

Canby Planning Commission
Regular Meeting
December 12, 1979

MEMBERS PRESENT: Chairman Ross, Commissioners Sowles, Edgerton, Kahut, Hart and Davis

MEMBERS ABSENT: Commissioner Cutsforth

OTHERS PRESENT: City Attorney Roger Reif, City Planner Stephan Lashbrook, Public Works Director Ken Ferguson, Ron Tatone, Margaret Cuthbertson, Carma Daniels, Fred Stefani, Earl Sisk, Arthur Davidson, Mary Monahan, Earl Oliver, Byron Smith, Clarence Van Dorn, Howard Barlow, Herman Bergman, Myra Weston, Dave Bury, Brenda Lashbrook, Bob Westcott, Jeff Durham and others

The meeting was called to order at 8:07 p.m. Chairman Ross dispensed with the minutes of the meeting of October 10, 1979 and asked for any correspondence. There being none, the first item was introduced.

Item #1: Request for a Minor Land Partition to divide a 3.58 acre parcel into two smaller parcels. The property is located at the west end of N.W. 12th Avenue and described as Tax Lot 100, Section 32AB, T3S, R1E. The applicant is John P. Tatone. City Planner Lashbrook gave his presentation and recommended approval based upon the findings of A) Public need; B) Need best met; C) Compliance with the Comprehensive Plan; D) Conformance with Zoning and Subdivision Ordinances; and E) Compliance with the Statewide Planning Goals and subject to the following conditions: 1) Dedication of sufficient property to allow for the construction of a cul-de-sac to City standards, extending approximately 150 feet west of the present termination of N.W. 12th Avenue; 2) Dedication of a strip of property 60 feet in width, extending south from the intersection of N. Ash and N.W. 12th to the southern property line. This property will become available for an eventual extension of N. Ash Street; 3) Applicant to be responsible for all costs associated with the dedication of land, subject to the requirements of the City Attorney; 4) Property owners to sign and record a waiver of remonstrance against any eventual improvements to N. Ash Street or N.W. 12th Avenue. Said waiver is to be subject to approval for form by the City Attorney prior to recordation. Commissioner Sowles asked the city planner how he had arrived at a figure of 150 feet for the cul-de-sac. Mr. Lashbrook explained that figure was flexible but that that shape would allow for the maximum number of lots to be created some time in the future. Commissioner Edgerton asked if that would leave the setback on the existing home (belonging to John Tatone) legal. Mr. Lashbrook stated it would be approximately 30 feet. Commissioner Davis asked what lay between the two street sections of N. Ash. Mr. Lashbrook stated there were some trees and a large mound of dirt. Ron Tatone (agent for applicant) stated that under the subject of "public need", it is a matter of record that Canby is in need of more residentially zoned property. Mr. Tatone explained that the reason for this minor land partition request is to isolate the existing home on the property in question. Mr. Tatone did not feel that a cul-de-sac was really necessary. Mr. Tatone suggested that N.W. 12th Avenue be extended for 100 feet instead of 150 feet to allow for access to the

second lot and then use a "T" as a turnaround. The use of the property will not be changing at this time. Mr. Tatone felt that when the property was subdivided in the future, the conditions of approval on the streets could be requested at that time. Mr. Tatone also suggested that the dedication of N. Ash from the intersection of N.W. 12th to the south property line also be done at some point in the future. Mr. Tatone suggested that the waiver of remonstrance be limited to curbs, 40 feet of paving and sidewalk (if necessary). Mr. Tatone requested that if dedications were to be made at this time, that they be kept in an Escrow Account by the City to be used only when the property was further developed. Discussion followed on the need for dedications at this time. It was brought out in the discussion that a minor land partition application may require the same requirements as a subdivision application. Mr. Lashbrook stated it would be possible to use an "irrevocable offer of dedication" at this time which would be recorded if Mr. Tatone were concerned about trespassing on unimproved street right-of-way. Chairman Ross proposed that the dedication of N. Ash to the south property line be done at this time since the property surrounding the proposed continuation of the street could be developed in the future without that dedication being done. City Attorney Reif read the ordinance requiring minor partitions to follow the same guidelines as subdivisions. Commissioner Edgerton felt that if the dedications were made on the cul-de-sac and on N. Ash Street to the south property line, that the applicant would be meeting the requirements necessary on this application. It was the consensus of the Planning Commission that dedications only would be asked for on this application but any subsequent division of the property would require that improvements be made. Ron Tatone felt if the dedications were made now, he would not be able to control people coming onto that property (bikers, noisy kids) because the property would belong to the City. Commissioner Kahut asked how wide the dedication would be. Mr. Lashbrook stated it would be 60 feet with 40 feet of paving. City Attorney Reif stated that if the Commission so desired, they could request a "T" at the end of N.W. 12th Avenue at this time and request a full cul-de-sac at the time of development. Chairman Ross stated that the owner of the southern parcel wouldn't necessarily be able to get the owner of the northern parcel to develop a full cul-de-sac when the southern parcel was being subdivided. City Planner Lashbrook stated the issue to be looking at is how many possible lots these parcels would be divided into and the possibility that using a "T" would create several flag lots on the southern parcel. *Commissioner Edgerton moved that since the applicant had met the required findings, the Planning Commission should recommend approval of the minor land partition subject to: 1) Dedication of sufficient property to allow for the construction of a cul-de-sac to City standards, extending approximately 150 feet west of the present termination of N.W. 12th Avenue; 2) Dedication of a strip of property 60 feet in width, extending south from the intersection of N. Ash and N.W. 12th to the southern property line. This property will become available for an eventual extension of N. Ash Street; 3) Applicant to be responsible for all costs associated with the dedication of land, subject to the requirements of the City Attorney; 4) Property owners to sign and record a waiver of remonstrance against any eventual improvements to N. Ash or N.W. 12th Avenue. Said waiver is to be subject to approval for form by the City Attorney prior to recordation;

5) All recommendations of other staff reports to be made conditions of approval, including all recommendations of the Canby Telephone Association; and 6) Any further divisions of either property creating tax lots would require full City street improvements. The Planning Commission stated it was their finding that there would be no improvements at this time because there are already streets serving the property. The motion was seconded by Commissioner Hart. Commissioner Edgerton requested condition #5 be changed to request a cover letter from Canby Telephone Association stating no easements on the west property lines would be necessary due to the fact the Molalla River is the west property line and Canby Telephone Co. would not be extending their lines across the river. The maker of the motion and the second concurred on the change in condition #5. Question was called and the motion passed with Commissioner Kahut voting against.

Item #2: Request for a Minor Land Partition to divide a .43 acre parcel into two smaller parcels. The property is located at 357 S. Locust Street and described as Tax Lot 3700, Section 33DC, T3S, R1E. The applicants are Ivan and Dorothy Frazier. City Planner Lashbrook gave his presentation and recommended approval based upon the findings of public need, need best met, compliance with Statewide Planning Goals, conformance with the Adopted City Plan, and conformance with zoning and subdivision ordinances and subject to: 1) Access strip to the rear parcel is to be paved for its full length, 20 feet in width; 2) The owners are to record a waiver of remonstrance against any future street, curb, gutter, or sidewalk improvements to S. Locust Street. Said waiver is to be reviewed by the City Attorney prior to recordation; and 3) All recommendations of other staff reports are to become conditions of approval. This includes the recommendations of the Canby Telephone Association. Margaret Cuthbertson (agent for applicants) stated the back portion of the parcel is not in any use at this time and is bordered on two sides by apartment houses and by a series of three houses on the other side. She felt a duplex would be the most feasible use and that she thought her parents were planning on building a duplex possibly for their own use on the back portion at some point in the future. Ms. Cuthbertson stated the need for more housing in Canby as the "public need". Commissioner Kahut asked the applicant the distance from her property line to the house on the north side of her parcel. Ms. Cuthbertson stated she thought it might be 10 feet. Chairman Ross asked for any proponents or opponents to speak on this application. There being none, the public hearing was closed. Commissioner Edgerton asked if the applicant had already dedicated street frontage to the City on the S. Locust Street improvement project. City Planner Lashbrook stated they had. Commissioner Kahut asked if the Frazier's were the legal owners of the property or if they were in the process of purchasing it. Planning Commission Secretary Shirley stated they were the legal owners. Chairman Ross stated that building a duplex on the back portion was not the "highest and best use" but since the older home on the front portion was to be retained at this time, a duplex was probably the only possibility at this time. Commissioner Hart asked what types of structures could be built on the front portion if the older home were torn down. Chairman Ross stated a single family residence or a duplex could be built on the front portion if the minor partition were granted. Commissioner Edgerton asked whether the residents of the

existing home could use the driveway to the duplex. City Planner Lashbrook stated at this time the ordinance has no restrictions on the use of the driveway but in the proposed Condominium Ordinance, driveway restrictions on lots adjacent to flaglots might possibly be made. *Commissioner Kahut moved to recommend approval of the minor land partition subject to: 1) The access strip to the rear parcel is to be paved for its full length, 20 feet in width; 2) The owners are to record a waiver of remonstrance against all future improvements to S. Locust Street. Said waiver is to be reviewed by the City Attorney prior to recordation; 3) All recommendations of other staff reports are to become conditions of approval. This includes the recommendations of the Canby Telephone Association. The motion was seconded by Commissioner Sowles. Commissioner Edgerton moved to amend the motion to state that the most easterly lot shall not take access through the 20 foot paved portion of the flag lot. The amendment to the motion was seconded by Commissioner Davis. Discussion followed on the use of the paved pole portion by both front and back parcel. Question was called on the amendment to the motion with Commissioner Edgerton voting for the amendment and Commissioners Kahut, Davis, Hart and Sowles voting against and causing the amendment to fail. Question was called on the main motion and passed unanimously.

Chairman Ross called for a 5 minute recess and the meeting reconvened at 9:03 p.m.

Item #3: Request for a Conditional Use Permit to construct a duplex in an R-1 (Single Family Residential) zone. The property is located at the northeast corner of N.E. 23rd Avenue and Country Club Drive and is described as Tax Lot 202, Section 28A, T3S, R1E. The applicant is Carma J. Daniels. City Planner Lashbrook gave his presentation and added that since this lot was created through a deed, it could change the possibility as to whether a street was intended to continue through the subject property. Mr. Lashbrook added Goal #12 - Transportation to those previously listed under the heading "COMPLIANCE WITH STATEWIDE PLANNING GOALS". Mr. Lashbrook stated if the Planning Commission did feel there was a need for Country Club Drive to be extended, then this application would not be able to meet the findings regarding the Zoning Ordinance under Section 14. If the Planning Commission does feel that the road would not likely go through, then the City Planner recommended approval based upon the following conditions: 1) The general design of the development is to follow the plan submitted by the applicant; 2) All necessary permits are to be issued and physical construction commenced within one year of the approval of this application or the approval shall automatically be revoked. Chairman Ross explained the format for the public hearing. Carma Daniels (applicant) asked Chairman Ross if she could have the Planning Commission's feelings on whether the road should go through as it would affect her application. Chairman Ross stated that answer would have to come later on in the hearing after they had all the information on this application. Ms. Daniels stated they had purchased their lot approximately one year ago from Jerome Driscoll. At that time, they had intended to build a single family residence on the lot. However, their lifestyle has changed and since they are away from home more than they are at home, did not feel they needed the room provided by a single family residence. Since they had friends (Coopers)

who also belonged to the Country Club who could not find a lot in this area (close to golf course) they decided to build a duplex to accommodate both couples. They came up with a design similar to the townhouses in Charbonneau. Ms. Daniels showed architects sketches and some pictures to the Commission. Ms. Daniels did state that each couple would own their own unit just as in a condominium. Mr. Lashbrook stated the Planning Commission would then be looking at a Planned Unit Development. Chairman Ross stated that two separate ownerships would constitute a Minor Land Partition or a P.U.D. City Attorney Reif stated if the "Conditional Use Permit" request were approved tonight, the Daniels would have to make application for a Minor Land Partition or P.U.D. Ms. Daniels stated that since her husband would be applying for a State G.I. loan for construction purposes, coming in for another hearing would pose a hardship for them as the State loans would be terminating on January 31, 1980. Chairman Ross asked for any more proponents and there being none, he asked for opponents to speak. Fred Stefani (2040 Country Club Drive) presented two small maps, one of Country Club Estates and one of Country Club Estates, Annex 1. He stated that only single family residences were allowed in that area according to the private Deed Restrictions that were put on that property. He stated he did not disagree with the staff report and felt there probably was a "public need" for a development of this sort but felt that Country Club Estates was not the proper place for it. Mr. Stefani had copies of the private deed restrictions that were recorded on September 11, 1964 and the amendments to those deed restrictions that were recorded in February 1965. Mr. Stefani read the pertinent parts of the private Deed restrictions which specified only single family residences. Mr. Stefani stated he felt the Daniels and the Coopers had good intentions and the plan they presented was attractive but they would be violating the private deed restrictions set up in that area. He stated that many residents of the area leave their homes for up to six months at a time and did not feel there would be a security problem. He stated that planning and zoning regulations set up in the last 20 years are not always met with approval but they do offer protection for the property owners. Speaking for the residents of Country Club Estates and Country Club Estates Annex 1, Mr. Stefani urged the Planning Commission's sincere consideration in viewing this controversial application. Commissioner Kahut asked if the private deed restrictions could be changed. Mr. Stefani stated at least 75% of the present owners would have to consent to a change. Chairman Ross stated that after 25 years the restrictions would cease. City Planner Lashbrook asked Mr. Stefani about the developer's original intentions on extending the road through the subject property and what the Country Club's feelings are on it at this time. Mr. Stefani stated that the original proposed plat showed the street going through. At this time, Willamette Valley Country Club owns the property abutting the subject property and he stated he could not speak for the Country Club as to the intentions of putting that road through. Chairman Ross asked if there was anyone present representing the Country Club. Earl Sisk (810 N.E. 23rd Ave.) stated he was on the Board of Directors of Willamette Valley Country Club. He is also a resident of Country Club Estates. He did not feel he could add anything to Mr. Stefani's testimony. However, he felt a condominium development in this

area is out of conformance with the single family residences surrounding the entire golf course. He stated that as a member of the Board of Directors of Willamette Valley Country Club, the country club was against this development and as a resident of the area, Mr. Sisk was also against this application. Mr. Sisk stated that at this time, there were no plans to extend the street but he could not speak for what may happen in the future. Arthur Davidson (2198 Country Club Drive) was against the application. He stated he purchased his property specifically because of the restrictions and felt this development would have a negative impact on the value of his property. Mary Monahan (2144 Country Club Drive) bought her home in this area with the idea of single family dwellings (one story) being built in this area. This application does not comply with one level structures being built in this area and would obstruct the view of the abutting lot. Earl Oliver (one of the original Board of Directors members) concurred with the previous opposing testimony. Byron Smith (2157 Country Club Drive) also concurred with the opposing testimony. Clarence Van Dorn (2195 Country Club Drive) was on the original Board of Directors and built the first house on the golf course. The rules set up for this area specified single family dwellings and those rules have been adhered to up to this point. He is also on the building committee and hated to see something like this on the golf course. Howard Barlow (2220 Country Club Drive) understood from the Daniels when he first met them that they would be building a single family ranch type home on their lot. Mr. Barlow felt a condominium would detract from the entire community. Mr. Barlow stated that at one time he had considered building a duplex in the Country Club Estates area and former Public Works Director John Whiteside told him they were not allowed in that area. August Tack (2215 Country Club Drive) stated if the proposed two story development were built, it would block his view completely and felt the area should be left the way it is. Ms. Daniels, in her rebuttal, stated that the construction plan they had picked would be attractive and the building would not obstruct anyone's view where the building would be situated on the lot. She did not feel that the residents of the area had given good reasons for not wanting this development built in this area. Chairman Ross then closed the public hearing. City Attorney Reif asked whether there would be enough room on the lot to build a single family residence if the road were put through. City Planner Lashbrook stated the lot would contain approximately 9,000 square feet if the road did continue on through, which would allow for a single family residence. Chairman Ross stated that since the developers of Country Club Estates did not extend the street at the time of completion of the subdivision, he did not think that the continuation of Country Club Drive was an issue in this hearing. He felt the real issue would be the setting of a precedent in allowing a condominium in an R-1 zone. Chairman Ross felt if this application were allowed, it would probably encourage spot zoning all along the golf course. Chairman Ross stated that although the Planning Commission did not have authority to enforce private deed restrictions, if the application were approved Willamette Valley Country Club would have to take legal action in the form of an injunction to stop issuance of a building permit. Commissioner Edgerton asked why the continuance of Country Club Drive was being ruled out at this time. Chairman Ross felt that since the Daniels lot was sold, that evidently the Country Club had decided not to continue the street. City Attorney Reif explained that the lot in

question was never legally approved by the City of Canby. City Planner Lashbrook stated that did not mean the lot was necessarily created illegally, only that it must have predated the City's minor partitioning ordinance. City Attorney Reif stated that the lot in question was not a part of any subdivision. Chairman Ross stated if the application is approved, then the density is being doubled, that it would have almost the same affect as if a multi-family zone would actually have been created. Commissioner Hart asked the applicant if she was aware of the private deed restrictions when the property was purchased. Ms. Daniels stated she was. Commissioner Edgerton stated he felt it would be inconsistent of the Planning Commission if the private deed restrictions were not respected because of the fact that in the past other developers have been asked to give deed restrictions. Commissioner Kahut felt there would be no precedent set if this application were denied since there were private deed restrictions in this area and felt that the Planning Commission was not necessarily against duplexes in single family zones. Fred Stefani stated that when Country Club Estates was originally platted, it showed the street going on through and coming out on Maple. However, when Country Club Estates, Inc. sold their property to Willamette Valley Country Club, then the subdivision lost any control in putting in the street. Chairman Ross felt it would be very hard to put the street through now anyway because the area now belonging to the Country Club has been narrowed so much it doesn't appear that a road could go through that area. Chairman Ross felt the country club would probably keep their property intact for future development of their recreational facilities. Commissioner Sowles felt satisfied that the road would never go through. He also felt that the people who originally bought in that area wanted single family housing there and felt their interests should be protected. Commissioner Kahut agreed with Commissioner Sowles. *Commissioner Edgerton moved to deny the conditional use permit application due to the fact it is not consistent with the original intent of the developers of this area and also felt the Planning Commission should respect the restrictions placed on the subdivision (the private deed restrictions adopted on September 11, 1964). The motion was seconded by Commissioner Kahut. City Attorney Reif suggested that the motion be based upon whether the applicant met the five applicable findings of Section 14 of the Zoning Ordinance. The maker of the motion and the second withdrew their actions. **Commissioner Edgerton moved to deny the request for a conditional use permit due to the fact it is not consistent with the original intent of the developers of this area and also felt the Planning Commission should respect the restrictions placed on the subdivision through the private deed restrictions that were recorded and because this application did not meet the findings listed under Section 14 of the Zoning Ordinance as follows: 1) The proposal would not be consistent with the Comprehensive Plan and the objectives of the Zoning Ordinance and other applicable policies of the City; 2) Taking into account location, size, design and operation characteristics, the proposal will have adverse impacts on the a) livability, b) value, and c) appropriate development of abutting properties and the surrounding area compared to the impact of development that is permitted outright; and 3) The location and design of the site and structures for the proposal will not be in keeping with the nature and use of the surrounding residential area. The motion was seconded by Commissioner Kahut. Question was called and the motion passed unanimously. Chairman Ross stated the applicant would have 15 days in which to appeal the decision of the Planning Commission.

Item #4: Request for a Variance to reduce front yard setback from 40 feet to ±13 feet for relocation of railroad depot to subject property. The property is located on the north side of Highway 99E across from S. Locust Street and described as excess Highway right-of-way (hence no tax lot number. The applicant is the City of Canby. City Planner Lashbrook gave his presentation and recommended approval based on the following findings of fact: A) There is a public need for the proposed development; B) The public need is best met through the approval of this particular development; C) The proposal complies with all applicable Statewide Planning Goals and is especially supportive of Goal 5 (. . . Historic Areas . . .) ; D) The proposal conforms with the Adopted City Plan; and E) The 5 required findings of Section 28 of the Zoning Ordinance have been made. Commissioner Edgerton asked the City Planner to explain Goal 5 of the Statewide Planning Goals. City Planner Lashbrook stated Goal 5 included preservation of open spaces, scenic and historic areas, and natural resources. Commissioner Edgerton asked whether this building would have any use other than simply a historic building. City Planner Lashbrook stated the Chamber of Commerce had had discussions with the City Council about using the building for a Chamber of Commerce office. Commissioner Edgerton asked whether there would be enough parking to meet zoning requirements. City Planner Lashbrook stated the six spaces shown would meet zoning requirements. Commissioner Edgerton asked if there were any plans for the building to be used for a public hall. City Planner Lashbrook stated that at the beginning of negotiations to obtain the building, it was hoped that the building could be used in that way, but the cost factor involved to upgrade the building to required standards do not make those plans feasible at this time. Chairman Ross pointed out this parcel is currently zoned C-2 and is scheduled to go industrial. Herman Bergman (proponent) asked the City Planner if this area was scheduled to be industrially zoned under the new Comprehensive Plan. City Planner Lashbrook stated it is shown as industrial property on Canby's current Interim General Plan. Myra Weston (proponent and member of "Save the Depot Committee") stated the Depot Committee had been working on a location for this building for over two years. She stated that Southern Pacific would give the building to the City of Canby if a proper location for the building could be found. It would then be used as the office for the Chamber of Commerce. Mrs. Weston gave the Planning Commission a brief history of the depot. The Depot is the most historic building in Canby. George Kraus, public relations for Southern Pacific, told Mrs. Weston in November 1979 that Canby had 30 to 40 days to move the building. Commissioner Kahut asked what Canby's cost would be in this move. City Planner Lashbrook stated the City was not financially involved in this project, other than for staff time, etc. Dave Bury (opponent) stated he felt the setback was not good because when a train went by, people talking in the building would not be heard. He felt there were other sites in town that should be looked at. Earl Oliver felt a vicinity map should have accompanied the public notices to all surrounding property owners to explain the site more fully. Mr. Oliver then asked why there was a 40 foot setback in the highway commercial zone. Chairman Ross stated that many years ago, the City felt there would be some big shopping centers along 99E and did not want them building right up to the highway. Since that time there have been several variances on setbacks granted along 99E.

Chairman Ross stated that several years ago he tried to get the 40 foot setback dropped when the ordinance was redrafted but it was decided to leave it in and give variances based on each particular situation. Mr. Oliver stated both he and Mr. William Hinckley felt there was no reason for a 40 foot setback and felt the ordinance should be changed. Discussion followed on the 40 foot setback, the odd shape of the subject lot, and whether a variance would be granted to any other applicant on this property. *Commissioner Davis moved that the application for a variance on street yard setback requested by the City of Canby be approved based on the following findings of fact: A) There is a public need for the proposed development; B) The public need is best met through the approval of this particular development; C) The proposal complies with all applicable Statewide Planning Goals and is especially supportive of Goal 5 (. . . Historic Areas . . .); D) The proposal conforms with the Adopted City Plan; and E) The 5 required findings of Section 28 of the Zoning Ordinance have been made. The motion was seconded by Commissioner Kahut. Question was called. Chairman Ross stated that he felt that the Planning Commission would grant the same right for a variance to any property owner based on past actions of variance approvals by the Planning Commission. The motion passed unanimously.

Chairman Ross requested the City Attorney and the City Planner go over the ordinance regarding the 40 foot setback and come up with a recommendation for possible change to that requirement.

The meeting was adjourned at 11:35 p.m.

This meeting has been recorded on tape.

Respectfully submitted,



Virginia J. Shirley, Secretary
Canby Planning Commission

VJS/MLP