

Canby Planning Commission
Regular Meeting
August 9, 1978

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

Members Absent: Commissioners Edgerton and Shaw

Others Present: City Attorney Roger Reif, Planning Consultant Rod Shoemaker, Mr. and Mrs. Menton Ebel, Robert Engle, Archie E. McLeod, Curt McLeod, Laurence Dean and others.

The minutes of the Planning Commission meetings of July 12 and 26, 1978 were approved as presented.

Item #1: Request for approval of a Minor Land Partition to divide one Tot into two lots on the south side of northwest Territorial Road approximately 1,000 feet east of N. Birch Street and described as Tax Lot 400, Section 33BB, T3S, R1E. The applicant is Archie E. McLeod. Planning Consultant Rod Shoemaker made his presentation and recommended approval with the following condition: Approval of a proposed method of sewage disposal by the City Engineer, and approval of a proposed method of water service for both lots by the City Engineer. The Planning Consultant brought up the question of access of the existing driveway seems to conflict with the location of a fir tree. Curt McLeod stated the existing driveway is just west of the fir tree and on the opposite side of the lot as the proposed flag lot access to Territorial Road. Secondly, water service is available from a city water line on Territorial Road. Both houses would be connected to the water service. There is an existing well that would be used just for irrigation. He talked with the Clackamas County Development Services about the sewer and is in the process of having the soils tested. Chairman Ross stated that a twenty (20) foot dedication of right-of-way for the future arterial would be necessary. Commissioner Kahut asked what the planning consultant was recommending as far as access. The planning consultant felt both pieces of property could utilize the same access. It would provide less potential traffic hazards. Chairman Ross stated that access problems with regard to easements is immaterial at this point. They could handle it as far as easements go. Commissioner Hulbert asked whether the square footage of the back lot included the access road. Mr. McLeod stated it did. *Commissioner Kahut moved the Minor Land Partition be granted subject to the following conditions: 1) Approval of the proposed sewage disposal by the county, 2) Dedication of twenty (20) feet for future street right-of-way along Territorial Road, 3) That a twelve (12) foot width the entire length of the pole portion of the flag lot be paved and 4) Subject to all staff reports. The motion was seconded by Commissioner Cibula and passed unanimously.

Item #2: Request for a Conditional Use Permit to conduct a bookkeeping/tax consulting business within his residence located at 535 N.W. Knights Bridge Road and described as Tax Lot 3000, Section 33CB, T3S, R1E. The applicant is Menton A. Ebel. Planning Consultant Rod Shoemaker made his

presentation and recommended approval. Robert Engle, representing Mr. Menton Ebel, stated Mr. Ebel had conducted a bookkeeping and accounting tax service out of his home since 1967. He has conducted his business exclusively out of his home since 1974. It was pointed out some time ago that Mr. Ebel would need to come in for a conditional use. Mr. Ebel is not proposing to make any changes in what has gone on in this home for some time. This business, other than some accounting work, is primarily tax work. It is general business which only generates any amount of regularity or increase in customers or clients around tax season. We feel that Mr. Ebel's business, which he is conducting in his home exclusively, meets the criteria of the ordinance. We ask that Mr. Ebel be permitted to continue the business. Commissioner Hulbert stated that there are conditions attached to this and asked whether Mr. Ebel had been informed as to what the conditions are according to our ordinance on home occupation (ie; size of the sign, etc.) if he is aware that there is a restriction on that. Chairman Ross pointed out that the application is for a conditional use, not a home occupation. Mr. Engle stated that he had gone over the ordinance with Mr. Ebel and the conditions that are attached, such as the one that has square footage of signs required. Mr. Ebel said he really didn't need to advertise as he has all the business he can handle. Therefore the conditions were perfectly agreeable to him. Commissioner Kahut asked whether there were any signs on the premises at this time. Mr. Ebel stated there was a sign on the garage door. Commissioner Kahut asked if there were any objections to not having any signs on the street. Mr. Ebel stated there hadn't been one on the street for years. Chairman Ross stated that there had not been any problems that he was aware of regarding Mr. Ebel's business. Commissioner Hulbert requested clarification of conditional use, can it be extended or built on? After perusal of the zoning ordinance, City Attorney Reif stated there is nothing in the ordinance which prevents an expansion of a conditional use or that they must come before the Planning Commission. Commissioner Cibula requested clarification on how many employees Mr. Ebel had. Mr. Engle stated there were no outside employees. *Commissioner Cibula moved that the conditional use permit be granted subject to the following condition: 1) That Mr. Ebel and his wife be the only employees. The motion was seconded by Commissioner Cutsforth. During the discussion, Commissioner Kahut stated that as a commissioner he was in favor of this particular application over others because there are not more than one or two persons working at one time and because there are no traffic problems. The Planning Commission, by concensus, adopted Commissioner Kahut's statements as findings of fact. The motion passed with Commissioner Hulbert voting nay.

Item #3: Reaffirmation of the vote of the proposed annexation of the Robert Overton property. City Attorney Reif explained to the Commission the fact that there has been a lot of new laws on the annexation. Before, L.C.D.C. was not involved in annexations and now that they are involved the question arises as to the proper procedures to follow. This came to light in a case which came down about six to eight months ago, a case from Klamath Falls where the people from Klamath Falls were trying to annex property to the city of Klamath Falls. They went through the Planning Commission, City Council, then annexed in. Now in Klamath Falls they don't have a Metropolitan Boundary Review Commission as we do up here, so it was totally up to the city. In that case, the court said that you cannot

annex property until you consider all fourteen (14) goals and guidelines of the L.C.D.C. They kicked it out; it wasn't annexed to the city. That's simply what happened. Now the question is does the City of Canby have to do the same thing? There's some dispute about it. You call the Metropolitan Boundary Commission and they say, "Oh, no you don't have to. Klamath Falls is different. They didn't have a Metropolitan Boundary Commission. We'll do the Findings of Fact as for the fourteen (14) goals and guidelines. Don't you worry about it. Just tell us if you want a property. Tell us if you have the utilities to serve the property. If you don't have the utilities, when do you anticipate having the utilities to serve the property?" That's about all that they're looking for. We really wonder whether we should put the risk upon the developer or person seeking to annex the property by asking them to put their faith in the Metropolitan Boundary Commission. The reason I say that is because the practical experience that we've had on some property that we were seeking to annex in another jurisdiction. As long as the City of Canby is trying to say what they want to do with their property and they're intelligently making the decision as to whether property should be annexed to the City of Canby then we'd better make our own findings on the L.C.D.C. goals and guidelines. There are drawbacks. Number one, it is an added cost to the applicant to make his presentation before the Commission or City Council to show they are in conformance with the goals and guidelines because the burden of proof is upon the applicant. A second disadvantage to it is the Metropolitan Boundary Commission says, "Don't bother about the city. We just want a letter from the city." Now we get the practical problem of that compounded by a couple of other things. This is in the City of Canby - our own internal makeup - as you're probably all aware we had one report one day that the Utility Board said "Fine, we can handle the annexation." The next meeting we had another report regarding the adjoining property and the Canby Utility Board said no more annexation. So how do we reconcile that? The third point is that I advised you at the last meeting where we discussed this annexation that what the City Council was looking for was the recommendation and that the City Council is the governing body that really has to make the decision whether they want additional property in the city limits. I advised the Planning Commission to just make a recommendation from a planning standpoint. It's my understanding now, although I wasn't at the meeting, that that isn't what the City Council wants. They want documentation submitted to the Planning Commission and the Planning Commission's review of that documentation to make a recommendation to them. There's no requirement that the Planning Commission say yes or no. They can simply say we have reviewed it, these are the problems we see, and we forward it to you with no recommendation. This is what the City Council wants. Their problem on the last one was that we just had a reference to the annexation in the minutes and a motion in which we put three to four facts as to why we want to see the property annexed. I don't blame the Planning Commission and I think the reason was because the applicant did not even show up at the meeting because he was misinformed by the Metropolitan Boundary Commission saying, "We just want a letter from those people." He did not submit information on the availability of land, the need for additional land, the availability of services or how he was going to do the transportation plan. We were just doing the best job we could with what little information we had. There are two ways you can do it. You can originate your application with the City

or you can originate your application with the Metropolitan Boundary Commission. The question is what procedure is the City going to follow on annexation because we don't have an ordinance on it, and because there has been no court case other than the Klamath Falls case of what cities should do with regards to annexations. Now we try to carefully weigh the cost to the applicant of making his presentation to the city based upon what the Metropolitan Boundary Commission was doing. Our opinion from a legal standpoint was as follows: we want to remain anonymous as much as possible from the Metropolitan Boundary Commission. The city wants to have their own say in planning decisions regardless of what they say. We feel that it might be stretching the point of the Klamath Falls case; but, if the city is doing it's job under the present law to determine if the property should be annexed, they should probably be considering the goals and guidelines of the L.C.D.C. anyway. Therefore, the city legal staff feels there should be some type of presentation to the Planning Commission to justify the decision to annex rather than say, here's the property on a map, do you want it or don't you? The applicant has to shoulder the burden of proof to show that the city needs it. We think there are some people that will probably say, "I want to just go through it, I'll take my chances with the litigation, I just want it done as quickly as possible." The legal staff feels that from a strict legal standpoint the best thing to do is for them to justify to the city why it should become a part of the City of Canby. The planning consultant asked about the fact that the land was within the urban growth boundary and should be considered urbanizable; therefore, would eliminate a good half dozen of the L.C.D.C. requirements. City Attorney Reif stated that was a good point and that should be one of the factors. The "Thousand Friends of Oregon" say there is land within an urban growth boundary which is Class 1 through Class 4 and we still have to consider the agricultural goals. The planning consultant stated that was contrary to the whole reason for this. City Attorney Reif stated it wasn't contrary because it has gotten to the Oregon State Supreme Court. They also had the argument that you have to consider your other goals like economy, housing, etc. One other thing is that the City of Canby does not have a valid Urban Growth Boundary. It has never been approved by the L.C.D.C. So, from a strict legal standpoint, that would be the fallacy in that reasoning. When you talk about annexation, that is more of a critical zoning and planning decision then whether you're going to approve a conditional use permit or whether you're changing the zone on one lot. We're talking about changing boundaries and that's really a major decision. Chairman Ross placed the Clark-Overton annexation on the Planning Commission agenda for August 23, 1978 for full consideration of all the aspects of the application.

Other: City Attorney Reif brought to the attention of the Planning Commission that Mr. William Osmer was appealing the Planning Commission decision on his request for a variance to the City Council. He further stated the appeal will be heard August 16, 1978 and the commission does not have anything other than our minutes for the City Council. City Attorney Reif stated there are two ways the commission can handle it. They can prepare an order and authorize the Planning Commission chairman to sign it if it meets with his approval. City Attorney Reif stressed the fact that a planning commission member should be present at the appeal

hearing before the City Council meeting and be prepared to speak if it is necessary. City Attorney Reif will draft an order for Chairman Ross's signature. Chairman Ross and Commissioner Kahut both stated they would be able to attend the meeting.

There being no further business before the Commission, a short discussion was held concerning electing a Chairman and Vice-Chairman for the Planning Commission. Both members shall be voting delegates. It was decided that in a case where only three members of the commission were voting, Chairman Ross would vote to show a majority of the quorum.

The meeting was adjourned at 9:30 P.M.

This meeting has been recorded on tape.

Respectfully submitted,

A handwritten signature in cursive script that reads "Virginia J. Shirley". The signature is written in black ink and is positioned above the typed name and title.

Virginia J. Shirley, Secretary
Canby Planning Commission