

CANBY PLANNING COMMISSION

Regular Meeting

June 10, 1991

7:30 p.m.

I. ROLL CALL

Present: Vice-Chair Mihata, Commissioners Westcott, Wiegand, Fenske, Maher and Zieg.

Staff Present: Robert Hoffman, Planning Director, John Kelley, City Attorney, and Joyce Faltus, Secretary.

Others Present: Milt Dennison; Bob Stuart; Mr. and Mrs. Carl Stuart; Jolyn, Terry, Charles and Sharlei Ann Blackwell; Kori, Dawn, Rachel and Tracy Smith; Allison and Ken Paterson; Erle, Brian, Helen and David Grove; Jim and Janice Haas; Bob and Nancy Friesen; Joey Ceia; M. McKennett; L.W. Brockway; Debi and Randy Sajovic; Heinz Rudolf; Fred Hughes; Tom Olson; Councilor Robert Smith; Cam Sivesind; Rusty Klem, Director of Public Works.

II. MINUTES

The minutes of **April 22, 1991** were approved as submitted.

The minutes of **May 13, 1991** were postponed to June 17, 1991.

III. BUSINESS FROM THE AUDIENCE

None

IV. COMMUNICATIONS

None

V. UNFINISHED BUSINESS

None

VI. FINDINGS

Mr. Hoffman reminded the Commission that at the last meeting, it was decided that staff would wait for the recommendation from the wetlands expert to fill in the width of the buffer zone or open space development area around all streams on the entire site. The expert recommended a 10 foot buffer zone and that figure has been inserted in Condition #21. Additionally, Mr. Hoffman brought to the Commission's attention that Condition #28 was not a part of the approval action, but the need to dedicate additional land along Territorial Road was clearly part of the intent of the approval and was, therefore, added. This condition was also approved as part of Phase I.

Commissioner Westcott moved for approval of SUB 90-06 (Willow Creek Estates - Phase II only - Lots 51-89, excluding Lot 56) Findings, Conclusions and Order, with the inclusion of the 10 foot wide buffer zone in Condition #21, and the addition of Condition #28. Commissioner Fenske seconded the motion and it carried unanimously. Commissioner Schrader was absent and Commissioner Maher abstained.

VII. PUBLIC HEARINGS

MLP 91-03, an application by Bob L. Stuart for approval of a minor land partition to partition a .58 acre parcel to create a 7,012 square foot lot, a 7,024 square foot flag lot (both, including the driveway), and an 11,514 square foot lot where the existing house will remain. Adequate space will be provided such that no backing motion will be necessary to access the public streets. The property is located at 1320 N. Holly (Tax Lot 201 of Tax Map 3-1E-33BA).

Commissioner Mihata asked if any Commissioner had ex-parte contact or conflict of interest to report. Commissioners Westcott, Fenske, Maher, Mihata and Wiegand all stated they visited the site, but drew no conclusions from the site visit.

Based on the number of people planning to testify, **Commissioner Fenske moved to limit testimony** to 15 minutes for all proponents and opponents, 10 minutes for the applicant, and 5 minutes for rebuttal testimony. **Commissioner Wiegand seconded the motion and it carried unanimously.**

Commissioner Mihata advised the audience that if new evidence is presented at this hearing, citizens may request a postponement to study the evidence and give new testimony relative to that evidence. If granted, there is a seven day period within which evidence relative to that material may be submitted.

Robert Hoffman presented the staff report. He referred to the original and current proposals submitted by Mr. Stuart, and two alternative proposals which were designed in response to a letter received from opponents of this application. There are

approximately 142 lineal feet of frontage along N. Holly and 30 feet of frontage on N.E. 13th Avenue cul-de-sac, he explained. Currently, there is a single-family home on the lot and there is room for adequate yards if the minor partition is granted, provided that the required easements and access drives can be provided. The subject property is surrounded by homes built on lots ranging in size from 7,000 square feet to 10,600 square feet, with 7,500-8,100 as the norm.

Mr. Hoffman stated that under the Residential Lands Policy No. 2 in the Comprehensive Plan, it is clearly the intent of the Comprehensive Plan to have lots at the minimal square footage, which can easily be done through a PUD process, although a PUD application is not part of this proposal. The Comprehensive Plan encourages lots **near** minimum size, he added. All public services are, or will become available through extension of those services to the lot, requiring only minimal extensions. There is a 6 inch water line immediately traversing to the south of the subject lot, which is provided via an easement.

The three parcels, as proposed, have access to N. Holly or N.E. 13th Avenue. Sidewalks are not present on either street. Holly Street is an arterial, 40 feet wide, and should ultimately be widened to a 60 foot right-of-way, requiring a 10 foot right-of-way dedication from the applicant. The applicant has indicated willingness to do that. With regard to the centerline in the cul-de-sac, Mr. Hoffman stated that in movements out of home driveways, paths often do cross, **especially in cul-de-sacs**. The entrance to the driveway can be constructed so that cars stay right of the centerline. All cars in the cul-de-sac cross the centerline either to enter or leave their driveways at the same 90 degree angle. Mr. Hoffman added that he did sketches to show various ways that turnarounds could be accomplished on the proposed lots, depending on building design. The Graphic Standards Book indicates that the inside diameter turning radius for a car is about 19 feet, and the outside turning radius is about 28 feet. In the professional opinion of staff, both of those dimensions can be provided by the indicated driveway on the cul-de-sac. Additionally, he explained that if the land to be reserved for eventual street widening is not counted as part of the lot area, it can be replaced with land from the access strip. The driveways, as proposed, are adequate, and turning movements will be provided on-site. No backing movements from the new lots will be required since there is adequate space to provide a turnaround on each lot.

Code Section 16.16.030 requires a minimum width and frontage of sixty feet, but it allows for the Commission to reduce that minimum, subject to special conditions, to assure adequate access. Staff has prepared some drawings that would indicate what happens if it is interpreted either way, and he reviewed those drawings. There are numerous examples where the Commission has approved lots with dimensions of less than 60 feet. Most of these lots, with less than 60 feet of width, are either flag lots or on cul-de-sacs. Mr. Hoffman referred to exhibits which adjusted lot lines, provided adequate setbacks, and allowed for averaging the rear and front to equal 60 feet.

Staff concludes that the requirements of the Comprehensive Plan are met and that the Municipal Code can be met with conditions. The overall design would be compatible with other homes in the area. There are a number of lots in the subdivision immediately to the north of this site that have lot frontage dimensions less than 60 feet. The proposed lots are at the end of a cul-de-sac and at least one of them is a flag lot. If an access strip to the cul-de-sac was provided, proposed Lot #2 would be considered a flag lot. If the frontage of 60 feet is required, it could be met, but the lot shapes would be very strange. With regard to the existing garage on the property, the applicant has stated that the garage is 71 feet from the street lot line, thus requiring only a 3 foot yard.

Staff further concludes that the partition does have adequate frontage on a public street and that there is safe and efficient access for all three structures. Public services are available and would not unduly hinder the development of the surrounding area. Therefore, staff recommends approval, with conditions as noted in the May 31, 1991 staff report, adding to condition #3, "An area be added to offset the dedication of the street and still remain within the 7,000 square foot requirement. This area to come from either the access area of Lot #1 or the front of 1320 Holly." Additionally, Mr. Hoffman recommended adding Condition #9, "An area approximately 44 feet wide and 30 feet deep be added to Lot #2 from the area between 1320 Holly and the street. Both additions are the result of looking at what happens when the requirements are interpreted literally. The applicant, and staff, initially interpreted Development Standard B to mean that the Commission had the authority to approve a reduction as long as access could be provided. There are also additional alternatives which would allow for adequate development on the lots and still meet the requirements.

Applicant

Bob L. Stuart, 1320 N. Holly, Canby, stated that he and his brother bought the property with the idea of partitioning it into three lots. He stated he fully intends to meet all the requirements. Mr. Stuart further stated he is in the process of remodeling 1320 N. Holly. He assured the Commission that, should he build on the other two lots, he will build quality structures to improve the neighborhood. He added that he is not in favor of Alternative #2 (Exhibit #6), proposed by staff.

Mr. Hoffman then read a letter into the record from Pat Harmon, a resident immediately to the north of this property, who stated the property owner has a right to develop the property as long as it is in the best interests of the community as a whole and complies with the criteria.

Opponents

Randy Sajovic, 1260 N. Holly explained that he is representing four families, and voiced concerns about this application. Mr. Sajovic referred to Exhibit 3 and Exhibit 9 in his testimony.

1. He is not opposed to partitioning **one** additional lot from the original parcel, if traffic flow concerns are addressed. Creating one additional lot to the east of the existing structure would be acceptable. The Commission should study whether the new lot would best be accessed via N. Holly or NW 13th.
2. Mr. Sajovic stated he believes the staff report contains serious errors and misinterpretations of ordinances and of the Comprehensive Plan.
3. Lot #2, he stated, does not meet the requirements of Section 16.16.030B. He added that even if Lot 2 is considered a flag lot, it must meet the minimum width requirements of the same section.
4. Mr. Sajovic stated that he believes lot area averaging is illegal.
5. Mr. Sajovic described the turnaround on his own lot and explained the difficulty he encounters using it, causing him to back his car out onto Holly.
6. He is of the opinion that access to Lot #1 is poor, due to its restricted entrance and proximity to the adjacent property's driveway.
7. He discussed the buildable square footage of Lot #1 and Lot #2.
8. He discussed his concerns regarding the distance from the lot line to the garage belonging to 1320 N. Holly.
9. He requested denial of the application.

Charles Blackwell, 160 N.W. 13th Avenue questioned the completeness of the original and amended applications and cited his reasons. Mr. Blackwell stated that he believes significant vegetation and forestation, in the form of historical trees, exist on the property, and should be considered in the application. He asked the Commission to make a determination regarding the completeness. Mr. Blackwell asked that any new evidence submitted at this hearing be duly considered at this hearing and acted upon at the next regular hearing.

Ken Patterson, 155 N.W. 13th Avenue discussed the safety of the driveway on N.W. 13th (Lot #1). After taking measurements, Mr. Patterson stated that there is 15 feet between his driveway and the proposed driveway on the cul-de-sac, which would impede his off-site parking space. He added that with two vehicles in his driveway he would be unable to back out onto the street. He also questioned whether there was sufficient turning radii for a vehicle to enter and exit the driveway on N.W. 13th.

Erle Grove, 140 N.W. 13th Avenue stated that he believes the applicant has not conducted business correctly since purchasing the property. He added that this

proposal is not compatible with the neighborhood; that one house would be acceptable, not two. Additionally, Mr. Grove addressed the issue of safety for children living on the cul-de-sac.

Dawn Smith, 1255 N. Ivy Street stated that she believed 13th Avenue would become a thru-street and would affect the safety of the children in the area.

Rebuttal

Bob Stuart stated that he is only asking for approval of a land partition, not for specific buildings on the property at this time. He further stated that he intends for one lot to access off the cul-de-sac and one to access off Holly. Mr. Stuart stated that he sees no need for off-street parking as the area on the lots are sufficient. Further, Mr. Stuart stated that the oak tree on the south side of the property will remain. The property is overgrown at the present time with weeds and limbs, and the previous owner was too elderly to care for it. He is planning to remove the excess and landscape it properly. Mr. Stuart discussed access to the lot off the cul-de-sac, which would be accessed just as the others in the cul-de-sac are accessed. If Holly Street is widened, Mr Stuart explained that the two large, existing trees would have to be removed.

With no further testimony, the public portion of the hearing was closed for Commission deliberation.

Issues discussed:

1. The Commission discussed the application. Mr. Hoffman explained that staff deemed it complete. With regard to the scale, Mr. Hoffman explained that original submittal was reduced and therefore, the scale reduction was inadvertently reduced. He exhibited the original that Mr. Stuart submitted, showing the true scale, where 1/8 inch equals 2 feet. Some information was submitted after the application date, and the concerned parties were informed that the applicant has the right to submit things in support of his proposal right up to the evening before the hearing, although he risks a continuance being scheduled.
2. The Commission discussed the alleged vegetation on the site. Mr. Hoffman explained that staff did not believe there was a significant forested area on the site.
3. The Commission discussed whether Lot #2 was a flag lot. Mr. Hoffman explained that staff viewed Lot #1 as a flag lot, but not Lot #2.
4. The Commission discussed whether or not there were historical trees on the lot and agreed the Comprehensive Plan refers to historical trees on Territorial, but

not on this site.

5. The Commission discussed the distance from the existing garage to Holly Street. Mr. Stuart explained that the existing garage is 71 feet from Holly Street (at the roof line) and 73 feet to the garage door. If Holly was widened, it would be reduced by 10 feet. That right-of-way is not shown on the drawing Mr. Stuart submitted.
6. The Commission discussed surrounding properties in relation to this application, and agreed it would need more information with regard to homes on the additional lots. Mr. Hoffman explained that under a PUD application, or an application under the Senior Citizen and Handicapped criteria, building units would have to be described, and the applicant would then be allowed to lot average. Mr. Hoffman further explained that there is clearly enough room to do so, and still meet the requirements of the 7,000 square foot average.
7. The Commission discussed access issues, and turnarounds, with regard to the proposed lots.
8. The Commission discussed Criteria C and whether or not the lots are functional relative to nearby R-1 lots.
9. Mr. Hoffman presented various designs for meeting the lot size requirements. The Commission considered them, and was uncomfortable with the land-swapping that would take place to make up for the 10 foot right-of-way eventually to be dedicated for the widening of Holly.
10. The Commission discussed having Mr. Stuart return with a new application, and waiving the application fee.

Commissioner Westcott moved for denial of MLP 91-03 based on the deliberations, basically finding that Criteria C has not been met as the lots are not functional. Further, Commission Westcott moved to waive the application fee is the applicant reapplied within six months. Commissioner Fenske seconded the motion and it carried unanimously.

MLP 91-04, a request by the City of Canby for approval of a minor land partition to partition an approximate 30+ acre parcel, to create two parcels, approximately 16.00 and 15.00 acres, respectively. The property is located north of Territorial Road and east of the Molalla Forest Road (Tax Lot 600 of Tax Map 3-1E-27).

Commissioner Mihata asked if any Commissioner had ex-parte communication or conflict of interest. Commissioners Fenske, Maher, Mihata and Wiegand stated they had visited the site and reached no conclusions.

Mr. Hoffman presented the staff report. He explained that the City of Canby was the applicant and proposed to divide a 31 acre parcel into two parcels. The northern parcel would be retained for public use and the southern parcel is the subject of the next public hearing for a conditional use for the new elementary school. He discussed the applicable criteria and the surrounding area. Additionally, Mr. Hoffman discussed the existing easement across the property from the southern part to the public parcel. An access easement, a minimum of 24 feet, would be needed to serve the rear parcel and, most likely, the existing road would continue to access the rear parcel until the Logging Road becomes available. An easement for the sewer would be necessary also. Both parcels could ultimately be accessed via the Logging Road if it became public, although the City does have access rights over it at the present time, which would continue to the northern parcel. Sidewalks are not present on the Logging Road, although it would be desirable to have them and a 10 foot right-of-way dedication would be desirable at the time of development. Further, Mr. Hoffman explained that the old, non-functional sewer interceptor on the property should be capped on both ends. Mr. Hoffman also explained that he had not been personally involved in any of the land negotiations prior to this minor land partition application. Staff has found that this proposal complies with the applicable criteria and that the subject parcel is generally flat, with adequate room for building with the required setbacks and yards. Therefore, staff recommends approval, with conditions, as recommended in the staff report, which Mr. Hoffman reviewed.

Applicant

Rusty Klem, Director of Public Works, City of Canby explained the historical perspective behind this parcel of property. He explained that the City acquired this site many years ago and built the City shop facility. At one time, there were plans to build an RV park, which did not materialize. About two years ago, the school district requested swapping property it owns, a filbert orchard at Territorial and Holly, for a large, undeveloped parcel in the northeast section, namely the parcel in question.

Opponents

Mr. Hoffman read a letter into the record from **Karen Chiba, 1885 N. Redwood**, stating her concerns regarding aroma from the sewer plant.

It was agreed this letter (Exhibit 4) would be considered when the Commission considered the conditional use application by the Canby Elementary School District and entered into the record for that application also.

Jim Haws, 43 Willamette Green stated that he is a retired Fish and Wildlife biologist and that he is concerned about the sacrifice of trees and understory plants, and about the wildlife that currently exists on the site.

Mr. Kelley explained that the Commission is only considering a minor land partition of the property at the present time and that this testimony should be given at the time the Canby Elementary School District's application is considered.

With no further testimony, the public portion of the hearing was closed for Commission deliberation.

Issues discussed:

1. The Commission discussed the maintenance of the Logging Road, regardless of ownership.
2. The Commission discussed access to the rear parcel through the southern parcel via a reciprocal access easement. Mr. Hoffman explained that the City has an access agreement to the northern parcel and the City shops and treatment plant from James River, via the Logging Road. It was agreed that the Logging Road is the preferred solution for access to the rear parcel. The Commission discussed the City's negotiations with James River for ownership of the Logging Road.
3. Mr. Kelley explained that the word "perpetual" could be added to the easement condition because the easement that is given by the school runs with the land forever, and could never be revoked.
4. Mr. Klem explained that the City considered access to the shops and plant via the existing Logging Road completely, half-way, and by creating a separate flag portion to the east off the southern parcel. The best option was found to be via the Logging Road as the City and CUB has irrevocable access on it. Presently, the City only owns the Logging Road up to Territorial but has access over the entire road. The City's irrevocable access was obtained from the prior owner and it can be passed on to anyone who purchases part of our property. The City is in the process of trying to acquire it from James River to make it a public road. Mr. Klem explained that the City is expecting a letter with regard to City ownership of the Logging Road shortly.

5. The Commission discussed making two conditions out of the proposed Condition #9, with regard to the interceptor and Logging Road.
6. Mr. Hoffman explained that if this application was approved, the next step would be a final partition which is noted in Condition #4. The easement would be illustrated on that final partition which is registered with the County. The Commission could reserve final approval of the final partition to make sure its intentions were met, as an additional conditions. When the easement is no longer needed, the Commission could revise the conditions.
7. A motion was made to deny the application based upon an incomplete access issue. Upon polling, two Commissioners voted for the motion and four against. The motion failed.
8. The Commission discussed deleting Condition #8 from the minor land partition application and add it to the school's conditional use permit so there is no doubt the developer bears the cost of improvements on Territorial. It was decided to leave the condition stand and add, "at the time of development" to it. The dedication of 10 feet for widening Territorial should remain as a condition of this application.
9. The Commission discussed the condition covering the abandoned sewer interceptor being moved to the conditional use application submitted by the school district.
10. The Commission discussed the permanent access to the rear parcel and that it should include a sidewalk and curb. The following wording was considered: If the logging road is to be a main access road for either newly created parcel, the developer of that parcel shall pave the logging road for a full width to at least the point of major access, prior to issuance of occupancy permits.

Commissioner Westcott moved for approval of MLP 91-04 with the conditions recommended by staff, as amended during Commission deliberations. Commissioner Zieg seconded the motion and it carried unanimously with the following conditions:

1. The applicant shall prepare a final partition map. The final partition map shall be a surveyed plat map meeting all of the specifications required by the

Clackamas County Surveyor. Said partition map shall be recorded with the Clackamas County Surveyor and Clackamas County Clerk, and a copy of the recorded map shall be provided to the Canby Planning Department.

2. A new deed and legal description for the new parcels shall be prepared and recorded with the Clackamas County Clerk. A copy of the new deeds shall be provided to the Canby Planning Department.
3. Utility easements 12 feet in width shall be provided on the exterior of the proposed development and six feet on all other property lines, and shall be part of the final partition.
4. A final partition map, modified to illustrate the conditions of approval, shall be submitted to the Director of Public Works for review and approval. The final partition map shall reference this land use application -- City of Canby, Planning Department, File No. MLP 91-04.
5. Plans to extend the sewer to service each new lot shall be approved for construction by the Director of Public Works, prior to the issuance of any building permits on the site.
6. All monumentation and recording fees shall be borne by the applicant.
7. All utilities must meet the standards and criteria of the providing utility authority.
8. A sidewalk and new pavement of the street area between curb and current street pavement shall be provided at the time of street widening and paid for by the developer of the front lot.
9. An easement for the access roadway and sewer interceptor, at least 24 feet in width, to the service yard, treatment plant, and rear parcel, shall be made a part of the final partition.
10. A strip of land 10 feet wide shall be dedicated, by the developer, for the eventual widening of Territorial Road to arterial street standards.

11. If the logging road is to be a main access road for either newly created parcel, the developer of that parcel shall pave the logging road for a full width to at least the point of major access, prior to issuance of occupancy permits.
12. The old sewer line crossing the center of the site may be abandoned, but must be capped at both ends.

Due to time constraints, the following hearings were continued to a special meeting to be held June 17, 1991:

CUP 91-01, a request by the Canby Elementary School District No. 86 for approval to construct a new elementary school, soccer field, softball fields, and other play areas, on a 15 acre site. The site is located north of Territorial Road and east of the Molalla Forest Road (Tax Lot 600 of Tax Map 3-1E-27).

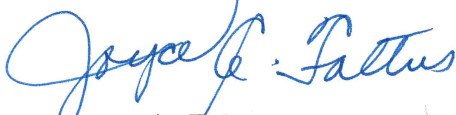
DR 91-02, a request by the Canby Elementary School District No. 86 for approval to construct a 61,000 square foot elementary school for students in grades K-4 (ultimately, K-5), to include 20 classrooms in a two-story configuration. The remainder is housed in a single story building. The site is located north of Territorial Road and east of the Molalla Forest Road (Tax Lot 600 of Tax Map 3-1E-27).

CUP 91-02, a request by the Canby Elementary School District No. 86 for approval of the following additions to Eccles Elementary School: a new covered play area at the north end of the existing gymnasium and a new music room with a connecting corridor to be located under the west end of the existing covered play area; and remodeling of the existing gymnasium and corridors, and paving of parking area at south end of school. The school is located at 562 NW 5th Avenue (Tax Lot 1100 of Tax Map 3-1E-32D).

IX. ADJOURNMENT

The meeting was adjourned at 10:55 p.m.

Respectfully submitted,


Joyce A. Faltus