

Canby Planning Commission
Regular Meeting
December 8, 1976

Members Present: Chairman Ross, Commissioners Shaw, Hulbert, Edgerton, Cibula and Cutsforth

Also Present: Consultant Eldon Edwards, City Attorney Roger Reif, Pete Kelly, Tom Tye, Lloyd Clark, Ernest Bedwell, Kenneth Hafner, Fred Siebenthal and others.

The meeting was called to order at 8:05 p.m.

The minutes of the Planning Commission meeting of November 10, 1976, were approved by the Commission as presented.

Item No. 1: Presentation of the final plat of "Clark-Oliver Addition" for Planning Commission approval. Consultant Eldon Edwards gave his presentation which included pertinent points to be considered and showed slides of the area. He made a recommendation for approval of the plat. Chairman Ross stated that the record was to show that lots 4, 5, and 6 are on a cul-de-sac and have a narrow frontage. The Chairman also stated that the question was brought up as to the advisability to making a full street improvement on the total frontage of lot 13 which would be the most northwesterly lot, so that sometime in the future the road would be swinging away from that lot in order to connect up with Ash Street to the north, we would then have a 32-foot fully improved street. The sewer and water would stop at this point with no further improvement beyond this point. Consultant Edwards stated that it would be advisable to design a pavement that swings to the west from the turnaround on and that we should have something there when the property to the west and north does develop. Commissioner Edgerton stated that in order for the Planning Commission to complete the intent of the streets that the Planning Commission designed on the Tatone property and make this a complete picture, I think this should be taken care of in this lot 13. Chairman Ross asked if to show intent Commissioner Edgerton was suggesting that a curve come over to the west property line and the remaining portion of the 32 feet be added to lot 13. Commissioner Edgerton said that however it works out best so that it can be to be joined with Ash Street to the north. Tom Tye of Compass Engineering came forward and expressed concern regarding second guessing future development to the west. He explained that it was difficult to design a radius for a curve without knowing what is planned for the other property. Commissioner Shaw asked if we are allowing occupancy or building permits on all these lots on the half-street. Would it be wrong to not issue a permit on this one lot. Tom Tye stated that he didn't feel this affected the lot in any way. He stated that at such time as the street was completed they would have additional front yard. Commissioner Edgerton stated that he was afraid that if everything was made straight the intent of our through street program would be lost in the shuffle. Tom Tye said it would be possible to just not pave the northerly sixty (60) feet of this property. Stated he feels this developer is doing more than his share. Consultant Edwards stated that he felt that this placed the Commission in a position of not being sure where they stood. He felt that if the radius started at the easement for the turnaround it shouldn't be too difficult and would simplify things in the future. Chairman Ross explained to Mr. Tye what the Planning Commission had in mind for the final plat. Commissioner Shaw stated his opposition to a piece of property being in limbo

and unimproved. He stated it could be ten years before the street is extended and if there is any question as to who is to maintain the property it could become an eyesore to the neighborhood. It should either have the proper curbing or be turned over to lot 13 now in order that it is maintained. He also felt we shouldn't hamper the developer of that lot as he may want to put the driveway on the north side of that house. It would be restrictive the other way. Tom Tye feels the present plan is acceptable and something that can be lived with. Commissioner Edgerton said the present plan would leave the one lot on the north the belongs to Mr. Knoblach with a street in front and behind him as there is nothing more across the intersection in that location. Tom Tye wanted to know if it were possible the road could be moved. Consultant Edwards stated that this was not possible as this was the alignment. Commissioner Edgerton stated that he would like to see the curve put in at the present time as he felt putting in the curve was the best method of handling the street alignment. Chairman Ross held a discussion with Tom Tye regarding the redesign. Commissioner Edgerton further stated that he wanted the discussion regarding this curve put into the minutes so that all would understand. He went on to explain that the city was attempting to initiate an L.I.D. for sewers in this district and the he didn't understand just what was being considered. He wanted to know just what the situation was regarding an L.I.D. Tom Tye stated that this was in regard to the half-street. Pete Kelly said that a petition has been approved by the City Council subject to a feasibility study and report from the Public Works Director. City Attorney Reif corrected Mr. Kelly by saying that the City Council had accepted the petition. Commissioner Edgerton wanted to know just what this improvement was. Mr. Kelly stated this was a Local Improvement District for sewer and water. Chairman Ross stated that basically this was an agreement to allow the subdivider to recap some of his investment if within a ten-year period the adjacent property owners to the west develop their property. A discussion regarding this L.I.D. followed. Chairman Ross asked if the L.I.D. failed, would the subdivider have the financing to finish it. Tom Tye stated that the work was being done at the present time regardless of what happened with the L.I.D. After further discussion, Consultant Edwards stated the options of the Planning Commission and the conditions on which approval should be granted. At this time he said the Planning Commission should required a one-foot strip on the west side of the half-street be deeded to the city and an additional letter be received from the finance company for monumentation. City Attorney Reif expressed his opposition to the deeding of the one foot strip as his office has been working on this project and doesn't feel the deeding of a one-foot strip is necessary. A discussion followed regarding the deeding of the one-foot strip to the city. A recess was requested by the City Attorney and granted by Chairman Ross.

The meeting reconvened and the discussion continued regarding the deeding of the one-foot strip on the west side of the half-street. Attorney Reif stated that by the reserving of the one-foot strip the city has gotten into some problems because of giving out building permits to people through error and then the developer has come to the city requesting their money. So, what our office has tried to work out is a hold harmless agreement where that they have granted all the property to the city of Canby for street purposes but reserving the right to go against the owners of tract "B" which would be the westerly property, in the event they connect to the

sewer to recoup their expenses. This would leave the city out of it. More discussion followed regarding the ramifications of the one-foot strip being deeded to the city. Chairman Ross stated that the Planning Commission cannot plan for the subdivider. If he wants to sue every time someone connects to the sewer that is his business, however he may not be around when they decide to connect. Commissioner Shaw stated that the Planning Commission does have the ability to dedicate the one-foot strip to the right-of-way in the event of an L.I.D. At this point, the Chairman asked for further questions and stated that the conditions discussed thus far included a one-foot strip being deeded on the west property line, the realignment and raduis change in front of lot 13. Some further discussion took place regarding the street frontage of the three lots on the cul-de-sac. The Chairman then stated that the third condition would be an additional letter from the finance company for the additional monumentation for \$600.00. Commissioner Edgerton asked if the one-foot strip was going to be dedicated to the city. This was answered in the affirmative. *Commissioner Edgerton made a motion to approve the final plat of the subdivision of Clark-Oliver Addition subject to the following conditions: (1) The north end of the half-street which will become Ash Street will be realigned with a curve to the west to realign with the present North Ash Street when the remainder is developed. (2) The developers will deed to the city a one-foot (1) strip by 1,110 feet in length on the westerly side of the one-half street. (3) An additional letter from the finance company which will be an indemnification letter for \$600.00 for post monumentation. The motion was seconded by Commissioner Shaw. The motion carried with Commissioners Edgerton, Shaw, Cutsforth and Hulbert voting aye and Commissioner Cibula abstaining. The secretary was directed to send a letter to the applicant stating the results of the hearing.

Item No. 2: The Canby City Council by Resolution has requested the zone change of property annexed into the city. This property is described as Tax Lot 201, Section 34BC, T3S, R1E, and located north of Highway 99E between Pine Street and the Molalla Forest Road. Consultant Edwards gave his presentation and showed slides of the area. Chairman Ross stated that this application was initiated by City Council Resolution CCXI, dated October 4, 1976, on property annexed to the city by the Boundary Review Commission on July 24, 1974. The resolution requested consideration of R-2, Multi-Family, zoning for the area. This zone along with other zones will be considered at this hearing. Consultant Edwards stated that if this property is rezoned R-2, there should be two ingress - egress points. The Chairman called for any proponents wishing to speak for the property known as the Bedwell property. Mr. Ernest Bedwell introduced himself to the Commission. He stated the City Council and the Planning Commission were aware of his development of Timber Terrace in 1969. This parcel in question is the balance of the property owned in 1969. He stated he wanted to development the entire development at one time but because of money he was forced to develop in phases. This has become more complex as time has gone on. He stated that he had met with the City Council and City Attorney Wade Bettis, Sr., and they were aware of his plans and intensions. The city brought the matter to the Boundary Review Commission and they approved the annexation for multiple family. He stated their desire was only for R-2 zoning and that he thought it was very late to

consider any other zoning for the area. The Chairman asked if he was the owner of record. Mr. Bedwell stated no that Kenneth Hafner and Fred Siebenthal were really the legal owners at this time and that they were present. He stated that two years have passed since this was annexed and now they wish to proceed. The Chairman asked if the annexation fee was paid. Mr. Bedwell stated that a note had been signed and payments were being made on the note. The Chairman then asked if the note needed to be cleared up prior to services being connected for use. Mr. Bedwell stated the City Attorney had stated there was nothing to hinder their proceeding. Chairman Ross stated that the Planning Commission had received a directive to rezone the property from the Council in the form of a resolution and then read the resolution into the public record. After the reading of the resolution, Consultant Edwards said the key word in the resolution was "consider" which enables the Planning Commission to recommend that zone which will allow the highest and best use of the property. Chairman Ross asked for further proponents for this zone change. At this time, Fred Siebenthal came forward and presented a preliminary plot plan which he stated was not complete, but does show the existing sewer lines that are already on the property. There were no further proponents or opponents so the Chairman closed the public portion of the hearing and opened the hearing to discussion by the Planning Commission members. Consultant Edwards was requested to give any further information he had. He stated that since this was a city initiated zone change it was incumbent upon the city to prove the need for more R-2, Multi-Family, zoning in order to satisfy the rules of Fasano. The Chairman proceeded to inform the public present and the Commission the uses in the area at the present time. Commissioner Shaw asked the consultant to inform them of the topography in the area of this parcel and the surrounding parcels. The consultant stated that all the property was fairly flat and that the Molalla Forest Road is built up and forms a barrier. He doesn't feel there is a topography problem. Commissioner Shaw stated his concern for the triangular parcel which is still outside the city limits. He stated his feeling that the geometry of the area did not lend itself to single family development. Consultant Edwards stated this was a difficult piece of property to zone in any case. A discussion followed regarding street frontage for this parcel of land and the present condition of Pine Street plus the fact that so many people use that railroad crossing for access to their residences. Commissioner Hulbert wanted to know if the Planning Commission would be reviewing any plans for the parcel once the zone change had been made. He stated that more and more multi-family is developing along this street. The Chairman stated that under the Subdivision Ordinance we could request street curbing and other improvements, however we can't do that under the Zoning Ordinance. Consultant Edwards said that we could require a minimum dedication under the ordinance but we could not require improvements. Commissioner Shaw requested a verification regarding the limits of the Planning Commission. City Attorney Reif referred the Commission to Section 13 of the Zoning Ordinance regarding "Street Widening." The Chairman stated that in order to satisfy the Fasano requirements, we have to prove beyond a reasonable doubt that we do have a need for additional multi-family zoning. If we can't prove that, then it must stay in the most restrictive zone which is R-1, single family residential. He went on to say that all were in agreement that single family was probably not the highest and best use of the land. He ask Mr. Edwards if it were possible to satisfy the Fasano requirements with

that type of reasoning. Saying that possibly R-2 is the only satisfactory use for the area in relation to the adjacent zoning and conditions. City Attorney Reif didn't feel this would be acceptable because of the term reasonable doubt. There should be some mention made that according to the other available property in the City of Canby there is a strong need for R-2 property to be developed. Consultant Edwards stated that from the material we have that would be difficult, however that without ot much cost he could run a current tabulation on the land use at the present time and the amount of R-2 that is presently vacant. In order to keep from getting into problems with the Fasano requirements at a later date, this should be asked for and presented at the next meeting. The City Attorney stated there had been no input that builders are searching for R-2 property to build on at the present time. One toher thing, Mr. Bedwell made an error, at least I hope it was an error, in the statement in that the City and Mr. Bettis, Sr., City Attorney, said this. That is a violation of Fasano requiriements right now because there can be no outside influence of a governing body in these public hearings. It has to be totally from the input and output and a decision made by this administrative body and then it goes up. It we have pressure put on us from above, we have already ruined this for Mr. Bedwell. The record should be corrected if Mr. Bedwell is in error, I think what Eldon said was correct that the City Council requested us to consider R-2 zoning. There followed some discussion as to the wording of the resolution by the City Council. The Chairman asked the City Attorney where we have the problem on the record, and if we should go back to that particular statement. City Attorney Reif said the Planning Commission should make the statement that they are not acting under any influence or any compulsion of the City Council. If they feel it should be R-2, fine. This must be based upon the evidence presented tonight of the zoning and that there was no compulsion from the City Council. If you feel there is, this hearing is tainted and we should probably hold another one. Commissioner Shaw stated that he personally didn't feel any pressure from the City Council and that the property should be zoned R-2. Consultant Edwards stated that he felt uncomfortable with it, the way the thing is worded in the first paragraphs it is directive and to avoid future difficulties it would seem to him appropriate that something be done. Chairman Ross stated that in any case the Planning Commission was going to have to table this particular application until the next regular meeting until the input can be gathered on the total amount of multi-family, so we can establish whether there is a need in order to satisfy the Fasano requirements; because if we can't do that then we are going to have to rezone it back to R-1, we have no choice in the matter, or any other zone which the Commission feels is appropriate. Consultant Edwards stated that the appropriate zone for us to look at presently is R-2, because that is what is shown on the general plan and adopted by the city. Any other zone we are going to look at would have to go from the beginning with an amendment of the general plan and alot of other things. It was his feeling that we should start with R-2 and go from there. Commissioner Edgerton wanted to know if it would be permissible to zone it R-1 and then ask for Mr. Bedwell or whoever to bring us in a proposed plan for the area. Consultant Edwards stated the Council had given us a resolution. Commissioner Edgerton stated that was what was bothering him as he felt as though he had been told what to do. Commissioner Hulbert said he felt that if the resolution had read the same way the legal notice in the paper read

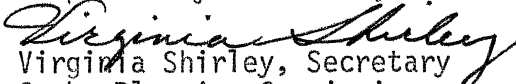
there would not have been a problem. He also stated that he felt R-2 was the highest and best use of the land, but that he couldn't say that there was a dire need for it. A discussion followed regarding priorities of the Fasano requirements which must be met and how this affected the Planning Commission in making their decision. The Chairman stated that the discussions could go on and on and that this request should be tabled until the next regular meeting on January 12, 1977, to allow for time to get the figures on the total amount of R-2 developed, that amount of R-2 zoned property that has other uses and that amount of undeveloped ground zoned R-2. Until we have those figures, we can not come to a decision. Commissioner Shaw stated that he hoped that at that time all the possible information the Commission would need would be available so it would not be necessary to postpone this hearing again. Consultant Edwards wanted to know if he was to do a land use of the entire city. Chairman Ross stated he should concern himself with only the R-2 at this time. Mr. Bedwell stated he wanted to make an apology to the Commission if he left the impression that the City Council was trying to pressure the Planning Commission. He didn't mean it that way at all and doesn't think the Council felt that way. As for the R-2 zoning, it has been gone through thoroughly by the Boundary Review Commission and all others concerned. The Chairman stated that we presently have to deal with the Fasano requirements, which does make a difference. Mr. Bedwell then read part of the Boundary Review Commission findings to the Commission. Chairman Ross questioned just how in depth a study was made by the Boundary Review Commission prior to the annexation. Mr. Bedwell stated that it was his feeling they had thoroughly investigated the request prior to granting the annexation approval. The Chairman stated this request would be tabled and would be placed on the agenda for the meeting January 12, 1977. Some discussion was held as to whether the consultant should research only R-2 or whether it should be expanded to include other possible zones. Commissioner Edgerton stated that he was not against R-2 as long as our ordinances are sufficient that we can get a good housing development. Mr. Siebenthal stated that Mr. Bedwell had built the other units and that they do have a plot plan which is less than the maximum number of units that would be allowed. The Chairman stated that these things do not come under consideration in a zone change. He also stated that Commissioner Edgerton had possibly gotten ahead of the agenda because he handle really laid in the development of a Design Review Committee. New notices of the continued hearing are to be sent out and another notice published in the newspaper.

The Chairman stated that the next item on the agenda will be a discussion of flag lots. *Commissioner Shaw made a motion to postpone the discussion of flag lots until the next meeting as Commissioner Kahut was most interested in how flag lots should be developed and not in attendance at the meeting tonight. The motion was seconded by Commissioner Edgerton and passed unanimously.

The Planning Commission listened to a presentation regarding the pertinent points of the proposed new Design Review Ordinance. The Planning Commission will study the proposed ordinance and either hold a workshop session or public hearing in the near future.

These minutes are recorded on tape.

Respectfully submitted,


Virginia Shirley, Secretary
Canby Planning Commission