

CANBY PLANNING MEETING
REGULAR MEETING
MARCH 12, 1990

1. ROLL CALL:

Present: Chairman Schrader, Commissioners Weigand, Bear, Lindsay, Nicholson, and Zieg. Absent: Commissioner Meeuwesen.

Others present: Rusty Klem, Ron Tatone, Paul Morris, Cheryl Pacholl

2. MINUTES:

3. COMMUNICATIONS: There were no communications brought before the Planning Commission.

4. UNFINISHED BUSINESS:

5. BUSINESS FROM THE AUDIENCE: None

6. PUBLIC HEARINGS:

(A) MLP-90-02 Request for approval to divide a 7.26 acre parcel into three lots containing 8,500 square feet, 8,500 square feet, and 6.87 acres respectively, on property identified as Tax Lot 300, Tax Map T3S-R1E, Section 32 A including a portion of N. Ash Street. The applicants are Ronald Tatone and Gloria Ives.

City Planner Skinner presented the staff report stating that Mr. Tatone and Gloria Ives have been systematically dividing two parcels off of a parent parcel of land on an annual basis. The staff report is similar to those seen in the past with one modification. Major partitions are normally classified as partitions that involve the creation of the street. In this case, the property already does front on a public street. There is additional dedication required through this partition process, but technically it is a minor partition. The 7.2 acre parent parcel has been reviewed under both the minor partition process and through a subdivision review at some point in the past. The subdivision was never finalized in a plat form, but the division of these properties is consistent with an overall plan to develop both this property and the property immediately west of it. Mr. Tatone has left areas to extend public right-of-way west from 9th 11th to complete a loop through both his property and the property west. Each of the lots that he is creating are in excess of the minimum lot requirements for the City in an R-1 district, subject to the requirements for street, sidewalk and curb improvements. Staff concluded that the application met criteria for approval.

Commissioner Lindsay stated that this is Mr. Tatone's third partition, the first one being in 1988, another one being in

1989, and now this one. The prior two have had conditions, and he wanted to know if the applicant had complied with the conditions set forth in those prior partitions. In particular, has the applicant built a pedestrian pathway from N.W. 12th to N. Ash? Also has Mr. Tatone, reimbursed Marty Clark for public facilities improvements as required in the earlier subdivision?

Public Works Director Klem informed him that the pedestrian pathway exists right now. There is a pedestrian easement through there. It's not all fenced and paved as it was intended to be eventually, but the pathway exists. Mr. Klem also stated that Ron Tatone had paid the necessary reimbursement to Marty Clark.

Commissioner Lindsay also wanted to know if there was an offer of dedication in writing for N.W. 9th. He stated that he felt the next partition would probably take in N.W. 9th.

Mr. Klem stated that there was not an offer of dedication in writing on N.W. 9th, but that staff is following the subdivision application that came in three years ago as a master plan of sorts and anything that varies from that will get a different staff recommendation than what the Planning Commission has before them now.

Commissioner Lindsay stated that he would like the Planning Commission to consider adding a ninth condition to the staff report which has been submitted on this minor land partition. That ninth condition would require an offer of dedication of N.W. 9th from Ash to the west boundary of Mr. Tatone's property. He wanted Mr. Tatone to respond to this proposed ninth condition.

Commissioner Nicholson noted that under Recommendation No. 3 it states full street, sidewalk and storm drain improvements to City standards are to be constructed along the street frontage of Parcels IV and V. He asked that the numbering be clarified as it appears that the numbering should read Parcels VI and VII.

Mr. Skinner agreed the parcel numbers on Recommendation No. 3 should be amended to read Parcels VI and VII.

Chairman Schrader stated that Parcels IV and V do not have those improvements. There is no sidewalk there.

Mr. Klem said that sidewalks are typically done when a building permit is taken out so that the delivery trucks and construction trucks don't break the sidewalk up when they deliver materials.

Commissioner Nicholson asked if the one-foot reserve strips to be dedicated to city are necessary at each end. He felt the only ones needed are those that are not abutting the already developed parcels because we already have one at that end.

Mr. Klem said Mr. Tatone is only doing one parcel at a time. It doesn't mean a whole lot in this case, but it is a matter of practice that one-foot reserve strips on the end of the street is

a good idea to prevent access on an adjacent parcel from an improved public street. Something must be done if you are going to develop off the end of that street that will encourage you to plat or go through the partition process in order to remove that one-foot strip. Once you dedicate it then the City owns it, and the only way you can get it removed is to go through a City process.

Chairman Schrader opened public hearing portion.

PROPOSERS: The applicant, Ron Tatone, stated that he had read the staff report and the recommendations and had no problems with them. The recommendation that there be no building permit allowed on the future right-of-way for N.W. 9th takes care of Commissioner Lindsay's question of future right-of-way so you have that protection. He stated that he was following the rules and regulations set out by the ordinances in minor partitioning, and just from a simplification of doing the drafting and dedicating the street right of way, he understood Rusty's reasoning for having the one-foot strip at the end of the street. That's normally the case where you are butting against another tax lot or future extension of the street. In this case where you have access to that strip on all sides, it doesn't seem necessary. He prefers that that be deleted, but it doesn't make any difference. It is just another step when the street is extended that portion has to be dedicated. He asked if the Planning Commission was aware of the new rules and regulations that have changed in minor partitioning since the first of January. The new state law for partitions is essentially the same as if you were doing a plat. He said that the street dedications have to be right on the plat so there won't be a separate document dedicating the streets. The county will issue a partition plat number, and the county will put that number in there. It will look just like a normal subdivision plat with the exception you will no longer have a metes and bounds description for each parcel. It will be referred to as Parcel 4, Parcel 5, etc.

OPPOSERS: None

Chairman Schrader closed the public hearing portion.

Commissioner Zieg moved to approve the minor land partition of property described as Tax Lot 300, Tax Map T3S-R1E, Section 32 A, as it meets all the criteria for approving a minor partition and subject to the following conditions:

1. Utility easements are to be provided having a minimum width of twelve (12) feet along all street frontages. Easements along interior lot lines are to be as specified by the Canby Utility Board or the Canby Telephone Association.

2. All recommendations of other agencies are to be regarded as conditions of approval.

3. Full street, sidewalk and storm drainage improvements to City standards are to be constructed along the street frontage of Parcels VI and VII. One-foot reserve strips dedicated to the City are to be provided at each end of the new street improvements, to prevent access from the unimproved areas.

4. Dedication of property for street, sidewalk, and utility improvements is required for Parcels VI and VII. The form of this dedication is to meet the requirements of the City Attorney.

5. Street, sidewalk, sewer and storm sewer improvements are to meet the requirements of the City Public Works Director.

6. Street lights, electrical system and water system improvements and hydrant locations to meet the requirements of the Canby Utility Board. The local Fire Marshal's requirements for hydrants and water line sizing shall also be observed.

7. A waiver of the right to remonstrate against future local improvement district formation is required to be prepared and recorded at the owner's expense. The form of this waiver is to meet the requirements of the City Attorney.

8. No development on Parcel I is to take place in the proposed right-of-way for N.W. 9th Avenue.

The motion was seconded by Commissioner Lindsay. The motion passed unanimously.

(B) MLP-90-03 Request for approval to divide a 24,377 square feet lot into two lots containing 7,987 square feet and 16,390 square feet respectively on property identified as Lot 3 of "Wygants Addition Annex," 941 S> Fir Street, Tax Lot 7735, Tax Map T4S-R1E, Section 4BD. The applicant is Barbara Kemp.

City Planner Skinner presented the staff report stating that this application for partition is on property that is currently developed. It's an oversized lot with some unusual characteristics. Access is gained from a street east of the residence, S.

Fir Street. The partition proposal is to divide the northern section of the property, removing an existing outbuilding that would be over the property line, creating a new line that would front along S. Fir Court. There is no access to the residence at this time from S. Fir Court. All access is gained from Fir Street to the east of the property. One of the concerns of the fire district as well as the police department was that the flag lot for the driveway section that runs east from the property to S. Fir Street not be used as a means of access to the newly created parcel. The owner of the property directly north of this came in and expressed some interest in this division of property. He has made some modifications to his residence that could have some impact on development of both these properties, a porch and stairway down close to the property line on the south side of the northern lot line. Mr. Skinner explained to him at that time that the parcel was within the minimum square footage and met the frontage requirements, for all intents and purposes it was standard division of land. That individual was not in the audience so apparently his concerns were expressed only in passing. As has been the City Council's policy with newly created parcels, or parcels that are newly developed, staff is recommending along with its approval that the full frontage of both parcels be improved with sidewalk. At the present time it is not. Staff's recommendation is that full frontage be improved since it is development of a new parcel. Other than that, the standard requirements for meeting the county surveyor's partition plat standards, properly recording and providing us copies of recordation and creation of the new parcels, staff has recommended approval.

Commissioner Nicholson asked if the setbacks would be met with respect to the existing codes. What was the side yard and what was the back yard?

Mr. Skinner said that in our ordinance, the point where access is gained is the front yard. Because of the size of the lot, there will not be a problem either way because of the residential single family district. They are keeping the ten-foot sideyard on the north, and they are well in excess of the twenty-foot requirements off either street. Typically a secondary or side street setback can be reduced to fifteen for a two story house, but this residence sits well into the lot. Additionally, the new parcel meets the minimum frontage requirements, and with some attention to the design of the floor plan for a new residence, they can also remain within the limits of the setbacks.

Chairman opened the public hearing on this application.

PROPONENTS: Pete Kelley spoke in favor of the minor land partition application. Mr. Kelley is from Kelley Brothers Realty and represents Barbara Kemp. Mr. Kelley stated that he complies with the staff report except the sidewalk recommendation. The problems with the sidewalk recommendation at this time are two: 1) The frontage of Tax Lot 7735 fronts on Fir Street, whereas Parcel B fronts on Fir Court, and the sidewalks, generally speaking,

normally front on the front of the property. 2) By improving the sidewalks on these two lots, it will be the only two lots on this street that would have sidewalks. They are not against going ahead and putting the sidewalks in but would like to have everyone on the street have sidewalks, not just these two parcels because they are useless otherwise.

OPPONENTS: None

Chairman Schrader closed the public hearing on this portion.

QUESTIONS BY THE COMMISSIONERS:

Commissioner Nicholson questioned the findings and conclusions to Number 4 asking if the access to be ruled out will be from S. Fir Court. Would the access be from S. Fir Court or S. Fir Street.

Mr. Skinner stated that access to the new lot will be from S. Fir Court. The police and the fire department both asked that it be addressed and accessed from S. Fir Court and that it not be provided for access along the flag lot. If they want to set up a private arrangement for an easement, that's not a problem, as long as it is addressed and accessed primarily from S. Fir Court.

Mr. Klem pointed out that in our ordinance it states if two lots are going to use one driveway, they have to have a reciprocal agreement that has to be recorded. One lot owner cannot foreclose the other lot owner's use.

Mr. Skinner asked the Planning Commission if they wanted a condition requiring the applicant to orient the residence and access primarily from Fir Court.

Chairman Schrader thought that would be an easier wording and asked Mr. Kelley for his comments.

Mr. Kelley commented that right now there is not an easement. Ms. Kemp's intent is not to have any easements on it. Her frontage is on Fir Street, and the access to the new lot will be from a driveway off Fir Court so that is not a problem. The proposed partition includes a slight angle at the existing driveway that may give you a misrepresentation that access comes off the flag lot strip. Their intent at this time is to try and square it off with the neighbors on the left so it will look square. It's not going to be used as an access for anything.

Mr. Skinner asked if there will be a minor adjustment to Tax Lot 7736 as well.

Mr. Kelley stated that there would be just a lot line adjustment.

Commissioner Lindsay thought the conditions should state that access to Parcel B should be off S. Fir Court.

Commissioner Nicholson asked if the City could enforce the sidewalk requirement since this is not a new development.

Mr. Skinner stated that when there is a change in land use, a division of property or a new development, it becomes a new development. He pointed out that it does create something of a patchwork of sidewalks. The City's intent is to have all of those public rights-of-way improved with sidewalks at some point. What the City has tried to do is get it when they have an opportunity to do so, either by creating a new lot or developing a new lot.

Commissioner Nicholson asked if Fir Court is close to being fully developed now or are there a lot of openings left?

Mr. Klem stated that this is the last one on the street.

Commissioner Nicholson commented that since we are not expecting to see any land use applications come through, there probably would not be other opportunities to get sidewalks in there.

Mr. Skinner agreed that through this process, no. The rest would probably have to be done through an LID or some other formal public improvement process.

Commissioner Nicholson wondered if just a waiver of remonstrance rather than requiring the sidewalks per se would be better here.

Mr. Klem stated the waiver of remonstrance is associated with the formation of a local improvement district. Another way to get sidewalks would be to expand that condition in the zoning ordinance that under certain conditions, such as anytime you do over a certain dollar value of improvements on your house, then you have to put in sidewalks. The City has that on businesses now. You could also have as a condition that at such time as the city deems it necessary, we can go to the property owner and say now is the time, we are calling in our condition. It would become part of the tax lot file.

Commissioner Nicholson stated that this is essentially a postponed sidewalk.

Mr. Skinner asked if this would be legal.

Mr. Klem said yes, it would be legal since it is just one stretch of the street. When we get some other sidewalks in there, as a way of getting more and more sidewalks in, we could approach the property owner and say now is the time that you have to pay up on this condition that was put on this lot partition.

Chairman Schrader questioned whether it would have to be excluded from any other LID responsibilities if that was the way it was approached.

Mr. Klem agreed.

Mr. Skinner wondered how this could be done with two property owners or multiple property owners.

Commissioner Nicholson stated that it would probably appear as an encumbrance on the deed.

Mr. Klem stated that it is easier and simpler now, but the applicant's point is well made. It will be the only sidewalk on the street on that side at this time, but on the other hand, you have to start somewhere.

Commissioner Lindsay asked if there sidewalks on the other side.

Mr. Klem said yes, on most of them. This particular lot is part of a bigger lot. All four of the tax lots you see here was part of a bigger lot that got platted completely all the way around. It was a part that was left out. In fact, S. Fir Court wasn't even improved in front of this house except as an afterthought that was done as part of a major partition some years after the rest of it was platted all the way around it. It was part of an old farm house.

Chairman Schrader asked if Parcel A could be further partitioned at this point with the appropriate frontage and other requirements.

Mr. Skinner said that if we excluded the 2,000 square feet that make up the flag lot, it would be very tight, and that would have to be done in order to be responsible. That would take them down to 14,390, which would just barely make the 7,000 square feet minimum lot size.

Chairman Schrader asked if S. Fir Street would count with the 100 feet on the one side.

Mr. Skinner stated that we might have to give them a 20-foot credit on frontage for S. Fir Street. We would have to if they wanted to divide it because they couldn't meet the 120 feet frontage that would be required without it.

Chairman Schrader asked if he knew whether the existing house would have to go if that was the case or is it close enough to that one side that it would be all right. Would an east/west division leave the house intact?

Mr. Skinner stated the existing house is at the minimum setback--10 feet. There are several options. The first option would be sidewalks along the whole frontage. Option two is a waiver of remonstrance, and option three would be some sort of wording requiring sidewalks in the future.

Mr. Klem stated that the City put the same condition on the other two lots that face S. Fir Street when they came up for partition.

That is Tax Lots 7736 and 7737. They were required to put sidewalks in when they partitioned off. However, they are facing a different street.

Commissioner Nicholson asked about the sidewalk situation along S. Fir Street

Mr. Klem said there is alot of sidewalk along there. There is more sidewalk than just those two lots.

Chairman Schrader stated that the wording should be to the effect that the applicant will provide a new deed showing encumbrance for an improved sidewalk along Lots A and B, to be required at such time as other property owners are required to develop theirs.

Commissioner Nicholson moved to approve the minor partition of Tax Lot 7735, Tax Map 4 1E 4 BD as it meets all of the criteria for approving a minor partition and subject to the following conditions:

1. The applicant shall prepare a final partition map. The final partition map shall be a survey plat map, meeting all of the specifications required by the Clackamas County Surveyor. Said partition plat shall be recorded with the Clackamas County Surveyor and a copy of the recorded map shall be provided to the Planning Department. No building permits for the newly created parcel shall be given until the recorded map has been provided.

2. The shed which shows on the preliminary partition map shall be removed prior to the issuance of a building permit for the new lot.

3. New deeds and legal descriptions for the two new lots shall be prepared and recorded with the Clackamas County Recorder. Copies of the new deeds shall be provided to the Planning Department prior to the issuance of building permits for the new lot.

4. The applicant is responsible for installing sidewalks along the approximately 159.25 feet of frontage for S. Fir Court at such time as the property owners along the remainder of S. Fir Court construct sidewalks.

5. Access to Parcel B shall be from S. Fir Court.

The motion was seconded by Commissioner Lindsay. The motion carried unanimously.

(C) LLA-90-01 Request for approval of proposed Lot Line Adjustment on property identified as Tax Lots 401, 402, 500, and 501, Tax Map T3S-R1E, Section 32 A. The applicant is Greg Anderson.

City Planner Skinner presented his staff report on the above-reference matter. He stated that lot line adjustments are handled in a slightly different manner than divisions of property. This is a rather complicated lot line adjustment and involves a number of different tax lots. He stated that he had had many sessions with the individual who has been purchasing these tax lots. Greg Anderson is the primary initiator of this request. He is a home builder, developer and local resident who lives on a tax lot which is part of this proposal. In 1987, a partition was approved to create what shows as Tract 3 on the map. It is a flag lot with frontage on Knights Bridge Road. Through that process, a small tax lot that is undersized, and not configured so that it can be developed shows up in the northwest corner of this property. When Mr. Anderson came in, he was looking at an option to buy both the flag lot and the small parcel in the northwest corner and wanted to try to figure out a better way to configure all of these lots so that the development would have a higher value and would have more logical source of access. In 1987 when that partition was approved to create Tract 3 or what is shown in the solid lines as Tract 3, the south portion of Northwest Ash was dedicated. This is just south and east of Mr. Tatone's property. Traditionally, flag lots are a problem. They tend to become less valuable property, very often rental property. The fire department, police department and all emergency services have a terrible time with them because you can't find an address for them. Access is often difficult. They are not clearly visible from the right-of-way. Mr. Anderson's proposal is to eliminate the flag lot, reorient Tract 3, so that it has frontage along a curvilinear extension of N.W. Ash, and he believes the Public Works Department, with cooperation from Mr. Tatone over the years, has come up with a proposal to extend Ash in a curvilinear manner southwesterly, so that it connects up with the southern extension across Knights Bridge Road over time. A portion of that has already been dedicated as is shown on the map. The proposal is to expand that little nondevelopable piece of property up in the northwest corner, reorient what was the old Tract 3, so that it has frontage on N. W. Ash and gain access exclusively from there, and extend Tract 4 across the old partition, the old flag lot, to create a better lot along Knights Bridge Road. He believes that in the future the applicant will be requesting an additional partition of property to the west. You will notice that there is one unusual bend in what is shown as Tract 2 in the dash lines. There is a little 19' by 13.39' dog leg extending south from the proposed Tract 2. Mr. Skinner tried to get the applicant to just take the property line from N.W. Ash down to the corner point and eliminate that dog leg, but the buyer he has for that northwesterly tract would like to keep

that little dog leg in there so that he has a place to put his shed out of the view of his rear yard. He will be fencing around that and he has a shed for his garden equipment. There is nothing in the rule book that says you can't have a little dog leg in your property. As long as it's a portable shed, there should not be a problem with the six-foot utility easements. The reason that the Planning Commission is reviewing this tonight is that the revised Tract 3 as shown on this map will not have 60 feet of frontage on a public right-of-way, and it's not technically a flag lot which would kick in a separate set of requirements. The ordinance does not require that in lot line adjustments a variance be granted for a situation where a parcel doesn't have the same amount of frontage as required. It only says that you have the right to review it. It doesn't require a public hearing. Staff feels that these parcels are more in conformance with the standards in the configuration as proposed than they were before. Certainly that northwest tax lot is, and with adequate frontage on a public right-of-way, Tract 3 is a more logically designed property as well. The Planning Commission has the option to call a hearing on this if desired. Staff has made a decision, but the Planning Commission may want the opportunity to recall that decision and consider this at a public hearing on the lot line adjustment.

Commissioner Bear asked if this meant that Ash Street would be stubbed again.

Mr. Skinner stated that because of the design of the roadway, it is going to stretch down into Mr. Tatone's property before it connects with Knights Bridge Road. Knights Bridge Road intersects with Ash Street quite a bit west of the west line of this property. It's another 100 feet or 120 feet west of it. Actually, there is no additional dedicated right of way. The right of way has already been dedicated and accepted. There isn't any additional stubbing, but the road will not go all the way through. We would have to have Mr. Tatone dedicate the rest of that. That portion that shows on this map has already been dedicated through the 1987 partition. When the flag lot was created, Ash Street was dedicated as far as it shows. It's not improved, and they would have to improve it to get a building permit.

Commissioner Nicholson asked what were the constraints surrounding this short frontage.

Mr. Skinner said that the design of the driveway and access is going to be important. The one thing that made him feel comfortable with allowing a lesser frontage in this case was because it was on the outside of the curve. That would allow visibility at the point where the driveway intersects the street in both directions. If it were on the acute angle on the inside, he would be very uncomfortable with creating a lot with so little frontage but in this case, safety, which is the primary issue, would be maintained.

Mr. Klem stated that in all likelihood, eventually you will see the extension of that property line to the extended street.

Commissioner Lindsay asked who would be doing the improvements on the half street.

Mr. Skinner stated that they should require the applicant to obligate himself to make those improvements prior to building permits being issued on those lots.

Commissioner Lindsay asked how far the applicant would be required to improve and how much of the fifty foot right-of-way.

Mr. Klem said that it would have to be line with what is improved now which is 36 feet. From the center line east to existing Ash Street creates a 40-foot street without sidewalks. This is another case where you get a little bit of sidewalk where you can. It's 32 feet of street now. Mr. Tatone, on the other side, added another 18 feet.

PROPOSERS: Cheryl Pacholl, a neighbor of Mr. Anderson's spoke. She is at the very end of Ash Street in the very last house before the little piece of property that is in question. She asked why she had not been notified with regard to the lot line adjustment, particularly in view of the strange curve in the street taking place, and also what the value of the dog leg portion was.

Chairman Schrader stated that the strange curve was done awhile back in 1987, and that is not a new thing that the applicant's bringing up. The second question on the value of the dog leg situation in the lot line adjustment is what the Planning Commission is deciding at this time. The staff was operating under the idea that if the lot line adjustment met the basic four criteria, it would be just a staff type decision and would not require a public hearing.

Mrs. Pacholl felt that the dog leg portion did not make sense.

Chairman Schrader said the reason for it, as he understood it, was that staff thought it basically fit those criteria. There were a couple of concerns, the dog leg and the narrow frontage. If the lots are better shaped than they were before, and if the Planning Commission approves of the frontage, the staff report will be approved. If on the other hand, these questions seem to be pretty controversial, the matter will be scheduled for a Planning Commission public hearing in which case everyone would be notified.

Mr. Skinner stated that he had misunderstood and thought the right-of-way had been dedicated, but after checking further discovered that it was not. He asked to amend the staff's recommendation and to now recommend that the Planning Commission hold a hearing to require dedication of the right-of-way.

Chairman Schrader commented that he wanted to discuss at every opportunity the sidewalk issue where there is a possibility of getting sidewalks dedicated even though it may not always be agreed to.

Chairman Schrader closed the public hearing portion.

Chairman Schrader introduced Paul Morris to give one final report on the solar access ordinance workshop. Mr. Morris gave his presentation of which there are tapes available for review. The main points that he talked about were model ordinances which are available that deal with solar exposure, subdivision layouts, and house designs. Mr. Skinner and the Planning Commission will take these issues under consideration for ordinance revisions.

There being no further business to come before the Commission, the meeting was adjourned.

This meeting has been recorded on tape.

Respectfully submitted,

Wayne S. Klem
Public Works Director