

Canby City Council
Regular Meeting
May 20, 1974

CORRECTED

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

Roll Call

Present: Mayor Roth, Councilmen Giger, Kariker, Tate, Wagner & Westcott

Absent: Councilman Gerber

Others present: Attorney Bettis Sr., Attorney Bettis Jr., Treasurer St. Amant, Administrator Wyman, Supt. Whiteside, Fire Chief Buttolph, Police Chief Graziano, Sergeant Antoine, Foreman Atwood and Utility Board Member Barlow

The mayor called for comments on the minutes of May 6 as distributed and there being no comments the mayor declared the minutes approved as distributed.

Leonard Lough and Ted Hensley appeared before the council in regard to the inferior construction of residences on S.E. 2nd Ave. of which they have purchased. The attorney and members of the council advised these men that the city had no jurisdiction over the construction of residences so long as they met the minimum requirements of the Uniform Building Code. Attorney Bettis advised them to seek legal advice before the Statute of Limitations could be invoked.

Administrator Wyman presented a clearinghouse questionnaire from CRAG regarding highway planning and research and funding thereof. After a period of discussion the council agreed to the city's answer of "has no significant effect & we have no comment".

Ernest Bedwell appeared before the council in the interest of his application for annexation and the action of the council at a recent meeting thereof. Discussion followed concerning annexation requirements and why Resolution CLXXIII did not include the property under the Clarence Van Dorn application. At that point Mayor Roth announced that he had not signed Resolution CLXXIII as adopted in the council meeting on May 16 on the advice of the city attorney. Considerable discussion followed regarding the classification guidelines that the Van Dorn property comes under and whether or not the Utility Board was in a position to supply utility services when requested. A motion was made by Councilman Giger, and seconded by Wagner to adopt Resolution CLXXIII revised with the Van Dorn property included. Councilman Tate rose to a point of order adopting a resolution which had previously been adopted at the May 16 meeting. Thereupon Attorney Bettis declared that the motion was automatically nullified by prior adoption of said resolution. Then Councilman Giger moved, Wagner seconded and the motion carried by a vote of 3 yes and 2 no that action of May 16 on Resolution CLXXIII be rescinded. Councilman Tate requested assurance of utility service for the Van Dorn property and Westcott questioned passage of ordinances or resolutions affecting city boundaries without local hearings or zoning study prior to adoption of said resolutions or ordinances. At that point Mayor Roth stated that he would assure that a safeguard be taken for the protection of the City of Canby. "It appeared that some councilmen questioned the qualifications set forth in the Van Dorn application to qualify for an Area #2 as required by the CRAG Interim Development Policy. Councilman Westcott stated that in his opinion it was not in the best interest of the City of Canby to make certain areas available for residential construction due to the unique type of soil which might be reserved for certain types of agriculture. Then a motion was made by Councilman Giger, seconded by Wagner and carried 3 yes and 2 no that the revised Resolution CLXXIII including the 35-acre tract north of Territorial Road be adopted"

Resolution CLXXIV, A RESOLUTION FURTHERING ANNEXATION TO THE CITY OF CANBY, CLACKAMAS COUNTY, OREGON, OF THE TERRITORY DESCRIBED IN THE ATTACHED EXHIBIT "A" was read by the attorney. A motion was made by Councilman Wagner, seconded by Giger and carried unanimously adopting Resolution CLXXIV.

David Anderson appeared before the council in the interest of improving a portion of N. Maple St. adjacent to the O-ME-CO subdivision. After a report on the matter by Supt. Whiteside a motion was made by Councilman Westcott, seconded by Wagner and carried unanimously granting O-ME-CO Inc. the right to improve and place an oil mat on a portion of N. Maple St. under the guidance and approval of the Public Works Dept.

Then the question arose regarding the installation of storm drains in the O-ME-CO area and the city's position in assuming the cost of said drain tile over and above the cost of smaller tile required to be installed by the subdivider under the existing ordinances. The report from the Public Works Dept. was incomplete and therefore Mayor Roth declared that the matter would be held over until the June 3 meeting.

The sewer connection fee of Package Containers which had been discussed at previous council meetings was represented by letters to and from Attorney Bettis and the receipt of an affidavit of Lee Cox, former City Public Works Superintendent. After a period of discussion a motion was made by Councilman Tate, seconded by Westcott and carried by a vote of 3 yes and 2 no to notify Package Containers of the authority contained in Ordinance #538 and their obligation to pay the city \$7,450.

Ordinance #582. AN ORDINANCE REQUIRING CITY PLUMBING PERMITS; PROVIDING FOR INSPECTION OF PLUMBING WORK; ESTABLISHING PERMIT FEES; AND PROVIDING PENALTIES FOR VIOLATION was read on first reading by the city attorney. After a period of discussion a motion was made by Councilman Giger, seconded by Tate and carried unanimously to pass Ordinance #582 on first reading and to post in compliance with the provisions of the City Charter, to come up for final action on June 17. Some criticism was voiced regarding the schedule of plumbing cost as contained in the ordinance.

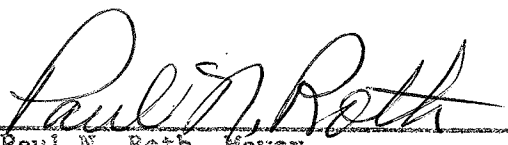
Administrator Wyman reported that the Campfire Girls had requested use of the community park for day camp purposes. After a period of discussion a motion was made by Councilman Giger, seconded by Wagner and carried unanimously approving the Campfire Girls' use of the park.

It was announced that the request of the Fire Dept. for funds in the amount of \$220 for a Fire Dept. employee retirement activity had been underwritten by Elsie Cutsforth and would not be an item of expense to the city.

The council reviewed the computer print-outs containing Accounts Payable claims in the amount of \$10,583. A motion was made by Councilman Giger, seconded by Tate and carried unanimously by roll call vote approving the payment of said claims with warrants being drawn on the city treasurer in payment thereof.

The meeting was adjourned at 10:58 p.m.


J. N. Richardson, City Recorder


Paul N. Roth, Mayor

April 29, 1974

O-ME-CO, Inc.
641 Baker Drive
Canby, Oregon 97013

City Council
Canby, Oregon

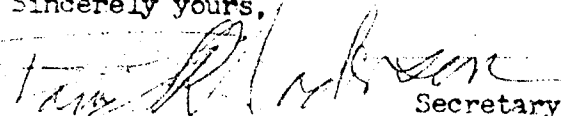
Gentlemen:

This letter is in reference to the 117 feet just south of the beginning of County Club Estates Annex #2 on Maple Street. This road needs improvement. We are not owners of the adjoining property, but feel it is to our benefit to improve the entrance to our subdivision.

We propose to go just south of the existing high shoulder that banks Maple into the country club, start the cut, and gently slope the existing high bed down to where the black top starts in Annex #2. We will then put a bed in and oil mat the surface so the completed job will be equal to or better than the existing Maple Street.

Upon council approval we will commence work immediately.

Sincerely yours,


Secretary
O-ME-CO, Inc.

April 29, 1974

O-ME-CO, Inc.
641 Baker Drive
Canby, Oregon 97013

City Council
City of Canby
Canby, Oregon


Gentlemen:

Last month the City of Canby Planning Commission gave us preliminary approval to Country Club Estates, Annex #3. This approval was subject to the city participating in a 42" drain storm drain tile that is called for on the over-all master storm sewer drainage plan for the entire city.

Our engineering plans call for 15 and 18" lines which we intend to put in the area this summer. We would like to know if the city is in a position to participate and have the larger 42" line installed instead.

We would appreciate knowing the city's position as we would like proceed on the project this spring.

Sincerely yours,


David R. Anderson, Secretary
O-ME-CO, Inc.

May 8, 1974

TO: Harold Wyman
City Administrator

FROM: John Whiteside
Public Works Superintendent

SUBJECT: Country Club Estates Annexation #3 - Storm Sewer Construction

In accordance with the comprehensive storm sewer plan, a 42" trunk line storm sewer is scheduled to be constructed within the subdivision. The engineering design for drainage of the subdivision and immediate area shows a need for only 15" and 18" pipe; therefore, making a substantial difference in cost between that which is required by the subdivider and that which is required by the City and their major trunk line.

We have reviewed the construction plans for the subdivision with reference to correlating it with the master storm sewer plan and find this storm drainage line to be a key link in the overall system, primarily with respect to the proposed out-fall line which is scheduled to go underneath the Mollala Forest Road and discharge into the Willamette River.

The section of pipe going under the Mollala Forest Road must be put in by a tunnelling method for a distance of approximately 60 feet. The estimate which we have received for tunnelling under the road in this area is approximately \$12,000.00 for the 18" pipe and \$13,200.00 for the 42" pipe.

It would also be necessary to construct a tidegate (18" equals \$250.00; 42" equals \$600.00), a manhole at \$650.00 and 50 foot of pipe to complete the road crossing (18" at \$600.00 or 42" at \$1,800.00). In short, the road crossing and the out-fall line to the Willamette River is of the utmost importance. We have estimated \$13,300.00 as being the cost which the subdivider will be paying for this crossing for an 18" line or a total of \$16,450.00 to install the necessary 42" line, making an estimated differential cost between the subdivider is required to install and that which the City needs of \$3,150.00. You must understand that this only provides an out-fall line from the west side of the Mollala Forest Road to the Willamette River.

(B) I have also negotiated with the subdivider and easement to be provided for the construction of the storm trunk line outside of the proposed subdivision and away from proposed street improvements. Originally, the 42" storm line

Page Two
May 8, 1974
Mr. Harold Wyman

was scheduled to be constructed within the street right-of-way but, in view of the differential cost of approximately \$24.00 per foot for pipe installation and knowing the City's ability to pay, it was my feeling that it would not be feasible to construct the 1,000 feet of line originally scheduled in street right-of-way. As you can see, the original construction schedule, which will ultimately need to be followed in the end, would have obligated the City of Canby in excess of \$25,000.00 for the differential costs on this portion of the project. Henceforth, the easement and the alternate design was established.

I have attached a map for your orientation and presentation to the City Council.

JW/a

Enclosure

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

May 14, 1974

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

Re: Sewer Connection Fees of Package Containers, Inc.

Dear Mr. Wyman:

I am returning herewith the letter to Mr. Whiteside by Mr. Jones, President of Package Containers, Inc., dated May 6, 1974, and the other papers which accompanied Mr. Jones' letter to Mr. Whiteside. Also enclosed is check No. 17286 of Package Containers, Inc. to the Canby Public Works Dept. dated May 6, 1974, in the amount of \$100.00. I kept a copy of Mr. Jones' letter for my file.

You will recall that at the last Council meeting Mayor Roth directed me to investigate this matter and report to the Council. In accordance with his directions I discussed the matter at considerable length with Lee Cox who was the City Superintendent that Package Containers, Inc. contacted his Department for a sewer connection. I am enclosing the Affidavit of Mr. Cox verified May 10, 1974. I suggest that you make photocopies of Mr. Cox's Affidavit for the Councilmen's advance study and also copies of the Council Minutes of the meeting attended by Mr. Stanley L. Mead who was then President of Package Containers, Inc. and his son Roger. It was probably a Council meeting in August, 1967. Also copies of the Minutes of the Council meeting should be reproduced and for the meeting later attended by Messrs. Mead and following the DEQ Order on sewer connection bans. Those would have been Minutes for a meeting in May, 1970. I am not sure that the Minutes of the Council in August, 1967, will show anything concerning the sewer connections by Package Containers, Inc. since the company made its oral application to the City's Public Works Department in Mr. Cox's office as indicated in his Affidavit. The Minutes of the Council meetings in May, 1970, should show, however, the appearance of Messrs. Mead before the Council and discussion of this matter. I know of my own knowledge that it occurred because I was present and recall at least some of the discussion and the Council's decision.

Mr. Harold A. Wyman, Administrator
City of Canby
5/14/74
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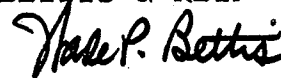
There is no doubt in my mind but that Package Containers, Inc. applied to the City's Public Works Department for a permit to connect to the City's sanitary sewer system. There was no formal written application filed. Because of the ban on sewer connections, Package Containers, Inc. was permitted to construct at its own expense a temporary private disposal system. I am sure that it was understood by all involved at that time (the Council, Package Containers, Inc. and Mr. Cox of the Public Works Department) that the private sewer system of Package Containers, Inc. would be permitted only until the City's sewer treatment capabilities were increased to accommodate the plant as well as others; and in fact the City Sewer Ordinance in force at that time required connection to the City's system as soon as a connection was ordered by the Public Works Department.

It was unfortunate that someone did not think to advise Package Containers, Inc. back in 1967 or at least in 1970 when the DEQ ban went into effect that they should file a formal written application for a sewer connection even though the City would have been unable to honor the request until after lifting of the DEQ ban. By that time of course the City's sewage treatment facilities had been improved, a bond issue sold and connection fees increased.

It appears to me that there was an unfortunate set of circumstances. that occurred during the periods mentioned above that made it impossible for the City to permit sewer connections, caused the City to neglect to require a written sewer permit application although it knew that one was requested and ultimately would be required and caused Package Containers, Inc. to expend several thousand dollars with Council sanction for temporary sewage Disposal.

Sincerely,

BETTIS & REIF



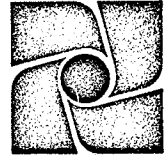
Wade P. Bettis

WPB:EN

Encl.

cc: Honorable Paul N. Roth, Mayor
J. R. Richardson, Recorder
John L. Whiteside, Supt. of Public Works
Mr. Douglas W. Jones, President
Package Containers, Inc.

Package Containers, Inc.



PHONE (503) 266-2721

777 N. E. 4th AVENUE ■ CANBY, OREGON 97013

TLX. 360-390

May 6, 1974

RECEIVED
MAY - 7 1974

The City of Canby
Post Office Box D
Canby, Oregon 97013

REC'D MAY 8 1974

Attention: Mr. John L. Whiteside, Superintendent of Public Works

Dear Mr. Whiteside:

In your letter of April 26, 1974 you requested information substantiating our position with regard to sewer connection fee.

We are enclosing a photo copy of the Earnest Money Receipt received by Canby Realty Company from Package Containers, Incorporated as dated August 22, 1967.

The receipt is self-explanatory. We were concerned with availability of sewer connection; the city fathers granted such privilege, which was a determining factor in purchasing the property and initiating construction of the new building.

The DEQ order of May 19, 1970 subsequently put the City of Canby in a position where, temporarily, they could not grant us hook-up privileges.

The rest of the story you know, as per our letter of April 10, 1974.

Our point is simply this: we were granted hook-up privileges as far back as 1967, which is well in advance of the DEQ restraining order.

Therefore, it is obvious to us the connection fee should be \$100.00, which was the prevailing rate prior to the DEQ order.

A precedent for such action was established when a similar charge was assessed the Canby Church of Latter Day Saints in June, 1971, based on their notice of intent given prior to the DEQ order.

Enclosed is our check #17286 dated May 6, 1974 in the amount of \$100.00 representing our payment in full of the connection fee.

The hook-up will be completed prior to the deadline date of June 28, 1974 as set forth in your letter of March 28, 1974.

Very truly yours,
PACKAGE CONTAINERS, INC.

Douglas W. Jones
Douglas W. Jones
President

DWJ:ko

cc: Wade Bettis
Harold Wyman
Paul Roth
J. R. Richardson
Lee Cox

AFFIDAVIT OF LEE COX RE: SEWER
CONNECTION FEES OF PACKAGE CONTAINERS, INC.

STATE OF OREGON }
County of Clackamas } ss.

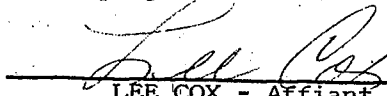
I, the undersigned, being first duly sworn on oath depose and say:

That I am currently the duly appointed, qualified and acting Manager of the Canby Utility Board for the City of Canby, Oregon. Prior to my employment in my present capacity, I served for a total of 11½ years as the City Superintendent of Public Works for the City of Canby. My employment in that capacity extended from April 1, 1960, and continued until June 30, 1971. My duties and responsibilities as the City Superintendent included among other things the processing of applications for sewer connection permits. In August, 1967, Mr. Mead of Package Containers, Inc. and his son Roger came to my office in the basement of the City Hall and discussed with me the availability of sewer and water utilities for the property of George Cattley which the corporation was interested in buying. At that time we had sufficient water, electricity and sewer treatment capacity for the explained needs and use of Package Containers, Inc. After this discussion and with these assurances on my part, Mr. Mead and his son went to Canby Realty Company and completed the signing of an Earnest Money Receipt for purchase from Mr. Cattley of the subject property. I didn't know at the time the actual date that the Earnest Money was signed, but I was advised by Mr. John Rasmussen of Canby Realty Company a few days later that the agreement had in fact been completed. A short time after the Earnest Money Agreement was signed, Package Containers company started site improvement and ground work. During May, 1970, I received an order from DEQ which banned any further connections to the City's waste treatment plant until the City made the necessary arrangements to increase the treatment capacity and percent of treatment. Shortly after my receipt of the DEQ order of May 19, 1970, Mr. Mead and his son

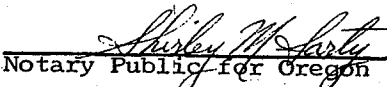
contacted me concerning the effect of the order and the connection of the company's facilities to the City's sewer line. I advised both Mr. Mead, Sr. and Jr. to attend a Council meeting to discuss the matter, and a short time thereafter both of them did attend. The Council Minutes of that meeting which they attended should show their attendance and at least a general discussion of the matter, but in any event, I know of my own knowledge of the facts herein stated and at the Council meeting, it was agreed by the Council that Package Containers, Inc. could construct a temporary holding and septic tanks for their business use and property, and that these arrangements were of a temporary nature and would be permitted until the ban by DEQ was lifted. At the time of that Council meeting, Package Containers, Inc. had already obtained their engineer's cost estimate of the temporary sewage handling facilities which I recall was between \$7,000 and \$8,000. The Council was advised of that fact and gave their sanction to the plans and temporary sewage handling arrangements. I also know of my own knowledge that at that time Package Containers, Inc. was ready, willing and able to make connection to the City's sewer lines and were prevented from doing so only by reason of the ban by DEQ. The only reason that Package Containers, Inc. didn't sign a formal application for a sewer connection permit was because of the ban by DEQ, but the Council's action in granting the temporary sewage handling facilities was in my opinion as the City Superintendent the grant of a permit for a sewer connection to the City's facilities as soon as the ban was lifted. It was understood by me and I thought by all concerned that the temporary septic tanks would continue only so long as the DEQ ban remained in effect, and that immediately thereafter Package Containers would be required to hook to the City's sanitary sewer system. In fact, it was the Council's decision and my instructions to Messrs. Mead that they would have to hook to the City's sewer line as soon as the ban was lifted.

When Package Containers first talked to me about the availability of City utilities, they asked about the prevailing rates and connection charges and I furnished them all of that information. At that time the sewer connection fee was \$100. Nothing more was ever said to my knowledge by them to me or my staff after that and concerning any other rates.

Since the City was unable to furnish sewer service to Package Containers at the time it first applied for a sewer connection permit, it would seem reasonable to me that they should be permitted to hook up at the connection fees which were in effect at the beginning of their project.


LEE COX - Affiant

Subscribed and sworn to before me this 10th day of May,
1974.


Notary Public for Oregon

My Commission Expires: 3/27/1977

Council Roll Calls for 19 74

CLAIMS
Revised Action Rem
Revised RES CLXXII