

Canby City Council
Regular Meeting
February 4, 1975

The meeting was called to order by the mayor at 7:30 p.m. followed by the traditional flag salute.

Present: Mayor Roth, Councilmen Gerber, Giger, Rapp, Wagner & Westcott

Absent: Councilman Kariker

Others Present: Administrator Wyman, Police Chief Graziano, Attorney Bettis Sr., Fire Chief Buttolph, Utility Board Chairman Newton, Foreman Atwood and Committee Members Johnson & Oliver

Arden Sheets and three boy scouts attended the meeting to provide requirements for scouting badges. Mayor Roth greeted the guests and praised them for their interest in public affairs.

The mayor asked for comments from the council pertaining to the minutes of January 20 and there being none, the mayor declared the minutes approved as distributed.

Ordinance #587; AN ORDINANCE RELATING TO THE IMPROVEMENT OF PARKING LOT ON SOUTHERN PACIFIC COMPANY PROPERTY; ACCEPTING BID FOR PAVING; DIRECTING EXECUTION OF A CONTRACT WITH PARKER-NORTHWEST COMPANY; AND PROVIDING AN EFFECTIVE DATE was read on final reading by Attorney Bettis by title only. After a brief period of discussion a motion was made by Councilman Giger, seconded by Westcott and carried unanimously by roll call vote to adopt Ordinance #587 to become a part of the laws of Canby.

Ordinance #588; AN ORDINANCE REGULATING STREET EXCAVATIONS; REQUIRING A PERMIT; IMPOSING REQUIREMENTS FOR THE PROTECTION OF THE PUBLIC; REGULATING THE BACK FILLING AND RESURFACING; PROVIDING PENALTIES FOR VIOLATIONS; REGULATING THE USE OF STREETS AND ALLEYS; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith was read on second reading by title only by the city attorney. Considerable discussion followed regarding contents within the ordinance pertaining to street excavation responsibilities and workability. A motion was made by Councilman Gerber, seconded by Giger and carried to defer final action on said Ordinance #588 to the next regular council meeting and to be brought up for discussion at the intervening workshop. Opposition to the ordinance was voiced by some members of the council and by persons in the audience which prompted the motion to defer.

Administrator Wyman read a letter from the Canby Community Pool stating their appreciation for work donated by the Public Works Dept. for improvement of the swimming pool parking facilities. A copy of the letter is attached to and becomes a part of the file copy of these minutes.

The administrator read a letter regarding the County Manpower Program and said that four positions had been applied for by the City of Canby these positions being: one police officer, two dispatchers and one person to enforce the parking control laws of Canby.

The council discussed the progress report on the comprehensive plan and the mayor reported on a recent meeting at C.R.A.G. which he attended and another meeting scheduled for March 5 at 7:30 p.m. at the Grant Street School to be chaired by members of the C.R.A.G. organization. Then the council discussed the progress being made by the planning consultant and a motion was made by Councilman Giger, seconded by Gerber and carried approving the invoice from Edwards' office in the amount of \$2,651.25.

The administrator introduced a letter from the Traffic Safety Committee as reported by Supt. John Whiteside dated February 3, 1975 and recommending three alternatives regarding the traffic control on Ivy Street. The council discussed the matter in detail and heard comments and recommendations from a number of guests at the meeting. A copy of this letter is attached to and becomes a part of the file copy of these minutes. A motion was made by Councilman Giger and seconded by Gerber to adopt the committees' alternative #3. An amendment was made by Councilman Wagner to remove the #2 recommendation from the motion. Then a second amendment was moved by Councilman Wagner and seconded by Westcott to remove the "no left turn" sign on 1st and Ivy Streets and after a period of further discussion and call for the vote on the 2nd amendment the motion failed to pass and was referred back to the next workshop for further study.

The council reviewed the accounts payable as presented by distribution of the purchase order print-outs and after a short period of discussion a motion was made by Councilman Giger, seconded by Westcott and carried by roll call vote to approve bills in the amount of \$12,720.05 for payment.

Administrator Wyman displayed print-outs of a general ledger test run as a new feature of the computer service to become a part of the monthly electronic service. The council discussed the source of information and found that advice from Auditor Douglas was needed to clarify the information contained in the test run before action could be taken.

The council discussed proposals recently made by the Canby Utility Board regarding costs for monthly sewer billings and changes in the Utility Board's payment to the city in lieu of taxes and the mayor declared that the matter would be held up for further study and discussion.

Attorney Bettis presented a deed from Terry Laxton granting the city property adjacent to Territorial Road more particularly described in said deed. A motion was made by Councilman Giger, seconded by Gerber and carried to accept the deed for signing and recording in the County Record of Deeds.

After a five minute recess from 9:03 to 9:08 p.m., copies of Ordinance #589 pertaining to trial by jury was distributed for the council members' study and placed on the agenda for action on February 18.

Administrator Wyman presented and read a thank you card from Mr. & Mrs. Loyal Crawford in appreciation for gifts and honors bestowed on Loyal by the City of Canby and the Canby Utility Board upon his retirement.


After a further period of discussion regarding the Utility Board's requests to increase the charges to the city by the Board for sewer rental billing from 10¢ to 15¢ per billing a motion was made by Councilman Giger, seconded by Rapp and carried increasing the cost of sewer rental billings to 15¢ per bill. At that point Attorney Bettis told the council that the water bond retirement was a responsibility of the city and that the retirement thereof would remain the city's responsibility.

Councilman Westcott reported to the council that he had made surveys of other towns in the area, regarding the various water sources and that most areas were in short supply. Mayor Roth said that the council was aware of the Utility Board's problems and referred their most recent documentary reports to the city attorney for study and recommendations.


Administrator Wyman noted that the city had paid the Utility Board for street light installation which had not been completed to date. Utility Board Chairman Newton stated that the light department crews had been installing lights when not occupied by more crucial duties. The councilmen were in agreement that most of the Utility Board's requests were of a nature that should be considered by the council and the Budget Board.

Administrator Wyman requested that the council approve a temporary corporal position in the city's police department to assume the duties of the sergeant when the appointed sergeant is not available. After a period of discussion a motion was made by Councilman Gerber, seconded by Wagner and carried approving the temporary position in the police department to the rank of corporal.

There being no further business to come before the council, the mayor declared the meeting adjourned at 9:47 p.m.



J. R. Richardson, City Recorder



Paul N. Roth, Mayor

WADE P. BETTIS
RAYMOND R. REIF
WADE P. BETTIS, JR.

BETTIS & REIF
ATTORNEYS AT LAW
160 N.W. THIRD AVENUE
CANBY, OREGON 97013

TELEPHONES
266-1113
655-1674
AREA CODE 503

January 30, 1975

Mr. John L. Whiteside
Superintendent of Public Works
City of Canby
P. O. Box D
Canby, Oregon 97013

Re: Ordinance No. 588 (Regulating Street Excavations)

Dear John:

I received your letter of January 17, 1975, with the suggested changes or additions to Ordinance 588. I have reviewed the letter, and I understand the suggestions of the Council but they are either unnecessary in some particulars, inappropriate in others, or do not fully cover the matters or would create other problems and for the following reasons:

1. Your first item suggests that permit applications "be presented a minimum of 48 hours in advance. . ." Forty-eight hours in advance of what? I assume you mean in advance of the issuance of a permit and without making an Ordinance change in that regard, you can accomplish the desired results if the City Administrator would simply make it an administrative rule of his that no permits will be issued until after 48 hours (except in cases of emergency), and thereby allow time for his notice to your Department and other Departments of the pending application so that everybody can acquaint themselves with the matter and voice any objections they may have or conditions that they would request that the Administrator impose. If you do it otherwise, I can foresee that every application will be one of an emergency nature, and they may not be that at all. Furthermore, applicants reporting to the Police Department are going to expect that Department's approval or at least assume that they have approval to proceed once they have notified the Police Department. Furthermore, the City Administrator is going to lose track in short order of these matters. Also, the idea of requiring an applicant to file his application "at the earliest convenience of the company" is leaving the door wide open to no application being filed or maybe months later and after the job is completed. You can solve some of the problems which apparently caused you and the Council some concern if the City Administrator would be willing to take emergency calls after normal working hours so that he can consider and decide on emergency matters and reach an understanding with the caller as to when the application is to follow and when the cash deposit or

Mr. John L. Whiteside
Superintendent of Public Works
City of Canby
1/30/75
Page 2

bond is to be posted, etc. Since the City Administrator will be absent on some occasions by either illness, business out of the City or vacation, etc., the Council can by motion designate you or someone else in City government as the Acting City Administrator and to serve in the Administrator's absence.

2. The second item involved a bond versus a deposit. There are several problems with this. You don't specify the type of a bond, and if anything short of a corporate surety bond is required, you would be inviting trouble. Even in cases of corporate surety bonds, they are not self-executing and will require a law suit for enforcement and collection if there is a default by the permittee and a claim made on the bond. Just because the City holds someone's bond doesn't mean that the City is going to be able to collect damages or its costs for the completion of a project. Furthermore, some of the applicants for these permits might not be bondable. Also, you don't say whether a bond of \$1,000 is to take the place of the minimum deposit of \$250 and also the additional sum required by Section 5? If you had a street cut with a trench width of 3½ feet and 500 feet in length, the Ordinance as last prepared and now pending would require a deposit of \$2,000 which is twice the amount of your suggested penalty for a bond. Furthermore, performance bonds do not automatically convert to maintenance bonds. It is possible to require a combination performance and maintenance bond, but any such bond should be reviewed by legal counsel before the City's acceptance of it to see if there is a valid and binding obligation of the principal and his surety and one that could be enforced by the City in Court if required.

3. The third item of your concern was with the interpretation of Section 8 and the suggested change isn't a good one either. As it now reads "The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewers, gas pipes, electric conduits or other utility facilities." There is no reason why his responsibility should be limited to cases of his negligence. It might result in his wilfull conduct which is apart from negligence or the damage might result simply from the fact that he did the work even though done in a careful manner. Paragraph 8 as now drawn makes the permittee an insurer against damage done to any public or private property, and the City doesn't have to prove negligence. Nobody, but nobody, ever admits their "negligence," but if damage results

Mr. John L. Whiteside
Superintendent of Public Works
City of Canby
1/30/75
Page 3

somebody has got to pay, and you are better advised to leave Section 8 as written.

I would suggest that this matter be placed on the Council's agenda for the next meeting for further discussion which I am sure they will want to do.

Sincerely,

BETTIS & REIF

A handwritten signature in dark ink, appearing to read "Wade P. Bettis". The signature is stylized with a large, looped initial "W" and a cursive "P. Bettis".

Wade P. Bettis

WPB:EN

cc: Honorable Paul N. Roth, Mayor
J. R. Richardson, Recorder
Harold A. Wyman, Administrator



Canby Community Pool, Inc.

A Non-Profit Corporation

P.O. Box 33

Canby, Oregon 97013

January 27, 1975

Mr. John Whiteside, Supt.
Public Works Department
City of Canby
Canby, Oregon 97013

Dear John:

The pool board wishes you and all city personnel concerned to know how much its members appreciate your services in grading the pool parking lot in the early winter volunteer project arranged by Frank Deos, CCP's secretary-treasurer. Gravel and hauling also were contributed by public spirited citizens, you no doubt know.

Without such fine cooperation as yours and the city's, the non-profit Canby Community Pool could not function for benefit of the greater Canby community.

Please accept the sincere thanks of all members of the 1974 board of directors for your greatly appreciated cooperation.

Cordially,

THE BOARD OF DIRECTORS

by

Recording Secretary

READ TO COUNCIL 2-4-75



COUNTY OF CLACKAMAS
BOARD OF COMMISSIONERS
OREGON CITY, OREGON 97045

655-8581

THOMAS D. TELFORD, Chairman
ROBERT SCHUMACHER, Commissioner
STAN SKOKO, Commissioner

January 28, 1975

Mr. Harold A. Wyman
The City of Canby
Postoffice Box D
Canby, Oregon 97013

Dear Mr. Wyman:

This is to acknowledge the receipt of your letter requesting participation in, and funding for, positions through CETA Title VI.

We are now engaged in the chore of compiling all the funding requests and rounding up a few stragglers prior to presentation before the County Board of Commissioners. This presentation is tentatively scheduled for Thursday, January 30, 1975.

With the assistance of the Board, requests will be prioritized for funding. Once this is accomplished, I will be notifying all requesting agencies of outcomes. We currently plan that this will be possible no later than Tuesday, February 4, 1975.

Once the above has been completed, work can begin immediately to fill approved positions.

Should you have any questions regarding this letter, please call me at 635-4591.

Yours truly,

A handwritten signature in cursive script, reading "Dellimer C. Smith".

Dellimer C. Smith
Manpower Director

jo

THE CITY OF

INCORPORATED
1893

Canby

GARDEN SPOT OF THE WILLAMETTE VALLEY

POSTOFFICE BOX D

CANBY, OREGON 97013

Paul N. Roth, Mayor
Harold A. Wyman, City Administrator
Jarrel R. Richardson, Recorder
John F. St. Amant, Treasurer
John L. Whiteside, Supt. Public Works Actg.
Wade P. Bettis, City Attorney
Vincent Graziano, Chief of Police
Everett L. Buttolph, Fire Chief
Gordon L. Ross, Chairman Planning Comm.
Roger Warren, Municipal Judge

COUNCILMEN
Anthony E. Gerber
Howard J. Giger
C. Ron Kariker
Joe M. Wagner
Robert D. Westcott
Robert E. Rapp

February 3, 1975

MEMORANDUM

TO: The Honorable Mayor and City Council
FROM: John L. Whiteside, Supt. of Public Works
RE: Recommendations of Traffic Safety Committee

The Traffic Safety Committee met Thursday morning, January 30, 1975, in Mr. Wyman's office to discuss traffic problems on North Ivy Street. The committee's recommendations were as follows:

1. To create a four-way stop at North Ivy and Second Avenue by installing stop signs for both north- and south-bound traffic on Ivy Street.
2. To remove the stop signs on Holly Street at Second Avenue. It was the Traffic Safety Committee's belief that, since Holly Street is currently the only street going all the way through town, much of the traffic now on Ivy Street would use Holly, if it were made a through street. The removal of these two stop signs was to be on a trial basis.
3. To install a "Right Turn Only" sign on First Avenue at North Ivy Street. The purpose for this sign would be to eliminate cross traffic movements at First and Ivy.

Other discussion in the meeting concerned the removal of an existing "No Left Turn" sign on Ivy at First; no parking on North Ivy; and the possibility of a one-way grid system. It was the opinion of the committee, at this time, that these items would remain as pending possibilities for further traffic control in the downtown area, subject to the workability of this current recommendation.

JLW/mjd

WADE P. BETTIS
RAYMOND R. REIF
WADE P. BETTIS, JR.

BETTIS & REIF
ATTORNEYS AT LAW
160 N.W. THIRD AVENUE
CANBY, OREGON 97013

TELEPHONES
266-1113
655-1674
AREA CODE 503

January 29, 1975

Mr. Harold A. Wyman, City Administrator
City of Canby
P. O. Box D
Canby, Oregon 97013

Re: Terry E. Laxton Deed for Road Purposes

Dear Harry:

You received a copy of Mr. Whiteside's letter to me dated January 27, 1975. I am enclosing herewith a Dedication Deed by Laxton to the City of Canby dated September 12, 1973. This is unrecorded and requires Council approval for that purpose. Will you please put this item on the Council's agenda for the next regular meeting.

At a Planning Commission meeting on March 28, 1973, the Planning Commission voted to authorize building permits for Mr. Laxton subject to his dedication of additional road right of way for Territorial Road. Mr. Laxton made the enclosed Deed to the City, and it was sent to me by Mr. Whiteside by covering letter dated October 5, 1973. I didn't prepare the Deed and don't recall any prior knowledge concerning this entire matter until Mr. Whiteside's letter of October 5, 1973. He sent me the Deed for my approval prior to recording. Apparently no one in the City or Planning Commission discussed with Mr. Laxton the matter of title insurance for the City on the subject property or the fact that the City would require clear title to the dedicated parcel. The legal descriptions were either furnished or based on a survey by Mr. Tatone of Zarosinski-Tatone Engineers, Inc., and I ordered a title report to aid me in my review of the matter and advice to Mr. Whiteside. The title report by Pioneer National Title Insurance Co., Order No. 123-977, dated March 28, 1974, shows the property described in the enclosed Deed to be subject to an easement by Laxton to Lithgow, et ux, recorded July 10, 1973, and a Deed of Trust by Laxton for the

Mr. Harold A. Wyman, Administrator
City of Canby
1/29/75
Page 2

benefit of Portland Federal Savings and Loan Association to secure payment of a note for \$22,800.00. The Trust Deed also included a nonexclusive easement for ingress, egress and all utility purposes, and that Trust Deed and the easement contained therein plus the prior easement to Lithgow, et ux, are prior in time and superior to the City's right, title and interest in the subject property.

I know that Mr. Whiteside wrote to Mr. and Mrs. Lithgow to solicit their cooperation in a Subordination Agreement or joinder in Laxton's easement to the City, but apparently without any success. I don't know what attempts were made to obtain a Subordination Agreement or a Partial Release of the Trust Deed from Portland Federal Savings. In any event, that is where the matter stands at this time, and Mr. Whiteside is still concerned about the possible future need of the City for the land described in Laxton's enclosed Deed and for widening of Territorial Road.

I therefore recommend that the Council approve the enclosed Deed for recording, and that we put it on the Deed records and obtain title insurance as previously ordered which presumably will still show the prior easements and encumbrances. Payment in time of the Trust Deed will eliminate that matter, and its foreclosure for nonpayment would dispossess the City of the dedicated area. I think we will just have to wait and see what develops in those regards.

With regards to the prior easement to Lithgow, it is very possible that it is compatible with the Deed to the City by Laxton for street widening purposes. I wouldn't know unless there was a survey made of the Lithgow easement to show its relationship to the parcel dedicated to the City.

The only other alternative to that of recording the Deed and "wait and see" would be for someone other than myself to make a concerted attempt to negotiate with Mr. and Mrs. Lithgow for either a Deed by them to the City for the same

Mr. Harold A. Wyman, Administrator
City of Canby
1/29/75
Page 3

parcel or a Subordination type Agreement with the City and negotiations with Portland Federal Savings and Loan for either a Subordination Agreement or Partial Release of their Trust Deed, or commencement of procedures for condemnation of the subject parcel. In the latter regard, it would require an appraisal of the subject property and an offer of purchase by the City to Mr. and Mrs. Lithgow. I don't feel that that or the expense involved is justified at this time, and recommend that we proceed with acceptance of the Deed and its recording, and then face the other problems if and when they present themselves in the future.

Sincerely,

BETTIS & REIF


Wade P. Bettis

WPB:EN
Encl.

cc: Honorable Paul N. Roth, Mayor
J. R. Richardson, Recorder
John L. Whiteside, Supt. of Public Works

Council Roll Call for 1974

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