

Canby Planning Commission
Regular Meeting
July 13, 1977

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

Other Present: City Attorney Roger Reif, Planning Consultant Eldon Edwards, Fred Egger of Canby Utility Board, Public Works Director Ken Ferguson, Robert Weygandt and approximately 35 members of Zoar Lutheran Church

The Chairman called for additions or corrections to the minutes of the Planning Commission meeting of June 22, 1977, and Commissioner Shaw noted that he had not been present for the meeting. There being no further corrections, the minutes were approved as corrected.

The Chairman informed the Commission they had received a letter from the Canby Kiwanis Club. They are improving their glass recycling station that is located across from Bo-s Wash and Dry on Highway 99E. The property is owned by Buchanan-Cellers and Ralston-Purina. They would like to make some improvements on the property which would consist of an 8-foot fence of hog-weave heavy duty wire topped with several strands of barbed wire, a new sign and a glass deposit platform for the covered area to totally hide deposited glass from the passing public. Seek Planning Commission approval to seek other than the M-1 required chain-link fence around the 22-foot square area. Some discussion followed regarding the problems that have existed and the type of fencing they are proposing. The question was raised that if it had to be open for the deposit of bottles, why the fence? This will be taken care of by the construction of a wall and glass being deposited through a slot in the wall. The next question was if this could be made site-obscuring. This would mean weaving something into the fencing such as lathe. Some discussion followed regarding the zone requirements, whether permission had been given by the owner, and the possibility of review after a period of time - maybe one year, and if it gets to be a problem something else could be done. *Commissioner Edgerton moved to approve of the upgrading of the area for the glass recycling station. The motion was seconded by Commissioner Shaw. During the discussion, it was brought up that the Kiwanis should be encouraged to make this a site-obscuring fence. The motion passed with Commisisoners Cibula and Kahut abstaining as they are members of the Kiwanis.

Chairman Ross informed the Commission they had a letter from the Zoar Lutheran Church congregation before them. He further explained that it had come to the knowledge of the members that they was a potential 10-unit apartment complex to be built in a multi-family zoned area. They are in opposition to it. Mr. Ronald Berg came forth to read a letter from Melvin P. Pihl, President of Zoar Lutheran Church Congregation, and also one he had brought himself. Both of these letters have been made a part of the minutes of this meeting. After reading both letters he further stated he was the personal representative of Mr. and Mrs. Hozy Drew who sold property subject to a deed restriction. This property was resold and is now a portion of this proposed development. Part of the property subject to the deed restriction is being used to satisfy the parking and square footage requirements for the eight-plex portion of the development. The Drews and Mr. Berg feel this is improper and plan to seek a legal opinion concerning it.

The Chairman thanks Mr. Berg for his address to the Commission and explained their appearance before the Commission was approximately 20 years to late. The property

was zoned multi-family in approximately 1957. So, there is no request before the Commission for a variance or for zoning, as it is zoned for apartments as is the church property. The area of concern was zoned multi-family at the inception of zoning in Canby in 1957. He further explained that the Commission understood their concern, however, there is nothing the Commission can do to stop them from developing their property with the zoning classification it has. City Attorney Reif was consulted by the Chairman and stated he felt there was a potential traffic hazard in the area but after researching doesn't feel there is any way the Commission can help. However, there is the deed restriction and if the deed restriction is valid, it would, in essence, wipe-out the development. Mr. Berg stated the deed restriction was made by Mr. and Mrs. Drew when they sold property and the property they sold was only to have a residence or a duplex on that portion of the property as long as they resided on the property. Now that portion of the property has been combined with the next section. The Chairman informed the audience they were now getting into legal matters and this would be their only case. They could still develop it and put in a duplex and put in a four or five plex on the other portion of the property. Bruce Short asked if there was anything within the ordinances about adequate access for such a development. This was answered that the ordinance reads that a lot shall have an access abutting an accepted dedicated street to the city. He has that with his 25-foot, which was granted some time ago. This was under a minor land partition and met all the requirements at that time. Myrtle Johnson stated they had sold the property with the understanding that a duplex would be developed. She wanted to know who would put up a fence to protect their property from the children who would be occupying these apartments. Chairman informed her the Planning Commission has no ordinance to require one party to fence another. If the property owner won't do it, then the person who is aggrieved has to do it just to keep the other people out. Mrs. Johnson expressed the feeling that if they are going to go ahead and build this complex it should be a restriction for them to build a fence. The Chairman stated the city has no power to place deed restrictions and the city does not have a fencing ordinance. Mr. Robert Brauner asked if the square footage of the property was adequate for the buildings they plan to put there. Chairman explained he had not seen the plans for the complex. Mr. Bergman stated that the objection of these people was the cutting in of a new street across from the Lutheran Church from this property. The objection is that street being put in. The Chairman answered this was not a street but a personal ingress and egress just like your driveway is on your particular house or any particular property, it is not a city street - it is privately owned property. Mr. Berg said he didn't think the people understood Mrs. Johnson's point. Her point was that this was sold as a flag lot and the lot in the front was sold as a separate lot. It was sold to the Johnsons with the understanding that there would never be more than a duplex in the back. The Chairman replied this appeared to be a legal matter. Mr. Berg stated the safety factor was the primary concern and wanted to know who the safety factor would go to as he understood the Commission can't handle it at this point. Chairman Ross replied that the safety factor would probably be looked at by the police department, but whether or not there would actually be a hazard would have to be proved and it would have to be proved in a court of law. It is no more than the use you have and enjoy with your parking lot against the neighbors right across the street; yet you would deny the people across the street (the apartment owner) ingress and egress that he will say you are enjoying the same use - what about that. This would be a toss-up as you have a heavy use and they will have a use. Chairman Ross indicated that since there were no further questions the only thing he could tell them to do

was to check out the deed restrictions and get a legal opinion as to whether they can use the square footage of this particular deed restricted property as increment to the other property to give them the density. If that is a fact as it turns out, the only alternative they have is to build a smaller complex. You are in a legal matter now, it is beyond the city at this point and is 95 percent sure that the city can not do anything at this point. Being this is properly zoned property they have the right to use it as it is zoned, they have the right to bring their ingress and egress out, they are legal as far as the width of the ingress and egress, and assume they are legal as far as their square footage requirements for the R-2 zone. The legal question would be the only thing that would change that. Mr. Berg commented that they are legal on square footage if you count the ingress and egress property which can't be built upon so doesn't feel it should be counted. Chairman answered that it is part of the tax lot and they are being taxed for that property so it is counted in the square footage. Commissioner Hulbert spoke to the audience and informed them that if they felt the density in an R-2 zone was too heavy they have the right to petition the Commission to lower the density. The question was raised concerning a moratorium on building in multi-family while a density study was made. The Chairman answered by saying that the property had been zoned in the same manner for the last 20 years and now you are wanting a moratorium because the density is too high. This is too late now to place a moratorium on construction while you are doing the research as he has the use and the right to use it as it is and you can't stop it. It is going to be litigation that will solve this thing and nothing else. There being no further questions, the discussion was closed.

Item No. 1: Consideration of a proposed annexation to the City of Canby of property located south of S. Elm Street and described as Tax Lots 400, 500, and 600, Section 4C, T4S, R1E. This parcel contains 16.59 acres. The applicant is The Robert Randall Company. Commissioner Shaw requested the procedure for hearing annexations be gone over prior to the opening of the public hearing. The Chairman asked for proponents to speak for this annexation request. None came forth. He then asked for opponents to the proposed annexation and none came forth. The public hearing portion of the meeting was closed and the Commission discussion began. The Planner informed the Commission that the CRAG plan as adopted has urban containment lines and those urban containment lines run along 13th Avenue and south on the property adjacent to Douglas Street and this property would be right on the city limits line on the south. The Randall property would have to go before CRAG for an amendment to their plan. As far as procedures go, in talking to CRAG and the Boundary people, we can go ahead and hear the annexation. They go to the city as a matter of practice, the Boundary Commission does not annex property, except if there is a definite hazard of some kind, to cities without the city's approval of that annexation prior to their hearing it. City Attorney Reif commented that he would like to see an opinion formed without the input of CRAG. One of the points being: What is a matter of local concern and what is a matter of regional concern. On behalf of the city we are after local control, so your opinion as to what you think locally is important regardless of what CRAG says. What do you want the boundaries of the City of Canby to be and how much we want to control the program each year. As you all know, it gets more restrictive as each year goes by to annex property. That is the question to be answered. As to assuming it was annexed, about the duty of the city to provide municipal services; we are of the opinion that there is no duty as long as voters keep turning down bond elections. Various jurisdictions place moratoriums on services and there is no duty that we find that if a municipality is at the end of its line and exhausted its water and sewer capacity they have any duty to approve a building permit on any other

property which causes a pre-existing property owner to have to start rationing his use. Discussion followed with regards to whether the Planning Commission should consider only the planning aspect of the annexation or take everything into consideration, i.e., utilities, additional growth, planning and circulation. Chairman Ross asked Fred Egger of the Canby Utility Board to speak to the Commission. Mr. Egger stated that if he didn't have to guarantee the availability of utility services they would have no problem with the annexation. Looking at two years from now, assuming too we did have the expansion of the water treatment plant so we could double the capacity, we would be in good shape. However, at the moment he would not like to start planning to provide services to another area of this size. Personally, he is not in favor of the annexation due to the increased load this would place on the utilities. At the moment they just don't have the facilities to pick up that much more. We are going to have to start looking for an additional source of water also. Discussion followed on the possibilities of further annexations, the cost of facilities to service the new areas, and whether the city is ready to consider annexations at the present time. By consensus of the Commission, the Chairman directed the secretary to continue this request and the other request for annexation until the next Planning Commission meeting (July 27, 1977). The Planner was instructed to prepare a report for the Commission of the impact on the schools, traffic, the percentage of vacant land remaining in the city, etc.

Item No. 3: Request for a Minor Land Partition of property located on the west side of S. Fir Street approximately 406 feet north of S. W. 13th Avenue and described as Tax Lot 300, Section 4B, T4S, R1E. The applicant is the Estate of Ella W. Weygandt, represented by Robert Weygandt. Consultant Edwards gave his report and made a recommendation for approval. Mr. Weygandt stated that the proposed road which the Commission had talked about during discussions of other subdivisions would be about 90 feet south of his south property line. There was some discussion of another road going through this property to open up the area. Mr. Weygandt stated he would be willing to let a road go through his property at a later date if it was needed to open up an area. The subject of a dedication came up and was discussed. It was the consensus of the Commission that it could be handled at a later date. *Commissioner Kahut moved to approve the Minor Land Partition subject to the appropriate dedication on S. Fir Street needed to bring S. Fir Street to a 60-foot right-of-way. The motion was seconded by Commissioner Edgerton and passed unanimously.

Item No. 4: Cul-de-sac deposit for subdivisions. The Planning Commission discussed temporary cul-de-sacs in subdivisions abutting undeveloped land, handling of deposits for removal of the temporary cul-de-sacs when the undeveloped land is developed and alternatives to Section 26.9(b) of the Subdivision Ordinance. *Commissioner Cibula moved to change the Subdivision Ordinance, Section 26.9(b) ". . . or turn-around shall be constructed . . ." to ". . . or turn-around may be constructed . . ." The motion was seconded by Commissioner Edgerton and passed unanimously.

Item No. 5: 25-foot Corner Lot Setbacks. The Commissioner requested the Planning Consultant to send a letter to the Canby City Council indicating the amendments needed to change the Zoning Ordinance for corner lot setbacks.

A brief discussion was held on the zone change which was denied by the Planning Commission, appealed to the City Council and denied by the City Council. This was the application by David Anderson for property on S. W. Fifth Avenue east of the Canby Square Shopping Center. By consensus of the Planning Commission, the Planning Consultant was requested to draft an ordinance somewhere between the C-1 and C-2 zone

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which would not allow the development of apartments, but would allow certain businesses not presently allowed in a C-1 as either an outright use or conditional use.

The minutes of this meeting have been recorded on tape.

Respectfully submitted,


Virginia J. Shirley, Secretary
Canby Planning Commission