

Canby Planning Commission
Regular Meeting
July 26, 1978

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

Members Absent: Commissioner Cibula

Others Present: City Attorney Roger Reif, Public Works Director Ken Ferguson, Planning Consultant Rod Shoemaker, Tom Tye, Mr. and Mrs. William A. Osmer, Duane Weeks, Hugh Harper, Robert Hill and others.

Item #1: Request for final approval of the subdivision plat of "Weber's Acres" located on the west side of S. Ivy Street approximately 200 feet north of S. W. Seventh Avenue. The applicant is Duane Weeks. The Planning Consultant stated the preliminary plat and the final plat of Weber's Acres are essentially the same, therefore he recommended approval contingent upon the applicant fulfilling all the conditions specified at the April 26, 1978 Canby Planning Commission Meeting. After a short discussion, *Commissioner Kahut moved to approve the final plat of Weber's Acres contingent to the provisions of the Planning Commission meeting of April 28, 1978. The motion was seconded by Commissioner Shaw and passed unanimously.

Item #2: Request for approval of the preliminary plat of "Canby Park East - Phase II" located east of South Pine Street. This request is for the south half of Tax Lot 400, Section 34C, T3S, R1E. The applicant is Canby Enterprises, Inc. Commissioner Hulbert excused himself from the hearing of this item due to a conflict of interest. The Consultant gave his presentation and made a recommendation for denial because the proposed forty (40) foot right-of-way for an industrial street is not allowed in the Zoning Ordinance and also the thirty (30) foot roadway for an industrial street is not allowed by the Zoning Ordinance. Tom Tye, representing the applicants, stated they were willing to increase the road width to sixty (60) feet with paving to forty (40) feet, with the entire additional roadway to come from the southerly property (Lot 6). The question was asked if they had considered stubbing that street to the most easterly boundary to create a street grid to the property to the east leading on to the future industrial ground? Tom Tye stated they propose to have a cul-de-sac. Discussion followed regarding changing the cul-de-sac to allow access to the property to the east. The access to the property on the east is from Highway 99-E, and this is a very poor access. Additional access should be acquired to reach the property east of the property under consideration. Commissioner Edgerton asked for clarification of what had happened at the previous meeting regarding the dedication and paving of S. Pine Street. Chairman Ross explained the situation and Ken Ferguson asked why they had changed from thirty-nine (39) feet of paving to thirty (30) feet of paving? Commissioner Shaw stated there was an appeal to the previous decision based on new information. The previous information was based on Pine Street being an arterial and the new information indicated it was to be a collector. As an arterial they would be required to pave the thirty-nine (39) feet, but as a collector they are requiring on thirty (30) feet of paving. Mr. Ferguson stated that the Council is opposed to anything other than a full street. You are allowing a three-quarter (3/4) paved street. He questioned what the Council's reaction will be. He was informed that the

Commission had taken that into account. The Consultant stated that he had further discussion with regards to Pine Street. He then read a letter from the City Attorney's office addressed to Ken Ferguson dated June 1, 1978, recommending a survey of the entire road area and determine a necessary width for this street under existing ordinances, proper alignments, etc. (This letter has been made a part of the minutes.) The Planning Consultant advised that the recommendation called for in the letter be made to the City Council. Commissioner Shaw asked if this was for additional property to be acquired through purchase or condemnation. Condemnation only if they are unable to purchase. Chairman Ross stated that such a procedure solve some of the problems partial streets. Ken Ferguson stated that as far as clearing up the right-of-way widths and so forth on S. Pine, as soon as the final plat is approved and recorded, we will go ahead with that - it will be automatic. *Commissioner Kahut moved to adopt the letter of June 1, 1978 as findings of fact and make this recommendation to the City Council. The motion was seconded by Commissioner Cutsforth and carried with Commissioner Shaw opposed. Discussion returned to the cul-de-sac within the subdivision. Tom Tye stated the applicants wish to keep the cul-de-sac in the subdivision. Hugh Harper stated the property owners to the east are not interested in developing at this time. Robert Hill stated that running a dead-end street into nothing doesn't necessarily make good planning. It was stated that this was good planning, because it allows for future street development in a grid system. It was further stated that it was only good planning to consider all the property in the area. Ken Ferguson recommended that street be extended to the east property line with a temporary cul-de-sac with the property to the east removing the cul-de-sac and paying the extension of the street and resurfacing the temporary cul-de-sac at the time of development. Tom Tye stated his clients are willing to go on to the east with a temporary cul-de-sac. At this point, Chairman Ross reiterated the highlights up to this point. The question of a one-foot reserve strip at the end of the east-west street on the east end of the temporary cul-de-sac was brought up. It was determined that this one-foot reserve strip was needed. *Commissioner Shaw moved that the preliminary plat of Canby Park East - Phase II be approved subject to the following conditions: 1) The improvement of S. Pine Street be the same as that established in Phase I; 2) The road through the subdivision be sixty (60) foot in width with forty (40) feet of paving between curbs; 3) This road to extend to the east property boundary; 4) Lots 4 and 5 of the subdivision to be squared up to the street; and, 5) subject to all staff reports and establishment of a name for the east-west street; and, 6) The easterly end of the east-west street to have a temporary cul-de-sac having a standard radius and showing lot easements on the final plat. The motion was seconded by Commissioner Edgerton and passed unanimously. Commissioner Hulbert did not participate.

Item #3: Request for a Conditional Use Permit to develop education and social function units in five phases over the next 20 years. This request by the First Conservative Baptist Church is located on the west side of N. Maple Street and north of Territorial Road. Consultant Shoemaker gave his presentation with a recommendation to approve phases I and II and not furnish any recommendation regarding phases III, IV and V, as they are too far into the future. Reverend Brindley stated that churches must plan from ten to twenty years in advance. They presently have plans to go ahead with phase I, with Phase II within the next three to five years. Chris Perkins stated she felt they are good neighbors and is in favor of the project. Dan Moray, another neighbor, stated they are for the project - questioned the widening of N. Maple Street. It was stated that Maple Street may be widened

an additional ten (10) feet in the future. Chairman Ross asked if the owner of Tax Lot 200 was present - no one came forward to speak. There being no further proponents, the Chairman asked for opponents. None came forth. Commissioner Kahut expressed his feeling that it is good planning to plan for all phases at one time. Commissioner Shaw expressed concern for problems that could arise in the future. Discussion followed regarding the height limitations of accessory buildings, placement of building on the property and circulation patterns with regards to the new projects and the parking lot. *Commissioner Edgerton moved to approve in concept only the Conditional Use the church proposed for church related activities. The motion was seconded by Commissioner Kahut and passed unanimously. Chairman Ross then asked for consideration of passage of Phases I and II of the proposed project. Discussion followed regarding the height of the two additions under consideration. This can be handled when the building permits are applied for. *Commissioner Kahut moved to approve Phases I and II with Phase I to be only a single story in height, subject to the setbacks being kept, subject to the parking lot being of a dust-free surface, and subject to all staff reports. The motion was seconded by Commissioner Hulbert and passed unanimously.

The Meeting was recessed at 10:05 and reconvened at 10:15.


Item #4: Request for a Variance to allow sale of farm produce in and from a farm storage and service building located on S. E. Township Road just inside the east Canby City limits on property described as Tax Lot 1390, Section 34C, T3S, R1E. The applicant is William A. Osmer. The Planning Consultant gave his presentation and made a recommendation for denial for the following reasons:

The proposed land use is commercial in character, and the proposed use is not allowed within an R-1 zone. Commissioner Kahut asked if the applicant had a building permit and if they realized they would need to come before the Planning Commission before it could be used as a commercial building. Both questions were answered in the affirmative. William A. Osmer stated that in this building they want to sell seasonal farm produce raised in this area. They need it for their livelihood. It is a building they are very proud of in the Canby area. Mrs. Osmer showed the Commission pictures of the new building. She did not make them a part of the file. She further stated the building was finished. The building has a cooler and a dryer within it. Mr. Osmer stated they would be selling cantaloupe, watermelon and home-grown popcorn. Things that are raised on a farm. Their home is located in the County. They were asked if the city limits splits their property. Mr. Osmer stated yes, their house is located in the county and the new building is located inside the city limits - they couldn't put the building in the county due to a tree and lack of enough room for the building. The Chairman asked for further proponents and none came forth. He asked for opponents and none came forth. The Chairman closed the public hearing. The Chairman stated that the City Planner's report states it is not in compliance with the Interim General Plan, it is retail in nature which is not allowable in an R-2 or an R-1 zone. The recommendation of the city planner is denial. Commissioner Shaw asked what the designation of Township Road was in the Interim General Plan. Consultant stated it was shown as a collector, with a sixty (60) foot right-of-way. The Plan also shows expansion of the R-2 zone to the city limits. This property would be located in an R-2 zone by the Interim General Plan and the property to the south would be R-1 as it is presently zoned. Commissioner Kahut questioned exactly what they were applying for. The Chairman stated it was a variance for a use. City Attorney Reif explained you could not really have a variance for a use but an applicant always has the right to ask for a certain use of the property. If it is not a

conditional use, and the ordinance doesn't provide for any other similar uses or anything at the disgression of it - you have to tell the person what rights he has and state that he has the right to apply for a variance as to the uses. Discussion followed regarding the placement of businesses throughout the city. The Planning Consultant stated that although this seemed like an appropriate place for a roadside stand the precedent that might possibly be established by approving this is that within an R-1 zone anywhere within the city someone could then come for a home occupation - that does not occur within a residence. This could be anything from furniture refinishing to a machine shop for a mechanic. This is what really needs to be considered is the precedent - the possibility of more applications of this kind. The fact that we have the ordinance that definitely outlines what an agricultural activity is and home occupation is and the fact that this does not fall within either one of the categories. The most obvious alternative would be to apply for a zone change - which is not in conformance with the Interim General Plan. Commissioner Hulbert stated that not long ago, the Planning Commission had denied an application for a beauty parlor on a very similar situation as this for fear that all the entrances into town would spring up with little businesses and that has been the policy in the past. Commissioner Shaw stated that if this is in fact a variance - we must consider if the four requirements for a variance have been satisfied. Chairman Ross stated that he did not feel it was possible to variance a use that is not allowed within a zone. City Attorney Reif stated that it might take more than a zone change, that an Interim General Plan change could be required. Commissioner Shaw stated if there were a zone change, there would have to be an Interim General Plan change. It obviously is not put within the Plan as there are other areas designated in the Plan for that type of use. A gentleman from the audience stated that when Brawner had the property he had little signs up and he sold produce. Wanted to know if the building affected the selling of produce. Chairman Ross stated that selling of produce from the farm or back porch is an allowable use in the zone as a related agricultural use, and you could get along with that until it didn't become very evident there was a commercial use and alot of traffic going in and out, turned into an actual retail commercial sales area. You might get in trouble when it expanded to that large a use, but a retail sales building is not allowable in a residential use, within the ordinance - you can build a storage building related to agriculture for packaging or processing agricultural products like picking the beets and taking them in and washing them and crating them, but the actual retail sales of a product is not allowed in a building. Mrs. Osmer asked if they could sell outside of the building - Chairman Ross and City Attorney Reif stated this would be questionable because if it takes on the manifestations of a retail enterprise then you are out of bounds. Residential zones are set up for the protection and liveability of housing whether it be multiple or single family. Your particular property is right on the edge - it still uses an agricultural use - ultimately it will get changed over and be used for multi-family or single family uses whatever it happens to be, so you have a conflicting use right from the start. Anything that goes on within the R-1 zone has to be in the character as specified under the R-1 zone and that is residential. You can still sell your wheat if you are growing wheat, you could sell off a few boxes of apples if you had an orchard, but where you get into the actual full merchandising of products that you grow you are getting into a retail trade - there's where we have the problem. Commissioner Shaw stated that the problem the Planning Commission has is due to the fact that this particular property is on the edge of a transitional area of the city, that the city's residential property is expanding around it as has been exhibited by the R-2 zone adjacent. In other words, the residential neighborhoods are moving in this direction to that boundary. If, in fact, what is being applied for is a variance unable to justify that at

Least items 1 and 2 have been satisfied. Item 1 says acceptable or extraordinary conditions applying to the property that do not apply to other properties in the same zone - which would be single family residential or even multi-family residential. Due to shape or size of the lot - doesn't feel either one of those apply to the property in question, topography - that doesn't apply, or other circumstances over which the applicant has no control - doesn't feel it has been proven that there are any circumstances necessarily that are beyond the applicant's control. The argument used to satisfy Item 1 is that the proximity of this proposed sales outlet to the residence. There are owners of commercial enterprises all over town that don't operate out of their homes. They operate in a commercial zone because that is the way it is set up. Item 2 says a variance is necessary for the preservation of a property right of the applicant substantially the same as possessed by other property owners in the same zone. Again, an R-1 zoned property right is not retail. R-1 zoned property is residential, so if, in fact, this is a variance I would have to say that I would be opposed to it. If it is an application for what is approvable as an outright use, I don't think there is any precedence in the ordinance that says that retail is an outright use in a residential zone. Agricultural use has been allowed in a R-1 zone, but agricultural use does not necessarily mean retail. Feels retail has not been proven to be an acceptable use in a R-1 so, I (Commissioner Shaw) move that the application be denied based on the aforementioned facts. The motion was seconded by Commissioner Kahut and passed with Commissioner Edgerton voting nay.

This meeting has been recorded on tape.
Respectfully submitted,


Virginia J. Shirley, Secretary
Canby Planning Commission