compared to the American Association of State Highway and Transportation Officials (AASHTO) requirement based on the posted speed of 40 mph¹⁰.

Table 4: Intersection Sight Distance Summary for Existing Access Point - South Ivy Road

	Intersection Sight Distance		
Criteria	Looking North	Looking South	
Field Measurement (feet)	>445	>385	
Clackamas County Standard (feet)	445	385	
Standard Met?	YES	YES	

As indicated in the table, intersection sight distance would be met at the existing Hope Village access across from Southeast 16th Street. Although sight distance is currently met, the existing vegetation on the west side of South Ivy Street on the proposed property sight should be kept trimmed back or removed to keep sight lines to the south clear (see Figure 3).

¹⁰ A Policy on Geometric Design of Highways and Streets, American Association of State Highway and Transportation Officials, Table 9-6: Decision Intersection Sight Distance and Table 9-8: Design Intersection Sight Distance, 2011.



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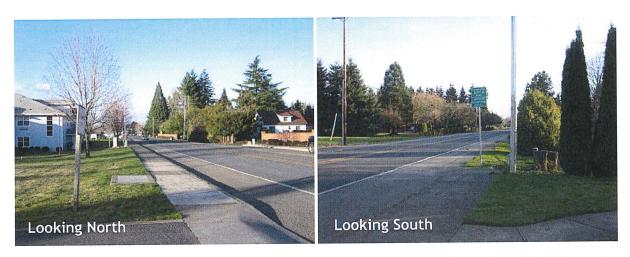


Figure 3: Intersection Sight Distance (Looking North and South from Existing Hope Village Access)

Multi-Modal Connectivity

There are currently no sidewalks on South Ivy Street south of Southeast 16th Street (along the site frontage). To the north of Southeast 16th Street there are existing sidewalks along the west side of South Ivy Street (existing Hope Village site frontage). On the east side sidewalks exist north of Southeast 16th Street for approximately 150 feet. There are currently striped bike lanes along South Ivy Street north of Southeast 16th Street. To the south there is a four-foot shoulder on both sides of the roadway. Southeast 16th Street has no sidewalks no bike lanes. The existing Hope Village site to the north has sidewalks along its south frontage between South Ivy Street and South Fir Street.

Along the site's east frontage to South Ivy Street, development would need to provide half-street roadway improvements including curb, sidewalks, and possibly set-back for bike lanes in the future. These improvements should be coordinated with City staff, and may include half-street improvements to County standards. The pedestrian and bicycle improvement plans provided in the City's TSP¹¹ do not identify any high-priority (i.e., Financially Constrained Scenario) pedestrian or bicycle projects in the site vicinity. However, internal connectivity should be provided when the site develops, and external connections to the existing Hope Village sidewalk network would allow for good pedestrian and bicycle connectivity to both South Fir Street and South Ivy Street.

Findings

Based upon the analysis presented in this memorandum, the proposed Comprehensive Plan designation change would reduce the potential number of trips to the project site during the P.M. peak hour assuming reasonable worst case development. Similarly, the reasonable worst case development of the site under the proposed rezone was found to generate a small increase in P.M. peak hour trips

¹¹ Canby Transportation System Plan (TSP), December 2010; Figure 5-1 (Pedestrian Improvements) and Figure 6-1 (Bicycle Improvements).



Hope Village Phase II Rezone Traffic Impact
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(i.e., unlikely to impact the surrounding transportation network) and less trips than was assumed for the site in the City's TSP. The proposed Comprehensive Plan Amendment and rezone therefore was found to have no significant impact on the surrounding transportation network.

Corresponding with future development of the site, frontage improvements and multi-modal connectivity can feasibly be provided to adequately serve the site. No additional mitigations are recommended to assure adequate public facilities.

If you have any questions, please feel free to call or email.

M E M O R A N D U M

TO: Honorable Mayor Carson and City Council

FROM: Bryan C. Brown, Planning Director

DATE: December 14, 2011 for January 4, 2012 Council Agenda

THROUGH: Greg Ellis, City Administrator

SUBJECT: Development Concept Plan Exception for Hope Village Annexation

Issue/Objective:

The applicant is requesting an exception from CMC 16.84.040 which requires that a property located within the boundaries of a designated Development Concept Plan area, as shown on the City of Canby Annexation Development Map, prepare and gain Council adoption of a DCP for the larger defined area prior to a change of zoning being granted. This is request is authorized for Council consideration by CMC 16.84.090.

Synopsis/Rationale:

Hope Village is in the process of preparing an additional annexation application and request for a ballot vote for the November, 2012 general election. They recently purchased two additional tax lots at 1665 S. Ivy Street adjacent to and southeast of the Hope Village campus. This 0.79 acre property aligns with the 4 acre tract recently approved for annexation by Canby voters in November, 2011.

Hope village successfully made a case for an exception for the adjacent 4 acre tract with a similar request in January, 2011. Negotiations for this property had not progressed enough to allow them to include this parcel in the previous annexation and exception application. The reasoning for this request as identified in the applicant's attached letter is identical to that presented with the previous request

Staff supported the findings presented by the applicant with the previous request and continues to support the same findings associated with this request. The Development Concept Plan requirement has value but its development by the applicant and adoption by the Council can present a burden and present significant difficulties in certain situations such as this Hope Village annexation request.

Recommendation: Staff recommends Option #1 with the following suggested motion: Based

on the findings submitted, I move to exempt Hope Village's newly acquired 0.79 acre site area (Tax Lots 1100 and 1101 in T4S, R1E, SE ¼ of Section 4) from the requirements of Chapter 16.84 requiring a Development Concept Plan prior to possible action by the City Council to move the associated annexation forward to a future ballot before the

citizens of Canby.

Options:

1. Approve Hope Village's request for an exception from the Development Concept Plan requirements of CMC 16.84.040.

2. Deny the request and instruct Hope Village to prepare a Development Concept Plan for adoption with their proposed annexation application.

Attachments:

- 1. Hope Village letter dated 11.20.2011 with findings to support exception request.
- 2. Vicinity Map
- 3. Conceptual Site Development

June 1, 2012

Subject:

Application/Petition for Annexation and related Zone Change by Hope Village, Inc. (Case File No. ANN 12-01/CPA 12-01/ZC12-01)

Chair Dan Ewert and Members of the Canby Planning Commission:

I am writing this letter on behalf of my wife and I who have been resident of Hope Village for 15 years now. We find Hope Village is a great place to live in a park like atmosphere with lots of sidewalks free of bicycle riding, skateboarding and rollerblading with benches to rest on throughout the campus. In the beginning, I was the Project Manager of this development. I have visited Indiana, Florida, Arizona and other retirement communities here in Oregon and have concluded that Hope Village is one of the best with its openness and park like setting. Almost daily I see people moving around in wheelchairs, walkers and some using canes to view the garden plots, beautiful flowers, well-manicured lawns and maybe take a break on a park bench in front of our beautiful waterfall.

Some years ago, I heard someone make a statement that Hope Village was a crown jewel of Canby. My dreams and hope are that Hope Village will become a continuum of care in my life time. Hope Village has a motto "To add years to life and life to years".

In closing, please support this application/petition by recommending approval to the Canby City Council.

Thank you for your consideration.

Bob Kauffman

Sincerely yours,

Bob Kauffman 1441 S. Ivy #102

Canby, OR 97013

June 3, 2012

Subject:

Application/Petition for Annexation and related Zone

Change by Hope Village, Inc.

(Case File No. ANN 12-01/CPA 12-01/ZC12-01)

Chair Dan Ewert and Canby Planning Commission:

We understand that Hope Village has applied to the City of Canby for approval of an application/petition to the Canby community for annexation of an additional .79 acre parcel, located just south of the existing Hope Village campus. We are in support of this proposed annexation.

We have been residents of Hope Village for 12 years and feel that Hope Village's plan for this expansion will be an asset to the community. Hope Village is a stable, wellrespected, well-run, caring establishment for seniors. Hope Village residents contribute to the community not only economically but also by volunteering for many community organizations.

We request that the Canby Planning Commission support this application/petition by recommending approval to the Canby City Council in order that it be placed on the ballot for the November general election.

Thank you very much for your consideration.

Clayton & Jean Metzger

1441 S. Inn Ch. 1997 1441 S. Ivy St., #408

Canby, OR 97013

June 1, 2012

Subject:

Application/Petition for Annexation and related Zone Change by

Hope Village, Inc. (Case File No. ANN 12-01/CPA 12-01/ZC12-01)

Chair Dan Ewert and Members of the Canby Planning Commission:

We understand that Hope Village has applied to the City of Canby for approval of an application/petition to the Canby community for annexation of an additional .79 acre of land, located just south of the existing campus. We are both in support of this proposed annexation and urge the Canby Planning Commission to recommend to the Canby City Council approval of the application/petition in order that it is placed on the ballot for the November general election.

We live at Hope Village and find it a secure and comforting community. Hope Village's plans for a modest expansion to the south of the existing campus will be an asset to the community and will bring more stable residents to the city. The people of Hope Village contribute to the community in more than economic and social ways, making Canby a better community in every way.

We request that the Canby Planning Commission support this application/petition by recommending approval to the Canby City Council.

Thank you very much for your consideration.

Sincerely

Buzz Weygandt Patsy Weyandt

1441 S. Ivy Street #1201

Canby, OR 97013

May 31, 2012

RECEIVED
JUN 0 5 2012
CITY OF CANBY

City of Canby Attn: Planning Commission Canby, OR 97013

Subject: Application/Petition for Annexation and related Zone Change by Hope Village, Inc. (Case File No. ANN 12-01/CPA 12-01/ZC12-01)

Canby Planning Commission:

I understand that Hope Village has applied to the City of Canby for approval of an application/petition to the Canby community for annexation of an additional .79 acre, located just south of the existing Hope Village campus. I am in support of this proposed annexation and urge the Canby Planning Commission to recommend to the Canby City Council approval of the application/petition in order that it is placed on the ballot for the November general election.

Hope Village is an integral part of the senior and larger Canby Community. We are in need of more residential options in Canby like those offered at Hope Village. Hope Village's plans for a modest expansion to the south of the existing campus will be an asset to the community and will bring more stable residents to the city. The people of Hope Village contribute to the community in more than economic and social ways, making Canby a better community in every way.

The Hope Village campus has a proven track record of keeping its facilities in top shape and this pride of ownership is a nice visual presentation entering Canby from the Southeast. A slightly larger Campus helped along by this approval will be a nice addition.

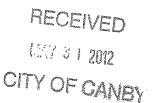
I request the Canby Planning Commission support this application/petition by recommending approval to the Canby City Council.

Thank you very much for your consideration.

Sincerely,

Scott Gustafson

Robert + Miriam Kinder 1441 S. Ivy # 506 Canby, OR 97013



Subject: Application/Petition for Annexation and related Zone Change by Hope Village, Inc (Case File No. ANN 11-01/ZC 11-01)

Chair Dan Ewert and Members of the Canby Planning Commission:

Hope Village has applied to the City of Canby for approval of an application/petition to the Canby community for an annexation of four (4) acres, located just south of the existing Hope Village campus. We are in support of this proposed annexation and urge the Canby Planning Commission/petition be placed on the ballot for the November general election.

Hope Village is a wonderful member of the Canby community. We are in need of more residents in Canby like those at Hope Village. Hope Village's plan for a modest expansion to the south of the existing campus will be an asset to the community and bring more residents to the city. The people of Hope Village contribute to the community in economic and social ways.

We ask that the Canby Planning Commission support this application/petition by recommending approval to the Canby City Council.

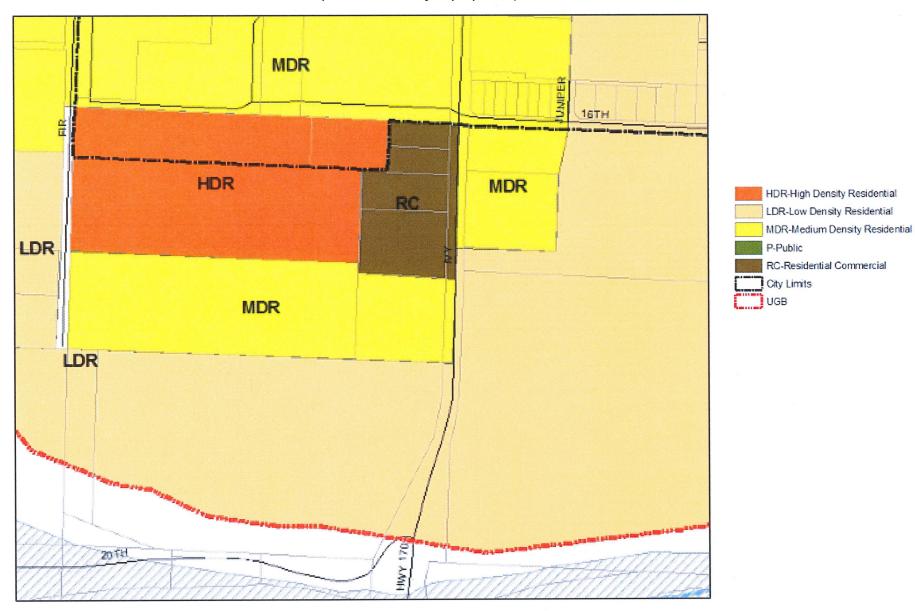
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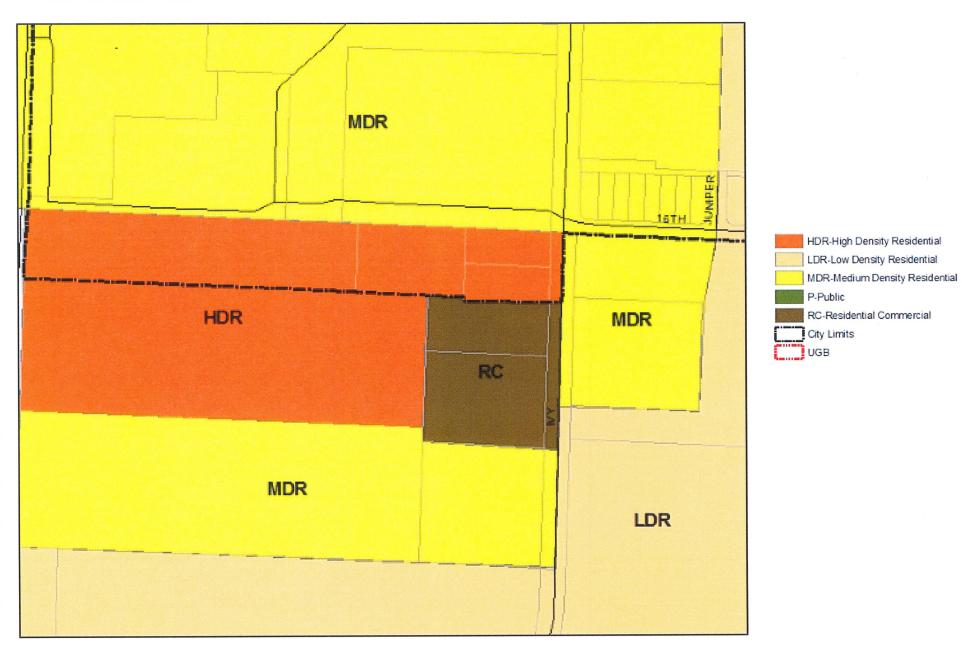
Sincerely

Gardenhome residents at Hope Village for 11 years.

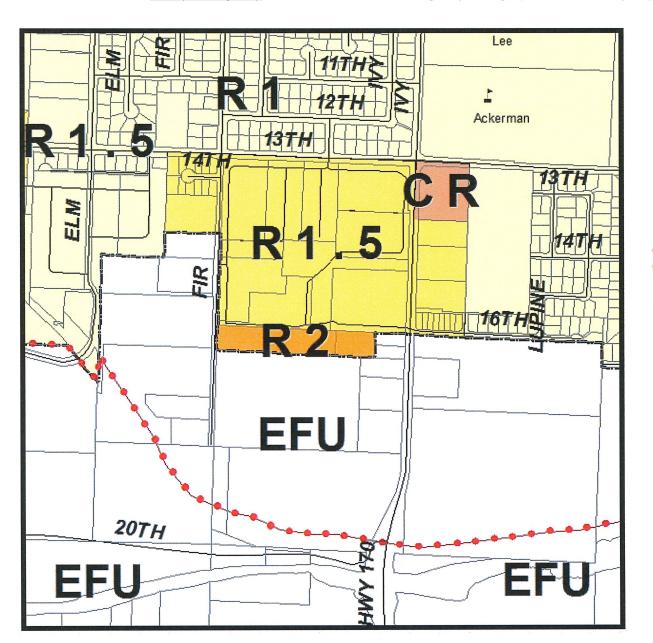
Robert Kinder and Miriam Kinder

<u>Canby Comprehensive Plan Map</u>: Before Annexation & Comprehensive Plan Map Change (Zoomed into subject properties)





<u>Canby Zoning Map</u>: Before Annexation & Zoning Map Change (Zoomed into subject properties)







RESOLUTION NO. 1139

A RESOLUTION APPROVING A COMPREHENSIVE PLAN LAND USE MAP AMENDMENT TO THE HDR DESIGNATION AND ANNEXATION OF 0.79 ACRES OF LAND WHICH SHALL BE ZONED R-2 HIGH DENSITY RESIDENTIAL, PENDING ANNEXATION APPROVAL BY THE CANBY ELECTORATE.

WHEREAS, Hope Village, Inc. owns real property described as Clackamas County Tax Lot 1100 and 1101 of Tax Map 4S-1E-4D, and is otherwise located adjacent to and west of the 1600 Block of S. Ivy Street as depicted on a Tax Lot locator map attached as Exhibit "A"; and,

WHEREAS, Robert Price has submitted an application on behalf of Hope Village, Inc., the owners, to the City of Canby requesting annexation of 0.79 acres of land, and the assignment of the R-2 High Density Residential zone district to conform with a concurrent request amending the Canby Comprehensive Land Use Plan Map from the RC Residential Commercial to the HDR High Density Residential designation for the subject property; and,

WHEREAS, the Canby Planning Commission held a public hearing on July 9, 2012, after which the Planning Commission recommended to the City council that the annexation be approved, the Comprehensive Plan Land Use Plan Map Amendment be approved, and that the zoning of the property upon annexation be designated R-2 as requested; and

WHEREAS, the City Council received a record of the Planning Commission's public hearing, together with Commission's recommendation of approval on July 9, 2012;

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

- 1. The Canby City Council hereby approves Comprehensive Plan Land Use Map Amendment application Case No. CPA 12-01; and approves and submits application Case No. ANN 12-01/ZC 12-01 to the Canby electorate for vote; a legal description of the property to be annexed in the form of a Tax Lot locator map is attached hereto as Exhibit "A".
- 2. Upon annexation, the Comprehensive Plan Land Use Map shall be amended to indicate the HDR designation and zoning of the 0.79 acres of annexed land shall be

designated as R-2 High Density Residential and indicated as such on the official zoning map for the City of Canby.

3.	This Resolution shall take effect on July 18, 2012.	
	ADOPTED this 18 th day of July, 2012, by the Canby City Council.	
	Randy Carson Mayor	
ATTE	ST:	
	erly Scheafer, MMC ecorder	

BEFORE THE CITY COUNCIL OF THE CITY OF CANBY



A REQUEST TO ANNEX 0.79 ACRES OF	")
OF LAND INTO THE CITY OF CANBY;)
TO APPROVE A COMPREHENSIVE)
PLAN AMENDMENT CHANGING THE)
LAND USE MAP FROM RC TO HDR;)
AND CHANGE THE ZONING FROM)
CLACKAMAS COUNTY EFU TO CITY)
OF CANBY R-2)

FINDINGS, CONCLUSIONS & ORDER ANN 12-01/CPA 12-01/ZC 12-01

NATURE OF APPLICATION

Hope Village, Inc. seeks to annex 0.79 acres of property adjacent to their senior housing complex into the City of Canby for future senior housing and amend the Comprehensive Plan Land Use Map from Residential-Commercial (RC) to High Density Residential (HDR) to establish the desire residential density; and have the High Density Residential (R-2) zoned district assigned to the property to match the requested Comp Plan amendment.

HEARINGS

The Planning Commission held a public hearing and considered this application at its meeting on July 9, 2012. The Planning Commission forwarded a recommendation of approval to City Council. The City Council held a second public hearing to consider the application and the Planning Commission's recommendation at its August 18, 2012, meeting. The planning director presented the staff report. Robert Price spoke on behalf of the applicant. The Council voted to approve the annexation, Comprehensive Plan Amendment and zone change application and to forward the annexation application on to the Canby voters for a final decision on this matter.

CRITERIA AND STANDARDS

The Planning Commission forms a recommendation for the City Council to consider after conducting a public hearing. If the City Council approves the application, that approval is forwarded to Canby voters as a ballot measure where a final decision is reached during a general election. Section 16.84, 16.88, and Section 16.54 of the Canby Municipal Code states the applicable review criteria when reviewing a proposed annexation, comprehensive plan amendment and zone change for which the Council shall give consideration, including the following:

For An Annexation:

- 1. Whether the subject property is required to submit either a Development Agreement or a Development Concept Plan;
- 2. Analysis of the "need" for additional property within the city limits;
- 3. Statement of potential physical, aesthetic and related social effects of the proposed development on the community as a whole and on the neighborhood of which it will become a part;
- 4. Statement of availability, capacity and status of existing water, sewer, drainage, transportation, park

and school facilities:

- 5. Statement of increased demand for such facilities to be generated by the proposed development, if any, at this time;
- 6. Statement of additional facilities, if any, required meeting the increased demand and a proposed phasing of such facilities in accordance with projected demand;
- 7. Statement outlining method and source of financing required to provide additional facilities, if any;
- 8. Statement indicating the type and nature of any comprehensive plan text or map amendments or zoning text or map amendments that may be required to complete the proposed development;
- 9. Compliance with other applicable city ordinances or policies;
- 10. Compliance of the application with the applicable sections of Oregon Revised Statutes Chapter 222:

For a Comprehensive Plan Amendment:

- 11. the remainder of the Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, in order to preserve functions and local aspects of land conservation and development;
- 12. A public need for the change;
- 13. Whether the proposed change will serve the public need better than any other change which might be expected to be made;
- 14. Whether the change will preserve and protect the health, safety and general welfare of the residents in the community.
- 15. Statewide planning goals;

For A Map Amendment (Zone Change):

- 16. Consider 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;
- 17. 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.

FINDINGS AND REASONS

The City Council deliberated on all evidence and testimony presented at the July 9, 2012, Planning Commission public hearing. The City Council incorporates the prepared June 25th, 2012 staff report, including all attachments thereto, the Planning Commission recommendation, and Council deliberations as support for its decision.

CONCLUSION

The City Council concludes that, based on the findings and conclusions contained in the June 25th, 2012 staff report, including all attachments thereto, the Planning Commission recommendation, together with testimony received and Council deliberations at the August 18th, 2012 public hearing:

- 1. The application processing is in conformance with applicable provisions set forth in CMC 16.89.
- 2. The requirement for submittal and approval of a Development Concept Plan in conjunction with this annexation request was provided appropriately provided an exception through a formal waiver by the City Council prior to the application being submitted.
- 3. The proposed annexation meets the approval criteria set forth in CMC 16.84.040.A.
- 4. The Comprehensive Plan Amendment meets the approval criteria set forth in CMC 16.88.180.C., making the requested change in the Land Use Map designation from RC to HDR appropriate.
- 5. The zoning of the property, if annexed, should be R2 pursuant to the approval criteria set forth in CMC 16.54.040.
- 6. The requested R-2 zoning is in conformance with the concurrent requested Comprehensive Plan Land Use Map Amendment to High Density Residential (HDR).
- 7. The application complies with all applicable Oregon Revised Statutes.
- 8. There are sufficient public and private utility and service capacity to serve the site at the anticipated development intensity.
- 9. This portion of S. Ivy Street is a County maintained arterial road which should stay under the County's jurisdiction and not be annexed at this time, in accordance with provisions of the City's Urban Growth Management Agreement with the County.
- 10. It has been determined as set forth in CMC 16.84.040.A.2. there is less than a three-year supply of High Density Residential (R-2) zoned land within the City limits a policy set by the Canby City Council to guide decisions on annexation requests. There is a High Density Residential (R-2) zone deficiency within the City limits and a long-term High Density Residential (HDR) designation deficiency within the UGB. Therefore, the supply does not exceed a three-year supply and there is a "need" for high density residential zoned land at this time.
- 11. Adequate access is available to the site, and is intended to connect to the north into the contiguously owned property.
- 12. The annexation proposal is in compliance with other applicable City ordinances or policies.
- 13. No natural hazards have been identified on the subject property, and there are no specially designated open spaces, scenic, historic or natural resource areas identified on the subject property.
- 14. The overall impact which is likely to result from the annexation and development shall not have a significant adverse effect on the economic, social and physical environment of the community, as a whole.

15. The annexation and concurrent land use map change and zoning change are shown to conform to the adopted Transportation System Plan with no significant impact on the surrounding transportation network and no mitigation measures necessary to satisfy TPR requirements.

DECISION:

The City Council **APPROVED** annexation, comprehensive plan amendment, and zone change application **ANN 12-01/CPA 12-01/ZC 12-01** with the following provisions:

- 1. Upholding previous Council action granting an exception pursuant to CMC 16.84.090 waiving the Development Concept Plan requirement;
- 2. That ANN 12-01/CPA 12-01/ZC 12-01 as indicated in the June 25, 2012 staff report be submitted to the electorate for a vote on the November 6, 2012 general election;
- 3. That upon annexation, the land use plan map be changed from Residential Commercial (RC) to High Density Residential (HDR) designation;
- 4. That upon annexation, the zoning of the property be designated as R2 High Density Residential.

ORDER

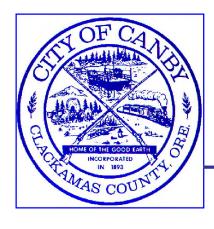
ABSENT:

None

IT IS ORDERED BY THE CANBY CITY COUNCIL that annexation ANN 12-01/ZC 12-01 is **APPROVED** and will be forwarded to Clackamas County Elections Department to appear on the November 06, 2012, general election ballot.

I CERTIFY THAT THIS ORDER approving ANN 12-01/ZC 12-01 was presented to and APPROVED by the Canby City Council.

DATED this 18	$\frac{g^{th}}{g^{th}}$ day of $\frac{July}{g^{th}}$.	
		Randy Carson, Mayor City of Canby
ATTEST:		Bryan Brown Planning Director
WRITTEN FI	NDINGS – July 18, 2012	
AYES:	XXX	
NOES:	XXX	
ABSTAIN:	None	



City of Canby

City Attorney

MEMORANDUM

DATE: JULY 18, 2012

TO: CANBY CITY COUNCIL

FROM: JOSEPH LINDSAY, CITY ATTORNEY

RE: RESOLUTION NO. 1137 A RESOLUTION GRANTING CONSENT AND APPROVAL OF

THE CITY OF CANBY TO CHANGE CONTROL TRANSACTION FROM WAVE

DIVISION HOLDINGS, LLC TO OAK HILL CAPITAL PARTNERS III, L.P.

Issue: Whether or not to consent to the change of control of our franchisee, Wave Broadband.

Summary: Through Ordinance No. 1347, passed 10-19-2011, the City Council extended and amended the

franchise agreement it had with Wave Broadband until March 4, 2017. Under the Change of Control Section 3.6 in the aforementioned franchise agreement, the franchisee shall request approval of the change of control, or otherwise, the whole Franchise is subject to revocation.

Under that same section, the City has 120 days to act upon the request.

The Change of Control section allows the City to inquire into the qualifications of the prospective controlling party to perform the obligations under the Franchise agreement. In this case, there is no overall change of ownership for Wave Broadband (just at the Wave Parent level), and the same executive management team will continue to run the company—they are only increasing their current ownership levels.

Attachments: Exhibit A Written Notice Letter from Wave

Exhibit B FCC Application for Transfer of Control

Recommendation:

Grant consent for the change of control

Motion: "I move to adopt Resolution No. 1137: A RESOLUTION GRANTING CONSENT AND

APPROVAL OF THE CITY OF CANBY TO CHANGE CONTROL TRANSACTION FROM

WAVE DIVISION HOLDINGS, LLC TO OAK HILL CAPITAL PARTNERS III, L.P."







Via Overnight Delivery

June 8, 2012

City of Canby, Greg Ellis, City Administrator 182 North Holly Street Canby Oregon 97013

Re: Transfer of Control of WaveDivision Holdings, LLC

Dear Mr. Ellis:

We are writing with exciting news concerning Wave Broadband. As you know, WaveDivision VII, LLC d/b/a Wave Broadband is the current holder of the cable television franchise issued by the City of Canby. Wave Broadband's parent company is WaveDivision Holdings, LLC ("Wave Parent"). On May 30, 2012, Oak Hill Capital Partners III, L.P. ("Oak Hill") and GI Partners ("GI"), in conjunction with Wave Parent's Chief Executive Officer Steve Weed and other members of Wave Parent management, entered into a definitive agreement to acquire Wave Parent from its current owners, principally three affiliates of Sandler Capital Management.

Oak Hill and GI are leading private equity firms with longstanding cable and IT infrastructure expertise. Their financial support will allow Wave Broadband to continue to deliver highly advanced video, high-speed data and voice services to residential and commercial customers in your community and Wave Parent's other markets in the Seattle, San Francisco, Sacramento and Portland areas. Both Oak Hill and GI bring value-added expertise and impressive track records of successful investments in the cable and broadband industry and their insight and support will be invaluable as Wave Broadband continues to provide your community with the highest levels of product quality, speed and customer care available.

Under the terms of the franchise held by Wave Broadband we request the City's consent to the change of control at Wave Parent level as Oak Hill, GI, Mr. Weed and other members of the Wave Parent management team (collectively, the "buyers") replace Sandler Capital Management. *Please note*: As a result of the proposed transaction there will be no change to the ownership of Wave Broadband. Further, the only change at Wave Parent will be the replacement of Sandler Capital Management with Oak Hill and GI. Steve Weed and other members of the executive management team of Wave Parent will continue to run the company and will increase their current ownership of Wave Parent.

In support of our request, we are providing a completed and signed Federal Communications Commission Form 394 "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise," together with the exhibits thereto along with two complete copies for your internal distribution. We believe the materials provided clearly establish that the buyers satisfy the requisite legal, technical and financial

Greg Ellis, City Administrator City of Canby June 8, 2012 Page 2

qualifications outlined under applicable federal and local law and under the franchise, and that these materials furnish you with all the information necessary to make a prompt and conclusive determination on our request for consent to the proposed change of control at Wave Parent.

The FCC Form 394 submission materials will be deemed filed with the City on your receipt of this letter on June 11, 2012; therefore, the 120-day limit for the franchise authority consideration of an assignment request pursuant to 47 CFR § 76.502 will expire on October 9, 2012.

We look forward to working with you to obtain swift approval of our request for the City's consent to the change of control at Wave Parent. We will send a proposed form of consent shortly.

Please do not hesitate to contact us if you have any questions.

Very Truly Yours,

Oak Hill Capital Partners III, L.P.

(on behalf of itself and the other buyers)

By: Kevin G. Levy

Title: Vice President of General Partner of General Partner of General Partner

WaveDivision Holdings, LLC

By: James A. Penney

Title: Executive Vice President

Federal Communications Commission

Washington, D.C. 20554

Approved by OMB 3060-0573

FCC 394

APPLICATION FOR FRANCHISE AUTHORITY CONSENT TO ASSIGNMENT OR TRANSFER OF CONTROL OF CABLE TELEVISION FRANCHISE

SECTION I. GENERAL INFOR	RMATION		FOR FRANCHISE	AUTHORITY USE	ONLY
DATE 06/08/2012		1. Commu OR0293	nity Unit Identification	Number:	
2. Application for:	Assignment of Franchise	×	Transfer of Control		
Franchising authority: City of Canby					
Identify community where the sy City of Canby, Oregon	stem/franchise that is the su	bject of the assignmen	nt or transfer of control	is located:	4
Date system was acquired or (fo service was provided to the first	r system's constructed by the subscriber in the franchise ar	transferor/assignor) t ea:	he date on which	12/10/07	
Proposed effective date of closi system to transferee/assignee:	ng of the transaction assignin	g or transferring owne	rship of the	120 days fro Form 394	om the date of this
 Attach as an Exhibit a schedule identified in the franchise as requested the type of transaction that is the 	uired to be provided to the fra	mation or material filed nchising authority whe	d with this application t en requesting its appro	hat is val of	Exhibit No.
 Indicate the name, mailing addre Legal name of Transferor/Assignor (if Sandler Capital Partners V, L. Holdings, L.P. Assumed name used for doing busine 	individual, list last name first P., SCP V FTE WaveDi)		any WaveDivisi	on
Sandler Capital Management Mailing street address or P.O. Box					
711 Fifth Avenue, 15th Floor					
City New York	State NY	ZIP Code 10022		ephone No. (includ 2) 754-8100	e area code)
Attach as an Exhibit a copy (including any exhibits or schan oral agreement, reduce to information, or other information.)	nedules thereto necessary in the terms to writing and attaction not otherwise publicly ava	order to understand t ch. (Confidential trade ilable, may be redacte	he terms thereof). If the terms thereof, or the terms of	nere is only r marketing	Exhibit No.
(b) Does the contract submitted transferor/assignor and transf		mbody the full and c	omplete agreement b		Yes 🔲 No
If No, explain in an Exhibit.					Exhibit No.

PART II - TRANSFEREE/ASSIGNEE

	Delaware limited liability co			
Assumed name used for doing bu	usiness (if any)			
Dak Hill Capital Partners II				
Mailing street address or P.O. Bo				
201 Main Street, Suite 101 Dity Ft. Worth	State TX	ZIP Code 76102	Telephone (817) 339	No. (include area code 9-7558
(b) Indicate the name, mailing lame of contact person (list last	g address, and telephone numbe name first)	er of the person to contact, if other	er than the transferee/assign	nee.
Penney, James A.				
irm or company name (if any)				
NaveDivision Holdings, LL			7	
lailing street address or P.O. Bo 01 Kirkland Place, Suite 5				
	State	ZIP Code	Telephone	No. (include area code
City State ZIP Code Telephone No. (Kirkland WA 98033 425-576-8200				
		LI CONTROL OF		
	name, mailing address, and telep	hone number of each additional	person	Exhibit No.
(c) Attach as an Exhibit the r who should be contacted		hone number of each additional	person	Exhibit No.
		hone number of each additional	person	
who should be contacted	, if any.		person	
who should be contacted (d) Indicate the address whe			person	
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who should be contacted (d) Indicate the address whe street address 101 Kirkland Place, Suite 8	, if any. re the system's records will be n		person ZIP Code	
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who should be contacted (d) Indicate the address whe street address 101 Kirkland Place, Suite Strikland	re the system's records will be n	naintained.	ZIP Code 98033	

SECTION II. TRANSFEREE'S/ASSIGNEE'S LEGAL QUALIFICATIONS

1.	Transferee/Assignee is:		
	Corporation	a. Jurisdiction of incorporation:	d. Name and address of registered agent in jurisdiction
		b. Date of incorporation:	
		c. For profit or non-for-profit:	
	Limited Partnership	a. Jurisdiction in which formed:	c. Name and address of registered agent in jurisdiction:
		b: Date of formation:	
	General Partnership	a. Jurisdiction whose laws govern forms	ation: b. Date of formation:
	Individual		
	j		Exhibit No.
х	Other - Describe in an exhibit		4
	more than 5%. Use only one contems below refer to correspond (a) Name, residence, occupation address and citizenship of first, officers next, then directly citizenship.	olumn for each individual or entity. Attaching lines in the following table.) on or principal business, and principal placenatural person authorized to vote the voting actors and, thereafter, remaining stockholde ee/assignee (e.g., officer, director, etc.)	al partners, and limited partners holding an equity interest of additional pages if necessary. (Read carefully - the lettered see of business. (If other than an individual, also show name, g securities of the applicant that it holds.) List the applicant ers and/or partners.
(a)	Please see Exhibi	ts 5 and 5A	
(b)			
(c)	-		
(d)			
(e)			
(f)			

3.	If the applicant is a corporation or a limited partnership, is the transferee/assignee formed under the laws of, or duly qualified to transact business in, the State or other jurisdiction in which the system operates?	×	Yes	П	No
	If the answer is No, explain in an Exhibit.		Exhil	oit No.	
4.	Has the transferee/assignee had any interest in or in connection with an application which has been dismissed or denied by any franchise authority?	_] _{Yes}	×	No
	If the answer is Yes, describe circumstances in an Exhibit.		Exhi	oit No.	
5.	Has an adverse finding been made or an adverse final action been taken by any court or administrative body with respect to the transferee/assignee in a civil, criminal or administrative proceeding, brought under the provisions of any law or regulation related to the following: any felony; revocation, suspension or involuntary transfer of any authority (including cable franchises) to provide video programming services; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or employment discrimination?			×	
	If the answer is Yes, attach as an Exhibit a full description of the persons and matter(s) involved, including an identification of any court or administrative body and any proceeding (by dates and file numbers, if applicable), and the disposition of such proceeding.			bit No.	No
6.	Are there any documents, instruments, contracts or understandings relating to ownership or future ownership rights with respect to any attributable interest as described in Question 2 (including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, debentures)?	П	Yes	×	No
	If Yes, provide particulars in an Exhibit.		res		NO
7.	Do documents, instruments, agreements or understandings for the pledge of stock of the transferee/assignee, as security for loans or contractual performance, provide that: (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of any ownership rights by a purchaser at a sale described in (b), any prior consent of the FCC and/or of the franchising authority, if required pursuant to federal, state or local law or pursuant to the terms of the franchise agreement will be				
	obtained?	×	Yes		No
	If No, attach as an Exhibit a full explanation.			bit No. I/A	
SEC	CTION III - TRANSFEREE'S/ASSIGNEE'S FINANCIAL QUALIFICATIONS				
1.	The transferee/assignee certifies that it has sufficient net liquid assets on hand or available from committed resources to consummate the transaction and operate the facilities for three months.	×	Yes	П	No
2.	Attach as an Exhibit the most recent financial statements, prepared in accordance with generally accepted accounting principles, including a balance sheet and income statement for at least one full year, for the transferee/assignee or parent entity that has been prepared in the ordinary course of business, if any such financial statements are routinely prepared. Such statements, if not otherwise publicly available, may be marked CONFIDENTIAL and will be maintained as confidential by the franchise authority and its agents to the extent permissible under local law.		163		
	and its agents to the extent permissible under local law.		Exh	ibit No.	
		_		-	

SECTION IV - TRANSFEREE'S/ASSIGNEE'S TECHNICAL QUALIFICATIONS

Set forth in an Exhibit a narrative account of the transferee's/assignee's technical qualifications, experience and expertise regarding cable television systems, including, but not limited to, summary information about appropriate management personnel that will be involved in the system's management and operations. The transferee/assignee may, but need not, list a representative sample of cable systems currently or formerly owned or operated.

Exhibit No.

SECTION V - CERTIFICATIONS

PART 1 - Transferor/Assignor

All the statements made in the application and attached Exhibits are considered material representations, and all the Exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith.	Signature Quantum Signature
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.	Date June 8, 2012 Print full name By: James A. Penney
Check appropriate classification: Individual General Partner	Officer Other. Explain: Executive Vice President

PART II - Transferee/Assignee

All the statements made in the application and attached Exhibits are considered material representations, and all the Exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

The transferee/assignee certified that he/she:

- (a) Has a current copy of the FCC's Rules governing cable television systems.
- (b) Has a current copy of the franchise that is the subject of this application, and of any applicable state laws or local ordinances and related regulations.
- (c) Will use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation of the system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.

I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith.	Signature
WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT. U.S. CODE, TITLE	Date June 8, 2012
18, SECTION 1001.	Print full name By: Kevin Levy
Check appropriate classification: Individual General Partner	Officer Other. Explain: Vice President of General Partner of General Partner Partner

RESOLUTION NO. 1137

A RESOLUTION GRANTING CONSENT AND APPROVAL OF THE CITY OF CANBY TO CHANGE OF CONTROL TRANSACTION FROM WAVEDIVISION HOLDINGS, LLC TO OAK HILL CAPITAL PARTNERS III, L.P.

Whereas, WaveDivision VII, LLC, a Washington limited liability company d/b/a Wave Broadband ("Franchisee") currently holds a franchise (the "Franchise") granted by the City of Canby, (the "Community") to own and operate a cable system in the Community; and

Whereas, Franchisee is a wholly-owned subsidiary of WaveDivision Holdings, LLC, a Delaware limited liability company ("Wave Parent"); and

Whereas, on May 30, 2012, OH WDH Holdco, LLC, a Delaware limited liability company affiliated with Oak Hill Capital Partners III, L.P. ("Oak Hill"), in conjunction with WaveDivision Capital, LLC, a Washington limited liability company controlled by Wave Parent's Chief Executive Officer Steve Weed, entered into a definitive agreement to acquire Wave Parent from its current majority owners, principally three affiliates of Sandler Capital Management (the "Transaction"); and

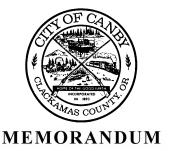
Whereas, Wave Parent and Oak Hill have filed FCC Form 394 with the Community and have provided the Community with all information regarding the Transaction required by applicable law (collectively, the "Application"); and

Whereas, the Community has reviewed the Application and has determined that (i) Oak Hill meets the legal, technical, and financial criteria to become the owner of Wave Parent and the indirect owner of Franchisee, and (ii) the Transaction is in the best interests of the Community.

Now, therefore, the City of Canby does hereby resolve:

- 1. The Community consents to and approves of the Transaction to the extent required by the terms of the Franchise and applicable law.
- 2. To the best of the Community's knowledge and belief, there are no existing facts or circumstances that with or without the giving of notice or the passage of time, or both, would constitute a default of any term or condition of the Franchise.
- 3. Effective upon the closing of the Transaction, the Franchisee shall remain responsible for any and all obligations and liabilities under the Franchise.
- 4. This Resolution is adopted and approved in accordance with all applicable notice and procedure requirements under all laws applicable to Community, and with all applicable notice and procedure requirements. This Resolution shall take effect upon its passage in accordance with applicable law.

This resolution shall take effect on July 18, 2012.			
ADOPTED by the Canby City Council at a regular meeting thereof on July 18, 2012.			
	Randy Carson		
	Mayor		
ATTEST:			
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Kimberly Scheafer, MMC			
City Recorder			



JULY 9, 2012

TO: MAYOR CARSON AND CANBY CITY COUNCIL

FROM: KIM SCHEAFER, MMC, CITY RECORDER

RE: RESOLUTION #1138

Issue:

DATE:

This Resolution is brought before the Council so that supplemental pages to the Canby Municipal Code can be formally adopted.

Background:

The last supplement that was codified for the Canby Municipal Code was for ordinances passed through March 2011. Since that time, several ordinances have passed that affect the municipal code. In order to keep the code up-to-date, these ordinances were sent to American Legal Publishing who prepared a 2012 supplement for ordinances passed through May 16, 2012 (Ordinances 1342-1357).

Recommendation:

Staff recommends approval of Resolution 1138, which formally adopts the 2012 supplement pages to the Canby Municipal Code.

Attached:

Resolution 1138

RESOLUTION NO. 1138

A RESOLUTION CODIFYING AND COMPILING CERTAIN EXISTING GENERAL ORDINANCES FOR THE CITY OF CANBY.

WHEREAS, on February 15, 2006 the Canby City Council adopted Ordinance 1200 which adopted a revised code of the City of Canby entitled the "Canby Municipal Code". Since that time the Council has adopted Resolutions 956, 1012, 1051, 1070, and 1100 codifying supplements.

WHEREAS, since that time Ordinances have been adopted affecting the Canby Municipal Code, causing the present general and permanent ordinances of the City to be inadequately arranged and classified and are insufficient in form and substance for the complete preservation of the public peace, health, safety and general welfare of the municipality and for the proper conduct of its affairs; and

WHEREAS, the Acts of the Legislature of the State of Oregon empower and authorize the City to revise, amend, restate, codify and compile any existing ordinances and all new ordinances not heretofore adopted or published and to incorporate such ordinances into one ordinance in book form; and

WHEREAS, the League of Oregon Cities, Ordinance Services Program, in its efforts to promote better and more efficient municipal governing, is willing to undertake the codification of the City's ordinances;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby that the City hereby authorizes a general compilation, revision and codification of the ordinances of the City of a general and permanent nature and publication of such ordinances in book form, at a cost according to the standard rates and billing procedures for services under the program. A copy of the 2012 S-6 Supplement (codifying ordinances 1342-1357) is attached hereto as Exhibit "A".

This resolution will take effect on July 18, 2012.	
ADOPTED this 18 th day of July 2012, by the Canby City Council.	
	Randy Carson
	Mayor
ATTEST:	

Kimberly Scheafer, MMC City Recorder

CITY OF CANBY, OREGON CODE OF ORDINANCES

2012 S-6 Supplement contains: Local legislation current through Ord. 1357, passed 5-16-2012

AMERICAN LEGAL PUBLISHING CORPORATION

432 Walnut Street Cincinnati, Ohio 45202-3909 (800) 445-5588

CHAPTER 2.04: COUNCIL MEETINGS

Section

2.04.010 Regular meetings. 2.04.020 Special meetings.

§ 2.04.010 Regular meetings.

Regular meetings of the Council shall be held on the first and third Wednesdays of every month at 7:30 p.m. in the council chambers of the City Hall. In the event that the first or third Wednesday of the month is a holiday, the Council meeting shall be held on the following day.

§ 2.04.020 Special meetings.

Special meetings of the Council may be called by the Mayor or at the request of any 3 members of the Council on 24 hours' reasonable notice to the public and at least 24 hours' actual notice to the Council members.

CHAPTER 2.05: PETITIONS

Section

2.05.010 Filing deadline for initiative petitions.
2.05.020 Chief petitioners for initiative, referendum, or recall petitions to be electors of the City of Canby.

§ 2.05.010 Filing deadline for initiative petitions.

No later than the 180 days after the initiative is approved for circulation, an initiative petition relating to a city measure or Charter amendment shall be deposited with the City Recorder for signature verification. All other procedures for an initiative shall follow the requirements set forth in the State of Oregon election laws.

(Ord. 1303, passed 2-4-2009)

§ 2.05,020 Chief petitioners for initiative, referendum, or recall petitions to be electors of the City of Canby.

No petition for initiative, referendum, or recall filed with the city shall be valid unless all Chief Petitioners are electors of the city at the time of filing and remain electors of the city through the entire initiative, referendum, or recall process, including the election.

(Ord. 1303, passed 2-4-2009)

CHAPTER 2.10: CANDIDATE NOMINATIONS FOR ELECTIVE OFFICE

Section

2.10.010 Nominations.
 2.10.020 Authorization to submit explanatory statements relating to municipal legislation referred or initiated by petition.

§ 2.10.010 Nominations.

- A. A petition nominating a qualified elector to be a candidate for election to the Canby City Council or to the office of Mayor shall be signed by not fewer than 50 electors. No elector shall sign more than 1 nomination petition for each office to be filled. No elector shall sign more than 1 nomination petition for the office of Mayor. If an elector signs more nomination petitions than permitted by this division, the elector's signature shall be valid only on the first petition filed for the office.
- B. The form of petition for nomination for all candidates for elective positions within the city shall substantially conform to the form designated by the Secretary of State.
- C. All pages comprising a petition for nomination shall be assembled and filed with the City Recorder as 1 instrument in the manner provided by the Secretary of State not less than 75 days before the election. The City Recorder shall make a record of the exact time at which each petition for nomination is filed and shall take and keep on file the name and address of the person by whom it is filed.

- D. Within 5 days after the filing, the City Recorder shall notify the nominee and the person who filed the petition for nomination whether or not the petition is valid. If it is found insufficient, the City Recorder shall return it immediately to the person who filed it, with a statement certifying that the petition for nomination is insufficient and stating the reason(s).
- E. Within the time allowed for the filing of petitions for nomination, an insufficient petition may be amended and filed again as a new petition, or a different petition may be filed for the same nominee. Any qualified elector for whom a valid petition for nomination has been filed shall have his or her name printed on the ballot for the election if, within 5 days after the City Recorder notifies the nominee of a valid nomination, an acceptance of nomination is filed with the City Recorder on the nominee's behalf.
- F. The petition for nomination for a nominee who is successfully elected shall be filed in the office of the City Recorder until the expiration of the term of office for which the nominee is elected. (Ord. 1312, passed 7-15-2009)

§ 2.10.020 Authorization to submit explanatory statements relating to municipal legislation referred or initiated by petition.

When directed by the City Council, the City Attorney is required to prepare an impartial explanatory statement for the Clackamas County Voters Pamphlet for matters relating to municipal legislation referred or initiated by petition.

(Ord. 1355, passed 5-2-2012)

§ 2.16.010 Established.

Pursuant to O.R.S. Chapter 279, the City Council is hereby designated as the City Contract Review Board. Relative to contract concerns of the city, the Contract Review Board shall have all the powers granted by Oregon law under the Oregon Attorney General's Public Contracting Manual. (Ord. 1170, passed 2-16-2005)

§ 2.16.020 Temporary rules.

There is hereby adopted by the city for the purpose of establishing temporary rules governing public contracts in the city, the Model Rules of the Oregon Attorney General for Public Contracting to be effective on March 1, 2005. These temporary rules shall remain in effect until the time that the City Contract Review Board adopts, by resolution, rules to supersede any portion or all of the temporary rules. (Ord. 1170, passed 2-16-2005)

§ 2.16.030 Conduct of business.

The City Council acting as the City Contract Review Board shall conduct its business in a manner consistent with the requirements of this chapter and in the same manner as it conducts other Council business. The requirements of this section may be modified at the time that the Board adopts rules to supersede the Board's temporary rules adopted by § 2.16.020.

(Ord. 1170, passed 2-16-2005)

CHAPTER 2.20: PUBLIC LIBRARY

CHAPTER 2.16: CONTRACT REVIEW Section BOARD 2.20.010 Establishment. 2.20.020 Governing body. Section Library Board. 2.20.030 Term of office; vacancies. 2.20.040 2.16.010 Established. 2.20.050 Officers. 2.16.020 Temporary rules. 2.20.060 Powers and duties. Conduct of business. 2.16.030 2.20.070 Gifts and bequests.

2.20.080	Librarian.

Meeting place and time. 2.20.090

Damaging library property. 2,20,100

§ 2.20.010 Establishment.

A municipal public library in and for the city is established under the provisions of O.R.S. 357.400 through 357.621, and its location shall be at 292 N. Holly, Canby, or at such other place as the Council may subsequently direct. It shall be known as the Canby Public Library. The Council proposes to finance the library by an annual tax levy.

Governing body. § 2.20.020

The city's public library as established by § 2.20.010 shall be governed by the City Council. A Library Board shall be appointed to serve in an advisory role to the Council.

§ 2.20.030 Library Board.

The Library Board shall consist of 5 members appointed by the City Council upon recommendation of the Board Chairperson and the City Council liaison to the Library Board. The Mayor may vote only to break a tie, if necessary. Not less than 3 members of the Board shall be residents of the city. No member of the Library Board shall have any financial interest, either directly or indirectly, in any contracts to which the library is a party, nor shall any member receive a salary or any payment for any materials or for any services rendered the Board. Board members may be reimbursed for expenses incurred in the performance of their duties.

(Am. Ord. 1137, passed 4-21-2004)

Term of office; vacancies. § 2.20.040

Appointees shall hold office for 4-year terms from July 1 in the year of their appointment. At the expiration of the term of a Board member, the City Council shall appoint a new member or may reappoint a member for a term of 4 years. If a vacancy occurs, the City Council shall appoint a new member to complete the unexpired term. Procedure for all appointments by the City Council shall follow § 2.20.030 above. Any Board member failing to

attend 3 consecutive Board meetings without approval of the Board chairperson may be removed by the City Council and a new member appointed to complete the unexpired term. Library Board members serve at the pleasure of the City Council and are subject to removal at any time by the Council with or without cause.

(Am. Ord. 1137, passed 4-21-2004)

Officers. § 2.20.050

At the first meeting of each year, the Board shall elect a Chairperson and a Vice-Chairperson who shall serve for a term of 1 year. The librarian shall serve as Secretary to the Board and keep the record of its action. Three members of the Board shall comprise a quorum. The Board shall have authority to make and alter rules, with approval of the City Council, for its government and procedures.

§ 2.20.060 Powers and duties.

The duties of the Library Board shall include:

- A. Keeping informed about current trends in the library services and administration;
- B. Studying library growth and needs in the city and its vicinity:
- C. Developing long-range plans for library service and facilities, consistent with city priorities and with state, regional and national goals pertinent to libraries:
- D. Recommending types of library service for the city and its vicinity;
- E. Investigating sources of funding for library service and facilities;
- F. Recommending policies for the acceptance and use of gifts for library purposes;
- G. Participating in the annual budgetary process of the city as that process pertains to the library;
- H. Recommending policies and procedures conducive to efficient and effective operation of the library;
- Reviewing and recommending terms for contracts and working relationships with other public agencies regarding library service;
- J. Encouraging widespread public support and use of the library;

- K. Submitting an annual report to the City Council and the state library; and
- L. Performing other duties as authorized by the City Council.

§ 2.20.070 Gifts and bequests.

The Board may solicit and receive gifts and bequests and real or personal property or funds (other than fees and fines) to benefit the library. All property or funds shall be held in the name of the city, and each donation shall be administered in accordance with its terms. Funds donated to the library shall be turned over to the City Treasurer immediately upon receipt and be placed in the library trust account with a line item budgeted for expenditure in accordance with the terms and conditions of the gift or bequest. Donated funds shall be used for improvements in

chapter shall take effect, and the provisions thereof shall be controlling within the limits of the city.

§ 8.16.020 Establishment and duties of Bureau of Fire Prevention.

- A. The Fire and Life Safety Code shall be enforced by the Bureau of Fire Prevention in the Fire Department of the city, which is established and which shall be operated under the supervision of the Chief of the Fire Department.
- B. The Chief of the Fire Department may detail members of the Fire Department as inspectors as shall from time to time be necessary.

§ 8.16.030 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Chief of the Bureau of Fire (Prevention) shall mean either Fire Chief or Fire Marshal.

<u>Corporation Counsel</u>, whenever used in the Fire and Life Safety Code, shall mean the attorney for the city.

<u>Jurisdiction</u>, whenever used in the Fire and Life Safety Code, shall mean the City of Canby, Clackamas County, State of Oregon.

§ 8.16.040 Storage of flammable or combustible liquids in outside, aboveground tanks; where prohibited.

- A. The outside, aboveground storage of flammable or combustible liquids, as defined in the Fire and Life Safety Code, is prohibited in all areas of the city which are zoned for commercial development.
- B. The development of new bulk plants for flammable or combustible liquids, as defined in the Fire and Life Safety Code, is prohibited in all areas of the city which are zoned for residential or commercial development.

§ 8.16.050 Bulk storage of liquefied petroleum gases; restrictions.

The limits referred to in the Fire and Life Safety Code, in which bulk storage of liquefied petroleum gas is restricted, are established as including all areas

of the city which are zoned for commercial development.

§ 8.16.060 Storage of explosives and blasting agents; where prohibited.

The storage of explosives and blasting agents, as defined in the Fire and Life Safety Code, is prohibited in all areas of the city which are zoned for residential or commercial development.

§ 8.16.070 Penalty.

- A. 1. Any person who shall violate any provision of this chapter, including the Fire and Life Safety Code adopted by reference, or who shall fail to comply therewith; who shall violate or fail to comply with any order made thereunder; who shall build in violation of any detailed statement of specification or plans submitted and approved hereunder, or any certificate or permit issued thereunder and from which no appeal has been taken; or who shall fail to comply with an order as affirmed or modified by the City Council or by a court of competent jurisdiction within the time fixed herein, shall severally for each and every violation and noncompliance, respectively, be guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.
- 2. The imposition of 1 penalty for any violation shall not excuse the violation or permit it to continue; and all these persons shall be required to correct or remedy the violations or defects within a reasonable time.
- 3. When not otherwise specified, each 10 days that prohibited conditions are maintained or permitted to exist shall constitute a separate offense.
- B. The application of the penalties prescribed in the foregoing paragraph shall not be held to prevent the enforced removal of prohibited conditions.

§ 8.16.080 Nonliability for damages.

The adoption of the Fire and Life Safety Code, 1994 edition and any amendments thereto as the fire code for the city shall not be construed to hold the city, its officers, agents or employees responsible for any damage to persons or property by reason of the inspection or reinspection authorized by the Fire and Life Safety Code, or for failure to inspect or reinspect

on a permit issued or denied for use of any equipment for which a permit is required.

CHAPTER 8.20: EMERGENCY ASSISTANCE ALARMS

Section

8.20.010	Short title.
8.20.020	Purpose and scope.
8.20.030	Definitions.
8.20.040	Alarm user's permit required.
8.20.050	User instructions.
8.20.060	Automatic dialing device; certain
	interconnections prohibited.
8.20.070	False alarms; fee.
8.20.080	False alarms; permit revocation.
8.20.090	Confidentiality; statistics.
8.20.100	Allocation of revenues and
	expenses.
8.20.105	Fees set by resolution.
8.20,110	Enforcement and penalties.

§ 8.20.010 Short title.

This chapter shall be known as the Emergency Assistance Alarm Ordinance or this chapter.

§ 8.20.020 Purpose and scope.

- A. The purpose of this chapter is to protect the emergency services of the city from misuse.
- B. This chapter governs all emergency assistance alarm systems, requires permits, establishes fees, provides for allocation of revenues and deficits, provides for revocation of permits, provides for punishment of violations and establishes a system of administration.

§ 8.20.030 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Alarm Business means the business by any individual, partnership, corporation or other entity of

selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing any alarm system or causing to be sold, leased, maintained, serviced, repaired, altered, replaced, moved or installed any alarm system in or on any building, structure or facility.

<u>Alarm Center</u> means any location, other than the communications center where alarms are received from sites within the city, and from which the police are requested to respond.

<u>Alarm User</u> means the person, firm, partnership, association, corporation, company or organization of any kind in control of any building, structure or facility wherein an alarm system is maintained.

Automatic Dialing Device means a device which is interconnected to a telephone line and is programmed to select a predetermined telephone number and transmit by voice message or code signal an emergency message indicating a need for emergency response.

<u>Chief of Police</u> means Director of Police Services for the city or his or her designated representative.

<u>Communications Center</u> is the city facility used to receive emergency and general information from the public to be dispatched to the Police Department field officers and detective bureau.

<u>Coordinator</u> means the individual designated by the Chief of Police to issue permits and enforce the provisions of this chapter.

Emergency Assistance Alarm System means any assembly of equipment, mechanical or electrical, arranged to signal the occurrence of an illegal entry or other activity requiring urgent attention and to which police are expected to respond.

<u>False Alarm</u> means an alarm signal or request eliciting a response by police when a situation requiring a response by the police does not in fact exist, but does not include an alarm signal caused by violent conditions of nature or other extraordinary circumstances not reasonably subject to control by the alarm business operator or alarm user.

Government Political Unit means a government, governmental subdivision or a governmental agency, including a county, city or special district.

<u>Interconnect</u> means to connect an alarm system including an automatic dialing device to a telephone

line, either directly or through a mechanical device that utilizes a telephone, for the purpose of using the telephone line to transmit a message upon the activation of the alarm system.

<u>Primary Trunk Line</u> means a telephone line servicing the Police Department that is designated to receive emergency calls.

(Am. Ord. 1357, passed 5-16-2012)

§ 8.20.040 Alarm user's permit required.

- A. Every alarm user shall obtain an alarm user's permit for each system from the Police Department within 30 days of the alarm system Users of systems using becoming operational. different alarm capabilities shall obtain separate Application for an permits for each function. emergency assistance alarm user's permit and a fee for each alarm shall be filed with the Police Department every 12 months. Each permit shall bear the signature of the Chief of Police and be for a 1-year period. The permit shall be physically upon the premises using the alarm system and shall be available for inspection by the Chief of Police or alarm coordinator.
- B. If a residential alarm user is over the age of 65 and is the primary resident of the residence and if no business is conducted in the residence, a user's permit may be obtained from the Police Department according to division A. of this section without the payment of a fee.
- C. A fee will be charged in addition to the fee provided in division A. of this section to a user who fails to obtain a permit within 30 days of the alarm system becoming operational, or who is more than 15 days delinquent in renewing a permit.
- D. An alarm user required by federal, state, county or municipal statute, regulation, rule or ordinance to install, maintain and operate an emergency assistance alarm system shall be subject to this chapter.
- E. An alarm user which is a governmental political unit shall be subject to this chapter, but a permit shall be issued without payment of a fee. (Am. Ord. 1327, passed 5-19-2010; Am. Ord. 1357, passed 5-16-2012)

§ 8.20.050 User instructions.

It is the responsibility of each alarm user to obtain instructions and information regarding his or her alarm system to ensure accurate operation and service of the alarm system. The alarm user should ensure that all potential users of the system receive the instructions and service information, including how to cancel a false alarm.

(Am. Ord. 1357, passed 5-16-2012)

§ 8.20.060 Automatic dialing device; certain interconnections prohibited.

- A. It is unlawful for any person to program an automatic dialing device to select a primary trunk line, and it is unlawful for an alarm user to fail to disconnect or reprogram an automatic dialing device which is programmed to select a primary trunk line within 12 hours of receipt of written notice from the coordinator that it is so programmed.
- B. Within 60 days after the effective date of the ordinance codified in this chapter, all existing automatic dialing devices programmed to select a primary trunk line shall be reprogrammed or disconnected.
- C. It is unlawful for any person to program an automatic dialing device to select any telephone line assigned to the city; and it is unlawful for an alarm user to fail to disconnect or reprogram the device within 12 hours of receipt of written notice from the coordinator that an automatic dialing device is so programmed.

§ 8.20.070 False alarms; fee.

- A. An alarm user required by federal, state, county or municipal statute, regulation, rule or ordinance to install, maintain and operate an emergency assistance alarm system shall not be subject to revocation due to false alarms; and
- 1. For each false alarm over 2 during each ensuing 12-month period after a permit is issued or renewed, upon written demand thereof by the Chief of Police or alarm coordinator, the holder of a user's permit shall pay a fee.

B. Governmental Political Unit.

1. Shall not be subject to revocation due to false alarms; and

- 2. For each false alarm over 2 during each ensuing 12-month period after a permit is issued or renewed, for each location, and upon written demand thereof by the Chief of Police or alarm coordinator, the holder of an alarm user's permit shall pay a fee.
- C. All Other Alarm Permits. For each false alarm over 2 during each ensuing 12-month period after a permit is issued or renewed, for each location, and upon written demand thereof by the Chief of Police or alarm coordinator, the holder of an alarm user's permit shall pay a fee.
- D. <u>Effect on Term</u>. The payment of any fee provided for in this section shall not be deemed to extend the term of the permit.
 - E. Nonpermit User's False Alarms.
- 1. Alarm requests from alarm centers, as defined in § 8.20.030, shall be subject to false alarm fees.
- 2. For each false alarm request over 2 in a calendar year, for each location, and upon written demand thereof by the Chief of Police or alarm coordinator, the resident, tenant or owner shall pay a fee.

(Am. Ord. 1327, passed 5-19-2010; Am. Ord. 1357, passed 5-16-2012)

§ 8.20.080 False alarms; permit revocation.

- A. Any emergency assistance alarm system which has 7 or more false alarms during each ensuing 12-month period after a permit is issued or renewed shall be subject to permit revocation as provided in this section.
- B. If the communication center records 7 or more false alarms during each ensuing 12-month period after a permit is issued or renewed, for any emergency assistance alarm system:
- 1. The Chief of Police shall notify the alarm user and the alarm business providing service or inspection to the user by certified mail of that fact and direct that the user submit a report to the Chief of Police within 10 days of receipt of the notice describing actions taken or to be taken to discover and eliminate the cause of the false alarms.
- 2. If the alarm user submits a report as directed, the Chief of Police shall determine if the actions taken or to be taken will prevent the

- occurrence of false alarms; if he or she determines that the action will prevent the occurrence of false alarms, he or she shall notify the alarm user and the relevant alarm business in writing that the permit will not be revoked at that time, and that if 1 more false alarm occurs within the permit year, the permit will be summarily revoked.
- 3. If no report is submitted, or if the Chief of Police determines that the actions taken or to be taken will not prevent the occurrence of false alarms, the Chief of Police shall give notice by certified mail to the user that the permit will be revoked without further notice on the tenth day after the date of the notice if the user does not file within that period a written request for a hearing.
- 4. If a hearing is requested, written notice of the time and place of the hearing shall be served on the user by the Chief of Police by certified mail at least 10 days prior to the date set for the hearing, which date shall not be more than 21 nor less than 10 days after the filing of the request for hearing.
- 5. The hearing shall be before the City Council, and the Chief of Police and the alarm user shall have the right to present written and oral evidence, subject to the right of cross-examination. If the Council determines that 7 or more false alarms have occurred during each ensuing 12-month period after a permit is issued or renewed, and that the user has not taken actions which will prevent the occurrence of false alarms, the Council shall issue written findings to that effect and may issue an order revoking the user's permit.
- 6. In situations permitting summary revocation under division B.2. above and revocation following a hearing under division B.5. of this section, revocations shall be effective on the fifth day following the mailing by certified mail by the Chief of Police or alarm coordinator of a notice of revocation. There shall be no appeal of a summary revocation.
- C. Permits revoked pursuant to the above procedure shall be revoked for a period of 1 year. Any alarms received during the period the alarm permit is under revocation will result in a charge per each alarm received. The charge or charges must be paid in full prior to reapplication for an alarm permit. (Am. Ord. 1357, passed 5-16-2012)

§ 8.20.090 Confidentiality; statistics.

- A. All information submitted in compliance with this chapter shall be held in the strictest confidence and shall be deemed a public record from disclosure pursuant to state statute; and any violation of confidentiality shall be deemed a violation of this chapter. The coordinator shall be charged with the sole responsibility for the maintenance of all records of any kind whatsoever under this chapter.
- B. Subject to the requirements of confidentiality, the coordinator shall develop and maintain statistics having the purpose of assisting alarm system evaluation for use by members of the public.

§ 8.20.100 Allocation of revenues and expenses.

All fees, fines and forfeitures of bail collected pursuant to this chapter shall be General Fund revenue of the city.

§ 8.20.105 Fees set by resolution.

All fees established by the sections above shall be set forth by resolution.

(Ord. 1327, passed 5-19-2010)

§ 8.20.110 Enforcement and penalties.

- A. Enforcement of this chapter may be by civil action as provided in O.R.S. 30.315, or by criminal prosecution.
- B. Violation of this chapter shall be punished upon conviction by a fine of not more than \$500.
- C. The failure or omission to comply with any section of this chapter shall be deemed a violation and may be so prosecuted, subject to the penalty provided in division B. of this section.

Code and shall meet the same requirements with regard to quality of materials and workmanship as the rest of the sanitary system. A clean-out shall be installed to within 12 inches of the ground surface and connected at the joint of the building sewer and the city lateral. The invert of the building sewer shall be at the same or higher elevation than the invert of the lateral at the point of connection.

- C. No trees shall be planted or allowed to mature in that portion of a city right-of-way within 10 feet of a sewer lateral.
- D. All building sewers shall be laid on not less than 2% grade; shall be not less than 5 feet from any unless otherwise approved by the building, Superintendent of Public Works; shall have not less than 4 feet, 6 inches of cover at the curb line, 18 inches at the property line and 12 inches inside the property line, and shall be not less than 6 inches in diameter from the public sewer to the property line, nor less than 3 inches in diameter inside the property line; provided, the Superintendent of Public Works may, where conditions in the opening require, specify larger building sewers than herein provided. Not more than 1 building shall be connected with a building sewer; except where the connection is made inside the property line and the owner or owners of the premises connected shall make and file in the office of the City Recorder an easement for the purpose; or except where connection is to an existing building sewer within a public street and written permission from the owner or owners of the premises served by the building sewer has been filed with the Superintendent of Public Works and approved by him or her. All excavation for building sewer installations shall be adequately guarded with a barricade and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Superintendent of Public Works at the expense of the property owner.
- E. All excavation required for the installation of a building sewer shall be open trench work, unless otherwise approved by the Superintendent of Public Works. Pipe laying and backfill shall be performed in accordance with regulations of the Oregon Department of Environmental Quality, Oregon State Plumbing Code and other applicable codes.

- F. The connection of the building sewer into the public sewer shall be made at a service connection lateral extended to the right-of-way line of a public thoroughfare. If no lateral already exists from a sewer main, the Superintendent of Public Works shall cause the installation of 1 or more laterals in keeping with the following standards:
- 1. <u>Previously Developed Lots</u>. The city shall install, at its expense, a service connection lateral to each previously developed lot where the existing development has utilized an on-site sewage disposal system and the other requirements for sewer connection have been met.
- 2. <u>Vacant Lots</u>. The city will install, by request, at the expense of the owner, laterals to undeveloped lots. Owners will be billed for all costs including labor, equipment, materials, bookkeeping, and any other costs directly attributable to the requested installation. An exception shall be made in the case of any vacant lot in a subdivision where it is found that the construction of laterals did not conform to the construction plans or "as-built" plans on file in the Public Works Department. In these cases the Superintendent shall authorize the construction of a lateral at city expense.
- Public Works shall, in order to avoid later street cuts and related construction difficulties, cause the construction of sewer laterals to serve vacant tracts and large undeveloped areas. To determine the correct number and proper location of the laterals, the Superintendent shall utilize the land use map of the comprehensive plan to determine the probable ultimate development of the site. The Superintendent of Public Works shall file with the City Recorder a statement of costs for this lateral construction. These costs, plus interest at the rate of 8% per annum, shall be added to the city's customary sewer connection charge.
- G. The city shall be responsible for the general maintenance of service connection laterals but shall bear no responsibility for the repair or maintenance of private building sewers. In any case where city crews are called upon to make repairs to a lateral and the repairs also include work done on the building sewer, the property owner shall be billed for any and all work undertaken as a result of a blockage which was located on private property.

§ 13.08.170 Point of connection.

Building sewer connections shall be made on the house side of the septic tank.

§ 13.08.180 Restricted connections.

No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other source of surface run-off or groundwater, either directly or indirectly, to a sanitary sewer.

§ 13.08.190 Unauthorized connections.

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenances thereto; and no person, firm or corporation shall make any connection to any part of the sewer system without first making an application and securing a permit therefor.

§ 13.08.200 Residential.

A residential permit shall be issued for single-family dwellings.

§ 13.08.210 Building sewer costs.

All costs and expenses incident to the installation and connection of the building sewer shall be borne by the applicant for the development. The applicant shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation.

CHAPTER 13.12: RATES AND CONNECTION FEES

Section

13.12.010	Sewer connection charges levied and imposed.
13.12.020	Rates for connection charges.
13.12.030	Deferral of sewer connection charges.
13.12.040	Charges for sewer service levied and imposed.
13.12.050	Rates for sewer service.

13.12.060	Special rates and other fee schedules.
13.12.065	In-lieu-of franchise fee.
13.12.070	Collection.
13.12.080	Prohibited practices.
13.12.090	Interference with operation of
	sewerage system.

Appendix A: Service Connection Mortgage

§ 13.12.010 Sewer connection charges levied and imposed.

- A. What is a Connection Charge? All sewer connection charges and any other development-related charges shall be imposed in accordance with the city's most current systems development ordinance and implementing resolutions.
- B. What the Connection Charge is Based On. The service connection charge is levied upon a property based upon the existing or intended use of the property at the time of application for connection. If the property is improved, expanded, subdivided or otherwise modified so as to increase the connection charge due from that property, a service connection charge shall be levied for the modified portion of the property based upon connection charges in effect at the time of modification.
- C. <u>Dwellings That Cannot Be Served</u>. Dwellings that cannot be served by gravity flow to the sanitary sewer shall not be subject to the sewer connection charges provided by this chapter, unless lesser charges for the dwelling are enacted by resolution of the City Council.
- D. Abutting a Right-of-Way with Sanitary Service. Any dwelling that is on property abutting any street, alley or right-of-way in which there is located a sanitary sewer of the city and that, by reason of ordinance, resolution or motion duly adopted by the City Council is not required to connect to the sewage system, shall not be subject to the sewer connection charges provided by this chapter.

§ 13.12.020 Rates for connection charges.

The City Council shall, by resolution, establish appropriate rates and methodologies to be charged for connecting to the city sewer system. The rates shall differentiate between various types of users or activities with discharge into the sewage system.

§ 13.12.030 Deferral of sewer connection charges.

Requirements and procedures for the deferral of sewer connection and collection sewer charges shall be in accordance with the following:

- A. <u>Eligibility</u>. The developer of any property whose connection charge, if any, exceeds the sum of \$5,000 shall be eligible to apply to pay the charges for that property in installments on a schedule appended to this section as Table I, below; provided, however, that if the collection sewer charge is payable by the city to someone other than the city, pursuant to an agreement between the city and that person to reimburse the person for all or a portion of the cost of constructing a sewer line extension, the collection sewer charge shall not be eligible to be paid in installments, nor shall it be considered in determining whether the connection charge is eligible to be paid in installments. The city reserves the right to reject any application for deferral of the connection charge.
- B. <u>Application</u>. Any eligible developer of property desiring deferral of the payment of the connection charge shall, at the time of application for connection, submit to the city an application requesting deferral on a form provided by the city.
- C. <u>Title Report</u>. Upon receipt of an application, the applicant shall order a preliminary title report from a title insurance company doing business in Clackamas County, Oregon.
- D. <u>Lienholders</u>. The applicant, at his or her expense, shall furnish the city with a current statement of amounts due to each lienholder disclosed by the preliminary title report of the title insurance company, and for property proposed for improvement, an MAI appraisal certified by the appraiser as to the estimated fair market value upon completion of the proposed improvement. The applicant shall answer questions as the city deems proper regarding the applicant's ability to pay the deferred connection charge and any other lienholder regarding applicant's payment history.
- E. <u>Appraisal</u>. If, upon examination of the title to the property and the appraisal report, the city is satisfied as set out in the following divisions 1. and 2., the applicant shall execute a mortgage in the form appended to this chapter as Appendix A and the city

shall issue a connection permit. This lien shall be enforced in the manner provided by O.R.S. Chapter 223:

- 1. That the total unpaid amount of all liens disclosed, together with the amount of connection charge sought to be deferred, does not exceed the appraised value of the property as determined by the current appraisal of the County Assessor; or if the city elects, based upon the appraisal or other evidence of value acceptable to the city, the total unpaid amount of all liens disclosed, together with the amount of the connection charge sought to be deferred, does not exceed the estimated fair market value of the property when the proposed improvement is completed; and
- 2. That the applicant can execute a mortgage covering the property which will be a valid lien on the fee thereof.
- F. Evaluation of Value. If the city determines that the amount of connection charge, together with all other unpaid liens, exceeds the appraised value or anticipated appraised value of the property, or that the applicant cannot execute a mortgage which will be a valid lien, or that the applicant cannot make the required payments, it shall so advise the applicant.
- G. <u>Due and Payable</u>. The deferred connection charge shall be due and payable January 1 and July 1 of each year together with interest on deferred principal balances at the rate of 10% per annum, which interest shall be the full and only compensation to the city for its administrative costs. Interest shall be paid in addition to each principal payment on the dates the principal payments are made. If the applicant is approved for a deferred payment schedule, a minimum of \$1,200 shall be paid immediately upon connection to the sewer. The remaining balance of the initial assessment shall then be computed into equal semiannual payments, per schedule set forth in Table I, with the first payment due 6 months after the initial connection.
- H. <u>Table I</u>. The following schedule shall apply to deferred payment for sewer connection charges:

Table I		
Amount to be Financed (Initial Assessment)	Maximum Amoun of Semi-annual Payments	
\$5,000 - \$10,000	14	
\$10,001 - \$15,000	16	
\$15,001 - \$20,000	18	
over \$20,000	20	

§ 13.12.040 Charges for sewer service levied and imposed.

- A. <u>Rates</u>. All users of the city's sewage system shall pay to the city the rates for sewer service as provided by this chapter.
- B. <u>Not Serviceable</u>. Dwellings that cannot be served by gravity flow to the sanitary sewer shall not be subject to the sewer service charges provided by this chapter, unless lesser charges for those dwellings are enacted by resolution of the City Council.
- C. Abutting a ROW with Service. Any dwelling that is on property abutting any street, alley or right-of-way in which there is located a sanitary sewer of the city and that, by reason of ordinance, resolution or motion duly adopted by the City Council, is not required to connect to the sewage system, shall not be subject to the sewer service charges provided by this chapter.
- D. When Levied (Existing). When sewer service is initially provided to existing dwellings, the sewer service charge shall first be levied for the month following the first month in which dwellings are permitted to be connected to the sewer.
- E. When Levied (New). When new dwellings are served by the sewage system, the sewer service charge shall first be levied for the month following the first month in which the dwelling is occupied or utilized by personnel not associated with the construction of the dwelling.
- F. <u>Based on Availability</u>. Sewer service charges are to be levied and imposed based upon the availability of sewer service and are not dependent

upon the owner's schedule for connecting to the sewer system after the system is available.

- G. <u>Minimum Service</u>. The minimum sewer service for an individually billed service shall be equal to the charge for a residential service.
- H. Who is Billed. Sewer service charges shall be billed to any dwelling showing connection to the city sewer and either water use or electric power use.
- I. <u>Property Owner Responsibility</u>. Sewer service charges may be billed to an occupant; however, the property owner shall be ultimately responsible for all sewer service charges to his or her property.

§ 13.12.050 Rates for sewer service.

The City Council shall, by resolution, establish appropriate rates to be charged for monthly sewer service. These rates shall differentiate between the various types of uses or activities which are connected to the sewage system.

§ 13.12.060 Special rates and other fee schedules.

The City Council shall by resolution, establish appropriate rates to be charged for but not limited to extra-strength rates, resampling fees and industrial waste discharge permit fees. The rates shall differentiate between the various types of uses or activities which require special fees.

§ 13.12.065 In-lieu-of franchise fee.

Effective July 1, 2012 through June 30, 2014, as compensation for the use of publicly-owned rights-of-way, the sewer combined funds shall pay the General Fund an in-lieu-of franchise fee in the amount of 7% of city sewer customer service charges. (Ord. 1356, passed 5-16-2012)

§ 13.12.070 Collection.

- A. Who Collects. The officer or agent who has been duly designated and authorized by the City Council to receive payments for sewer charges and connection charges, as provided for herein, is hereby directed to collect those charges.
- B. Where Paid. Sewer service fees shall, as and when collected, be paid into a fund designated as

the Sewer Fund and connection charges shall, as and when collected, be paid into a fund designated as the Sewer Reserve.

C. <u>Delinquent Charges</u>. Sewer service charges, as hereinafter provided, shall be collected monthly; and if not paid on or before 15 days after the billing, the charges shall be deemed delinquent.

§ 13.12.080 Prohibited practices.

- A. It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner upon public or private property within the city, or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste.
- B. It shall be unlawful to discharge into any outlet within the city any sanitary sewage, industrial wastes or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this title.

§ 13.12.090 Interference with operation of sewerage system.

- A. No unauthorized person shall enter any city sewer, manhole, pumping station, treatment plant or appurtenant facility. No person shall maliciously, wilfully or negligently break, damage, destroy, deface or tamper with any structure, appurtenance or equipment which is part of the city system. Any person violating this provision will be subject to immediate arrest.
- B. No person, other than an authorized employee or agent of the city, shall operate or change the operation of the city sewer, pumping station, treatment plant, outfall structure or appurtenant facility.

Canby - Public Services

APPENDIX A: SERVICE CONNECTION MORTGAGE

THIS MORTGAGE is made this day o	of, 20	, between	, herein called
"Mortgagor" and the City of Canby, Oregon, herein	called "city".		
City has imposed a connection charge of \$	on Mortgagor fo	or the privilege of c	onnecting to the city's
sewerage system, the following described real proper			
SEE ATTACHED PROPERTY DESCRIPTION	N, EXHIBIT "A."	,,	
Mortgagor desires to defer the payment of the c	onnection charge	and the city has ag	reed to such deferral.
Mortgagor agrees to pay to the city the service charg	ge of \$ in	not less than	() equal installments
of \$ each on the first days of January and Ju	uly of each year to	ogether with and in	addition to each said
installment, interest on unpaid principal balances exis			
(10%) per annum on each principal payment date. In			
To secure the aforesaid sum, the Mortgagor co			
Mortgagor covenants to and with city that Mortgagor			
defend the same from the claims of all persons.		O	0
Mortgagor covenants and agrees to commit no v	vaste on the prem	ises and to pay all t	taxes and assessments
thereon promptly when due and before the same become		and the pay and	
NOW, THEREFORE, if the covenants herein sh		as agreed this conv	vevance shall be void.
But, in case default shall be made in payment of the	•		•
become due or in any covenant herein, then the whol	•	the first teachers are the first teachers and the second	
city may foreclose this mortgage at any time thereafte		catalogy become du	e and payable and the
In any suit to foreclose this mortgage, or in any		v defends to protec	et the lien thereof the
Mortgagor agrees, in addition to any sum due on the			
to pay a sum of money as reasonable attorney's fee			
이 경영 프로그램이 보고 있다면 하는데 이 사람이 되었다면 하지만 하는데			
therefrom and the costs and disbursements allowed by			
reasonable costs of searching records and abstracting	the same as may	be incurred by the	city in foreclosing or
defending this mortgage.	1. 1.1.1.0		
In this instrument, the masculine shall be deemed	d to include the fe	minine and the sing	gular the plural where
the connotations are applicable herein.			
IN WITNESS WHEREOF, the Mortgagor has se	t his or her hand the	he day and year first	t hereinabove written.
	-		_
F-1-1-1-1	7.77	DEC LOOP	_
	MC	ORTGAGOR	
STATE OF OREGON	,		
STATE OF OREGON)	D.4.	
COLINITY OF CLACKANAC)SS.	. Date:	
COUNTY OF CLACKAMAS)		
Personally appeared the above named	the forego	oing instrument to b	10
and acknowledged voluntary act and deed.	inc forego	onig mistrument to o	-
and acknowledged voluntary act and deed.			
BEFORE ME:			
A76691			
Notary Public for			
Notary Public for My Commission Expires:			

TABLE I: FRANCHISES

Ord. No.	Date	Description
996	6-17-1998	Authorizing the City Administrator to enter into an agreement between the city and Canby Telephone Association to extend the current non-exclusive franchise agreement
1000	7-15-1998	Amending Section 7 of Ord. 668 regarding annual franchise fee to be paid by the Franchisee, Canby Telephone Association, to the city, increasing the annual franchise fee from 3.7% to 7% of the gross annual revenue for local exchange service, and repealing Ord. 845
1001	7-15-1998	Amending Section 12 of Ord. 788 regarding annual franchise fee to be paid by the franchisee, Northwest Natural Gas Company to the city, increasing the annual franchise fee from 3% to
4		5% of the gross annual revenue for local natural gas service
1012	12-2-1998	Authorizing the City Administrator to enter into an agreement between the city and Canby Telephone Association to further extend the current non-exclusive franchise agreement. The extension shall be controlled by the terms and conditions of Ord. 732 except that the additional extension shall expire and be of no legal effect as of January 21, 1999
1014	1-20-1999	Authorizing the City Administrator to enter into an agreement between the city and Canby Telephone Association to further extend the current non-exclusive franchise agreement. The extension shall be controlled by the terms and conditions of Ord. 732 except that the additional extension shall expire and be of no legal effect as of April 22, 1999, or on such date as the city may grant a new non-exclusive franchise to CTA, whichever occurs first.

Ord. No.	Date	Description
1017	4-7-1999	Granting a non-exclusive franchise to North Willamette Telecom to provide cable service within the city for a period of 12 years from the effective date of the ordinance
1040	11-17-1999	Extending the current non-exclusive franchise agreement between the city and Canby Telephone Association for the provision of telecommunication services within the city. Ord. 668 is amended by extending the expiration date thereof to June 6, 2000, or on such date as the city may grant a new non-exclusive franchise to Canby Telephone Association, whichever first occurs. The terms and conditions of Ords. 668 and 845 shall control the extension.
1053	7-19-2000	Granting to Canby Telephone Association a nonexclusive franchise for the provision of telecommunications services within the city pursuant to Chapter 12.36 of the Code of Ordinances, for a term of ten years, commencing with the effective date of Ord. 1053
1169	2-2-2005	Granting to Canby Telephone Association a non-exclusive franchise for a period of 12 years from the effective date of Ord. 1160, to operate and maintain a cable television system in the city
1208	6-7-2006	Granting to Northwest Natural Gas Company a non-exclusive gas utility franchise for a period of 20 years and fixing terms, conditions and compensation of such franchise and repealing Ord. 788
1328	6-16-2010	Granting an exclusive franchise to Canby Disposal Company to provide solid waste, recyclable materials and yard debris collection service with the city

Franchises TSO I

Ord. No.	Date	Description
1342	5-18-2011	Granting a non-exclusive franchise to Canby Telephone Association to provide telecommunication services within the city, for a period of 5 years retroactively effective from June 7, 2010
1347	10-19-2011	Amending the cable television franchise agreement with WaveDivision VII, LLC, and extending its term to March 4, 2017
1349	10-19-2011	Amending the cable television franchise agreement with Canby Telephone Association to maintain competitive equity

References to Ordinances

Ord. No.	Date Passed	Code Section
1292 § 5.8	9-3-2008	13.16.082
1292 § 6.1	9-3-2008	13.16.090
1292 § 6.2	9-3-2008	13.16.091
1292 § 6.3	9-3-2008	13.16.092
1292 § 6.4	9-3-2008	13.16.093
1292 § 6.5	9-3-2008	13.16.094
1292 § 6.6	9-3-2008	13.16.095
1292 § 6.7	9-3-2008	13.16.096
1292 § 6.8	9-3-2008	13.16.097
1292 § 6.9	9-3-2008	13.16.098
1292 § 6.10	9-3-2008	13.16.099
1292 § 6.11	9-3-2008	13.16.100
1292 § 6.12	9-3-2008	13.16.101
1292 § 6.13	9-3-2008	13.16.102
1292 § 6.14	9-3-2008	13.16.103
1292 § 6.15	9-3-2008	13.16.104
1292 § 7.1	9-3-2008	13.16.115
1292 § 7.2	9-3-2008	13.16.116
1292 § 8	9-3-2008	13.16.130
1292 § 9	9-3-2008	13.16.140
1292 § 10	9-3-2008	13.16.150
1292 § 10.1	9-3-2008	13.16.151
1292 § 10.2	9-3-2008	13.16.152
1292 § 10.3	9-3-2008	13.16.153
1292 § 10.4	9-3-2008	13.16.154
1292 § 10.5	9-3-2008	13.16.155
1292 § 10.6	9-3-2008	13.16.156
1292 § 10.7	9-3-2008	13.16.157
1292 § 10.8	9-3-2008	13.16.158
1292 § 10.9	9-3-2008	13.16.159
1292 § 10.10	9-3-2008	13.16.160 13.16.161
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1292 § 11.2	9-3-2008	13.16.177
1292 § 11.3	9-3-2008 9-3-2008	13.16.178
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	9-3-2008	13.16.192
1292 § 12.3 1292 § 12.4	9-3-2008	13.16.193
1292 § 12.4 1292 § 12.5	9-3-2008	13.16.194
1292 § 12.3 1292 § 13.1	9-3-2008	13.16.210
1292 § 13.1 1292 § 13.2	9-3-2008	13.16.211
1292 8 13.2	9-3-2000	15,10,211

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Ord. No.	Date Passed	Code Section
1292 § 13.3	9-3-2008	13.16.212
1292 § 13.4	9-3-2008	13.16.213
1292 § 14.1	9-3-2008	13.16.230
1292 § 14.2	9-3-2008	13.16.231
1292 § 14.3	9-3-2008	13.16.232
1292 § 14.4	9-3-2008	13.16.233
1292 § 14.5	9-3-2008	13.16.234
1292 § 14.6	9-3-2008	13.16.235
1296	10-15-2008	12.12.010 - 12.12.040
1303	2-4-2009	2.05.010, 2.05.020
1312	7-15-2009	2.10.010
1313	7-15-2009	12.08.010, 12.08.030
1316	8-19-2009	9.24.060, 12.13.010 - 12.13.120
1319	11-18-2009	8.04.010, 8.04.020
1327	5-19-2010	3.20.070, 4.12.030, 5.04.210, 5.16.030,
		6.04.060, 6.08.070, 8.20.040, 8.20.070,
		8.20.105, 9.08.030, 10.04.090, 10.04.095,
		10.12.010, 10.12.020, 15.08.060
1328	6-16-2010	T.S.O. I
1333	7-21-2010	5.12.020, 5.12.030
1336	11-3-2010	12.36.3030
1341	3-2-2011	2.80.010 - 2.80.050
1342	5-18-2011	T.S.O. I
1347	10-19-2011	T.S.O. I
1349	10-19-2011	T.S.O. I
1355	5-2-2012	2.10.020
1356	5-16-2012	13.12.065
1357	5-16-2012	8.20.030 - 8.20.050, 8.20.070, 8.20.080

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ORDINANCE NO. 1360

AN ORDINANCE DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUE FOR FISCAL YEAR 2012-2013.

WHEREAS, a public hearing for the use of state revenue sharing funds was held before the Budget Committee on May 24, 2012, and before City Council on June 20, 2012; now therefore,

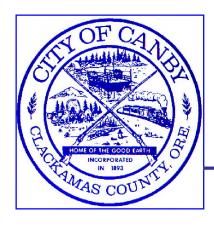
THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1 Pursuant to ORS 221.770, the City of Canby hereby elects to receive state revenues for fiscal year 2012-2013.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, June 20, 2012, 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, July 18, 2012, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2nd Avenue, Canby, Oregon.

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 18th of July 2012, by the following vote:

	YEAS	NAYS	
		Randy Carson	
		Mayor	
ATTEST:			
Kimberly Scheafer,	MMC		
City Recorder			



City of Canby

City Attorney

MEMORANDUM

DATE: JULY 18, 2012

TO: CANBY CITY COUNCIL

FROM: JOSEPH LINDSAY, CITY ATTORNEY

RE: ORDINANCE NO. 1361 AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO

ENTER INTO A CONTRACT WITH KEN ROBINSON DBA KR MAINTENANCE TO PROVIDE SERVICES AT THE CITY OWNED ZION MEMORIAL CEMETARY; AND

DECLARING AN EMERGENCY

Issue: Whether or not to continue contracting Ken Robinson's services at the cemetery.

Summary: Ken Robinson has been providing this service to the City of Canby since 1996. There is no

change in compensation between this agreement and the last one.

Attachments: Ordinance 1361 and *Exhibit A* Personal Services Agreement with Ken Robinson

Recommendation:

Continue contracting with Ken Robinson

Motion: "I move to approve Ordinance No. 1361: AN ORDINANCE AUTHORIZING THE CITY OF

CANBY TO ENTER INTO A CONTRACT WITH KEN ROBINSON DBA KR

MAINTENANCE TO PROVIDE SERVICES AT THE CITY OWNED ZION MEMORIAL

CEMETARY; AND DECLARING AN EMERGENCY."

ORDINANCE NO. 1361

AN ORDINANCE AUTHORIZING THE CITY OF CANBY TO ENTER INTO A CONTRACT WITH KEN ROBINSON DBA KR MAINTENANCE TO PROVIDE SERVICES AT THE CITY OWNED ZION MEMORIAL CEMETERY; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby desires to continue its contract between the City and Ken Robinson dba KR Maintenance to provide for operation and maintenance services for Canby Zion Memorial Cemetery; and

WHEREAS, the current contract with Ken Robinson dba KR Maintenance needs to be renewed; now therefore,

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 Personal Services Agreement with Ken Robinson dba KR Maintenance to continue to provide for operation and maintenance services of Canby Zion Memorial Cemetery. A copy of the Personal Services Agreement is attached hereto as Exhibit "A".
- Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to maintain the Zion Memorial Cemetery and provide services, 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 therefore on Wednesday, July 18 2012, 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, August 1, 2012, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2nd Avenue, Canby, Oregon.

YEAS	NAYS
	Randy Carson Mayor
ATTEST:	
Kimberly Scheafer, MMC City Recorder	

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the $1^{\rm st}$ of August 2012, by the following vote:

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the CITY OF CANBY (City) and KEN ROBINSON dba KR Maintenance. (Contractor).

- A. City requires services which Contractor is capable of providing, under terms and conditions hereinafter described.
- B. Contractor is able and prepared to provide such services as City requires, under those terms and conditions set forth.

The Parties Agree a Follows:

- 1. <u>Scope of Services</u>. Contractor's services under this Agreement are set forth in Exhibit "A", attached hereto.
- 2. <u>Contractor Identification</u>. Contractor shall furnish to City its employer identification number as designated by the Internal Revenue Service, or Contractor's Social Security Number, as City deems applicable. Contractor understands it is required to obtain a City of Canby business license for conducting business in the City. Contractor agrees to obtain a Canby business license prior to commencing work under this contract.

3. <u>Compensation</u>:

- A. City agrees to pay Contractor \$7,600.00 per month for the services provided, not to exceed a total of \$91,200.00 per year.
- B. The City agrees to pay ten percent (10%) of gross annual revenues exceeding \$60,000.00 annual to Contract as incentive bonus.
- C. City agrees to pay Contractor within 30 days after receipt of Contractor's itemized statement reporting completed work. Amounts disputed by the City may be withheld pending settlement.
- D. City certifies that sufficient funds are available and authorized for expenditure to finance costs of the Agreement.

4. <u>Contractor is Independent Contractor.</u>

- A. Contractor's services shall be provided under the general supervision of the City Administrator. Contractor shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Paragraph #3 of this Agreement.
- B. Contractor certifies that it is either a carrier-insured employer or a self-insured employer as provided in Chapter 656 of the Oregon Revised Statutes.

- C. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City Employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this contract, except as specifically declared in writing.
- 5. <u>Subcontractors and Assignment</u>. Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any subcontract between Contractor and subcontractor shall require the subcontractor to comply with all terms and conditions of this agreement as well as applicable OSHA regulations and requirements.
- 6. <u>Access to Records</u>. City shall have access to all books, documents, papers and records of Contractor which are pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.
- 7. Work is Property of City. All work performed or improvements made by Contractor under this Agreement shall be the property of the City. City agrees that the Contractor may use its work in other assignments if all City of Canby data and references are removed.

8. Term.

- A. The term shall be considered as a continuing or rolling two (2) year Agreement commencing on the date agreement is executed.
- B. This Agreement may be terminated by:
 - 1. Mutual written consent of the parties.
 - 2. Either party, upon ninety (90) days written notice to the other, delivered by certified mail or in person.
 - 3. City, effective upon deliver of written notice to Contractor by certified mail, or in person, under any of the following:
 - a. If Contractor fails to provide services called for by this Agreement within the time specified or any extension thereof.
 - b. If Contractor fails to abide by the terms of this Agreement.
 - c. If services are no longer required.
- 9. <u>Professional Standards</u>. Contractor shall be responsible to the level of competency presently maintained by others practicing the same type of work in

City's community, for the professional and technical soundness, accuracy and adequacy of all work and materials furnished under this authorization.

10. <u>Insurance</u>. Insurance shall be maintained by the Contractor with the following limits:

A. Liability - \$1,000,000.00 combined single limit, bodily injury/property damage, including automobile coverage for any vehicle used for City business.

B. Professional liability – errors and omissions - \$1,000,000.00, combined single limit, bodily injury/property damage.

The City shall be named as an additional insured on all required policies. The City may require current copies of insurance endorsement. Procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury or loss caused by Contractor's negligence or neglect connected with the Agreement.

- 11. <u>Legal Expense</u>. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorneys fees, costs, and expenses as may be set by the court both at trial and all appeals there from.
- 12. <u>Modifications</u>. Any modification of the provisions of this Agreement shall be in writing and signed by the parties.
- 13. <u>Notices</u>. Any notice, bills, invoices, reports, or other documents required by this Agreement shall be sent by the parties by United States mail, postage paid, or personally delivered to the address below. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing unless sooner received.
- 14. <u>Entire Agreement</u>. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
- 15. <u>Savings Clause</u>. Should any provision of this Agreement be found to be in conflict with any federal or Oregon state law, or final controlling decision of any Court of competent jurisdiction, or ruling or decision of any controlling administrative agency, all other provisions of this Agreement shall remain in full force and effect.
- Rates. Contractor may propose rate changes for services at the cemetery; however, City shall only set new rates by resolution pursuant to Canby Municipal Code 12.28.050.

	I first agree to and then be responsible for costs of such provements to cemetery requested by someone other proved by the Contractor.
CITY:	Greg Ellis, City Administrator City of Canby PO Box 930 182 N. Holly Street Canby, OR 97013
CONTRACTOR:	Ken Robinson PO Box 934 Canby, OR 97013
Please submit invoices to: Attn:	Accounts Payable City of Canby PO Box 930 Canby, OR 97013 potterl@ci.canby.or.us
IN WITNESS WHEREOF, the parties have appointed officers.	caused this Agreement to be executed by their duly
CONTRACTOR:	CITY OF CANBY:
Ву:	By:
Date:	Date:
Approved as to Form:	
Joseph Lindsay City Attorney	

Capital Improvements. Contractor my propose capital improvement to benefit the

17.

SCOPE OF SERVICES

- All bills for materials, supplies, utilities, and marketing are to be handled by Ken Robinson (Contractor) and are to be held in that name. The City will act only as the final guarantor for payments.
- Contractor will maintain on-site record keeping as defined and requested by the City. The
 current system of paperwork will continue until changes are needed and/or requested by
 either party.
- Contractor will be responsible for the sales of cemetery property.
- Contractor will be responsible for all maintenance of facilities and the grounds of the cemetery. The City, on a case-by-case basis, will pay for repairs that were due to prior neglect.
- Ground maintenance includes the following, but not limited to:
 - Mowing
 - Trimming hedges and trees
 - Fertilizing, spraying and weed control
 - Planting grass on new graves
 - Season irrigation
 - Mole control
 - Removing old flowers
- Contractor will be responsible for setting headstones, repairing headstones, and installation of name bars on mausoleum.
 - Advance purchase of double name bards, before the second person has died will not be allowed for the mausoleum.
- Contractor will be responsible for digging, backfilling and compacting grave sites.
- Contractor will be responsible for interments of bodies & cremains (disinterment if necessary).
- Contractor will be responsible for building maintenance
- Contractor will be available for weekend services, as needed.
- Contractor will develop working relationships with services clubs for Memorial Day; with local and out of town funeral directors; and with City staff.
- All vendor deliveries will be at the Zion Memorial Cemetery.
- Contractor has authorization to sell grave markers under the name of K R Maintenance and has no bearing with the City.

ORDINANCE NO. 1362

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN LAND USE MAP FROM RESIDENTIAL-COMMERCIAL TO HIGH DENSITY RESIDENTIAL FOR TAX LOT 1100 AND 1101 OF TAX MAP 4S-1E-4D LOCATED ADJACENT TO AND ON THE WEST SIDE OF THE 1600 BLOCK OF S IVY STREET.

WHEREAS, an application was filed with the City by Hope Village, Inc. the owner of Tax Lot 1100 and 1101 of Tax Map 4S-1E-4D to amend the Comprehensive Plan Land Use Map from Residential-Commercial (RC) to High Density Residential (HDR); and,

WHEREAS, concurrent applications to annex and amend the zoning map of the City of Canby, Clackamas County, Oregon accompanied this request; and,

WHEREAS, a public hearing was conducted by the Canby Planning Commission on July 9, 2012 and Canby City Council on July 18, 2012, after public notices were mailed, posted and printed in the Canby *Herald*, as required by law; and,

WHEREAS, the Canby City Council considered the matter and recommendation of the Planning Commission and reviewed the record of the Planning Commission hearing and concluded that the findings of fact and the amendment itself are appropriate; and,

WHEREAS, the Canby City Council, after concluding its review and discussion on this matter and by motion duly made and seconded, voted to approve the Comprehensive Plan Land Use Map Amendment contingent upon approval of the concurrent annexation and zone map amendment by a subsequent required vote of the people; now therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The comprehensive plan designations for tax lots 1100 and 1101 of Tax Map 4S-1E-4D are changed from Residential-Commercial (RC) to High Density Residential (HDR) subject to the concurrent annexation and zone map amendment approval by a vote of the citizens of Canby.

Section 2. The Mayor, attested by the City Recorder, is hereby authorized and directed to make the appropriate change on the City's Comprehensive Plan Land Use Map in accordance with the dictates of Section 1 above.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 18, 2012 and ordered posted in three (3) public and conspicuous Ordinance 1362

Page 1 of 2

Council for final reading and action	ccified in the Canby City Charter and to come before the City on at a regular meeting thereof on Wednesday, August 1, 2012 a.M. in the Council Meeting Chambers located at 155 NW 2 nd
	Kimberly Scheafer, MMC City Recorder
PASSED on second and fithereof on the 1 st day of August, 2 YEAS	nal reading by the Canby City Council at a regular meeting 2012, by the following vote: NAYS
	Randy Carson, Mayor
ATTEST:	Randy Carson, Mayor
Kimberly Scheafer, MMC City Recorder	



City of Canby Bi-Monthly Report Department: Administration For Months of: May & June 2012

To: The Honorable Mayor Carson & City Council

From: Kim Scheafer, MMC, City Recorder Prepared by: Erin Burckhard, Office Specialist Through: Greg Ellis, City Administrator

Date: July 16, 2012

- 1. Business Licenses Forty-two (42) new business licenses were issued during the months of May and June 2012. This compares to 54 new licenses issued during March/April 2011. Thirty-four (34) business licenses were inactivated during the months of May/June 2012. This compares to 21 inactivated during the same period in 2011. Two-hundred thirty-six (236) business license renewals were sent out, compared to 221 in 2011. The total number of businesses licensed with the City of Canby is 1,149. Sixhundred fifty-six (656) of these have Canby addresses.
- 2. Complaints/Inquiries Twenty-one (21) complaints/inquiries were received during May and June 2012, all of which have been resolved. Twelve (12) were resolved within 24 hours. Seven (7) follow-up cards were mailed and 4 were returned with Excellent and Good ratings. We received no Poor rating during this tracking period.

The following comments from citizens were received that exemplify the satisfaction with the service received by City employees:

- **3.** Training/Meetings Kim Scheafer and Sue Ryan attended the International Institute of Municipal Clerks Conference May 21-24.
 - Sue Ryan attended the NW Clerks Institute PD 3 June 18-22.
 - Kim Scheafer attended the Benefits Committee Meeting on June 19.
- **4. Special Animal Permits** –. There were two Special Animal Permits issued during the months of May and June 2012.
- **5.** Sidewalk/Park Vending Permit Permits were issued to Dewey's Dogs to sell hot dogs at Community Park, Legacy Park, and Maple Street Park.
- 6. Liquor Licenses Processed None.
- 7. Miscellaneous The City's electronic newsletter was distributed to 1,026 email addresses in May and June 2012.

[&]quot;Impressive! Thank you for responding so quickly!"

[&]quot;My thanks to both Kari and yourself for making Canby a better place to live! I appreciate the work you both do!"

[&]quot;Thank you for your quick response. I didn't realize all I had to do was call..."

[&]quot;It was very prompt and it (street light) now works fine."



City of Canby Bi-Monthly Monthly Report Department: Court For Months of: May & June, 2012

To: The Honorable Mayor Carson & City Council

From: Kim Scheafer, MMC, City Recorder Prepared by: Kathy Mashek, Office Specialist

Date: July 2, 2012

- Twelve people attended the seatbelt class for the month of June. This generated \$360.00 toward the purchase of helmets. There was no class held for the month of May because of the Memorial Day holiday.
- Court trials for the months of May & June were held for 19 defendants. This required ten officers, at various times, to come to testify.
- Four hundred fifty-eight cases were filed and 516 cases were concluded during these months.
- Revenue for both months was \$83,259.19. Out of the amount collected, Oregon Department of Revenue received checks totaling \$15,681.00 and Clackamas County received \$395.55.
- Fifty-three defendants appeared with attorneys. With the defendants there were a total of eight different attorneys present.

Training/Meetings:

- Kim Scheafer, Jane Moe-Wright, and Joseph Lindsay toured the Clackamas County Jail on June 5.
- Jane Moe-Wright observed Court proceedings at Gladstone Municipal Court on June 26.

Canby Urban Renewal Agency Economic Development Department



M EMORANDUM

TO: Honorable Mayor Carson and City Council

FROM: Renate Mengelberg, Economic Development Director

Jamie Stickel, Main Street Manager

THROUGH: Greg Ellis, City Administrator

RE: BI-MONTHLY STAFF REPORT MAY – JUNE 2012 ECOMONIC DEVELOPMENT DEPARTMENT

Economic Development Updates

The following projects are funded through Urban Renewal.

• Business Recruitment Activities:

- Staff toured company representatives from Project Rainbow a Japanese food processing company. I promoted two 20+ acre sites in the Canby Pioneer Industrial Park. The company will be making their site decision next month. Canby is still on their list of options.
- Shimadzu Manufacturing celebrated their 15th year anniversary and recent expansion on June 7th.
- Hawksoft, Inc. moved in to their new office facility on Pine Street in late June from their previous location at the Aurora Airport. More information on the company can be found at http://hawksoftinc.com/.
- Oragonberry Produce is proceeding with their vegetable and fruit processing and distribution facility on their 4 acre Walnut Street site. Construction will begin this fall. The city will offer a SDC payment plan for them. See http://dragonberryproduce.com/ for more information on the company.
- O Bold Ideas, a precision metals manufacturer has moved into their new building on 4th Avenue in June and is adding employees.
- o Proposals and site information for three business leads were submitted.
- **Revolving Loan Program** The program was funded and is officially available for business loans as of July 1.
- Retail Market Analysis the 2012 Retail Market Analysis was completed by Mary Bosch of Marketek and will be presented to the URA on July 11th. It provides recommendations for supporting and expanding business activity in Downtown Canby with pragmatic and actionable steps for implementation. This study will guide the revitalized Main Street Economic Restructuring Committee.
- Business Survey The business surveys are completed and have been distributed to the city council, Chamber Board, city management team and the library. It is also available online at www.canbybusiness.com. A press release summarizing the major findings was submitted to the Canby Herald.

- Canby Business Response Team The second meeting of the group will be held July 10th focused on developing key messages to promote the community and to share business recruitment and retention leads. This team of business and community leaders was trained on the business response process in May and can now rapidly assemble to serve as ambassadors for business recruitment projects.
- Enhanced Communications Efforts Development services staff continues thier efforts to share information relating to urban renewal and planning projects and initiatives. This includes an updated 1st Avenue project website, weekly construction update press releases and business outreach visits from project and main street staff.
- URA Land clearing project The 6.1 acre former police station site work is complete. The site was graded this spring and grass sown. Parks staff can now easily maintain it with their equipment. Emerging blackberries will be mowed later in the summer and should be overpowered by the dominant grass by the end of the season. A geo technical report was finalized.
- Canby Industrial Forum The May 23rd meeting was held at MEC / Screaming Circuits and the presentation focused on "Managing the Flow". The event was well attended with 16 guests representing 10 businesses. The August 22nd meeting that will focus on "Operational Excellence".
- Main Street Manager recruitment The city launched a personal recruitment to fill the vacant Main Street Manager position in early April. After two series of interviews, an offer was extended and accepted by Jamie Stickel. Jamie brings 3 ½ years of directly related main street management expertise to this position. Jamie began in her new role on June 4th and has focused on business outreach, 1st Avenue business assistance and other main street efforts. Her report follows.

Main Street Updates

The following projects are funded through Urban Renewal.

Promotion

• **Downtown Canby First Friday** – The July First Friday program and Cash Mob was a success. Sixteen businesses participated and Classic Cars cruised several rotations around downtown. Main Street organized a raffle for downtown customers who were interested in riding in one of the classic cars during the parade. There were 25 shoppers eagerly waiting outside city hall on July 6th. Ebner's Custom Meats was announced as July's Cash Mob location. The shoppers marched down 2nd Avenue, cash in hand, and Ebner's staff was available to help their happy "mob" of customers. The August 3rd First Friday planning is underway and will include a classic car parade. The program continues to grow with more interest from the public and downtown businesses.

- **Downtown Entertainment Brochure and Event Center Sign** Through an initial meeting with Laurie Bothwell, the need emerged to cross promote between the Event Center and downtown. The Main Street Manager is working on a brochure that identifies entertainment, dining, and shopping attractions, and will develop a temporary Event Center sign that highlights downtown businesses.
- Website and Social Media Updates Marketing downtown's successful, unique businesses is imperative for the success of downtown Canby. The Main Street Manager will increase contact with businesses, residents, and all who are interesting in learning more about downtown Canby through increasing the use of Canby Main Street's website and Facebook page, and introducing a new, weekly newsletter that will focus on news, events, and promotion in downtown Canby.

Organization

Outreach – In order to effectively carry out the Main Street's mission, it is important to
foster strong working relationships with the Canby Area Chamber of Commerce, the
Clackamas County Event Center, Canby Public Library and other organizations throughout
Canby. Through initial meetings, programs and initiatives have been identified as
opportunities for the Canby Main Street to coordinate with and support these organizations.
In addition, providing outreach to all Main Street businesses will help to determine the look
and feel of what Canby Main Street is in the future.

Economic Restructuring

- 1st Avenue Construction Project As construction continues on 1st Avenue, there has been weekly face to face contact with business owners in order to ensure that there are open lines of communication between the City, contractors, and businesses. There is also a weekly construction update emailed to 1st Avenue businesses.
- Available Space Inventory The Main Street program works to effectively market downtown properties as a way to recruit new businesses and attract businesses that are looking to relocate to the downtown core. The Economic Development Director and Main Street Manager compiled a database of available properties and made it available at the Planning Department and on the City's website.

Design

• Façade Improvement Program – The Grant Crossing project (and new home of Bricks and Minifigs) is complete. Staff has met with Norm Kenagy (Mattress World Building), American Legion, and Team Spirit (Holly Mall) to explain the program and application process. A press release on the Bricks and Minifigs and Canby Station projects was submitted to the Canby Herald.



Bi-Monthly Finance Department Report

To: Mayor Randy Carson & City Council Members

From: Sue Engels, Finance Director **Through:** Greg Ellis, City Administrator

Covering: May & June 2012

Compiled by: Suzan Duffy

In addition to providing services and responding to inquiries from both internal and external customers, and performing the tasks listed statistically on the last page, the Finance Department reports the following items of interest this period.

- The **Proposed 2012-2013 Budget** was approved with changes by the Budget Committee in May and adopted by the City Council on June 20th. A **resolution transfer** to accommodate budget needs for the current year was also approved.
- Four people from the accounting firm Pauly Rogers and Co. held **interim** audit **procedures** on-site the last week of June. This was a very in-depth review of processes that required a lot of time from our staff. An example of the level of detailed review included a request for a complete audit trail from billing to bank deposit of 20 randomly selected individual utility customers. Similar "testing" was done on accounts payable, payroll, and journal entries. Capital assets, Transit grants and Court processes were also under review.

In addition, Internal Control and Fraud Questionnaires were sent to select staff, managers and City Council members.

- The annually updated **Master Fee Schedule** was approved in May and updated for SDC changes in June. The new rates are effective July 1st. In addition, an updated policy for the reduced sewer rate was approved. A new application form was developed this period to be ready for the July 1st effective date.
- Staff attended the **PERS** Spring Outreach program in May to receive updates on the latest changes and issues. A new rep has been assigned to the City of Canby and there has been a marked improvement in responsiveness.

- **Payroll cross training** on the new software is under way in preparation for vacation coverage.
- **Transit Tax** returns for the 2^{nd} quarter were sent out as collection efforts on prior quarters continue. New reports for checking status were created to assist in keeping the data current and accurate.
- As the fiscal year comes to a close, reminders about **purchasing and payment deadlines** have been sent out and preparation for new annual purchasing authorizations is being made.
- Compilation of the records needed for recording **fixed assets and capital project costs** is on-going, as these will be part of the fiscal-year end closing activities.
- **Research and analysis** was provided to other departments in various areas such as URD Debt, Fund Exchange history, and property cost information for insurance purposes.
- **Staff spotlight: Tracy Harris** is a Finance Office Specialist III in charge of **Transit Tax** since starting with the City in 2003. She is responsible for collection of over 1200 accounts which include businesses located within Canby's Urban Growth Boundary, as well as those from outside the area who come in to do business here. Her soft-spoken nature belies the diligence with which she pursues her duties. In addition to the Transit Tax, Tracy processes utility payments that are received in house and is responsible for reconciliation of the City's main bank account. By taking on these tasks, Tracy has been an immeasurable help in enabling the segregation of duties required in the Finance Department. Tracy lives in Silverton with her two sons and a kitty cat, and visits her daughter in California as often as possible. She enjoys traveling, going to concerts, and spending time with her extended family and many friends.

Statistics this period:

• Accounts Payable

Invoices: 827
Invoice entries: 1238
Encumbrances: 21
Manual checks: 13
Total checks: 470

Payroll

Timesheets processed: 565
Total checks and vouchers: 652
New hires/separations: 3/6

• Transit Tax Collection

Forms sent: 726
Delinquent notices sent: 25
Non-filed notices sent: 476
Collection notices sent: 4

Accounts opened/closed: 37/27 Returns posted: 344

Utility Billing

Bills sent: 9026
Counter payments: 313
Accounts opened and closed: 118
Lien payoffs: 10
Lien payoff inquiries: 31
Collection notices sent: 0
Accounts sent to collections: 8

General Ledger

Total journal entries: 353

• Cash Receipts Processed

Finance: 786 Utility: 490

• Cemetery

Total property purchases recorded: 9
Total interments recorded: 12

CANBY PUBLIC LIBRARY BI-MONTHLY STAFF REPORT May - June 2012

TO: Honorable Mayor Carson and City Council

FROM: Penny Hummel, Library Director

THROUGH: Greg Ellis, City Administrator

DATE: July 6, 2012

Our statistics for FY11-12 are in—and there's strong evidence that the Canby Public Library continues to be well used and well loved by our community.

- Annual circulation remains steady. 345,514 items circulated in FY11-12, a scant 1% decrease from FY10-11. This works out to over 14 books checked out or renewed by every man, woman and child in the library's service area! Since library district funding began in July, 2009, circulation has risen by 19.5%.
- E-book circulation continues to grow, from 4,265 circulations in FY10-11 to 6,501 in FY11-12. We continue to offer weekly e-reader classes to assist patrons in taking full advantage of the e-book titles offered to LINCC patrons.
- Our net borrowing from other LINCC libraries decreased in FY11-12 by 60%, from 31,019 to 12,570 items. This indicates that our ongoing work to improve the quality of our collection is having a positive impact.
- Adult program attendance doubled (again)! In FY9-10, there were 456 attendees of adult programs, which grew to 942 attendees in FY10-11. This last year (FY11-12), attendance at the library's adult programs grew to 1,807, a testament to the importance of offering opportunities for life-long learning.

Library programming. May/June brought a wide variety of popular programs to the Canby Public Library, ranging from a reading by former Oregon governor Barbara Roberts to the Curious George tea party to a concert by soprano Audrey Sackett to an Oregon Humanities program in Native American art. All were well attended and appreciated by diverse members of the community.

Following the success of the 1776 reading and discussion series, the library has initiated a new book group to complement our ongoing fiction book group. Focused on history, the group will be led by retired Lewis & Clark College professor Pat Baars and will meet monthly. An initial planning meeting in June generated a long list of books for future discussion. The inaugural session will be held on July 25 at 4 p.m.; the book to be discussed is *Confederates in the Attic* by Tony Horwitz. All are invited.



The library's annual Summer Reading program is also in full swing, with over 800 children and teens participating so far. We also have over 250 adults participating in the 2nd annual adult summer reading program, which is sponsored again this year by Cutsforth's Thriftway.

Gifts to the library. One of the most popular features of our children's room is the puppet stage, which inspires young imaginations and celebrates the joy of play. However, after years of dedicated and continuous service to the small fry of Canby, the library's collection of hand puppets had definitely seen better days. Thanks to a \$500 gift from the Friends of the Canby Library, we have ordered a variety of colorful replacements. They will make their debut in early July.

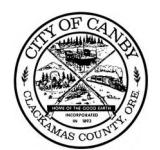
Statewide involvement. In June, I was elected Vice-President/President-Elect of the Oregon Library Association. My three year term on the OLA board will begin this September and I will assume the presidency of OLA in September, 2013. The Oregon Library Association is a 1,000 member organization that is our state's affiliate to the American Library Association. I am honored to be chosen by my peers for this leadership role, and grateful for the City of Canby's support of this unique opportunity for professional development.

New library planning. At the June 6th Urban Renewal Agency meeting, library and city staff and FFA Architecture presented a recommendation for siting the new library on 2nd Avenue adjacent to the historic city hall, which would be renovated into council chambers. Additional work was authorized by the URA to explore the possibility of siting a city hall at the existing library site. When completed, this work will be presented to the URA in August.

Service enhancements. During June, the library implemented several changes designed to maximize staff efficiency and improve patron experiences. All DVDs were moved out into the stacks, so that customers can review the original packaging (in color). Signage for the self-check machine has been improved to encourage use of this relatively new technology, and further innovations are planned for later in the summer. In June, we also installed a people counter so that we can more accurately track the number of patrons who visit the library each day.

Community involvement. Volunteers donated 491 hours in May and June, helping the library by pulling holds, sorting, shelving, processing and mending books, staffing the Friends of the Library Bookstore, and assisting with library programming and events.

PLANNING & DEVELOPMENT SERVICES MAY/JUNE 2012 BI-MONTHLY REPORT



TO: Honorable Mayor Carson and City Council

FROM: Bryan Brown, Planning Director

DATE: July 6, 2012

THROUGH: Greg Ellis, City Administrator

The following report provides a summary of the Planning and Development Services activities for the months of May and June, 2012. Please feel free to call departmental staff if you have questions or desire additional information about any of the listed projects or activities. This report includes a listing of new land use applications being processed and building permit site plan review coordination and permit release activity for this period.

Plan Preparation

- 1. Highway 99E TGM Gateway Corridor & STA Grant. The draft plan continues to be finalized by the consulting team with staff looking at those projects identified that should receive the highest priorities for possible future implementation.
- 2. Canby Land Needs Study. The technical assistance grant application prepared by staff to DLCD and ODOT to assist in the preparation of an updated Buildable Lands Need Study did not make the cut for funding this year. Staff has therefore, determined to work this project into the senior planner's work schedule while coordinating with the County on their current project to complete a Clackamas County rural cities coordinated population forecast which will be critical to complete such a study.
- 3. Downtown Parking Study. An updated parking study for Downtown Canby was developed, grant secured, and study approved with assistance included from the original parking study developer Rick Williams. This downtown parking analysis grant work is expected to run from May 1 through November, 2012 (Check with Matilda Deas for status at this time).
- **4. Dog Park Design.** The location for the dog park was agreed upon and details began on parking lot needs and solutions and how to proceed with demolition of the "Sisters Home" on the dog park site.

City Program/Project Participation

- 5. Transportation/Parks System Development Charge Study & Fee Update. The FCS Group John Ghilarducci, and Doug Gabbard continued work on the analysis and methodology being used for both the Parks and Transportation SDC's. This SDC study is crucial in setting the SDC funding rates necessary to meet the City's development growth needs for transportation improvements and parks.
- **6.** Community Park Improvements. Considerable consultation with Fish & Wildlife agency has now moved the design improvements back to a simpler and more

- reasonable and doable scope of design improvements around community pond. Project details are available from Matilda Deas.
- 7. Planning Commission. The Planning Commission held a on May 14 and another Special Meeting on June 4 to handle public hearings for the Evangelical Church expansion and the occupancy of an existing warehouse space by Habitat Restore.
- **8.** Code Enforcement Issues. Planning staff worked with the code enforcement officer on a detached garage placement issue.

Regional Activity Participation

- 9. Clackamas County Coordinated Population Forecast for Five Rural Cities. Staff attended the kickoff meeting in March with county staff and others who are leading a project to arrive at a coordinated and approved population forecast for each of the rural cities in the County. All local planning actions must utilize the results of this study.
- **10. Clackamas County Transportation System Plan.** The City continues to provide input through the Council's C-4 coordinating efforts.
- 11. Metro 2035 Forecast of Households and Employment. Metro is heavily engaged in their next round of regional growth forecasting modeling which results in the allocation or distribution of households and employment across the region by Traffic Analysis Zones. A meeting to receive the results for the long-term (2045) forecast is set in July.
- **12. French Prairie Forum Meetings.** *Ongoing.* Staff has missed the last two meetings due to conflicts in schedule.

13. Miscellaneous Dept. Activities

- Director attended an Oregon City Planning Director's Board meeting in Madras.
- Planning related Changes to the Master Fee scheduled were prepared and approved by the Council for implementation on July 1, 2012.
- Director attended Budget Committee Hearing.
- Planning staff was represented at the Shimadzu SUM Grand Opening and 15 year celebration.
- Staff met with consultant to assist with the Fred Myer Fuel application.
- Planning staff assisted with 2 Bike and Pedestrian and Parks Board meetings.
- Director listened to a webinar entitled "Measuring Sustainability 60 Indicators to Track Progress". This was a project in Iowa City, Iowa on a timely topic that many cities are trying to make some concrete headway on.

Development Activity

- 14. Pre-Application Conference(s) Held:
 - none
- 15. Land Use Applications Submitted May 1 through June 30, 2012:

 A Legislative Code Text Amendment and Site and Design Review for a Fred Myer Fuel Station at the southwest corner of Hwy 99E and Locust Street.

16. Pre-Construction Conference(s) Held:

- Phase II 4th Avenue Street/Sidewalk/Utility Extension Project pre-construction meeting held on May 1.
- A special utility installation Downtown 1st Avenue Redevelopment preconstruction meeting was held on May 22 with contractor.
- Zoar Lutheran Church pre-construction meeting was held on May 30.

17. Land Use Consultations.

 Staff has continued to work with Darren Monen who is working with the owner/developer of the property across from the High School on SE 2nd Avenue on a dance studio project, and a land owner looking into possible accessory dwelling units on multiple properties.

Permits Reviewed for County Approval

Site Plan Reviews for May and June (City Zoning Conformance)

SP 12-09	John Champ	Roof Line Reconstruction	1201 N E 9 th Ave
SP 12-10	Tom Scott LES inc.	Single Family Residence	426 SE 16 th Ave
SP 12-11	Pat Tortora GHD inc.	Repave School Parking Lots	Various
SP 12-12	Brad Clark	Kitchen Remodel/Expansion	650 N Ash St
SP 12-13	Rebekah Robinson	Garage Conv. Home Base Bus.	544 N E 21 st Ave
SP 12-14	Andrus Building	Tenant Improvement	227 NW 3 rd Ave
SP 12-15	Canby Utility	Reservoir Improvements	440 SW 13 th Ave
SP 12-16	Zoar Lutheran Church	Construction of New Church	SW 2 nd Ave.
SP 12-17	Chris Lancaster	Detached Shop	1331 S Baywood
SP 12-18	Nick Netter	Remodel/Expansion	2045 N Walnut
SP 12-19	Ryan Oliver	Remove Bleachers/Construct	CHS Baseball
		Announcer Booth	Field
SP 12-20	Dana Geiser	Remodel/Expansion	883 NE 10th

Sign Reviews

SN 12-07	Security Signs	Women's Healthcare Wall Sign	200 S Hazel Dell
SN 12-08	Ramsey Signs	Legoland Wall Sign	250 SW 1 st Ave
SN 12-09	Ramsey Signs	Legoland Wall Sign	250 SW 1 st Ave

Other City of Canby Building/Mechanical Permits Issued:

May

1 Police Facility Solar Panels (value \$5004)

none

Previous City of Canby Active Permit Finals/Inspections

May

- ♣ 1 Residential Covered Patio
- ♣ 3 Residential Mechanical Permits
- ♣ 3 Commercial Mechanical Permits
- ♣ 1 Re-Roof for the City of Canby
- 2 Sign Permits
- 2 Fire Alarm Permits
- ♣ 1 Single Family Residential Home
- 4 1 Grading Permit
- 1 Commercial Tenet Improvement (Ebner's Meats)
- ↓ 1 Commercial Improvement (Acid Room Johnson Controls)

June

- 1 Industrial Building (Hawksoft)
- 1 Residential Remodel
- 4 3 Sign Permit
- 1 Residential Shop Building
- ♣ 1 Single Family Residential Home
- 1 Erosion Control
- ♣ 3 Residential Mechanical Permits
- 4 1 Commercial Mechanical Permit

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City of Canby Bi-Monthly Report Department: Police May and June 2012

To: The Honorable Mayor Carson & City Council

From: Chief Bret Smith Date: July 9, 2012

Monthly Stats

Description	May	June
Calls for Service	1384	1222
Juvenile Arrests	11	2
Adult Arrests	50	51
Accidents	4	10
Crime Reports	62	70
Traffic Citations	287	201
Parking Citations	6	7
False Alarm Calls	23	19
Abandoned Vehicle / Parking Complaints	21	22
Animal Complaints	10	8
Other Ordinance Viol. Complaints	17	11
Total Code Enforcement Calls for Service	51	44
Records Public Contacts (Calls/Walk-ins)	262	411

Detectives Significant Cases:

- Homicide/Bomb Explosion
- Forgery
- DCS Meth
- Sex Abuse
- ID Theft
- Sodomy
- MCS Marijuana
- DCS Methamphetamine/Marijuana
- Burglary I
- Child Neglect
- Fraud
- Rape

Ongoing Investigations: 28 Closed/Suspended Investigations: 27

<u>Case Highlights</u>: Detectives completed an investigation of a Marijuana dealer supplying drugs to Baker Prairie Middle School students. This resulted in the arrest of the suspect and seizure of over ½ pound of marijuana. Detectives continue to work joint narcotics cases with the SMGTF (South Metro Gang Task

July 9, 2012 Page **1** of **3**

Force) which recently led to the arrest of a known Canby methamphetamine dealer and his accomplice at a motel in Wilsonville. Cash and methamphetamine were seized at the site.

<u>Computer forensics:</u> Det. Floyd continues to examine evidence from cell phones, video and computer in conjunction with investigations into reported crimes of Sex Abuse, PCS/DCS, Homicide, Theft and Encouraging Sex Abuse (10 new or pending cases, 9 closed investigations). In June he presented a power point to approximately 100 seventh and eighth grade students at Baker Prairie Middle school about internet safety, cyber bullying and sexting.

School Resource Officer Activities Officer Larrison attended state play-off games for girls softball, boys baseball and completed his first year as varsity golf coach at Canby High School. He met with 12 to 14 parents this month regarding drug abuse problems with their children and referred them to Canby Police department for free drug tests. He presented Anti-Bullying programs in classrooms, and worked the high school graduation and all night party on 6/15/12.

In a fun but educational school project, Officer Larrison and students conducted their own analysis to determine whether male or female drivers drove faster in the parking lot. Students were assisted by Officer Larrison on proper use of the handheld radar gun to determine speeds. Of 64 drivers assessed, it was determined that females more often than males drove faster (20 MPH vs. 18.7 MPH).

Police reports filed at the High School written during the period included: 6 MIP Tobacco citations, 1 MIP Alcohol citation, and 3 Theft reports. Officer Larrison started working patrol on 6/25/12.

Training

May 2012

Wallbaum, Roberts	May 3 & 4	Basic Peer Support CISM	PSTC
Holstad	May 7 & 8	Remington 870 Armors Course	PSTC
All Officers	May 16	Department Firearms Qualifications	CRGC
Wallbaum, Roberts	Mov. 16-19	Door Sunnart Conforme	PSTC
B. Smith	May 16-18	Peer Support Conference	PSIC
Floyd	May 21-24	CEIC 2012 Conference	Las Vegas, NV
Fetters	May 21-25	CCSO SWAT Week	

June 2012

TET (Tactical Entry Team)	June 11	Monthly Training	Milwaukie, OR
B. Smith, Mead			
Wallbaum, Vroman	June 13	Make-Up Firearms Training	CRGC
McCuistion, Sommer, Murphy			
Holstad	June 20	Karly's Law Training	Oregon City, OR
Fetters, Kitzmiller	June 21-22	Designated Marksman Rifle Class	Sherwood, OR
Ethington	June 18-20	Search Warrant Writing Class	Portland, OR
Stanislaw	June 25 - 29	Tactical Combat casualty Care	Brooks, OR
All Officers	June 27	Active Shooter	Canby High
All Officers	June 27	Active Shooter	School

Department Activities

July 9, 2012 Page **2** of **3**

The City team consisting of Dan Drentlaw, Chief Smith, Lt. Tro and Amanda Klock, continue to meet weekly with project architects Group Mackenzie, P&C Construction and project manager Bill Harper. Construction delays have re-scheduled project completion to mid-July, 2012.

Meetings & Events Attended – Chief Smith / Lt. Tro

- Monthly Chief's Meeting Milwaukie PD
- Terrific Kids Presentation Lee
- Canby Teen Parent Consortium Meeting
- Sheriff Dan Stayton/ Multnomah County Sheriff's Office
- 2012 Oregon Fallen Law Enforcement Officers Tribute
- Rotary Weekly
- DDA Greg Horner/Clackamas County District Attorney's Office
- Chief Kim Yamashita/Sandy PD & Chief Bob Jordan/Milwaukie PD
- Clackamas County Criminal Justice Council Quarterly Mtg.
- Karly's Law Presentation
- 2012 Northwest Peer Support Conference
- Kiwanis Officer Brett Ethington Presentation
- Metro Gang Task Force Board Mtg.
- Light the Night Steering Committee
- All Hands (City Leaders) Mtg.
- Canby Community Response Team Kick Off Meeting
- Natural Hazards Mitigation Plan Meeting
- Chief Paul Rubenstein Cornelius PD
- Clackamas County Sheriff's Office Re-Dedication Ceremony
- Human Trafficking Recording/OCTS TV
- Canby Ford Institute Leadership Program
- Leon Colas/Department of Public Safety Standards & Training
- Canby Adult Center lunch service Monthly
- C800 Meeting / Fire & Law Services Mtg. (CCOM Clackamas County Dispatch)
- Chief Rod Lucich/Molalla PD
- Clackamas County Communications (CCOM 911) User Meetings Monthly
- CCOM 800 Meeting Monthly
- VIP Executive Briefing / Military Hero's
- FBI Ribbon Cutting Ceremony
- Chamber of Commerce Networking BBQ
- Asst. Chief Joe Noffsinger/WACCA

July 9, 2012 Page **3** of **3**

Year End Report

From: Eric Laitinen, Aquatic Program Manager

Date: July 9, 2012

Re: 2012 Year End Report

The Canby Swim Center had a very good fiscal year. We collected \$193,000 in revenue, \$3,700 more than last year. Attendance was 1,000 swims ahead of last year at 72,300 total swims for 2011-12. During the September closure, David had the electrical service totally re-done, this was the first time since the pool was built 41 years ago. He emptied the pool tank, cleaned and filled it back up. That is done every year. The filter sand was replaced and the pool pumps were serviced.

This year we added passes to our online registration system. We have been using ActiveNet an online registration system for our swimming lessons and began using it for passes in January. It has worked out pretty well so far, it makes it easier to track the passes and the usage for each person.

Nathan Templeman offered Tri-it class for triathletes that need to tune-up their swimming skills in preparation for the Gator Grinder and the triathlon season. It was a little smaller group this year so we will be looking to see if we need to change up the class for next year.

This year in November the voters of Canby chose to renew the levy for funding of the Canby Swim Center for five more years. We feel very blessed to be able to continue service to the community for another five years. This Levy began July 1, 2012 and goes through June 30, 2017.

ERIC LAITINEN, AQUATIC PROGRAM MANAGER MONTHLY REPORT FOR MAY 2012 FROM:

SUBJECT:

July 9, 2012 DATE:

CANDY OWAN OFFITED	ADMIT	ADMIT	D400	D.4.00	TOTAL	TOT 41	YTD	YTD
CANBY SWIM CENTER	ADMIT	ADMIT	PASS	PASS	TOTAL	TOTAL	TOTAL	TOTAL
MAY 2012	2011	2012	2011	2012	2011	2012	10-11	11-12
MORNING LAP	54	63	256	292	310	355	3562	3580
ADULT RECREATION SWIM	74	56	581	652	655	708	6530	7029
MORNING WATER EXERCISE	93	54	295	307	388	361	3517	4558
PARENT/ CHILD	228	272	0	0	228	272	1464	2293
MORNING PUBLIC LESSONS	331	282	0	0	331	282	4980	4532
SCHOOL LESSONS	1240	1120	0	0	1240	1120	3230	2798
NOON LAP	84	142	303	253	387	395	3450	3828
TRIATHLON CLASS	19	31	0	0	19	31	157	147
AFTERNOON PUBLIC	210	222	4	14	214	236	3428	3495
PENGUIN CLUB	0	0	360	296	360	296	1087	1072
CANBY H.S. SWIM TEAM	0	0	0	0	0	0	2140	3723
CANBY GATORS	0	0	1054	1038	1054	1038	8659	8558
MASTER SWIMMING	0	0	0	0	0	0	0	50
EVENING LESSONS	1309	1403	0	0	1309	1403	9477	3775
EVENING LAP SWIM	47	73	59	65	106	138	1220	1300
EVENING PUBLIC SWIM	658	430	45	58	703	488	5508	5107
EVENING WATER EXERCISE	100	131	60	50	160	181	1675	1661
ADULT LESSONS	0	4	0	0	0	4	118	112
GROUPS AND RENTALS	379	312	0	0	379	312	3328	2984
KAYAK	0	0	0	0	0	0	0	0
OUTREACH SWIMMING	0	0	0	0	0	0	448	523
TOTAL ATTENDANCE	4,826	4,595	3,017	3,025	7,843	7,620	63978	66125

ERIC LAITINEN, AQUATIC PROGRAM MANAGER MONTHLY REPORT FOR JUNE 2012 FROM:

SUBJECT:

July 9, 2012 DATE:

CANBY SWIM CENTER	ADMIT	ADMIT	PASS	PASS	TOTAL	TOTAL	/TD TOTA	TD TOTA
JUNE 2012	2011	2012	2011	2012	2011	2012	10-11	11-12
MORNING LAP	57	44	284	317	341	361	3903	3941
ADULT RECREATION SWIM	66	55	601	609	667	664	7197	7693
MORNING WATER EXERCISE	117	59	271	346	388	405	3905	4963
PARENT/ CHILD	380	188	0	0	380	188	1844	2481
MORNING PUBLIC LESSONS	1168	649	0	0	1168	649	6148	5181
SCHOOL LESSONS	0	480	0	0	0	480	3230	3278
NOON LAP	83	88	267	220	350	308	3800	4136
TRIATHLON CLASS	0	0	0	0	0	0	157	147
AFTERNOON PUBLIC	516	423	46	27	562	450	3990	3945
PENGUIN CLUB	0	0	487	308	487	308	1574	1380
CANBY H.S. SWIM TEAM	0	0	0	0	0	0	2140	2723
CANBY GATORS	0	0	799	662	799	662	9458	9220
MASTER SWIMMING	0	0	0	0	0	0	0	50
EVENING LESSONS	1327	1232	0	0	1327	1232	10804	11007
EVENING LAP SWIM	39	36	97	53	136	89	1356	1389
EVENING PUBLIC SWIM	908	633	72	87	980	720	6488	5827
EVENING WATER EXERCISE	84	66	48	51	132	117	1807	1778
ADULT LESSONS	0	6	0	0	0	6	118	118
GROUPS AND RENTALS	505	526	0	0	505	526	3833	3510
KAYAK	0	0	0	0	0	0	0	0
OUTREACH SWIMMING	168	80	0	0	168	80	616	603
TOTAL ATTENDANCE	5,418	4,565	2,972	2,680	8,390	7,245	72368	73370



May and June, 2012 Monthly Reports

Facilities Maintenance – Dan Mickelson Fleet Service – Joe Witt Parks Department – Jeff Snyder Public Works – Jerry Nelzen

Facilities Maintenance May & June 2012 Prepared by Dan Mickelsen

Well I have been busy trying to transition from one budget year into the next. There have been supplies that I needed to buy in the 2011-12 budget but the materials will be used in the 2012-13 year. I've been keeping my eye on prices and I try and hold out for the best deal. Also a lot of time was spent on seeking out bids and materials for jobs and finalizing contacts for the upcoming budget cycle. Now that the new budget has been approved I will be off and running again.

Police Dept: 4 w/o repairs. Timing couldn't be better to get out of the current P.D. We have definitely had our share of HVAC problems. There are five units on the roof and one of them always seems to have problems. I also changed out several lamps and took care of a foreign smell that seemed to be radiating in one area. 7.5 hrs total.

Adult Center: 7 w/o repairs. I was called out to take care of a roof leak. Rest assured the roof was not leaking. In the eighties the building was added onto and there is a short little parapet wall that water has to pass through. The sealant around the scupper had cracked and was seeping water. It was a good catch by the Adult Center staff to notice the wet area. The old sealant was cut out and dried out with a torch and was then replaced with more sealant with fiber glass mesh sandwiched between layers. This will prevent the sealant from cracking in the future. I also did the springtime maintenance on the swamp cooler so it's ready for warm temperatures, I extended an overflow pipe at one of the roof drains as well. I also unplugged several floor drains, fixed a flush valve, repaired the lunch room sink and cleaned the remaining leaves and maple seeds off the roof. 20.75 hrs total.

City Hall/ Courts: 7 w/o repairs. I repaired a broken desk drawer, hung up a sign, changed out lamps and unplugged and re plumbed a disgusting sink drain. Also door locks were changed out, replaced broken cover plates and moved copy machines to several locations. 18.75 hrs total.

Finance / Transit: 2 w/o repairs. A Rep from the State of OR said that an additional delineator was needed in the parking lot during an inspection. I ordered and installed delineator and also moved boxes of records to City Hall to be archived. 4.5 hrs total.

Planning / Building: 2 w/o repairs. The thermostats were re set for summer hours and I also repaired a lock on a rest room door. 3 hrs total.

Library: 7 w/o repairs. Last fall the cooling compressor failed on one of the HVAC units. I held off until May to do the repairs knowing we did not need to cool during the winter. This also extended the warranty period by six months. The repairs are made and after resetting the thermostats for summer temps we are good to go. I hauled donated chairs from Clackamas Co. to the Library and then hauled off old furniture to be donated. I replaced cover plates and finalized alarm system issues with the Civil Rights Attorney in Seattle. Then to cap of the month of June the men's rest room flooded possibly due to vandalism. I called in a cleanup company and sheet rock was removed and the area was dried out. The insurance claim is still open at this time. 37 hrs total.

Shop Complex: 11 w/o repairs: A lot of time was spent chasing my tail seeking out bids and or price quotes for up coming jobs. I did meet with Joe to be sure I was one the right track. The HVAC system here at the Shops is contracted with CUB but more often then not I help with repairs. The unit had kicked out several time's and the sound barrier may have been blocking air flow. I made a new sound barrier that allows more air flow and it seems to be working. I also did the scheduled filter change on the Fleet Dept. KFU heaters. I repaired door locks, and doors, hauled file cabinets for an upcoming project, and got a final on the roof project phase two.

Another project in the works for some time is the slurry sealing of the shop complex. I did manage to get several impounded cars moved off site along with securing bids for the project. Jerry in Public Works gave me some help so we blew out the cracks and sealed all the cracks in the asphalt. On June 1st the slurry seal job was completed. I am currently working on pressure washing the over 30 thousand square feet of concrete when time allows so I can get it sealed before any more damage occurs. 69.75 hrs total.

Public Works: 12 requests. I worked on getting the new Erosion Prevention and Sediment Control Manual adopted. I worked on the original back in 2003 and we now have a new and updated manual. I also finalized the new fees to be added to the Master Fee Schedule. I also did 10 ESC site inspections and finalized the permit for Hawksoft. I also attended pre-cons for the Zoar Lutheran Church expansion and the 4th avenue job. Meetings attended, safety, storm water committee and lead man meeting. 27.25 hrs total.

Fleet Services

Bi-Monthly Report: May / June 2012 Prepared by Joe Witt, Lead Mechanic

May 2012

Department	Work Orders	Labor Cost	Material Cost	Fuel Cost	Total Cost
Administration	2	\$106.13	\$86.60	\$116.75	\$309.48
Adult Center	1	\$0.00	\$0.00	\$390.63	\$390.63
Building	0	\$0.00	\$0.00	\$0.00	\$0.00
Collections	3	\$1,121.25	\$516.81	\$841.34	\$2,479.40
Facilities	2	\$271.88	\$8.63	\$79.32	\$359.83
Fleet Service	1	\$75.00	\$0.00	\$80.30	\$155.30
Parks	8	\$1,320.00	\$212.66	\$965.40	\$2,498.06
Police	21	\$6,717.10	\$3,317.36	\$7,632.71	\$17,667.17
Streets	9	\$4,241.25	\$513.02	\$2,826.60	\$7,580.87
Transit (CAT)	26	\$12,498.90	\$4,769.34	\$7,545.97	\$24,814.21
Wastewater Treatment	4	\$1,023.75	\$541.10	\$160.29	\$1,725.14
Total Work Orders Processed for the Month	77		Totals*		\$57,980.09

^{*}Total includes labor, materials and fuel for all departments:

June 2012

Department	Work Orders	Labor Cost	Material Cost	Fuel Cost	Total Cost
Administration	2	\$337.50	\$43.71	\$46.67	\$427.88
Adult Center	1	\$251.25	\$40.09	\$207.45	\$498.79
Building	0				\$0.00
Collections	3	\$652.50	\$423.75	\$368.41	\$1,444.66
Facilities	3	\$468.75	\$40.92	\$96.87	\$606.54
Fleet Service	3	\$442.50	\$61.75	\$209.43	\$713.68
Parks	9	\$2,328.75	\$1,110.69	\$745.63	\$4,185.07
Police	22	\$5,434.60	\$3,610.15	\$5,681.70	\$14,726.45
Streets	12	\$2,872.50	\$1,273.69	\$1,775.13	\$5,921.32
Transit (CAT)	27	\$12,918.60	\$7,841.53	\$6,884.05	\$27,644.18
Wastewater Treatment	4	\$915.00	\$140.36	\$124.31	\$1,179.67
Total Work Orders Processed for the Month	86		Totals*		\$57,348.24

^{*}Total includes labor, materials and fuel for all departments:

Fleet Service Highlights

Fleet Service working with other City Departments kept the City's vehicles and equipment on the road performing their duties.

Parks Maintenance

By Jeff Snyder, Parks Maintenance Lead Worker

May – June 2012

Park Renovations

At Community Park, Dawna Gould purchased a bench in memory of her friend Joan Bowman. Parks staff assembled and installed the bench along the river across the road from the ball field.

Cub Scout Leader Steve Provon, from troop 503 met with park staff to set up a Knotweed removal project. The Cub Scouts were going to do the invasive species removal at the end of May to help the kids earn their World Conservation badge.

A porta potty was installed on the Forest Rd. Walking Path by the Disc Golf course to accommodate the course users and the walkers.

Park Maintenance

May started off with lots of mowing, string trimming, edging and fertilizing. By June staff was well into adjusting and repairing irrigation systems for the summer months. Shrub bed maintenance, weed spraying and pruning also dominated staff time. Valley Green was contracted to do weed control on the turf areas for the parks. The weed control application saves the department time as the summer gets under way; we are not spending so much time mowing just the weeds as things start to dry out. The John Deere flail mower was used to cut the Fish Eddy trail and control the brush along the Forest Rd. Walking Path.

At Community Park three porta potties were installed to accommodate park users during the high use months. The Parks Department spent 4.5 hours addressing graffiti and vandalism the last two months.

EC electric replaced the in ground warning lights on Territorial Rd. for the Molalla Forest Rd. lighted crosswalk. We were still under warranty for the material but we paid for the labor.

Regular maintenance was performed at the 29 areas the Parks Department is responsible for, the Adult Center, Arneson Gardens Horticultural Park, Baker Prairie Cemetery, City Hall, Community Park (River), CPIP sign, Eco Park natural area, Faist V property, Holly & Territorial welcome sign property, Hulbert's welcome sign property, Klohe Fountain Library, South Locust Street Park, Logging Road Trail and Fish Eddy/Log Boom property, Maple Street Park, Nineteenth Loop Natural area, Northwood Estates Park, Simnitt Property, Skate Park, Shop Ground, Swim Center, Legacy Park, Territorial Estates Future CLC Park, Transit Building, Transit Bus Stop, Triangle Park, Vietnam Era Veterans Memorial, Wait Park & Willow Creek Wetlands.

Clackamas County Corrections Crews

The crew spent the one Sunday of the last two months String trimming at Community Park.

C.C.C. performed approximately 48 hours of labor for the City of Canby in the months of March and April.

Meetings attended

I attended the Park and Rec. meeting.

I attended the Lead Workers meeting.

Matilda and I met with Russ Hall from Wilderness International Inc. to discuss the Canby Community Park pond improvements.

Matilda and I met with Gordon Munro from Kennedy/Jenkins Consultants to review the Northwoods park design.

For your Information

The Parks Department is responsible for 200 acres of property.

The Clackamas County Corrections Crews will no longer be working for Canby due to budgetary constraints. Last year CCCC provided 2112 personnel hours of labor to the city of Canby Parks Department.

Department: <u>PUBLIC WORKS</u> For Month of: May and June 2012

Prepared by: Jerry Nelzen

1. Streets:

During the month of May the Public Works Department changed out the banners on NE/NW 2nd Avenue for the Economic Department. Fixed the sidewalk panel on NW 2nd Avenue in front the Planning Department. Set out barricades for Saturday Market and the Gator Grinder. NE 4th Avenue Reconstruction has begun along with the NW 1st Avenue project.

The crew received and located 100 locates for May.

Streets	Total Hours
Street Sweeping	123.5
Street Sweeper Maintenance	21
Street Maintenance	292.5
Sidewalks	29
Driveway Approach Inspections	2
Street Sign Manufacturing	19
Street Sign Maintenance	48
Street Sign Installation	35
Street Light Repair	12
Tree Trimming	29
Tree Removal	14.5
Vactor Usage	4

2. Sewer and Storm System:

The crew cleaned lift stations in Canby. Cleaned and video inspected sewer mains and laterals upon citizen's requests. Installed cleanout at 1245 N Lupine Court to alleviate the problems between citizen's sewer lateral and our sewer main. Cleaned and video inspected sewer mains in Canby.

Sewer	Total Hours
Sewer Maintenance/Repair	80
Sewer Laterals	19.5
Lift Station Maintenance	35
Locating Utilities	72
Vactor Usage	12
Drying Beds	6
Storm	
Catch Basin Maintenance	75
Dry Well Maintenance	3
Storm Line Maintenance	76
Storm Line Inspections	15
Vactor Usage	7.5
Drying Beds	3

3. Street Sign/Trees/Lights:

The crew during the month of May removed tress and clear tree limbs out of the City's right-of-way. Removed the street lights along NW 1st Avenue with the help of Canby Utility Electric crew for the NW 1st Avenue Reconstruction project.

The crew replaced numerous streets and faded stop signs.

The crew fixed or repaired 7 street lights for May.

4. Miscellaneous:

Miscellaneous	Total Hours
Meetings	30
Warehouse Maintenance	18
Equipment Cleaning	21.5
Work Orders	20
Other	13

June 2012

1. Streets:

The NW 1st Avenue Reconstruction project is in full swing with installing storm, sewer and water lines along with placing electrical and fiber throughout the development. The Public Works crew has worked diligently with Canby Excavating to ensure the work flows smoothly. The crew has weed eated in the right-of-ways, removing debris and started striping the roadways around town.

The crew received and located 81 locates for June.

Streets	Total Hours
Street Sweeping	68.5
Street Sweeper Maintenance	11.5
Street Maintenance	321.5
Sidewalks	10
Street Sign Manufacturing	23
Street Sign Maintenance	28
Street Sign Installation	29
Street Light Repair	10
Tree Trimming	56
Tree Removal	1
Dump Truck Usage	8.5
Vactor Usage	8

2. Sewer and Storm System:

The crews video inspected sewer mains at SW 7th and NE 13th Avenues to help homeowner's to locate their blockage, which were on the private side of the lateral. A water main on NW 1st Avenue broke and the crew had to clean out all the debris in our newly installed storm system.

Sewer	Total Hours
Sewer Maintenance	26
Sewer Laterals	6
Lift Station Maintenance	76
Locating Utilities	83
Sewer Inspections	6
Vactor Usage	5
Storm	
Catch Basin Maintenance	72.5
Storm Line Maintenance	23
Storm Line Inspections	14
Drywell Maintenance	12
Vactor Usage	24
Drying Beds	4

3. Street Sign/Trees/Lights:

The crew during the month of June fixed 10 street lights, trimmed back limbs in the City's right-of-way and replaced faded signs. Economic Development requested Public Works made signage for the NW 1st Avenue Redevelopment, which included parking and businesses open.

4. Miscellaneous:

The crew worked with Economic Development re-hanging banners on NE and NW 2nd Avenues. Together with Canby Utility Water, we are fixing a water leak near the new police station on NW 3rd Avenue.

Miscellaneous	Total Hours
Meetings	11
Warehouse Maintenance	18
Equipment Cleaning	17.5
Training/Schools	26

City of Canby Bi-Monthly Report Department: Transit

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For: the months of May & June, 2012

Date: July 6, 2012

Prepared by: Julie Wehling

Through: Greg Ellis, City Administrator

1) Funding Issues:

a) Monthly Elderly and Disabled transportation reports were submitted to TriMet.

b) Contracted with RCShain & Associates to find pass-through partners for outstanding Business Energy Tax Credits (BETC).

2) Ridership:

The service changes that went into effect in June of last year reduced services by nearly 33 percent (from 83.25 to 56 service hours per day). The drop in ridership for the first year of reduced service was proportional to the drop in service hours. For the fiscal year 2011-12 the total ridership was down by 31 percent as compared to fiscal year 2010-11.

The usual comparisons are only meaningful for the Orange Line and Dial-A-Ride services with understanding that the services are only similar and not an exact service comparison. All local fixed route services were eliminated and neighborhood shuttles and a general public Dial-A-Ride were implemented on June 27, 2011.

During the first year of reduced service:

Ridership on Oregon City portion of the Orange Line was down by only 12.24 percent following a 25 percent decrease in service hours.

Ridership on the Woodburn portion of the Orange Line was down by only 16.79 percent following a 33.3 percent decrease in service hours.

The Dial-A-Ride program provided a total of 17,511 rides in fiscal year 2011-12 which is a 71 percent increase over the previous year.

During the final two months of the fiscal year CAT provided:

- a) 13,532 rides in May (27.3% fewer than May of 2011).
 - 1,527 demand responsive rides (Neighborhood Shuttle & Dial-A-Ride). This is 42.4% more rides than were provided during May of 2011.
 - 8,487 to Oregon City (2.8 % fewer rides than May of 2011)
 - 3,518 to Woodburn (15 % fewer rides than May of 2011)
- b) 12,874 rides in June (29.6% fewer rides than June of 2011).
 - 1,332 demand responsive rides (Neighborhood Shuttle & Dial-A-Ride). This is 24.25% more rides than were provided during June of 2011.
 - 8,005 to Oregon City (11.1% fewer rides than June of 2011)
 - 3,537 to Woodburn (17.1% fewer rides than June of 2011)

3) <u>Updates:</u>

- a) On May 17th and June 21st the Transit Advisory Committee held their regular meetings.
- b) Two Arboc buses were delivered in May and went into service on June 7th.
- c) Effective June 30th new schedules went into effect on the Orange Line. Also effective June 30th the Neighborhood Shuttle was eliminated. These changes were posted on the buses, at the major transit stops, in the Canby Herald, and on the CAT website.
- d) The Public Transit Division (PTD) of ODOT was audited by the Federal Transit Administration. Canby Area Transit was one of the sites identified as a PDT sub-recipient site for the Public Transit Division audit.

4) Collisions

- a) No collisions in May or June.
- 5) <u>Training/Meetings/Conferences Attended:</u> City staff, contractors and/or volunteers represented CAT at:
 - a) On May 9th Julie Wehling attended a coordination meeting hosted by Clackamas County and attended by Clackamas County transportation providers.
 - b) On May 25th Julie Wehling attended the executive committee meeting of the Regional Transportation Coordinating Council (RTCC).
 - c) On May 30th Julie Wehling attended a meeting with other Clackamas County transportation providers regarding the update of the TriCounty Elderly and Disabled Transportation Plan.
 - d) MV Transit held a safety meeting for drivers on June 23, 2012.



City of Canby Bi-Monthly Report Department: Wastewater Treatment Plant For Months of: May & June 2012

To: The Honorable Mayor Carson & City Council

From: Dave Conner, Lead Operator Through: Greg Ellis, City Administrator

Date: June 30, 2012

Facility Operations & Maintenance

The water quality for the months of May and June remained excellent with no violations or interruption of services for either month. Plant Operators continue daily operations of the plant as we enter our tighter summer compliance monitoring for DEQ.

Plant personnel continued to keep up with all preventative maintenance and operations that include some of the following:

- Completed most of plant lighting upgrade.
- Replaced diaphragms on North W.A.S pump.
- Replaced some rusty grating at the influent pump room.
- Repaired some broken brackets on plant compressor.
- Annual boiler inspection was completed with no problems.
- Raw Sewage Pump still in for repair, still waiting for new motor assembly.
- Completed monthly belt press filter maintenance.
- Annual backflow inspections were completed.
- Continued ground maintenance: mowing, edging, pruning, spraying and cleaning of the approximate 10 acre facility.
- Performed routine daily maintenance, repairs, and cleaning of plant equipment.

FOG (fats, oils and grease) program

- 1. Dave Frahm made 33 inspections of GRD's (grease removal devices) in Canby's food service establishment.
- 2. 52 pump outs were completed over the last 2 months, the continued inspections and mandatory cleaning schedules remain effective in the reduction of FOG throughout the sewerage system.

Biosolids Program:

- 1. Plant personnel ran the belt press approximately 37 days in the last 2 months.
- 2. Canby Disposal hauled approximately 408 cubic yards of raw sludge from the treatment plant to Riverbend Landfill.
- 3. We have received bids for the new temporary conveyor system we had designed to more effectively discharge sludge to the dumpsters that are currently being used and will consider options of having it built in the next several months.

Meetings and Training Attended

- 1. Dave Frahm attended the monthly preferred pumper meeting, the stormwater summit meeting at lane Community college and the city stormwater committee meeting.
- **2.** Bob and I continue to attend the energy conservation workshops in efforts to further reduce electric consumption used by equipment.
- 3. Bob attended the monthly biosolids meetings in Salem.
- **4.** I attended the monthly lead worker meeting, and met with one of our lab equipment vendors along with Don Steiner in effort to upgrade our data monitoring program.
- 5. All plant personnel attended our shop safety meeting.
- 6. Give annual plant tour for Clackamas Community College water environment students.
- 7. Continuing to participate with the Clackamas Community College internship program.
- **8.** Don Steiner and Dave Frahm put on an informative PowerPoint presentation for the science students at Baker Prairie Middle School.



M EMORANDUM

TO: URBAN RENEWAL AGENCY

FROM: DAN DRENTLAW, URBAN RENEWAL PROJECT MANAGER

DATE: JULY 9, 2012

RE: MAY/JUNE URBAN RENEWAL UPDATE

Police Facility

Progress on the police facility is moving along quickly and is nearly complete. Interior finishes such as painting, carpet and tile have been completed. Installation of the lockers and rolling files is in progress and the building will be ready for furniture delivery on Monday, July 16th. All utilities, such as gas, electrical, water and sewer will be on line the week of July 16th. However, substantial completion of the building has been moved back to July 27th due to several small outstanding items, but this will not affect the move in date for the police department which will occur in the first or second week of August.

The portion of the road and parking lot that will provide access from the 3rd Avenue parking lot to an area in front of the lower level of the police facility is currently under construction and should be completed by the end of the month. The access road was an original part of the police facility design as it provides a connection to the emergency road that connects the property to Cedar, but it was never included in the contract. It also provides access to the storm drainage facility and lift station that is maintained by public works maintenance personnel. Irrigation lines and landscaping are currently in progress and should also be completed by the end of the month.

First Avenue Redevelopment

Construction is now in week six and the project is progressing on schedule. A new web site for 1st avenue construction updates has been established, and weekly updates will continue to be published in the Canby Herald. Weekly construction team meetings are held every Thursday at 9:00 AM at the Planning Office.

Currently, work is focused on the installation of underground utilities. The new storm water system has been installed from Elm to Holly and is nearly completed. The area between Holly and Ivy will be trenched to allow for the last segment of the storm water lines. Conversion of the overhead electrical service to underground lines is well underway in 1st Avenue between Elm and Grant. Electrical vaults and connections to existing buildings have been completed in this area. Cable conduit and water laterals and meters have also been placed in this section of 1st Avenue.

Last week, the curbs and sidewalks were poured between Elm and Fir. This week the same will occur between Fir and Grant. Concrete will also be poured at the intersection of 1st and Fir and will have to remain closed for 14 days to allow the concrete to cure. Soon thereafter paving will occur between Elm and Fir.

Major work at the Grant and 1st Avenue intersection will start July 18th, and last 4 to 5 weeks. It will require the closure of the 99E and Grant intersection. Detour signs will be posted before the closure.

As work progresses on a block by block basis, at least one row of parking will be maintained in the railroad side parking lot at all times. As demolition of the sidewalks occurs, a portion of the sidewalk will also remain open or a compacted gravel base will be maintained at all times.

Sequoia Parkway Extension

Curran McCloud is in the process of completing the preliminary design for the extension of Sequoia Parkway to SE 13th Avenue. The staff is currently reviewing a proposed MOU with one of the major property owners served by this project. The first meeting with the consultants and affected property owners occurred in May. A series of three updates will be made to the agency as work progresses on the project.

Management Team Meeting Minutes June 18, 2012 2:00 PM City Hall Conference Room

In attendance: Greg Ellis, Sue Engels, Renate Mengelberg, Penny Hummel, Kim Scheafer, Bret Smith, Joe Lindsay, Amanda Zeiber, Eric Laitinen, Bryan Brown, Julie Wehling, and Darvin Tramel.

Penny Hummel

• The Urban Renewal Agency approved additional work with FFA for the Library Facilities Study

Greg Ellis

- Out of office Friday at Ford Leadership Training
- Sidewalk on 4th Avenue is being poured
- Police Department construction is going well

Sue Engels

- Auditors will be here next week. Monday, Tuesday & Friday they will be in the Council Chambers. Wednesday and Thursday they will be in the City Hall Conference Room. They may be coming to various departments to ask questions.
- Working with Transit on fare implementation

Renate Mengelberg

- Working with Finance on developing a process for financing SDCs for Dragonberry Produce
- Not getting a RARE student this year. Looking at other avenues for getting help to do GIS work.

Eric Laitinen

• Summer schedule starts next week

Darvin Tramel

- Attended Energy Management Training
- Working on the Stormwater Annual Report

Bret Smith

- The Gang Enforcement Team made a big bust last week
- Officer Dennis Swanberg retired today. Will be starting the recruitment process.

Amanda Zeiber

- Health insurance increase came in at 19%. Benefits Advisory Committee is meeting tomorrow to look at options on reducing the increase
- Agreement with Canby Telcom was signed for a new phone system
- Off the week of July 4

Bryan Brown

- Working with Dragonberry Produce and a possible new business by the high school
- Fred Meyer Fuel Station Traffic Study was missing some information which has been requested
- Matilda is working on a parking solutions workshop for next Monday

Minutes taken by Kim Scheafer

Management Team Meeting Minutes July 9, 2012 2:00 PM City Hall Conference Room

In attendance: Greg Ellis, Sue Engels, Renate Mengelberg, Penny Hummel, Kim Scheafer, Joe Lindsay, Amanda Zeiber, Eric Laitinen, and Julie Wehling.

Kim Scheafer

• Reviewed Agenda for July 18 CC Meeting

Greg Ellis

- He and Renate spoke at Kiwanis today regarding various projects
- Working on a long-term visioning process

Penny Hummel

- Summer reading is going well
- Hold notices have been redesigned
- A celebration will be held in late September or October for the 75th anniversary of the library
- A new Bilingual Library Assistant I has been hired

Renate Mengelberg

- Finished first phase of the Retail Market Analysis Survey
- Jamie Stickel is bringing a work plan to the Agency
- Community Response Team will meet Tuesday
- Dragonberry Produce submitted their Development Application
- Annie Tran's last day is Friday. A party will be held at Wait Park on Thursday at 5:30 p.m.

Eric Laitinen

- Penguin Club attendance is good
- Summer school students are attending the public swim session in the afternoon

Sue Engels

- Spoke about the budget to actual and chart of accounts
- Auditors finished their work on site early

Julie Wehling

- Working with a company on selling BETC credits
- Scheduled changes made on July 1 were minor

Amanda Zeiber

- Police Department move is tentatively scheduled to happen in two weeks
- New phone system is being installed in phases with completion by the end of the year
- Ryan from Kintech will be out July 13-30. Submit work orders now if you need something done prior to him leaving. Kintech will have another technician available during that time.

CITY COUNCIL / URA MEETING FOLLOW-UP ITEMS						
ORIG. CC / URA MTG. DATE	ITEM	STATUS	ASSIGNED TO	FOR CC OR URA MTG. OF		
10/12/2011 URA	Entrance Sign Power - ODOT	Contact appropriate person at ODOT	Dan	TBD		
10/12/2011 URA	Other use or market for solar panels	Researching	Dan	TBD		
OTHER STAFF ITEMS						
DATE	ITEM	STATUS	ASSIGNED TO	TARGET DATE		
	Road Improvement & Sidewalk Extension on NE 4th	Getting Easements & Right-of-Way; Proceeding		Under		
12/7/2011	Avenue by CC Event Center	With Design	Greg	Construction		
	Selling Property Partitioned Next to Maple Street Park					
	(former location of Marshall House)	Waiting for better econmic times to sell property		On-Going		