

CANBY PLANNING COMMISSION MINUTES
Special Meeting
October 15, 1990

APPROVED

7:30 p.m.

I. ROLL CALL

Present: Chairman Schrader, Commissioners Mihata, Bear, Zieg, Wiegand, Westcott and Fenske.

Others present: Rusty Klem, Director of Public Works; Bob Hoffman, Interim Planner; John Kelley, City Attorney; Joyce Faltus, Secretary; Earl Walker, John W. Beck, Jim Myron, Cleo Wolf, Pat Ewert, Ginny Jones, Lisa Wilcox, Bob Graham, Bob Traverso, Dirk Williams, Susan Hayakawa, Kathy Ellickson, Marjorie Wolf, John and Sande Torgeson, Dave Nelson and Robert Reif.

II. MINUTES

None

III. COMMUNICATIONS

None

IV. UNFINISHED BUSINESS

None

V. BUSINESS FROM THE AUDIENCE

Lisa Wilcox requested information regarding the status of the Design Review process and if the City was considering revising the Comprehensive Plan. Rusty Klem explained that the Design Review Ordinance was up for a second reading at the City Council on October 17 and that it has an emergency clause in it, so it will be effective immediately if it passes. He further explained that it is still the City's intention to update the Comprehensive Plan.

VI.

PUBLIC HEARINGS

CUP 90-06, a request by Dave Nelson for approval to construct a 147-unit mobile home park on property identified as Tax Lot 1790 of Tax Map 4-1E-4C. The property is generally located east of the Canby Community Park and south of S. Elm Street.

John Kelley, City Attorney, explained that the City received a letter from Roger Reif (Exhibit 22), that relies on ORS 197.480 language. Mr. Reif believes mobile homes are an outright permitted use in an R-1 zone. Mr. Kelley explained that his research indicates the City is correct in treating mobile homes as conditional uses and DLCD indicated several municipalities treat mobile homes as conditional uses. The DLCD has also determined they are to be treated as conditional uses, as long as conditional use ordinances are in effect with standards and criteria. Further, he explained that allowed uses are not necessarily outright permitted uses. Allowed uses can also be conditioned. As Mr. Nelson has indicated he will submit additional evidence, ORS 197.763 requires that all information reach the City no later than twenty days prior to the hearing. If additional documents are submitted, a continuance is required, though **not** subject to ORS 227.178 (the 120-day time period). Mr. Kelley indicated he is under the assumption Mr. Nelson will submit all evidence given at the hearing, to the City. To date, the City has not had the benefit of reviewing such evidence.

Bob Hoffman presented the staff report. He reviewed the applicable criteria which the application must meet. In addition to the regular conditional use criteria, the proposed park design must meet the requirements of Chapter 16.40, the Hazard Overlay Zone. The criteria for this zone, he explained, provides for flood protection and protection of fish and wildlife and tree protection and requires a tree cutting plan and grading plan. The current Comprehensive Plan/Zoning designation for this parcel is Flood Prone/Steep Slopes with an underlying low density zone that allows for up to seven units per acre, and a hazard overlay over the entire site. Mr. Hoffman also reviewed the background of the parcel, including the mining operations that have taken place and the fact that the property, at one time, had been heavily treed. The southern edge of the property is not only the City limits, but the edge of the Urban Growth Boundary. On a portion of the area that the street would be going through is within the City and within the Urban Growth Boundary, while a portion lies in Clackamas County. Mr. Hoffman explained that because of inadequate information available at this time, and the potential hazard and sensitive nature of the site, staff is unable to make the necessary findings regarding conformity with the policies of the Comprehensive Plan, Zoning Ordinance and other applicable laws and ordinances. Therefore, staff

recommends the Planning Commission not approve this application at the present time.

Had the applicant applied as a Planned Unit Development, the Commission could possibly have modified some of the required standards. Additionally, the applicant has requested waivers, rather than variances, but the ordinance does not give authority to waive requirements.

Mr. Hoffman discussed the site characteristics. He addressed issues of concern to Clackamas County, which were enumerated in a letter from Doug McClain. Those issues included an amendment to the UGB and annexation to the City of Tax Lot 1701; a roadway connection to Elm Street, which appears to be located in the 100-year floodplain and partially outside the UGB; the intersection of SW 13th and Ivy with regard to traffic generation; and the effects of placing fill within the 100-year floodplain. Mr. Hoffman explained that resolution of the County-City related concerns must be determined because, as currently designed, the portion of the development which lies in Canby does not function without the later phase, which lies within the County. He then addressed additional concerns, which included the necessity of utilities and a new road traversing the 70 foot embankment; the Elm Street extension; the need for a topographical survey by a registered surveyor; and the need for detailed plans for sewer lines, water lines and storm drain system.

Mr. Hoffman discussed staff concerns regarding substantial changes that have been made to the original contours of the parcel, making previous floodplain and wetland determinations questionable. A Geotechnical Report for the Cedar Creek project recommends not using power equipment on the embankment slope because of potential slippage.

With regard to the wetlands issue, Mr. Hoffman explained that there is no section in Canby's ordinance that deals specifically with wetlands as a process, with specific standards, independent of the state. However, under the hazard section, many portions deal with the same kinds of issues - natural habitat, protection of natural environment, protection of water courses, flooding, etc. The State would still go through its process, often concurrently with the City. In his past experience, Mr. Hoffman has found that applicants generally hire their own wetlands expert and, as a part of the application, include the expert's report as to where the wetlands are, how extensive they are, what kind of mitigation would be required in order to meet the intent of the City and State laws, etc. Mr. Hoffman explained that it would benefit the applicant to have those determinations made at the start, as it is of major affect to his site plan. Where the floodplains and wetlands are very drastically affects the applicant's design. Furthermore, Mr. Hoffman explained that in the Canby inventory of wetlands that was

submitted to LCDC, this site was determined to be the top wetlands site in the City. The State, which has the final responsibility for wetlands, has physically investigated the site and would have to approve any changes relative to that site.

In response to a discussion about whether the requirements would have been different, Chairman Schrader explained that whether or not this had been applied for as a standard subdivision or PUD, the standards and criteria would be the same. There would be no mobile home overlay, but the hazard overlay would still exist under the present situation. Under any application procedure, the Commission would have to feel comfortable that it meets the Comprehensive Plan and Zoning Ordinances, that the design and site are appropriate, have the public facilities, access, etc. In essence, the Commission must adhere to the applicable criteria, he added.

Applicant

Dave Nelson, 25610 SW Mountain Road, West Linn 97068, submitted the following exhibits:

- An agenda outlining his testimony at this hearing.
- A copy of a previous exhibit, a letter to Hank Skinner from Mr. Nelson, dated August 19, 1990, referencing communications with Clackamas County.
- DOGAMI letter to the Torgesons, dated October 12, 1990, referencing modification of reclamation plan.
- Letter to Michael Jordan, City Administrator, from CUB, dated September 19, 1990, referencing the availability of electricity and water.
- Letter from CUB to Nelson, dated September 19, 1990, referencing service agreements.
- Letter from Canby Elementary School District 86, dated September 19, 1990, referencing school concerns.
- Letter to City of Canby from Robert Reif, dated October 11, 1990, referencing outright use of mobile home parks.
- Letter from Lingel, dated October 10, 1990, in support of this application.

- Letter from Tony Weller, P.E., dated October, 1990, referencing flood plain and FEMA.
- Keech & Associates letter and traffic study.
- Letter from Nelson to Clackamas County (McClain), dated October 15, 1990, referencing development concerns.
- Rebuttal of Staff Report dated October 5, 1990.
- City of Portland, Bureau of Environmental Services and Washington County, Department of Land Use and Transportation Erosion Control Plans, Technical Guidance Handbook
- Multnomah County, Department of Environmental Services, Division of Planning and Development Staff Report

Mr. Nelson explained that the density in Village on the Loch is 5.7 mobile homes per acre, as opposed to the traditional 9 or 10 per acre, and that there is 17-1/2 percent open space. He then commented on ORS 197.475-.490, Mobile Home Development Outright Use. He said that because of the provisions of ORS 197.480, mobile home parks are an allowed use in the R-1 zone, although the statute does provide that the City can establish clear and objective criteria and standards for the parks. Further, he stated, ORS 197.480(5)(c) provides that no criteria or standards can be established which would preclude the development of a mobile home park. Therefore, he added, it is clear that Canby is required to provide suitable sites for mobile home parks through its zoning ordinances and Comprehensive Plan, and the criteria and standards the City has established should be the sole issue to be determined at this hearing. In order to meet the requirement of LCDC Goal #10, housing must be available for people of all levels. This development will provide affordable housing in Canby for people of all levels.

Mr. Nelson explained that he cannot borrow monies for this project until he has the conditional use approval. After that is accomplished, he explained, he can borrow funding for his engineering studies. The wetlands studies, and some others are not appropriate at the present time. Mr. Nelson stated that his application was complete upon submission and, at the present, is only submitting additional information to bring the City's comfort level up.

With regard to the City's concern that this plan does not function as a stand-alone development, Mr. Nelson stated that he will submit a revised plan at the next meeting. He said he will not be submitting the plans he

will be referring to at this hearing, even though Mr. Hoffman advised him that anything he used as part of his presentation should be submitted as evidence. Mr. Kelley advised that the revised plan must be submitted ten days prior to the November 19th meeting. Mr. Nelson explained that he plans to submit testimony from a wetland and wildlife expert prior to the next meeting. The expert will also be on hand at the next meeting to answer questions.

Mr. Nelson then discussed the revised plan:

1. He explained that he has been involved in discussions with Mr. DeAnza regarding possible shifts in the alignment of the proposed access road from the Elm Street extension.
2. The Elm Street extension will descent down a 70-foot embankment to service the site and the proposal includes a cutting the slopes and filling.
3. The school district was concerned that there was no cul-de-sac at the terminus of Cairnsmoor Drive, which is now planned for.
4. Red Deer Road was reconfigured to loop, with the cul-de-sac eliminated.
5. Cairnsmoor Drive is proposed to be widened in areas where there is no median planter. He stated that he believes that traffic will tend to slow down where the median planters are situated, as that has been proven in areas of Wilsonville, where similar ones are presently located. (These median planters were shown in some of his slides.)
6. Flow control devices will be added (headwalls at culverts under the roads) to separate Loch Leel and Laird Loch from existing wetlands and creek on the north side to control the lake levels.
7. A fence will be constructed around the development, except at the north side which is the wetland and creek area. A fence on the north side, in the area of the wetlands or the City park, is unnecessary. The proposed fence will provide security for both the mobile home park and to protect residents from drifting into unsafe areas. The proposed fence will include a gate to the City park to allow emergency vehicle access. The issue of emergency access then, as viewed from this being a stand-alone development, will be seen as providing an additional emergency access for the City park.

A second emergency access will be provided near 20th Avenue, by Goods Bridge, in the form of an easement.

8. Parking spaces will be added by the private park. Mr. Nelson added that there would probably be more discussion regarding interfacing with the park. A berm currently separates the park from this property.
9. The bridge originally planned near Loch Leel will be eliminated.

Mr. Nelson then introduced slides to familiarize the Commission and audience with areas he reviewed, and will review, in his discussion. To orient the Commission, he also pointed out the wetland areas on his enlarged aerial, which he used to describe his revised plan. (The slides, as shown, were a reversed view of the site and, thus, for the viewer, was difficult to orient.)

Mr. Nelson addressed the issue of the interface between the City and the County. The problem appears to center around an urban use in an EFU zone in the County. LCDC provides for "exemptions to the Goals." Jim Sitzman, of LCDC, suggested Mr. Nelson contact Multnomah County because they recently had a similar situation with Crystal Springs Country Club. The land was zoned for Low Density Residential and golf courses are a conditional use in agricultural land. In order to access their site, the street from the urban area passed through the County. Mr. Nelson submitted the staff report regarding this application (Exhibit 30). Based on this, Mr. Nelson explained he will be requesting a flood plain development permit from the County, which will include an LCDC exception to the Goals. In addition he will request a grading permit from the County, which will include a wetlands mitigation plan approved by the Division of State Lands. This wetlands mitigation plan will cover all the wetlands on the property. Mr. Nelson explained that he will build the road in the County to City standards so that when it is annexed in the future, the City will accept it. Those agreements will be worked out with Clackamas County. Once the Conditional Use Permit is in place, the wetlands mitigation plan will be done. (The wetlands map identification will be done by experts and will be available for the next meeting.) When the Division of State Lands approves the plan, Mr. Nelson will submit applications for the additional permits, including the fill permit.

Landscaping and tree removal will be covered under the Design Review Process, Mr. Nelson said, with landscape plans that will identify the landscaping needs. He pointed out that this property was used to harvest trees and has been logged since, at least, 1964 and is currently being

logged. Logging is an outright permitted use and the current owners have permits, he added.

With regard to erosion control plans, Mr. Nelson submitted "Erosion Control Plans, Technical Guidance Handbook" (Exhibit 29), issued by the City of Portland, Bureau of Environmental Services and Washington County, Department of Land Use and Transportation. He explained that erosion control, as it affects the site during construction, are all addressed in this exhibit.

Mr. Nelson explained that he would be installing either a 6 or 8 inch pvc line in the area below the existing sanitary sewer system. The preliminary design to determine feasibility is shown on the Preliminary Topo and Utilities Plan. He explained that where the pump station is shown now, will be moved and a pressure line will follow the road up the hill, as opposed to traversing the hill itself. The pump station has the ability to move the sewerage material, he added. The existing line in Elm has adequate capacity. Whatever needs to be flood-proofed to meet FEMA guidelines will be addressed at the time of design, once the permit is issued.

With regard to the storm sewer, Mr. Nelson said his design is a standard drywell/wetwell taken out of the City's spec book. He said he is offering modifications to the standard, which he explained. The primary line is the catchbasin and separation takes place there. There will be a wetwell four feet below the street, where the minimal groundwater table is. Most of the separation will take place at the catchbasin, but it will enter the wetwell and be separated again. Baffles will be put on the wetwell so solids flow to the surface and cannot flow out. If an overflow is necessary, it will drain out into one of his waterways. The drains will be pulled back into one of the new lake areas on the site. Controls will be in place before they drain into the creek or wetlands areas. Protection will be in place for drinking water. The sands and gravels in the soils that exist there also act as an excellent filter material.

Mr. Nelson said that his main accessway, Cairnsmoor, is proposed to be built just like Elm, with some modifications, subject to County approval. A boring will be made at the time the roads are designed and are ready for building permits, to verify the actual material and the location of the road. He discussed what he believes is adequate separation of the four private streets feeding onto Cairnsmoor Drive.

The lighting will meet CUB requirements, as will water and electricity. He stated he met with the City fire marshal and will meet City requirements in terms of servicing the entire area with regard to radius' and turnarounds.

An expert will be available to discuss wetlands and wildlife at the next hearing. Her testimony will be submitted ten days prior to the next hearing and she will be available to answer questions.

Regarding the floodplain issue, Mr. Nelson referred to the letter from Consulting Engineering Services (Exhibit 22). Mr. Weller states in the letter, that the project site does have areas within the floodplain, but not within the floodway. He cites FEMA's regulations regarding building in floodplains and floodways. Mr. Weller also states he conferred with Mr. Basich of FEMA, who informed him that FEMA would allow fill to be placed to elevate the property to or above the base flood elevation, since the project was not within a floodway. With respect to previous excavations that have occurred on the project site and their impact on flood elevations, Mr. Weller stated that the removal of materials in the floodplain will not cause an increase in the flood elevation but provides increased area for the water to flow, thereby reducing flood velocities and occasionally reducing flood elevations.

Mr. Nelson said that although staff has requested a registered survey of the property, in terms of the topography information, and he believes the topography information is not relevant at this time. He showed on the aerial, that his property is not in the floodway. Portions are in the floodplain, he added. He pointed to an area on his aerial that FEMA said must be filled in order to remove it from the floodplain to be able to build on it. He said the only area adjacent to this site that could be materially affected, would be John Beck's property, which includes a pasture and a pond. Mr. Hoffman's concerns center around the excavating which, he explained, the expert says the storage capacity of the floodplain is increased, thereby enhancing it. After the fill is complete, and before any homes are on it, he will have to certify to FEMA, that every homesite meets their guidelines. In terms of water flow, he stated, the fills would, at the worst, affect less than an inch of flood level.

The school concerns have been discussed with the school superintendent and they are working together to resolve them. Mr. Dennison's concerns were mostly centered around traffic and safety. Mr. Nelson stated that approximately 54 kindergarten through 8th grade children will be generated from the project. He submitted a letter from Milt Dennison (Exhibit 21), Superintendent of Canby Elementary School District which relates his concerns about the school district being able to accommodate increases in student enrollment he said the proposed bond issue could relieve much of the crowding and, if it failed the district would be struggling to keep up with the overcrowded conditions. Mr. Nelson said he will submit a copy of the traffic study to Mr. Dennison, who is concerned about the traffic on Ivy and 13th.

The parks shown on the plan will be used by occupants of the project only. When the project is approved, the Torgesons will have to file a new reclamation plan and fill everything they have excavated, bringing the land back to its original state. He submitted Exhibit 18, a letter from E. Frank Schnitzer, Reclamationist, at the Department of Geology and Mineral Industries (DOGAMI). There will be no playground equipment in the park as such equipment exists in the nearby City park. He intends that it remain as natural as possible with, possibly, barbecue pits and benches. A gravel walkway will be added to encourage use and enjoyment of the mobile home park residents. The park space is well within compliance of the Canby ordinance, he added. Mr. Nelson said that by opening his park area to the public, he will be decreasing his security and possibly increasing vandalism, while at the same time the presence of his project might offer more security to the City park.

With regard to setbacks and access, all City standards are basically met. Minor adjustments may have to be made to accommodate setbacks. Parking will be allowed on one side of private park streets and restricted to guests only. No parking will be allowed on Cairnsmoor Drive. The number of lots may be decreased to accommodate the possibility of saving more trees.

Before the planning process began, Lynn Sharp, an environmental consultant visited the site. The project design evolved from her recommendations. The recommendation was to leave the existing wetlands along the north side as is, and enhance them by planting more vegetation. Pointing to another wetland area, he explained the mitigation plan for fill will expand and enhance it substantially. Areas that have been mined under a mining permit are not wetlands even though they generate some wetland vegetation. The wetlands will be physically identified in the field. It will be surveyed and the design will be configured to end up with no net loss. The center of the ponds will be as deep as possible, to retain as much water circulation as possible in the summer. A compliance representative from the Division of State Lands walked the property and there appears to be no current violations. The violation in questions appeared to be on Earl Oliver's property. A letter should be in the file to that effect. There appears to have been a mix-up between Mr. Franklin and Joel Shaich of the Division of State Lands. The mitigation plan will fall under Mr. Bill Parks of the Division of State Lands. Prior to the next hearing, a written wetlands identification will be submitted. Landscaping to the edge of the wetlands with natural plant matter is planned, negating the need for setbacks.

Regarding the wildlife concern, Mr. Nelson explained that the Comprehensive Plan Policy 9R is the closest thing to wetland concerns.

Basically, he added, there are no standards to adhere to. Before the next hearing, his wildlife expert will submit comment on potential wildlife concerns. The addition of the two lakes will add to the wildlife areas. Native vegetation is included in the landscape plans. The slides showed that the area has been pretty well logged and mined and is certainly not a pristine forest and, he added, he is also unaware of any breeding areas on the site.

Exhibit 23, the traffic report from Keech Associates, indicates that neither the intersections of 13th and Elm, nor 13th and Ivy require a traffic signal. They recommend that no special traffic-related improvements appear necessary for this project. The 8% additional traffic generated at the Ivy and 13th intersection does not warrant a left turn refuge in the foreseeable future either, and most traffic from this development would use Elm.

Mr. Nelson then referenced his rebuttal of the October 5, 1990 staff report (Exhibit 25). With respect to staff's request for additional information, he submitted a traffic study. He will submit an environmental report regarding wildlife and a wetlands delineation prior to the November 19th meeting. Engineering design, in terms of street width, will also be submitted. Detailed designs, in terms of sewer and water, will be submitted at a later date. County issues will be addressed with personnel from Clackamas County. The City will receive copies of all correspondence with the County. Mr. Nelson stated he believes approval should be conditioned upon County permits and the wetlands mitigation plan from the Division of State Lands. Conditions can also be included regarding detailed designs. Landscaping requirements will be addressed at the design review level. The County has an extensive development permit plan regarding the floodplain concern, as it relates to flood fills. He cited all the County requirements relating to that permit and, as it is so extensive, he suggested the County requirements are appropriate for City use. He suggested the Commissioners review the Multnomah County staff report as it offers background as to County-City resolution of various concerns that are similar to staff concerns. Mr. Hoffman stated that this staff report only offers the City version, not the County's.

The Commission then addressed issues it would like staff to address:

1. Feedback regarding how analogous the Multnomah County report is to the present situation (size of development, number of accesses, etc.).
2. Feedback regarding the number of mobile homes put in since the Comprehensive Plan was adopted; number of multi-family dwellings; and single family dwellings.

3. Feedback from DeAnza about re-routing the road.
4. Feedback regarding the 20th Street easement - making sure it is a valid easement.
5. Staff should readdress, based on new testimony, the fill permit with DSL.
6. Feedback regarding silvaculture done on the property with logging permits. Confirm all that. See what has actually been done on this particular piece of property.
7. Feedback from staff regarding the City's procedure on drywells, wetwells, etc. Get Public Works input. Address how the City's stormwater filters out toward the river. (Three ways we can treat this - let it filter out, or let it go through a wetwell or drywell situation).
8. Feedback on four accesses within the 1000 feet in the new plan (whether or not it is a problem.) Comment was made on the City standard being a 40 foot street with a sidewalk? Check into it and address it.
9. Staff's feedback on issue of the floodway vs. floodplain.
10. Staff to address how the new project affects public vs. private use of the property once it's reclaimed. In particular, since they have already submitted a reclamation plan, what the procedure is for DOGAMA to approve this one versus the old plan.
11. Feedback regarding the wetlands violation. Shaick-Franklin-Park situation. Who is the authority that the Commission needs to relate to?
12. Staff's opinion about the setbacks not being required since the landscaping would go to the edge of the wetlands.
13. Staff should reconcile the difference between the number of trip generations between what County proposed and what was given at hearing by Mr. Nelson. There appears to be a 2:1 difference.
14. Response from staff regarding Mr. Nelson's statement that the topography survey is not needed at this time.

The applicant asked to reserve the right to return with additional testimony at the next meeting. He stated he is aware that if he offers new testimony, a decision could not be made at that hearing and another hearing would be necessary. Additionally, the feedback requested from staff could generate additional requests for information. Chairman Schrader explained that written testimony would be allowed ten days prior to the hearing. Staff and interested parties could review it and respond by the next hearing. Mr. Kelley explained the public testimony phase of this process (proponents, opponents, rebuttal) must be opened at the next hearing.

Mr. Kelley suggested staff would submit an additional report and that the Commission impose time limitations at the next hearing. If new evidence is submitted at the November 19th hearing, the hearing would then have to be continued. Mr. Reif requested reserving approximately 20 minutes for the applicant to summarize his position at the next hearing. The Commission agreed that the applicant could reserve 20 minutes, and if new information was submitted November 19th, an additional hearing would be scheduled. The Commission also requested a final plan from Mr. Nelson prior to the next scheduled meeting, with enough time for staff review. Mr. Kelley further explained that the 120 day period starts to run 31 days after an application is submitted if not deemed complete by the City. Any continuances brought about by the requirement of new evidence submitted by the applicant stays the 120-day period.

The Commission voted 5-2 to continue the hearing to November 19, 1990 at 7:30 p.m. and allow the applicant an additional 20 minutes of testimony.

VII. FINDINGS

None

VIII. ADJOURNMENT

The meeting was adjourned at 10:50 p.m.

Respectfully submitted,



Joyce A. Faltus