

Canby Planning Commission
Regular Meeting
October 12, 1987

MEMBERS PRESENT: Chairman Kahut, Commissioners McKibbin, Harmon, Lindsay, Nicholson, and Schrader

MEMBER ABSENT: Commissioner Seale

OTHERS PRESENT: City Administrator Stephan Lashbrook, City Attorney John Kelley, Secretary Virginia Shirley, Eldon Edwards, Butch Olsen, George Irwin, Ron Tatone, Martin Clark, and Larry and Virginia Whitman.

The minutes were corrected to correct the spelling on page 4, second paragraph, line 9 . . . that they, and page 4, first paragraph, lines 9 and 10, delete the following: "and would only be outside if there was no room inside the building." The minutes were approved as corrected.

Request for final plat approval of Lillian's Meadow subdivision by Ronald G. Tatone and Gloria Ives. City Administrator Lashbrook explained to the Commission that the City had not received a bond to construct the subdivision, a certificate for the cost of improvements or any bids, and the subdivision fee. Also, that the matter of settling the agreement with Double "C" Construction had not been settled. If Double "C" is not reimbursed, the agreement specifies that the City will take on the liability for those improvements. We do not have a City Engineer on staff and there are several things on the plat that require an engineer. We contract for that service and it takes time after we receive the information. If we receive all of the information required by ordinance in a satisfactory form by 5:00 .m. on October 14, at that point we would get it to the engineer for review. The plat would come back for the Chairman's signature as soon as the engineer is through with the review. It seems to be the only way to do all that needs to be done at the last minute. Chairman Kahut asked what would happen if we don't receive everything on time. Mr. Lashbrook stated that if we don't have the information by 5:00 p.m., Wednesday afternoon, the developers would have to start over again - reapply to complete the subdivision. Commissioner Schrader asked if the four items in the staff report had not been fulfilled yet. Administrator Lashbrook stated that he had not seen them. Commissioner Schrader next asked if the original five conditions placed on the preliminary plat had been met. Mr. Lashbrook stated that the first one had not been met (resolution of Clark Bargain and Sale Deed) and although the offer of dedication form was received, it needed the approval of the City Attorney as to form. Commissioner Nicholson asked if the Certificate of Bonding would cover the connection to the utilities. Administrator Lashbrook stated that to include the amount due on the agreement was the only way he knew to assure that it would be taken care of. Commissioner Schrader expressed the opinion that the Clark Bargain and Sale Deed was the key issue and must be satisfied prior to final plat approval. Commissioner Schrader asked Mr. Tatone if it was his feeling that he did not have enough time.

Mr. Tatone, applicant, stated that the requirement was for him to come to an agreement with the Clark's prior to construction. He stated he has a letter in his file from the City. He said that the letter stated the need for completion of construction by April, 1988. City Administrator Lashbrook stated that the letter read: "Final plat to be brought to the Canby Planning Commission for final action and approval by October 15, 1987. Recordation to take place by April 15, 1988." The ordinance does allow six months after signing for recordation. Mr. Tatone stated that what he had in mind was that he would need finish the plat knowing the Commission had a plat they could approve. Mr. Tatone stated that he never felt he had to record the plat prior to completion of construction. Mr. Tatone went on to say that only after his conversation with the City Administrator, a few days ago, did he realize there could be a problem. Mr. Tatone stated that he had never had to bond before, but had given the Commission a letter of credit on at least one occasion. Mr. Tatone did not want the extra expense of bonding. Mr. Tatone stated that he felt his subdivision was just a little different than others. Mr. Tatone stated that he had made an effort to contact Martin Clark. He had met with Mr. Clark the day of the meeting and they discussed the improvements on N. Ash Street. Mr. Tatone felt there would be added expense in the development of his subdivision. Mr. Tatone stated that he had offered Mr. Clark \$8,000. Mr. Tatone reminded the Commission that at one time Mr. Clark had offered to accept the face value of the Bargain and Sale deed which is \$10,607.00. Mr. Tatone informed the Commission that he had made a stand on "principle" and did not intend to pay interest. Chairman Kahut asked Mr. Tatone if he could take care of the requirements prior to the deadline. Mr. Tatone stated that he could have everything taken care of by Wednesday at 5:00 p.m. Mr. Tatone asked that the construction drawings be approved prior to satisfaction of the Bargain and Sale deed. Mr. Lashbrook stated he would prefer that the Bargain and Sale deed was all settled and all there was left was the final subdivision. A reasonable alternative is to add to the normal cost estimates of the Bargain and Sale deed. The action of connecting to those services and that everything happen according to the agreement. Mr. Tatone asked why the City was concerned with the Clark Bargain and Sale deed. City Administrator Lashbrook stated that he was only trying to protect the City. Mr. Tatone asked if the Planning Commission would look at the final plat, give their conditional approval, and keep the plat in the office of City Hall. Mr. Lashbrook stated that he viewed that method of handling as a time extension. Commissioner McKibbin asked if Mr. Tatone had only until October 14, 1987. Mr. Tatone stated that he had only until the October 14, 1987, date to present the plat to the Commission and until April, 1988, record the plat. Once the final plat is approved he must do one of two things: he must post bond or otherwise assure the improvements will be put in, or he must physically put in the improvements. Chairman Kahut asked Mr. Tatone if he could sell one of the lots. Mr. Lashbrook stated that if the plat had not been recorded, he could not sell one of the lots. Commissioner McKibbin expressed concern that the City by the agreement would take on the liability if a connection were made prior to payment to Double "C." Mr. Tatone stated that he could not connect to any of the sewer or water lines without getting a permit from the city. Commissioner Nicholson reminded Mr. Tatone of his statement that he didn't intend to meet one condition

without a court fight. Mr. Tatone stated that was only if he were asked to pay interest on the money. Commissioner Nicholson asked if this were legal. Chairman Kahut stated there was some doubt if the requiring of interest was ever legal. Mr. Kahut went on to say that he was waiting for a legal opinion of how the Commission was to continue. City Administrator Lashbrook told the Commission that what Mr. Tatone had proposed to the Commission would set a precedent for extending a plat another six months with the City. Chairman Kahut stated that the request appears to be for an extension of time. Commissioner Schrader expressed the opinion that with the extension enough time had been given to accomplish the needed paperwork on this plat, and that more time would not help. Commissioner Schrader moved to give final plat approval to the subdivision of Lillian's Meadow, applicants Ron Tatone and Gloria Ives, original date of application is April 14, 1986, and subject to all original conditions of approval listed on letter of October 6, 1987, and subject to four additional conditions which are: 1) Preliminary Title Report; 2) Certificate for bonding or other financial security for required improvements to include the amount owing on the Clark Bargain and Sale Deed; 3) a certificate for the improvement cost estimate; and, 4) the subdivision development fee, which are all required by Section 16.68.0404 of the Municipal Code by October 15, 1987. The motion was seconded by Commissioner McKibbin. Chairman Kahut asked to go over the conditions again. City Administrator Lashbrook stated that aside from Clark Bargain and Sale Deed, the remainder were conditions required by ordinance not additional conditions. Discussion concerning the original conditions to which Mr. Tatone had answered in his letter of October 6, 1987, which was read by Commissioner Schrader. Commissioner Schrader stated that the motion was to include City Attorney approval as to form of the Offer of Dedication. Second concurred. The motion passed unanimously with the Chairman voting. City Administrator Lashbrook asked for clarification of the motion (if the motion gave Tatone six months while we held the plat). Commissioner Schrader explained it was the Commission's goal not to penalize Mr. Tatone for not having the little things done, but not to give a further time extension. Mr. Tatone asked if the Planning Commission meant the 14th and not the 15th and were including the settlement of the Bargain and Sale Deed as part of the requirements along with the construction cost. Mr. Tatone further stated that the Planning Commission has asked him to put up a bond for construction cost, or a line of credit; plus he is supposed to secure the Bargain and Sale Deed plus interest. Chairman Kahut informed Mr. Tatone that if he had worked it out with the client go ahead and sign the agreement and take both signatures into the City. Mr. Kahut explained that the Planning Commission was not telling him that he had to pay interest, if he has already made an agreement with the Clarks. Commissioner Nicholson asked if there was confusion over the date. Chairman Kahut stated that the Planning Commission should not bend the ordinances to help one person. Mr. Lashbrook stated that the 15th is beyond the eighteen months allowed, in answer to Mr. Nicholson's question. Commissioner Schrader corrected his motion to read 5:00 p.m. on the 14th. The second, Commissioner McKibbin, agreed to the correction. Commissioner Schrader moved for the same motion as he made originally with the exception that the date be changed to the 14th, as was before the Commission and the second (Commissioner McKibbin) agreed. The motion passed unanimously with the Chairman voting.

Request for preliminary plat approval of a proposed four-lot subdivision to be known as Willamette Valley Estates which is located in the northwest quadrant of N.E. 22nd and N. Maple Street. The applicant is Arthur R. Olsen. The staff report was given by City Administrator Lashbrook with a recommendation for approval, with the addition of sidewalks to the conditions of approval.. This is a newly annexed parcel in the City of Canby. Eldon E. Edwards, agent for the applicant, stated the staff report had been thorough, but he was available to answer questions.

Chairman Kahut opened the public hearing portion of the meeting and called for proponents. When no proponents came forth, he called for opponents. There being no opponents, Chairman Kahut closed the public hearing portion of the meeting.

After a short discussion, Commissioner McKibbin moved to approve the preliminary plat of Willamette Valley Estates to be located in the northwest quadrant of N.E. 22nd and N. Maple Street. This preliminary plat appears to meet the standards and criteria under Section 16.02.020 of the Canby Municipal Code as it does conform with the text and applicable map of the Comprehensive Plan, it complies with the zoning ordinance, and finally the plan, design and arrangements of the lots will be functional. This approval is subject to the following conditions: 1) The recommendation of Public Works Director Klem, noted in his memo of October 9, 1987, are to be regarded as conditions of approval; 2) Utility easements are to be provided, 12 feet in width along exterior boundaries (including streets) and six feet in width along all interior lot lines; and, 3) Sidewalks are to be constructed to City standards along both N.E. 22nd Avenue and N. Maple Street. The motion was seconded by Commissioner and passed unanimously with Chairman Kahut voting. The City Administrator requested that the Planning Commission note that exterior easements are twelve (12) feet and interior easements are six (6) foot in width. Chairman Kahut asked if he wished the motion to be stated over. Mr. Lashbrook stated that was not necessary as long the applicant understood the required easement width.

Findings of Fact and Conditions of Operation of a Nonconforming Use Permit on S. Elm Street, Larry Whitman applicant. Commissioner Harmon stepped down from his seat on the Planning Commission for this item, due to a conflict of interest. City Administrator Lashbrook explained that he written some conditions of operation and explained them to the Whitmans. Mr. Lashbrook stated that Mr. and Mrs. Whitman had not been in agreement with some of the conditions and that he had assured the Whitmans they would be able to address those conditions tonight before the Planning Commission. Mr. Lashbrook explained copies of payroll records from 1963 and General Ledger of 1963, which Mr. Irwin had brought to City Hall for verification regarding the amount of construction activity which had taken place in 1963. Commissioner Schrader asked Chairman Kahut if he could bring some points regarding this issue before the Commission. Mr. Schrader stated that he had serious concerns and major problems with the appeal of the business license that came before the Planning Commission at the last meeting.

His primary concern was the way and why the business license came before the Commission. Particularly, because it was a nonconforming use and there was no public hearing involving the people. Mr. Schrader explained his second problem was deciding the degree of nonconforming use based on the use twenty-five years ago. Mr. Schrader went back to his first concern, regarding a public hearing, the Comprehensive Plan is explicit - the first element of the Plan is Citizen Involvement. Mr. Schrader feels that one of the major projects in the Comprehensive Plan and implementing ordinance was to reduce the amount of public hearings, but does not want to see them reduced to none. Commissioner Schrader asked if the business license process superceded the Comprehensive Plan and Zoning Ordinance. Further Mr. Schrader expressed the feeling that the business license was incorrectly appealed. Commissioner Schrader explained that he had spoken with other jurisdictions concerning their procedure. Commissioner Schrader stated that business licenses apparently do not have conditions, but limitations of operations. He again stated his concern with using 25 years ago when the zoning went into effect for consideration of this operation. Commissioner Schrader stated that he had spoken with the City Attorney and all the cases to which the City Attorney referred did not involve a change of ownership. The way the Planning Commission has interrupted the nonconforming use it will never be phased out. Commissioner Schrader expressed his opinion that the most recent level of activity should be the level used for any new business. Although he feels that the proposed level of business is much less than what was occurring in 1963. Mr. Schrader suggested the Planning Commission reconsider their action. City Attorney Kelley stated that a discussion was held because case law had decided where jurisdictions did not have ordinances that specify a procedure for determining this type of situation. If an ordinance specifies a procedure then you follow the procedure specified in the ordinance. If the ordinance fails to do that then look to what the court has said in deciding whether or not you wish to allow a change in use or an expansion in use or a determine of whatever it might be. That's where the language that was quoted last week regarding a change of use was less intense. If an ordinance has a specific procedure you follow that procedure, if you don't you let the courts say what procedure is to be followed. Commissioner Schrader felt that since you work towards trying to eliminate certain types of uses from a zone, then you set that type of standard when considering that type of use. Commissioner Schrader expressed that change comes under the nonconforming use and should be discussed as such. The City Administrator stated that the City Attorney, Commission, or himself should address Commissioner Schrader's points one at a time. At the time the action was taken, it was the City Administrator's opinion that it was a planning issue and therefore should come before the Commission. Discussions on the ramifications of how this came back to the Planning Commission as a denial of a business license followed.

Attorney Kelley told the Commission that they could hold a public hearing although there is nothing in the ordinance requiring a hearing for these types of appeals.

Commissioner Nicholson moved that the findings of fact were not adequate as presented and there is a need for public input and evidence. This

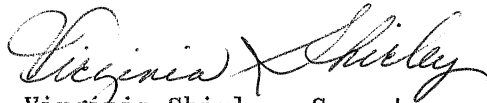
should come back before the Commission with a public hearing. The motion was seconded by Commissioner McKibbin and passed unanimously with Chairman Kahut voting.

Commissioner Harmon rejoined his fellow Commissioners.

Findings of Fact for zone change from R-1 to R-1.5. Applicants Shirley McCarter and Melvin Reeves. The findings of fact on the McCarter zone change were presented. Commissioner Nicholson moved to adopt the findings of fact on McCarter zone change as presented. The motion was seconded by Commissioner Schrader and passed unanimously with the Chairman voting.

This meeting has been recorded on tape.

Respectfully submitted,


Virginia Shirley, Secretary
Canby Planning Commission