

CANBY PLANNING COMMISSION
SPECIAL MEETING
MAY 31, 1990
7:30 p.m.

APPROVED

I. ROLL CALL

Present: Chairman Nicholson, Commissioners Bear, Lindsay, Zieg and Mihata.

Others Present: Rusty Klem, Director of Public Works; John Kelley, City Attorney; David Nelson, Ed Sullivan, Al Sizer, Butch and Lynn Olsen, John and Sande Torgeson, George Wilhelm, Marv Dack, Ed Dobbs and Lynette Robertson.

II. MINUTES

The Commission postponed reviewing the May 14, 1990 minutes until the next meeting.

III. COMMUNICATIONS

There were no communications from the City to consider.

Chairman Nicholson explained the public hearing procedures relative to the applicable criteria.

IV. UNFINISHED BUSINESS

John Kelley explained that he reviewed a letter submitted by Sande Torgeson, dated May 14, 1990, regarding the appeal of a staff decision dated May 8, 1990. This letter was submitted at the last meeting and, as a result, he dictated a memorandum to the Commission stating his views on that issue, recommending that the Commission take no action.

A discussion regarding the background of this issue was held. Mr. Kelley stated he had attached all of the background material concerning Ms. Torgeson's concern for the Commissioners to review. It was unanimously decided by the Commission to accept Mr. Kelley's opinion and advice to take no further action on Ms. Torgeson's letter.

V. BUSINESS FROM THE AUDIENCE

When asked if anyone in the audience had business to bring before the Commission that was not on the Agenda, nobody came forth.

VI.

PUBLIC HEARING

SUB-90-01, (Cedar Creek Development) a request to subdivide a 14.27 acre parcel that is zoned R-1.5, Medium Density Residential, with a Planned Unit Development overlay. Approval of a PUD with individual lot sales requires consideration as a subdivision. Tax Lots 800, 900, 1000, 1001 of Tax Map 4-1E-4C and Tax Lot 1000 of Tax Map 4-1E-4B. (Continued from May 14, 1990.)

Chairman Nicholson explained the procedures for testifying. He inquired if any members of the Commission had any ex-parte contact or conflict of interest. None was expressed.

Rusty Klem, Director of Public Works, explained that at the last meeting the staff report had been presented and proponents had testified. Due to a request at the May 14th meeting, both master plans are positioned on the board as a basis for comparison. Sande Torgeson had begun testimony in opposition, which was continued to this meeting. No new testimony has been submitted since the last hearing.

Opposition

Sande Torgeson, 34815 S. Dickie Prairie Road, Molalla, OR 97038 stated that she and her husband own the property immediately south of the subject property. Ms. Torgeson submitted copies of three official complaints which were filed with City Council regarding zoning violations and conditional use noncompliance on the subject property and asked that the evaluation of this proposal be suspended until those matters are resolved.

As neither the Commission, nor staff, has had the opportunity to review the complaints, Mr. Kelley recommended the Commission continue taking testimony and delay a findings on the application until the testimony has been reviewed. The Commission was in agreement.

Ms. Torgeson asked that the record show the Torgesons object to the continuation of the hearing without resolution of the allegations of zone violations and noncompliance with conditional use.

Continuing with her testimony, Ms. Torgeson addressed procedural questions. She requested that the written record show her objection to the applicant's failure to submit the required engineering report to the Commission. In the event of an appeal, Ms. Torgeson stated there could be a problem with what was and was

not in the record before the Commission. For the official record, Ms. Torgeson asked that applicant reference, or identify by name, each document that he is relying upon in the rebuttal. Mr. Kelley stated that the documents in the file would be inventoried and indexed and would be available to anyone who wished to reference the documents in order to file an appeal.

Ms. Torgeson requested that the written record show she objects to the refusal to list each document in the files. She further requested an interpretation of whether the apartments are a permitted use in the R-1.5 zone, or any residential zone, once the PUD overlay is applied. The Commission agreed they would respond to this request after taking public testimony.

Ms. Torgeson then asked for a clarification of the history of this property, with regard to previous approvals. It was her understanding that the requests included a zone change from R-1 to R-1.5, a minor partition, a conditional use permit for a residential concept with handicapped access for the elderly. She believed that what was actually approved was a zone change from R-1 to R-1.5 with a PUD overlay, a major partition involving the creation of a road, a master plan approval for a PUD project and a conditional use permit for an assisted living facility (approval of Phase I of the PUD).

Mr. Kelley and the Commission agreed that this portion of the public hearing was devoted to taking testimony and her questions would be addressed during deliberation. Ms. Torgeson asked that the record reflect her objection to the refusal of the Commission to address her procedural questions at this time, which deal with the history of the property prior to the consideration of this application.

With regard to the standards and criteria used to evaluate this proposal, Ms. Torgeson submitted a copy of the provisions for processing a subdivision application, summarized from the Code and an application checklist which lists all the items a subdivision and PUD application must contain. She challenged staff's contention that the application is complete and requested that Mr. Klem point out where the particular requirements of the application checklist are, that she has not seen.

John Torgeson, 34815 Dickey Prairie Road, Mollala reiterated that the Commission had requested Mr. Klem submit a copy of the engineering report which he had relied upon to recommend approval of the project. Mr. Torgeson stated that the engineering report Mr. Klem relied upon was not for the property in question, nor

was it commissioned for the purpose of excavation for building sites. He referred to the disclaimer on the engineering report. Since the proposal includes the removal of trees, stumps and brush on a steep slope to create a recreational area and excavation and removal of trees along the bank for residences, he questioned the level of structural strength after the excavation disturbance. He said the engineering report was used to fulfill the zone change condition was, in fact, ordered and paid for by the City of Canby. This report, he added, was for the sole purpose of evaluating the bank of Fred Kahut's property for construction of the I-5 by-pass highway. Finding #2 of the staff report states the applicant's steep slope is stable, but the engineering report does not concur and he, therefore, requested denial of the application. He further addressed the discrepancies between the staff report and engineering report, with regard to the issues of boring holes, excavating the steep slope, and erosion protection (storm drains). Mr. Torgeson referred to a diagram he drew and submitted into the record, at a previous hearing on this property, which shows storm drains and how they work. He illustrated the drainage system and bank of the applicant's property on the board. He described property on the Molalla River Bluff, where 50-60 feet of bank had washed completely away, leaving the septic tank hanging over the edge and stated his concern for the safety of the elderly people living on the top of the bank, too near to the bluff edge. He recommended conditioning adequate setbacks at the top of the slope to control the safety factors for both housing and recreation. Furthermore, Mr. Torgeson addressed the need for erosion control, as referenced in the engineering report on page 5. He questioned how excavation for pathways and park-like amenities on the 1:1 slope could not disturb the vegetation and the volatilizable sand and gravel soil, keeping in mind that the bottom side of the property in question is flooded by the City's pond. Mr. Torgeson referred to approval conditions for neighboring properties which included the construction of a cyclone fence along the bank boundary. He pointed out the existence of wetlands on the property and suggested a condition requiring mapping and evaluation of the impact of their proposal on the wetlands before any permits are issued. He added that the impact would probably be minimal if the storm drain water was carried away from the bank, and by not excavating the bank without a solid engineering report addressing the specific property.

Mr. Torgeson then discussed the sewer drain. He stated that the collection system on SE 2nd and Ivy, which this property would connect to, is overloaded at the present time, and backs up periodically and could be

construed as inadequate sewer service. He suggested the Commission place a moratorium on building for the entire west side of Ivy Street until the sewer service is adequately planned and engineered by the City.

SHORT RECESS

Sande Torgeson reviewed her concerns regarding the compliance with the Comprehensive Plan. She distributed a workbook to each Commissioner which contained the goals and policies for each of the elements of the Comprehensive Plan to enable them to follow her testimony. Following her testimony, she would submit her workbook with her notations to the Commission to be included in the record. She stated that the policies pertinent to this application are: Citizen Involvement Element, Policy No. 2 [appeal filed re City's previous actions and complaints regarding violation of City Codes and State Statutes]; Urban Growth Element [the goals and policies of this element are not relevant to this application, nor has staff or the applicant addressed this]; Land Use Element [goals and policies be reviewed with regard to uses in the R-1.5 zone, especially increased density and reduced parking, compatibility with surrounding uses and effect on sanitary service facility]. Ms. Torgeson then discussed industrial, farming and mining uses of nearby property and stated the proposed use would only be compatible if the current uses would be permitted to continue without interference. She further discussed the contingency sale of her property for use as a mobile home park and the fact that the only access to the property is via an easement through the applicant's property, without which her property would be landlocked. She described how a new road from the subject property, connecting to her property, would provide access to the creek, rather than a steep difficult-to-negotiate path. This road, if property engineered and cooperatively developed between the property owners and the City, it would provide a new access to the City park for the community. Therefore, Ms. Torgeson asked that the extension of this road, over the existing easement, a condition of approval to better serve the overall community, by providing access to recreation and encouraging the development of a new, affordable housing alternative in the mobile home park planned by her contingency purchaser.

Additionally, she discussed the risks to elderly residents of dust and noise generated by the Canby Sand and Gravel operation; of noise, traffic and trespassers from the high school; the fumes and dust from the diving board factory; and, of the swamp, which would

attract and breed mosquitos. These concerns, she stated, must be addressed in evaluating whether this proposal meets the policy.

She referred to a memo from Ed Sullivan and questioned the conditions he said were imposed or suggested to mitigate the above conflicts. Ms. Torgeson asked for a specific list of conditions and how they address or mitigate her concerns. Regarding how approval would gradually increase density and discourage wasteful development practices, Ms. Torgeson questioned whether the proposed development density truly fulfills the goal of reduced housing costs and preservation of open space. She stated there was no information in the application with respect to the pricing structure of the houses and rental units and that the only open space is limited to areas deemed unbuildable.

Policy #3, she stated, has been addressed by Mr. Torgeson with regard to the already overburdened sewer system. Regarding Policy #4, Ms. Torgeson reminded the Commission that when the zone change was approved, no building permits were to be issued until an engineering report was secured for the subject property, which addressed the storm drainage problems. She stated that staff used an engineering report from an entirely different piece of property in deciding that condition was met, and issued building permits on that basis. This was an administrative decision made without benefit of public notice.

Policy #5 could be met because PUDs are not inappropriate, if properly designed and executed. The Commission needs more evidence supporting proper design and methods of execution before making a finding, she added.

Regarding Policy #6, Ms. Torgeson stated that the uniqueness of this property is on the negative side when the topography, the surrounding uses, the truck bypass, etc., are considered. Stringent conditions must be imposed to offset that uniqueness.

The Environmental Element requires protection of agricultural lands. The Commission needs to discuss the level of agricultural activity on the subject property and make a finding as to whether it is one of the least productive agricultural properties the City desires to urbanize. There is a need to identify the prescribed standards for air, water and land pollution, before determining whether this proposal meets them. Part of Necessary steps be taken to mitigate noise pollution from existing surrounding activities which could have a detrimental impact on the future residents. Page 57 of the Comprehensive Plan requires

disclosure of negative characteristics of an area or neighborhood, to prospective buyers. With regard to open space and greenway areas are relevant. There is no physical evidence addressing how the development would maximize open space.

Ms. Torgeson stated that staff has made modifications to the conditions of approval placed by the Commission, with respect to the type of road required before occupancy. The Council received a complaint May 30th (copy entered into record), with regard to allowing temporary gravel access to the complex.

Mandatory requirements for internal street building and the extension of 13th Street must be in place before allowing division and sale of the lots. New intersections in the proposed development must be closely scrutinized to ensure they do not become problems, especially as there are 8 or 9 entrances on both sides of the truck bypass within a 1200' strip, with no provisions for traffic signals. To reach commercial services nearby, senior citizens would have to cross the truck bypass. Therefore, Ms. Torgeson stated that Policy #6 has not been met for reasons of safety and convenience if the street system is developed as proposed. She further stated that dead end streets will be created as SW 13th would, at least, be a dead end street temporarily. Temporary turnarounds and other safety precautions are also warranted in this project as fire vehicles would have to access the hillside in emergency situations. The proposal asks for reduced parking but offers no pathways to accommodate bicycle or slow-moving vehicular traffic, questioning its compliance with Policy #7. The extension of SW 13th to Berg Avenue could accommodate a new Tri-Met Bus Line, which would benefit the senior citizens and Canby itself.

With reference to the Public Facilities and Services Element, Ms. Torgeson discussed the sewer collection system. She stated that it is overburdened, and new development should share in the cost of correcting the problem. Adequate sewer service is not available without a solution to the collection system problem and the applicant should shoulder part of the bill to improve the sewer service to make it adequate for future development. She also stated that the applicant does not address how this proposal assures adequate sites for recreational facilities.

With respect to the Economic Element, Ms. Torgeson questioned whether this property should remain an agricultural operation, contributing to the local economy.

The Housing Element has not been met because there is no evidence that meets Policy #2. Increasing the density and reducing the parking requirements should allow the developer to develop cheaper housing for the elderly, which was stated as the reason for the request. More information is needed to support the cost structure, anticipated rents and lot prices. Ms. Torgeson stated that one of the Commissioners had reservations about approving the project because the proposed price range for the housing did not appear to address Canby's need for affordable housing. As the map shows no lot dimensions and, therefore, Ms. Torgeson questioned whether the lot sizes comply with the density and lot coverage requirements of the City code. She further stated that the site plan incorporates land she owns and land in the creek, and suggested a topography map might provide more insight, as would a survey.

Ms. Torgeson further stated that the applicant may not have incorporated wind and solar orientation and design, as she has seen no physical evidence to back this claim.

She submitted a Comprehensive Plan worksheet to enable the Commission to review her testimony and an Ordinance worksheet which attempts to identify which ordinances have been met and which have not been met.

In summary, Ms. Torgeson stated she supports senior citizen communities. In approving such development, the safety and welfare of the prospective tenants must be assured. In order to approve this proposal, the proper procedures must be followed, adequate and complete findings must be made, and a method of monitoring compliance with conditions must be assured.

Rebuttal

Ed Sullivan, representing Cedar Creek Corporation, stated that he would be unable to respond because some materials presented and submitted raised issues that have not been presented before. He stated that the previous Commission approved a zone change, a PUD, and a conditional use permit for this property for the same use, an assisted living facility. He stressed that the opponents and applicants have personal difficulties. The Commission is being asked to deal with the conceptual feasibility of this project - an assisted living facility, the realignment of 13th Street (a major road facility the applicant agreed to put in), and whether or not it meets the Canby Code. When it got down to doing the precise engineering plans, one area on the plan changed the road so it could not make

the radius curve, requiring the applicant to return to the Commission for a redesign. They are not being asked to approval final engineering plans now, as they will be submitted later, for final approval. He suggested one of the main issues for the opponents is the access across this property to deal with later development proposals for the Torgeson property.


Mr. Sullivan stated that since he received no copies of exhibits entered into the record at this meeting, that this hearing be continued. Chairman Nicholson agreed that a continuance would be necessary. It was unanimously agreed to continue this hearing to June 18, 1990 at 7:30 p.m.

The Commission discussed a visiting the site to more thoroughly familiarize themselves with it.

VII. ADJOURNMENT

The meeting was adjourned at 10:30 p.m.

Respectfully submitted,


Joyce A. Faltus
Secretary