

Canby Planning Commission
Regular Meeting
February 9, 1977

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

Member Absent: Al Cibula

Others Present: City Attorney Roger Reif, Planning Consultant Eldon Edwards, Public Works Director Ken Ferguson, Tom Tye, Ron Tatone, Marvin Dack, Dave Anderson, Don MacIntosh, Sharon Netter, Tony Pizzuti, City Councilman Dick Nichols, and others.

The minutes of the Planning Commission meeting of January 12, 1977, were corrected to read as follows on Item No. 3 at the end of the motion the following should be added: ". . . This request is in conformance with the Interim General Plan for the City of Canby." The minutes were approved as corrected.

Item No. 1: Presentation of the final plat of "Filbert Estates" for Planning Commission approval. Consultant Edwards gave his report on the final plat and made a recommendation for approval. Commissioner Shaw brought it to the attention of the Commission that this subdivision comes under the proposed 13th Avenue Improvement District. A discussion followed regarding the paving and the amount of paving that will be required of future subdivisions. City Attorney Reif quoted from the Planning Commission minutes of July 28, 1976, when the preliminary plat was approved. At that time, the Planning Commission had required an oil mat to the centerline. Public Works Director Ferguson stated that the City Council is considering an improvement district on Fir Street, Elm Street and part of 13th Avenue. There was further discussion regarding how street improvements for subdivisions should be handled in the future. *Commissioner Shaw made a motion to approve the final plat of "Filbert Estates" as presented. Commissioner Hulbert seconded the motion. The motion passed unanimously.

Item No. 2: Presentation of the final plat of "Pettit Addition" for Planning Commission approval. Consultant Edwards stated the final plat was in conformance and recommended approval. *Commissioner Edgerton made a motion to approve the final plat of "Pettit Addition" with the condition that all staff requirements be met. The motion was seconded by Commissioner Shaw and passed unanimously.

Item No. 3: Presentation of the final plat of "Grace Addition" for Planning Commission approval. Consultant Edwards gave his presentation with a recommendation for approval subject to the staff reports and conditions. Chairman Ross stated that the only area of question is the two flag lots - should paving be required? A discussion followed regarding the requiring of paving of driveways for single family residential subdivisions. Commissioner Edgerton stated that he would like to see the paving of the two flag lots made a voluntary deed restriction. It was the concensus of the Planning Commission that some paving should be required but that no specific width should be required. Mr. Reddaway stated they were agreeable to paving of the flag lots and if the Commission desired it as a deed restriction they were agreeable to that also. Further discussion followed as to the width of paving that should be required. The Commission agreed that no minimum paving width should be required for the driveways. Chairman Ross stated that the record should show that the applicant has agreed to place asphaltic or concrete ingress and egress

on lots 9 and 3 as deed restrictions. Commissioner Edgerton asked if all the staff reports had been obtained. The Chairman stated that all staff reports had been received. Discussion followed regarding street lights, curbs, sidewalks and fire hydrants. Mr. Ferguson stated that all were shown on the working drawings. Commissioner Edgerton made a motion that the final plat of "Grace Addition" be approved subject to the inclusion of sidewalks, street lights, fire hydrants that are on the working drawings and the additional deed restriction that the applicant agreed to. The motion was seconded by Commissioner Cutsforth and passed unanimously.

Item No. 4: Anderson-Ritter Realty requests approval of a preliminary subdivision to be known as "Douglas Addition" and located on the west side of Elm Street at the south end of Douglas Street and described as Tax Lot 500, Section 4B, T4S, R1E.

Consultant Edwards made his presentation and showed slides of the area. He made a recommendation of approval subject to street lights, fire hydrants and sidewalks to city specifications. Don MacIntosh, representing the applicant, stated that sidewalks will be included in the final plat. They are willing to comply with any conditions the Commission requests. A discussion followed with regards to the Canby Utility Board request for four street lights and where they would be placed. Dave Anderson asked how sidewalks within subdivisions are presently being handled. He was told that in most instances they are not put in place until after the building is completed. Chairman Ross asked if there were any deed restrictions proposed in the subdivision. Dave Anderson replied that they hadn't gotten into deed restrictions as they were going to be doing the building themselves. Chairman Ross asked if they would be willing to place deed restrictions on the property. Mr. MacIntosh asked if they were talking about value of buildings, style or just what was wanted. Chairman Ross stated that basically some of the subdividers in the area are trying to set a trend of housing for the south side. The problem has been brought out in discussions that some of the quality of the housing on the south side of town is not up to par. This is an older section of the city. Presently, they are trying to influence the development of the south side in order to set a precedent and make it as desirable as the north side. A discussion followed with regards to the location of sidewalks within the subdivision. Chairman Ross pointed out to the Commission that the same problem existed in this subdivision as in previous subdivisions in that there is a flag lot on the corner. Mr. MacIntosh stated they would pave the driveway into this lot. The Chairman asked if this would be a deed restriction. He was answered in the affirmative. The chairman stated the record should show that the applicant has stated that they will place a deed restriction on Lot 17 for an asphaltic or concrete driveway ingress - egress. Commissioner Shaw spoke of the improvement of Elm Street to the centerline. Mr. Ferguson stated that he was going to bring it to the attention of the Planning Commission that due to the situation with the possible L.I.D.'s the requirement should be that if the L.I.D. is not passed the width of paving would probably be what was required of the other two developers of paving to the existing oil mat. This is an instance where if you require full pavement improvement you are going to have a patching job. So, what I am saying is you could oil mat from the curb to the existing oil mat and match the existing oil mat and you haven't really got much down there to tear out. Consultant Edwards stated that this kind of gets back in to a waiver of remonstrance. Further discussion was held regarding the surfacing of Elm Street. Mr. Ferguson

stated that all storm water drainage systems being installed are now interconnected. Chairman Ross stated in review that the applicant had agreed to a deed restriction of the Lot 17 for asphaltic or concrete drive, the discussion right now seems to be on the full half-street paving requirement for oil mat to the existing oil mat and a waiver of remonstrance to an L.I.D. for full-street improvement for the frontage on Elm Street. *Commissioner Shaw made a motion that the preliminary plat for "Douglas Addition" be approved as presented, subject to the staff reports, subject to the oil mat from the curbline on Elm Street to the existing oil mat with a waiver of remonstrance for future improvement of Elm Street, and contingent upon the deed restriction as agreed to by the applicant regarding Lot 17 paving of driveway ingress - egress. The motion was seconded by Commissioner Edgerton and passed unanimously.

The Chairman called for a recess at 9:15 p.m.

The meeting reconvened at 9:25 p.m.

Item No. 5: Mr. and Mrs. Howard Bruce request a minor land partition from one lot to two lots on property located on the northwest corner of Ninth Avenue and Juniper Street. Consultant Edwards gave his presentation and showed slides of the area. He made a recommendation for approval. Ms. Sharon Netter, representing the applicant, stated the lots across the street from this property did not have seventy (70) foot of frontage. Chairman Ross stated that lots 15, 16, 17 and 18 are sixty-eight (68) foot lots in width. We do have lots within the area which would conform. The division of 141 feet left the existing lot with the minimum requirement of seventy-five (75) feet. The lot being created is 66.6 feet which is 3.6 feet short of the required seventy (70) foot. The square footage requirement has been met. Commissioner Kahut asked what the reason was for it only being 66.6 feet. The reasoning being that the corner lot requires a minimum of seventy-five (75) feet of depth so in creating a minor land partition you can't create two infractions of the ordinance. By making the existing house conform, you are making the new partition only 3.6 feet less than the required lot size which the Planning Commission can approve. Ms. Netter stated that because of the row of trees on the property it would be an aesthetically pleasing partition. The square footage resulting from this partition would be just a little over 9,000 square feet. Commissioner Shaw asked if in a minor land partition if it is required of the applicant to meet the four Fasano requirements. The Chairman stated it was not necessary. City Attorney stated that the minutes should show that if approval is granted it is because the lot has over 9,000 square feet and is of sufficient size and not as an under-size lot and the fact that no further partitioning could occur. Discussion followed regarding whether or not the builder could or would come in and ask for a variance on this lot due to the width of the lot. *Commissioner Shaw made a motion the minor land partition be approved because it is evident that the 9,000 square foot lot could not be divided further and because it is not inconsistent with other lots in the area. The motion was seconded by Commissioner Kahut and passed unanimously.

Item No. 6: Mr. Joe Vraives requests a zone change from R-1 and R-20, single family residential, to M-1, light industrial, on property located on the south side of State Highway 99E directly across 99E from Pine Street and described as Tax Lot 400, Section 34, T3S, R1E. Commissioner Kahut stated that due to a conflict of interest he would abstain from voting on this item. Consultant Edwards made his presentation and made a recommendation to table this item until the four Fasano considerations have been adequately answered. City Attorney Reif gave the Planning Commission a briefing on the four Fasano requirements that must be met for a zone change to be approved. Chairman Ross stated that what the City Attorney had told them was that the proof had not been supplied to the Planning Commission at this point. We will have to table this item until another meeting until the applicant can prove that he satisfies all the requirements of Fasano and they are presented to the Planning Commission. City Attorney Reif said it was apparent from the application itself that there was absolutely no way to make a decision on this matter from the material presented. However, this is a public hearing and there can be input. Perhaps that may suffice, I don't know as I haven't heard it but what has been presented so far is not sufficient. Chairman Ross wanted to know if this meant that if the Planning Commission does not feel there is sufficient testimony at that time we can reconvene the hearing at another meeting for further study. City Attorney Reif felt that best method was just to table the hearing for more information. He also stated the hearing would have to be readvertised. Commissioner Shaw asked if this would be tabled until there was another initiative by the applicant to supply further information. Mr. Reif answered in the affirmative and added that at the present time there was not enough information to render a decision therefore it should be tabled. Discussion followed as to whether the request should be opened for a public hearing at this point. It was determined that the Planning Commission should hear any testimony relevant. The Chairman asked if the applicant was present. Mr. Tony Pizzuti came forward and stated that he was representing the applicant on this zone change. The Chairman asked Mr. Pizzuti his feeling on the input that has been presented at this time and the hearing in question. Mr. Pizzuti stated that the position of the applicant/proponent on this is that (I read the recommendation) we don't feel this is a Fasano type of situation. We don't think that Fasano applies for this simple reason; you see Fasano is not the last word on land use planning. That case was decided in 1972 or 1973 and many cases have come since then. Fasano - I've heard that phrase used and I read that case three times today. That case had to do with Washington County, the problem that came in was a zone change contrary to what was under the comprehensive plan. There case was to change the comprehensive plan - then you have to show certainly the minimum requirements. There are two requirements that Fasano really has and they are enumerated one and two. Dependent upon the degree of change that can be more intense with each case handled on its own facts. There are only two things that Fasano requires: 1) There is a need; and, 2) The need is best met by the property. Fasano goes on at length to explain that comprehensive plans and zoning ordinances are one and the same thing. The comprehensive plan as you have it here - Interim General Plan - is something adopted by the Planning Commission then the City Council or governing body passes the ordinance. The Baker case - Mr. Reif alluded to the Baker case, there the same court speaking said that once the comprehensive plan is passed by a Planning Commission, or adopted I mean, then the City Council not only may pass the enacting legislation it has a duty to. I don't if you are familiar with the Baker case but Baker was a case where it was zoned for apartment houses and the comprehensive plan had it for single dwelling. The man with the apartment house

started putting up his apartment house and Mrs. Baker complained. The prior zoning had it apartment houses, the comprehensive plan had single dwellings. The Oregon Supreme Court states that first the city has a duty to enact legislation conforming it to the zoning they want and Fasano states it very clearly. They are different analytically but they are the same thing. My point here is that the Interim General Plan that was passed after hearing, studies, a lot of input; it is our position that it would not have been labeled M-1 if somebody after the appropriate hearings etc., decided that there was a need and it is best served by it. There is an assumption of validity - the burden of proof is important here if somebody opposes it I would think. If somebody were to come in and say it were wrong than the burden of proof is important. All this man is wanting now is to come in and do something with this land he can't do anything with unless the ordinance, proper ordinance, is passed. Chairman Ross stated that it this is one of the reasons that the Planning Commission and City Council chose to adopt in verbage an Interim General Plan. Interim meaning possibly. It has gotten to be proven to the upmost through the public hearing that that is the final word. If we had said comprehensive plan, then there would be quite a bit of "we've got to," underneath "interim" we don't have to. Interim says OK the hearings and studies show by those committees that possibly that may be the best use for the property and interim means that it is still in a stage of flux and has got to be proved out through the public hearing. There is your difference between your court tried cases on the comprehensive plan. We don't have that - we have an Interim General Plan. Mr. Pizzuti stated that in defining comprehensive plans you can call it whatever you want, but a comprehensive plan is basically a general plan to control and direct the use and development of property in a municipality. This interim general plan is to control and direct use of property in a municipality is what Fasano calls a comprehensive plan. I believe Mr. Edwards in his presentation called it that, so, again, I don't believe labels or the name by what you call it - it is the function of what the plan is. If this thing has been adopted by the City Council is to control it, I feel it a duty on the part of the City Council to pass to conforming legislation otherwise again, what if Mr. Vraves decides to develop as R-20 it wouldn't be allowed. Consultant Edwards stated that the second Fasano requirement is that the city has the duty to rezone a piece of property if it is shown on the comprehensive plan or whatever the plan is called - the city has the duty to rezone the property. The point where we come to a basic disagreement as some requirements have been interpreted differently. The fact that a parcel is shown as a specific land use designation is a threshold requirement. Without that, there is no point in discussing or persuing it further. That just sort of opens the ballgame and makes it available for discussion. Beyond that the applicant has the responsibility, and the City Attorney has shown that the burden of proof is on the applicant. These are legalistic requirements. It is the burden of the applicant to show public need and that this property shows the public need. It is the Planning Commission's burden and it is their duty to decide on when the time is right and the only way that they can decide on that is when the facts are presented to them or when a case is made for approving something at a specific time. At this point, City Attorney Reif pointed to another case which had been heard by the Supreme Court of the State of Oregon relevant to the Fasano ruling. Mr. Pizzuti stated that the point he was trying to make, and I'm obviously not making, is that anybody who seeks a change from the comprehensive plan and zoning ordinance must show needs. They always speak in terms, even the statutes, of the

comprehensive plan and zoning ordinance are one and the same. Only when you seek a change from the comprehensive plan are these requirements a presumption of validity. The burden of proof is on the one who wants the change. Mr. Vraves does not want to change anything, he wants it zoned as it should be. Chairman Ross stated that the zone is presently R-1 and R-20 which is residential. That is what the zone is so the Interim Development Plan and the zoning are not the same at this point. The only thing the Planning Commission can do at this point, until the City instigates a full zone change on everything that is recommended on the Interim Development Plan, then it will be until that happens, the applicant's responsibility to still go through the steps of Fasano to make that change. A discussion followed as to whether the city could make a full zone change or whether each parcel of land had to be reviewed on an individual basis. The decision was that each parcel must be reviewed individually. Commissioner Shaw stated that at this point he felt that nothing could be served to night by further consideration of this particular item until there is a decision by the attorneys as to what the responsibility of the Commission is on this particular item. There is evidently a disagreement between the applicant and the city as to whose responsibility it is here and we can talk about legal matters all night and my recommendation is that we get some kind of a firm opinion as to what we do. I think we should move on to the next item. Chairman Ross stated that the Planning Commission position is that recently the city adopted an Interim General Plan and the Planning Commission has new rules and regulations. Mr. Vraves is the first man who has come forward requesting a zone change. At this point, being the first application without any input as far^{as} making the change the burden of proof is going to have to be on Mr. Vraves. He is going to have to come back with some facts and figures lay them out in front of the Planning Commission; and, then, the Planning Commission with those facts can make a decision. *Commissioner Shaw made a motion to table this item until either proof of the four Fasano requirements are submitted by the applicant or unless the city changes its position as to who is burdened with the proof. The motion was seconded by Commissioner Hulbert. The motion passed with all Commissioners voting aye except for Commissioner Kahut who abstained.

Item No. 7: Marvin L. Dack requests a zone variance for off-street parking within the front yard setback for the apartment complex located on the southwest corner of S. E. Second Avenue and S. Knott Street and described as Tax Lots 7700, 7800 and 7900, Section 33DC, T3S, R1E. Commissioner Shaw stated he would withdraw from the hearing of this item due to a possible conflict of interest. Consultant Edwards gave his presentation, showed slides of the apartment complex and made a recommendation for denial of the request. Mr. Dack stated he would like to clarify three things. 1) In front of building #4 (217 and 219) in the last two years there has been no parking allowed off-street and prior to that it was parallel parking and there was room for three spaces. They did away with that and would not allow the cars in there as there was too much confusion. The way it was originally set up there was a very narrow place to drive through the units. The new set up provides a place for children to play and a private patio for each apartment. There was original parking all along Second Avenue. He stated there were two fires in cars in one month that he owned the apartments. These fires occurred during the time that interior parking was allowed and there was no way to get the cars out of the parking lot. Stated he felt it was a badly designed parking area. Consequently he did away with the interior parking and felt he could provide enough parking in the setback area. With regards to the safety factor, this is exactly how the

did it in the first place. The maneuvering is no different now than it ever was in the past. Chairman Ross asked Mr. Dack if he was making an application for a variance to do this work or has it been done? Mr. Dack stated that it had been done and he is trying to get the city to cooperate with him to stop the deterioration on the buildings and turn it around and make it an asset. Stated he would cooperate to do whatever was necessary to provide more parking. Stated he would like an opportunity to go to the site with a city employee and show them the situation and ask them what can be done. He realizes that there are some problems with the variance but would like the city to work with him to work something out. Chairman Ross asked if he had submitted a written statement to meet the conditions for granting a variance. Mr. Dack answered in the affirmative. Chairman Ross asked the consultant to state to the Commission the points on which this application is in violation of the Zoning Ordinance. Consultant Edwards referred the Commission to page 11b of the Zoning Ordinance under Other Regulations #3, going on to Section 12, subsection 5. The chairman stated that this apartment complex was built in 1965 or 1966, which made this use pre-existing to the ordinance as far as parking requirements in the front yard setback. The applicant is correct in that they did park all the way around in the twenty (20) foot setback, that was the only place they had to park. Also, at that time they only had to provide one (1) parking space for each unit. Doesn't know if there is any validity for a variance to be granted. Commissioner Edgerton questioned the fact that if we were to allow this and there was an accident backing onto the street is the city because we have allowed it, are we in any way responsible? City Attorney Reif stated that the question could not be answered because people sue every day. If you are looking at liability, the answer is yes. Commissioner Edgerton then asked if off-street parking were provided and a person still doesn't use the space that he has provided, then it is his responsibility as he is parking in the wrong spot. Mr. Ferguson stated the reason this application was before the Planning Commission was because the building inspector on a tour noticed that Mr. Dack had done these things to the property. He reported back to me and we sent Mr. Dack a letter of procedure outlining the violations that at that time we thought he was in violation of, since he was removing curb without permission. The position of Public Works Department is the position stated in the letter. The fact remains that the curb was removed without permission, and I'm sure that Mr. Dack wishes he had contacted us before this was done. Discussion followed regarding the number of parking spaces that will exist if the variance is allowed. Consultant Edwards then read the requirements necessary for the granting of a variance. Further discussion followed with regards to the fact that this was a pre-existing use and nonconforming but any change must be to bring the property into conformance not an expansion of nonconformance, even if this is for improvement of the property. Commissioner Hulbert stated that the thought some time should be taken before a decision was rendered to allow the applicant and the Public Works Department to try to work something out. A discussion followed regarding the three new parking spaces Mr. Dack has provided within the setback area. Chairman Ross stated that he would like to table this application until the meeting in March and have the Public Works Department and the applicant work on the problem and submit to the Commission a scale drawing - everything drawn to scale showing all the measurements, corners, show what they are providing in width, depth for the parking stalls whether they are 6, 8 or 9 foot, and how many there will be; and, based on that maybe the problem can be rectified the problem. Based on the material and information presented the Commission is not

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able to make a decision. A resubmission seems to be in order. So, if the application can be tabled and postpone the decision until the meeting in March the Commission will have all the facts. The Chairman directed the application be tabled for decision until the meeting of March 9, 1977.

The Chairman stated that the Planning Commission had received a letter from Mr. John Carlson requesting an interpretation and clarification of M-1 industrial. Mr. Carlson is of the opinion that Globe Union is in violation of the present zoning ordinance. The Chairman requested the City Attorney to prepare an interpretation for Mr. Carlson and for the secretary to place the item on the next agenda.

The Planning Commission held a discussion regarding the procedures for handling zone changes that come before the Planning Commission.

The meeting was ajourned at 11:30 p.m.

This meeting has been recorded on tape.

Respectfully submitted,


Virginia J. Shirley, Secretary
Canby Planning Commission