

Canby Planning Commission
Regular Meeting
November 23, 1987

MEMBERS PRESENT: Vice Chairman Schrader, Commissioners Harmon, Lindsay, Nicholson, McKibbin, and Seale (Tardy)

MEMBER ABSENT: Chairman Fred Kahut

OTHERS PRESENT: City Administrator Stephan Lashbrook, City Attorney John Kelley, Esther Nelson, Agatha Andrus, Gordon L. Ross, Ted Driery, Roger and Margaret Weinkauff, Mike Clancy, Tim Davis, Butch Olsen and Jim Millar

Approval of Minutes: The minutes of October 12, 1987, were amended as follows: pp 2, strike the sentence beginning "A reasonable alternative . . . to the agreement, to read: A reasonable alternative is to add the normal cost estimates and the payment plus interest due of the Bargain and Sale Deed." Delete the next sentence beginning "The action of connecting . . . and replace with the following sentence: "The action of connecting to those services will be a cost along with other costs and everything should take place according to the agreement." pp 3, close to bottom of page page change "the client" to Double "C" he should. pp 4, the motion was seconded by Commissioner Harmon. pp 5, change "interrupted" to interpreted. The minutes were approved as corrected. The minutes of October 26, 1987, were corrected to add an explanation of Commissioner Schrader's vote of nay to the motion. Commissioner Schrader noted that he voted "nay" because he felt that it was not appropriate to review this proposal in the light of uses present in 1963. The minutes were approved as corrected.

NONAGENDA ITEMS - Esther Nelson spoke to the Commission concerning the meat smoker located in the building next to her parents building (parents: the Andruses) which she considers a zoning violation. This business is located on N. Grant Street and her parent's building is located at the corner of N.W. Third and N. Grant Street. The adjacent business known as Fisher's Meats was originally operated by her parents as "Canby Frozen Food Lockers." During that time there was no meat smoking done on the premises. They sold to Mr. Matson in 1976 and in 1984 he installed equipment to smoke meats. Since that time there has been illness in the adjacent building, Canby Tour and Travel. Ms. Nelson stated that they feel this is directly related to the meat smoker. As she interpreted the zoning ordinance, the processing that takes place (meat smoking) should be done in an industrial zone, not a commercial zone. This appears to be in violation of that portion of the Comprehensive Plan dealing with air quality.

The smoke is exhausted above the building and depending on the wind it seems to settle on the Andrus building which has three rentals. The employees of Canby Tour and Travel have had a history since the smoking began of eye irritations, diarrhea, and started with headaches unexplainable in 1984 when the smoking began. They began to suspect the smoking. The operation ran for approximately two years and Mr. Matson

went out of business. There was a period of about nine months when the meat smoker was not operating. During this period of time there was no problem with the health symptoms. Having logged all this, Ms. Nelson and family feel there is a relationship to the smoke coming from the adjacent building. Two workers at Canby Tour and Travel have filed Worker's Compensation claims and are off the job. She said that Canby Tour and Travel is being forced to move and will be moving the first part of December. She said that it is intolerable to work in that space. Ms. Nelson stated that she and her family requests the Commission to investigate and review. This leaves the family with a vacant business and the plans they have for the lot on N.W. Third can not materialize until this is resolved. Vice Chairman Schrader asked if they had the report of doctors who had examined the people filing claims with the state. Commissioner Harmon asked if anything had been done to relieve the problem. Ms. Nelson stated that Mr. and Mrs. Davis of Canby Tour and Travel had had work done on the ventilation system and also the smoke stack had been raised. Mr. Fisher has been doing his smoking at night, which has had a moderate effect, but it still tends to be a lingering problem. Vice Chairman Schrader stated that it sounds like it needs investigation, and asked what the City could do? City Administrator Lashbrook informed the Commission that the problem was not new to the City staff. He became aware of this early on - probably in 1984. Katherine Davis requested he join them in the building when this was happening. Mr. Lashbrook stated that he went over to the building and upon entering became sick within a matter of minutes. Mr. Lashbrook further indicated that he was aware of the records they have kept, that the problem has been at its worst when the smoker is in operation next door, and they apparently did not have a problem during the time there was no smoking taking place. Mr. Lashbrook informed the Commission that he had been able to get people from the State Health Division, State Accident Prevention Division, DEQ, and City officials together with the Davis's, the Fishers, and their respective attorneys to attend a meeting at City Hall. The problem from the City's standpoint is that although circumstantial evidence makes it clear that you can tie the occurrences together, the City doesn't have any kind of evidence that the smoke is toxic and what is causing the problem. Mr. Lashbrook stated further in his opinion the smoker was not a zoning violation as it is an accessory operation of the same sort as is being conducted in other commercial locations without apparent problems. Mr. Lashbrook stated that he had spoken to people from the meat operations of Safeway Stores that have smokers in commercial locations in Lake Grove and Lake Oswego. Both of these smokers burn alder chips and seem to be about the same as Fisher's operation. He also spoke to a City Planner from Lake Oswego who did not know of any problems existing and stated that Safeway had not gone through any special permit process. This was regarded as an accessory use. He pointed out to Mr. Lashbrook that the Safeway store also had a flower shop and a deli inside that weren't there when the store opened but they also are considered as incidental accessory uses of the store. At this point, Mr. Lashbrook stated the staff was waiting to see what the State had found out from their tests. Mr. Lashbrook stated that if the City were to shut down Mr. Fisher's operation, the City does not presently have good grounds to support the closure in court.

City Attorney John Kelley stated that there were two issues that needed to be addressed. The first one being the question of whether or not such a use was an allowable use in a downtown commercial zone. Mr. Lashbrook spoke with Lake Oswego's planner and he (Mr. Kelley) had spoke with the Lake Oswego City Attorney. Mr. Kelley went on to say that he and the Lake Oswego City Attorney were in agreement that the smoker would be an accessory use to a downtown commercial use and would not be considered an outright violation of the zoning ordinance. Mr. Kelley said the second way to treat the use would be in terms of nuisance abatement. Mr. Kelley further stated that he doesn't feel the City has enough cause and connection to initiate an abatement proceeding in circuit court. Mr. Fisher will not voluntarily abate the smoker. The City would have to initiate and prosecute and Mr. Kelley doesn't feel the City has the necessary causal connection at this point to start those proceedings.

Commissioner Schrader asked what else was needed, as the City has the medical evidence. Mr. Kelley stated that the medical evidence doesn't say "The allergy is caused by the irritant emitted from Fisher's Meat." This could be a combination of things. The gentleman from DEQ pointed this out. As pointed out at the meeting, there could be other factors that get together to create the problem, not just the smoke.

Commissioner McKibbin stated that he had been into Canby Tour and Travel and wanted to know what else could react with smoke and tar to cause the allergy. Mr. Kelley stated that he did not know, but the experts indicated that they could not say. The experts wanted to do a broad spectrum analysis. Mr. Kelley asked if this had been done. Tim Davis answered that the broad spectrum analysis had not been done. They had not brought all the equipment they would need. Commissioner Schrader stated that he thought it was quite costly to perform all these tests. Mr. Kelley stated that there were three or four things they wanted to eliminate. Commissioner Harmon asked if the allergy was seasonal. Ms. Nelson stated that there seemed to be some connection with the weather conditions.

Commissioner Schrader asked how they got a Workmen's Comp judgment on Canby Tour and Travel, and yet it can't be proven in court. City Attorney Kelley stated that the conditions in Canby Tour and Travel can not be disputed, the question becomes what caused the condition inside Canby Tour and Travel that contributes to these people's illness. The City Attorney went on to ask if it was just Fisher's Meat or a combination of conditions already existing in Canby Tour and Travel coupled with the smoke from Fisher's Meat. Commissioner Schrader stated that he had justified some other toxic cases and its been situations where these substances break down so rapidly that you can not find them either in the tissues of the animal which has died or ground water, soil, or leaf analysis unless its done within a specified period of time and then its like a shot in the dark. Those cases have been tried fairly successfully if the clinical signs of the individuals involved are pretty classic and systematic to that particular type of condition. Commissioner Schrader went on to say that he thought the Planning Commission should pursue this matter in some manner. Commissioner Harmon read from the Municipal Code book Section 16.32.010.

Commissioner Harmon went on to ask if D.E.Q. could be asked to test on the basis of our ordinance requirements. City Attorney Kelley asked if a reading wasn't taken from the smokestack. Catherine Davis stated that was one which Canby Tour and Travel was awaiting. Commissioner McKibbin stated that he worked for Safeway for eight years as a meat cutter and smoked alot and unless it is clean that will build up and you will always have a problem. Commissioner McKibbin stated that he had had an opportunity to see the operation and that all of the equipment existed that existed when he was processing meat. Commissioner McKibbin stated that as far as he was concerned the meat smoking operation should be located in an M-1 zone. City Attorney Kelley asked for explanation of the difference between meat processing and what Matson (former owner) did. Commissioner McKibbin stated that the difference between food processing is that he had the equipment to make links sausages, to make sausage. Mr. Kelley asked if he hadn't been processing food since prior to zoning. Commissioner McKibbin stated that cutting and wrapping is not processing. In 1984, Mr. Matson put in equipment to go into full processing. Mr. Kelley asked if Mr. Matson had made sausage or links before that time. Commissioner McKibbin stated that he might have made sausage by hand. Catherine Davis stated that Mr. Matson had bought the building in 1976 from her parents. Mr. Andrus stated that it was a shame that his children have to move to another building, when he had built this building a long time ago. He said that this business all started from the smoke, no matter what anybody says. Commissioner Lindsay asked the City Administrator if he had received any other complaints, like from Parsons Drug Store or across the street. Mr. Lashbrook stated that he believed that Catherine's records show one other person in the building had become sick, but the city has not received any other complaints. Ms. Nelson stated the family believes this is because of prevailing wind patterns. Commissioner Lindsay then asked Ms. Nelson if she was aware of anybody other than in their immediate building. Ms. Nelson stated that she was only aware of the party in the building who has had it. Commissioner Lindsay then asked Catherine Davis if any customers had commented on the odor. Catherine Davis stated that she could not smell it but could sense what it is doing to her body. She stated further that she can smell the smoke smell out on the sidewalk and once in a while she smells something in the office, but that she can feel it in her body. Tim Davis, stated that the agencies have always expressed that it was up to them (the Davises) to get rid of whatever it was that is causing the illness.

Commissioner Schrader stated that he felt the City should take two actions. The City should ask D.E.Q. to come in and do some testing. Secondly, some sort of workshop session should be held to deal with air quality control. Mr. Kelley stated that the city has had D.E.Q. out here and you couldn't pin the man down, he would not guarantee to do anything. City Administrator Lashbrook stated that if the City was going to embark on an abatement program, in effect shut down somebody's business, and tell them it was a zoning violation the City Council would be behind that decision. City Attorney Kelley told the Commission that although the ordinance states we are to monitor air quality control, the question is how to get somebody to do it, when they don't want to it. Commissioner Schrader stated that the City should have a contract with an outside agency to do the testing. Commissioner McKibbin stated that

Metro also has a section that does air testing. City Administrator Lashbrook reminded the Commission that we are outside of Metro's boundaries. Also, the USDA also checks these items. Catherine Davis explained the period of time each of her employees has been off work. Ms. Nelson stated that the City had been responsive since the beginning and that she should have explained that before. Commissioner Nicholson stated that if this is a health problem and we can't get D.E.Q. to help, then the City should find someone else to help. Given that this is a health problem, it is the kind of thing the City could/should spend some money on.

Request for preliminary approval of a planned Unit Development Subdivision on 2.4 acres of land located north of the County Fairgrounds and west of N. Pine Street. This property is described as Tax Lots 901, 1100, and 1200, Section 33AD, T3S, R1E. The applicant is Arthur Olsen and his representative is Eldon E. Edwards. City Administrator Lashbrook presented the Commission with letters from Jim Millar (owner) and Bob Rapp (Canby Utility Board). Mr. Lashbrook gave the staff report and made a recommendation for approval subject to conditions and pending information secured at the public hearing portion of this meeting. Mr. Lashbrook went through the list of proposed conditions with the Commission. Vice Chairman Schrader asked the applicant if he had anything to add to the staff's report. Mr. Edwards stated they would speak after the public hearing portion. Commissioner Lindsay asked if Mr. Lashbrook had checked the lot sizes and did they meet the ordinance requirement for square footage. Mr. Lashbrook stated that the application was in an R-1 area and means that average lot size has to be seven thousand square feet. In taking the Planned Unit Development approach and without public streets, the formula the staff used was to take the total area of the property involved and divide by 7,000 square feet to determine the total number of lots. The intention of the Comprehensive Plan was to allow the properties on the north side of the Fairgrounds to be upzoned to R-1.5. In this instance, upzoning was not a requirement. Commissioner Harmon asked if this was similar to Canby West. Mr. Lashbrook stated that it was similar. The owner's own their own unit but they are jointly responsible for the maintenance of the common area. Mr. Edwards stated that they would be sending the sketches of units that would fit onto properties of the proposed sizes. Mr. Edwards went on to say that the drawing before the Commission at this time were preliminary and will take some time before final drawing are ready. Mr. Edwards informed the Commission that he and the applicant had gone through the conditions proposed by the Planning staff. The only concern was the easement for the sewer line and he was designing that into the plan. Also, within the design Mr. Edwards stated that he is trying to save some special trees. Parking seems to be the main problem. Mr. Edwards wants additional parking in front of the garages. If RV parking is a requirement, the entryway can be shifted and RV parking put in that area. Mr. Edwards stated that of particular importance to the development is the ability to use zero lot line in order to have the open space on the other side of the lot. Commissioner Lindsay asked if the common area or open space would be used exclusively by this development. His other question regards parking, the developer say each house will have a double car garage and a space in front, and what the space in front would be used for. Mr. Edwards said that there

was a space between the garages and that was the space they were referring to. Commissioner Harmon asked if each lot would have one-thirteenth ownership of the common area. Mr. Edwards stated that he was right. Mr. Edwards stated that he would like to designate the common area as recreation space, but not design it at this time. Vice Chairman Schrader asked when Mr. Edwards expected to do the design work. Mr. Edwards stated he would ask prospective buyers what their desires were. Vice Chairman Schrader asked about the hammerhead on the west side - any problems in negotiating the turns. Mr. Edwards stated there would be no problems, and that he had spoken to the Fire Marshal and he had indicated that one fire hydrant near the entrance would be all that was required. Commissioner Nicholson expressed the opinion that the drawings which they had before them were not adequate. Mr. Lashbrook stated that the Commission did need to conduct a public hearing, but after the public hearing the Commission could tell the applicants what additional information was needed in order to make a decision on the application. The applicants could then bring the requested information to a future meeting. Vice Chairman Schrader opened the public hearing for proponents of the application. There being no proponents, he called for opponents.

Margaret Weinkauff, 869 N. E. Tenth Avenue, stated her concern was for traffic. Claimed Tenth Avenue was a race track and asked how it would increase with thirteen more homes. Mr. Lashbrook stated that the average for a single family dwelling is approximately seven vehicle trips in and seven vehicle trips out. There will be more traffic.

Roger Weinkauff asked about street improvement. Mr. Lashbrook stated that the only part of N.E. Tenth that would be improved is the small entrance and exist piece they will own.

Vice Chairman Schrader closed the public hearing portion of the meeting. Commissioner Lindsay stated that he felt it was a good project for this property, but the Commission needs more time to go through the details of the PUD. Commissioner McKibbin stated that in the future he wanted all details shown on the map, but felt that if the Commission adopted the 13 conditions of approval it would cover the problems. Commissioner Harmon stated that he would like to see the Planning Commission have some input into the bylaws, covenants, and conditions/restrictions on the property. His main concern was the common area. Commissioner Harmon wanted to see the common area improved prior to occupancy. Mr. Edwards stated that the improvement was anticipated both in landscaping and whatever equipment goes in. Discussion followed regarding fencing, backyards, and setbacks into backyards. Commissioner Nicholson stated that the common area is being intruded upon by the buildings. There doesn't seem to be enough room on the lots. Commissioner McKibbin asked where sidewalk was being placed. Commissioner Nicholson stated that the cars would overhang the sidewalk placed in front of the houses. Gordon Ross expressed the feeling that the Commission should be looking at the concept tonight. Vice Chairman Schrader asked for further explanation as to the problem with excavation of the existing mound. Mr. Lashbrook stated that he couldn't be sure of the amount that existed on the applicant's property. Commissioner Harmon asked if this could be worked out with the neighbors. Mr. Lashbrook stated that he was sure it could.

Vice Chairman Schrader asked how they would be removing the house on Tenth. Mr. Lashbrook answered by saying that it was the easiest way for the City to handle the removal problem. Vice Chairman Schrader stated that he wanted to go through the requested conditions of approval for any changes the Commission may want to make. Vice Chairman Schrader read each of the proposed conditions. Nos. 1, 2, and 3 were approved as written. No. 4. Covenants and by-laws of the homeowner's association are to meet the requirements of the City attorney to assure that private improvements within the development will not become the responsibility of the City for maintenance and replacement. No. 5 is to be changed to require parking signs or indicate where parking is allowed.

Commissioner Lindsay expressed the desire to see the parking within the open space to be limited to a percentage of the open space.

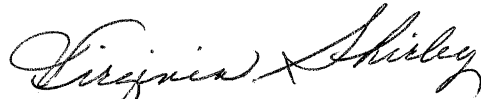
Commissioner Seale stated that he wanted to see it all kept as open space, not RV parking. Mr. Edwards stated that could eliminate RV parking altogether. Mr. Ross stated that with the small lot sizes and most of these people will be first time homeowners, some provision should be made for parking. Commissioner Harmon stated that anytime you have additional parking, they will be parking junk which takes away from the aesthetic value. Commissioner McKibbin stated that at Charbonneau the overflow parking is used by guests and maintenance people. If we don't leave people room to park, they will be parking on 10th Avenue and that isn't safe. The Commission didn't have any problem with Nos. 7, 8, and 9. Ten, eleven and twelve were discussed and a final decision will be made at the next meeting.

Commissioner Nicholson stated that the way this proposal was laid out would lend itself to solar access. However the houses that could use solar access are oriented north-south rather than east-west. Mr. Edwards questioned Commissioner Nicholson on what had to be done. Commissioner Nicholson explained and informed him of additional material on solar access that was available.

Commissioner Lindsay asked the applicant to bring back plans for removal of the pile of dirt which now exists on the property. Commissioner Lindsay wants assurance that the adjacent properties will not be affected.

This meeting has been recorded on tape.

Respectfully submitted,



Virginia Shirley, Secretary
Canby Planning Commission