

**CANBY PLANNING COMMISSION**  
**Regular Meeting**  
**May 13, 1991**

**APPROVED**

**7:30 p.m.**

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**I. ROLL CALL**

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

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

Others Present: Milt Dennison, Cam Sivesind, Wayne Scott, George Wilhelm, Roger Reif, Wayne Oliver.

**II. MINUTES**

The minutes of **April 22, 1991** were postponed to **June 10, 1991**.

**III. BUSINESS FROM THE AUDIENCE**

None

**IV. COMMUNICATIONS**

None

**V. UNFINISHED BUSINESS**

None

**VI. FINDINGS**

Mr. Hoffman presented a request from Richard Kraxberger to the Boundary Commission requesting annexation of his parcel to the City of Canby. The Portland Boundary Commission contacted the City requesting that this parcel (Tax Lot 600 of

Tax Map 3-1E-34C) be annexed simultaneously with Mr. Watson's parcel (Tax Lot 700 of Tax Map 3-1E-34C). As our ordinance only requires a public hearing at the Council level for annexations, it would be possible to have Mr. Kraxberger's request considered with Mr. Watson's request. Mr. Hoffman explained that the process and the intent of the ordinance would be met in so doing, and recommended that the Commission recommend that City Council also consider Mr. Kraxberger's lot for annexation.

Commissioner Westcott moved for approval of ANN 91-01 (John Watson) Findings, Conclusions and Order. Commissioner Zieg seconded the motion and it carried unanimously.

Commissioner Fenske moved to recommend that the City Council hold a hearing and recommend approval of Tax Lot 600 (Kraxberger) for annexation, to the Portland Boundary Commission. Commissioner Mihata seconded the motion and it carried unanimously.

## VII. PUBLIC HEARINGS

**SOLAR ACCESS ORDINANCE** presentation by Keith S. Liden, AICP, Senior Planner, McKeever/Morris, Inc.

Mr. Liden explained that, since the release of the model ordinance package, thirteen of the participating local governments have adopted and implemented the ordinance. The purpose of the project, he stated, is to develop and implement a uniform set of land use standards to provide and protect solar access to residential properties. The solar access ordinance would require new subdivision and PUDs to be designed to maximize solar access to houses, and it provides standards for siting houses and landscaping to minimize shade on adjoining properties. Mr. Liden further explained that the project offers technical assistance services, at no cost, to local governments and the private development industry.

The new development standard maximizes solar access in new residential subdivisions and PUDs by requiring that 80% of all lots have proper solar orientation. A Solar Balance Point Standard minimizes building-to-building shade and limits a new building from casting shade greater than 12' to 20' at the northern lot line, depending on the north-south lot dimension. A third ordinance, called the Solar Access Permit, provides existing single-family residences protection against shade from future non-solar friendly trees on adjoining properties within 150'.

Mr. Liden referred to a display model of a development, explaining various ways homes could be oriented to maximize solar access. Mr. Liden explained that the ordinance is designed to protect winter daylight hours and that, based on the orientation of homes on lots, 10 - 20% of energy could be saved during the winter

months. Some keys to enhancing solar energy are: situating the home so the peak of the roof is parallel to the street, orienting at least 80% of the lots in an east-west direction, and designing streets in developments to run in an east-west direction. Further, Mr. Liden explained that an entire development, or portion of a development, may be exempted from the solar design standard for steep slopes or significant pre-existing shade, or that reductions below the standard 80% of lots that must comply may be granted if the applicant meets certain conditions.

Mr. Liden stated that 18 of 22 communities who originally investigated this solar access ordinance, have adopted either the entire ordinance or the Solar Access Standard for New Development and the Solar Balance Point Standard.

Mr. Hoffman stated that staff recommends that the City of Canby adopt a Solar Access Ordinance, omitting the Solar Access Permit section, as it has been found to consume too much staff time and energy. The Commission agreed that it should be placed on a future agenda, once proper notice concerning the proposed action has been sent to LCDC.

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**SUB 90-06**, an application by **A. Wayne Scott for approval of Phase II of Willow Creek Estates**. Forty-nine single family units are proposed with over 6 acres of greenway, including wetlands and a recreational area. A portion of the site lies in the Hazard Overlay Zone. The site is located northwest of 99E, south of N.E. Territorial, and east of Redwood. [Phase I, consisting of 50 single family lots was previously approved by the Commission. The applicant has submitted new information involving wetlands, traffic impact analysis and noise abatement.] (Tax Lot 500 of Tax Map 3-1E-27DB, Tax Lots 700 and 900 of Tax Map 3-1E-27C, and Tax Lot 800 of Tax Map 3-1E-27C.)

When asked if they had any ex-parte contact or conflict of interest with regard to this application, Commissioner Westcott responded that Roger Reif is both his attorney and the applicant's attorney. During lunch one day, the issue of a traffic signal was discussed, and how an L.I.D. might work. None of the other Commissioners expressed any ex-parte contact or conflict of interest.

Mr. Hoffman presented the staff report. He reviewed the approval of Phase I of the development. At that hearing, the Commission requested that the applicant return with information regarding traffic impacts, noise and wetlands. He was asked to also review the access issue situation on the property. Those reports have been submitted and distributed previous to this hearing, along with supplementary letters the City has received. The noise report was supplemented by a letter from the engineer, answering questions Mr. Hoffman raised after reviewing the original report. The wetlands report was supplemented by a letter containing recommendations about how mitigation steps to protect the wetlands and wildlife habitat might be accomplished. The applicant has

withdrawn his application for being treated under the PUD designation, but requests that it be considered as a subdivision with modifications. He referred to a revised tentative plat which has been submitted and reviewed the modifications. The alignment of Teakwood Drive has been modified, and some lots changed as a result of the realignment. The condominium lots have been withdrawn and replaced by six lots for single family development. Staff recommends approval of Phase II with 26 conditions, most of which are similar to those recommended as part of Phase I approval. Condition No. 4, dealing with traffic, is new. Conditions Nos. 21-26 are relatively new, dealing mainly with aspects of the wetlands and redesign relative to noise and the railroad crossing.

With regard to the traffic impact analysis, Mr. Hoffman referred to a memorandum from Mike Jordan outlining some of the things staff discussed with the County and State and methods of accomplishing some of those objectives in the near future. The report basically concludes that there are no serious problems except for the already existing need for a traffic light at 99E and Territorial. The total project has been reduced from 143 units to 89 units, reducing the traffic impact by approximately 20%. After holding a meeting with the State, County, developer, and school district, it was discovered that no traffic light is currently programmed, and the traffic study, itself, will place this intersection on the State's list of hazardous intersections, making it eligible for safety funds. Although it is not currently on the 6-year plan for highway improvements, being on the list of hazardous intersections could move it up on the priority list. The estimate for such improvement is between \$200,000 and \$300,000. With the cooperation of all parties, it is possible the signalization could be accomplished within 2-3 years. The County has offered to coordinate the solution and help to organize the funding, including sources outside the City. The developer is willing to contribute to the solution and has made an offer toward that end.

With regard to noise, a acoustic engineer has submitted an in-depth study. It recommends noise mitigation techniques on the homes themselves, but does not believe a noise barrier is necessary. Staff recommends a condition requiring that potential buyers receive a disclosure advising them of the train traffic and the acoustic engineer's recommendations.

Regarding the wetlands, a wetland and wildlife expert has made a final determination of the exact area and has submitted mitigation recommendations, which requires modifying Condition No. 21, to recognize the existence of those recommendations.

Mr. Hoffman discussed the second means of access which is illustrated on the new proposal. He discussed the various access options, with respect to adjacent properties. Mr. Hoffman then discussed the various lot modifications, which have resulted mainly from learning where the wetlands area actually is, from the wetlands' expert's recommendations, and due to access eventually becoming available through the adjacent Egli property to Redwood. Mr. Hoffman then reviewed each of the conditions individually. He explained that the applicant had submitted a draft set of

CC&Rs. The main purpose of the CC&R's would be to insure maintenance of the common areas, designated wetlands and stream corridor area. In summary, Mr. Hoffman explained that staff recommends approval, with 26 conditions.

### **Applicant**

**Roger Reif**, representing the applicant, addressed the following issues:

1. Homeowners Association - The CC&Rs of the Homeowners Association, part of the Phase I requirements, will take care of the common areas, wetlands, and tennis courts, and there will be more participants as the lots are sold. The by-laws have been submitted to the City Attorney for his review and approval.
2. Traffic Report - Mr. Reif explained that an L.I.D. would be a poor way to go about installing a traffic light. It could be accomplished quicker and sooner if money was made available. It would be more responsible if all the developers came up with their "fair share contribution" paid up-front, into an escrow account. Determination of the "fair share" amount would be a function of City Council. This determination should be made prior to the issuance of building permits for Phase II.

**George Wilhelm, Wilhelm Engineering, Inc. 546 S.E. Township Road, Canby**, explained that the wetlands expert studies the soils, vegetation, and wildlife, and that it is best to define the wetlands in June and July in this area. During that time they can tell, more definitely, if the soils are actually wetland soils or if they are just wet. The applicant decided to have the expert proceed with the study now, even though the wetlands would be defined larger now, than if they were studied in June or July. The applicant is satisfied with the findings and doesn't intend to employ the expert's services for another study.

With regard to the walkway/jogging trail around and in the wetlands, Mr. Wilhelm explained that the applicant plans to request permission from the Division of State Lands at the same time the roadway crossing is applied for. No permit would be required for the tennis courts as they are not in the wetlands.

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

Mr. Hoffman read a letter into the record from Carol Berggren, stating that she concurs with the staff report.

Issues discussed:

1. The Commission discussed erosion control methods and that the purpose for these controls is to avoid dirt being trucked onto City streets, which would eventually drain into catchbasins. The Commission agreed that the condition should apply to the development of the subdivision and to the construction on individual lots.
2. The Commission discussed the drywell issue and the fact that one drywell can handle 20,000 square feet of surface area, possibly serving 2 lots/drywell. The Commission further discussed runoff water from streets which would be conditioned to go through filtering devices.
3. The Commission discussed a concern about the single access to Territorial Road. The Commission considered the proposal to provide for eventual extension of Teakwood to Redwood as an alternative to the one access that is presently designed for the entire subdivision. The applicant presented a traffic report which showed that left turns at Teakwood and Territorial would not be a problem. This was accepted by the Commission.
4. The Commission discussed the need for tree preservation. The Commission agreed it was wise to have an expert make determinations. The Commission agreed it is best to incorporate the Technical Guide to Community and Urban Forestry in Washington, Oregon and California into the tree treatment program for the site.
5. The Commission agreed a condition relating to Section 16.68.040(G) [development fees], will be included.
6. The Commission discussed each of the conditions in the February 8, 1991 and April 26, 1991 memos submitted by Mr. Hoffman.
7. The Commission discussed the width of Teakwood Drive. Mr. Hoffman explained that a 36' pavement is wide enough for three lanes of traffic, with a center left-hand-turn-lane.
8. The Commission discussed the proposed widening of Territorial to include 80 feet of right-of-way and 44' of pavement. The Commission agreed to include

the condition requiring the widening, and requiring the applicant to sign a waiver of remonstrance for improvements that might be required in the future.

9. The Commission agreed the traffic analysis submitted with the Phase II application was useful information and appeared to be valid. The intersection of Territorial and 99E was found to need a traffic signal. The traffic engineer report also reviewed the intersection of Teakwood and Territorial and found the project design appropriate.
10. The Commission discussed the fact that there is only one proposed ingress/egress to Territorial. The Commission agreed, from a safety standpoint, this could present a problem when Phase II is developed and that it would be desirable to consider alternatives.
11. The Commission discussed concerns about potential noise from trains with regard to the lots closest to the railroad.
12. The Commission discussed development of the recreation area and the possibility of a jogging trail through the wetlands and the need for Division of State Lands approval and possible need for mitigation were discussed. [The Commission requested that the proposed walking trail be shown on the map, in order for the State Division of Lands to review it.]
13. Since portions of the site are within the Hazard Overlay Zone and Flood Plain, special provisions are needed for those portions of the site.
14. The Commission discussed concerns about maintenance of the common areas and requested assurance that a Homeowners' Association will be formed to provide maintenance.
15. The Commission discussed the dedication of additional right-of-way along Territorial Road. It was agreed dedication should include space for 5 feet minimum sidewalks, and a 6-foot bikeway. A right-of-way, a minimum of 80 feet in width, should be provided, as should half-street improvements. Half-street improvements should include pavement, curbs, sidewalks, bikeways and urban-type street lighting, to meet Canby's Construction Standards. The construction designs should be approved by the Director of Public Works. Street pavement width between curbs should be a minimum of 44 feet.

16. The Commission discussed the width of buffer zones, or open space development, around the streams, ponds and wetlands. It was agreed a buffer zone should be provided with restrictive covenants that prevent mowing and removal of desirable wildlife plants. It was agreed staff would bring back, included in the final set of Findings, the exact footage of the buffer zone.
- Commissioner Fenske moved for approval of SUB 90-06 - Phase II of Willow Creek Estates [Lots 51-89, excluding Lot #56, but including the wetlands and floodplain area] as indicated on the revised application and on maps received by the City of Canby on April 11, 1991, subject to the following conditions as amended during deliberations:

1. Any proposed fill and grading shall be submitted for review and approval of the Director of Public Works.

2. Prior to Final Plat approval, a Tree Preservation Plan, prepared by a recognized professional arborist/urban forester, shall be submitted. Such plan shall follow the principles and practices described in pages 34-44 of the chapter entitled, "Preserving Trees Affected by Development" from a Technical Guide to Community and Urban Forestry in Washington, Oregon and California, available from the World Forestry Center, Portland. The City Forester shall review and approve such plan for consistency with the approved plan and all conditions. The subdivision developer shall implement the approved plan. The lot layout on proposed subdivision maps, as received by the City of Canby on April 11, 1991, need not be redesigned in a major fashion, but minor adjustments may be necessary to preserve selected trees.

3. During construction, erosion control shall follow the Erosion Control Plans Technical Guidance Handbook published by Portland, dated November 1989 (as amended).

4. The applicant shall provide a waiver of remonstrance for any traffic improvements needed for N.W. Territorial Road. The Final Plat for Phase 2 shall be approved only after the developer has provided written agreement to participate in funding his proportional share of the needed improvements or has provided an actual cash contribution accepted by City Council as a "Fair Share" contribution toward improvements at Territorial Road and 99E.



5. All vehicular bridges and stream crossings to be used by fire equipment shall be engineered to sustain at least 41,800 pounds vehicle minimum. An additional fire hydrant shall be installed at Teakwood Drive in the vicinity of Lot 55. All hydrants shall be three port type hydrants.
6. The applicant shall participate in a preconstruction meeting with City staff, CUB, the fire district, etc., prior to construction of the second phase of development.
7. Teakwood Drive shall be constructed with a minimum of 40 feet of right-of-way width throughout the subdivision, to the edge of the property near Lot 74, with a minimum of 36-foot pavement. The remainder of Teakwood Drive shall be a dedicated 40 foot right-of-way and pavement width for local public street shall meet City standards.
8. All utilities shall be constructed to the specifications of the provider.
9. Utility easements shall be provided and shall be twelve (12) feet along all streets and exterior boundaries of the subdivision, adjacent to other platted subdivisions with easements, if any, and easements along all interior lot lines are to be six (6) feet wide off of each lot, for a total of twelve (12) feet. Utility easements along all interior lot lines shall be six (6) feet wide off each lot, for a total of twelve (12) feet.
10. "As built" drawings shall be submitted to the City of Canby within sixty (60) days of completion.
11. Five (5) foot curbs and sidewalks, designed to City standards, shall be constructed along all street frontages. If the sidewalk is set back from the curb, it may be four (4) feet wide. The setback for the garage, in that case, shall be measured from the back of the sidewalk in front of the garage, and shall provide at least twenty (20) feet for parking.
12. All requirements of the Canby Utility Board, Fire District #62, North Willamette Telecom and the Canby Telephone Association shall be considered as conditions of approval, with final plans to meet staff approval.

13. Water lines shall be constructed to the standards established by the Canby Utility Board. Hydrants shall meet CUB and the Fire Marshal requirements. Electric service and street lights shall meet CUB requirements. Street, curb, sidewalk, storm drainage and sanitary sewer construction shall meet the requirements of the Director of Public Works.

14. The final plat shall reference this land use application - City of Canby, File No. SUB 90-06, and shall be registered with the Clackamas County Surveyor's Office and recorded with the Clackamas County Clerk's Office. Evidence of this shall be provided to the City of Canby Planning Department prior to the issuance of building permits requested subsequent to the date of this approval.

15. The draft Conditions, Covenants and Restrictions (CC&Rs), submitted with the application, shall be considered as a beginning point for drafting the final CC&Rs to be submitted with the final plat, and restrictions, the following shall apply:

a. Such covenants, conditions and restrictions and homeowner association by-laws shall be filed with the County Register of Deeds and shall provide for notice to the City Attorney and to the purchaser of any lot, at least ten (10) days in advance of any changes to be made, if such change is made prior to the sale of 75% of all lots in the development.

b. Such covenants, conditions and restrictions shall assure the continued maintenance of the commonly held areas by a homeowners' association, created thereunder.

c. All covenants, conditions and restrictions and homeowner association by-laws adopted thereunder shall be reviewed and approved by the City Attorney to assure continued conformity with City Code provisions and the conditions of this approval.

16. Construction costs of all roads and utilities shall be borne by the applicant.

17. Street names and numbering shall meet City requirements, and numbering shall be uniform and conspicuous on all units.

18. **The developer shall maintain separation between the sanitary sewer and water system improvements to comply with State health division requirements.**
19. **Street grades shall use vertical curve when grade breaks exceed 1%.**
20. **No work shall commence until the developer has signed the necessary certificates and paid the subdivision development fees specified in Section 16.68.040(G).**
21. **The wetlands report, as submitted with the revised application, is accepted as a preliminary wetlands boundary determination provided that, prior to approval of the final plat, a final report is prepared by a recognized wetlands/wildlife habitat expert(s). Such report(s) shall include a final wetlands determination and delineation. Wildlife habitat preservation and enhancement recommendations and stream corridor protection recommendations as submitted by letter of March 3, 1991, and FAX'd to George Wilhelm on May 3, 1991, and revised by letter of May 15, 1991, shall be fully implemented. The \_\_\_ foot width buffer zones or open space development around all streams on the entire site, ponds and wetlands shall be provided with restrictive covenants that prevent mowing and removal of desirable wildlife plants. The applicant shall submit his wetlands report and wetlands determination to the Division of State Lands for acceptance of such determination. The action of the Division of State Lands shall be provided to the Canby Planning Director for review and approval for consistency with this approval and all conditions and approval criteria. The final report and mitigation recommendations of the Wetlands and Wildlife Habitat and Open Space expert(s) shall be implemented by the developers and subdivision association in their final design, construction and maintenance of the subdivision, provided the recommendations are consistent with other conditions of this subdivision approval, as determined by the Planning Director.**
22. **In the vicinity of Lots 45, 46, 54, 55 and 57, preliminary design of roadway and utility is approved, as shown on the "Revised Phase 2 - Tentative Plan" received by the City of Canby on April 11, 1991, and submitted with the revised application. Prior to Final Plat approval, such roadway and utility design shall be finalized in such a fashion that the following objectives are met:**

a. roadway right-of-way is to be extended to the property line (with a one foot reserve strip) to be provided to the City of Canby at the subdivision property line adjacent to the new roadway at the end of Teakwood Drive and adjacent to Lot 74, in order to provide for an ultimate extension to service off-site tax lots to the southeast and the adjacent parcel(s). and ultimately connect to Redwood.

b. wetlands, stream corridors, flood plain fringe, and wildlife habitat are to be preserved to the maximum degree practical.

c. necessary sewer, water, storm drainage, and other utility services be provided (and waterproofed for flood conditions, if needed).

d. construction details to provide for adequately meeting the soil conditions encountered in order to minimize maintenance costs.

e. for road and sidewalk construction near flood plain, stream corridors and wetlands, an adequate base shall be provided.

f. a wetlands and water crossing permit application for any affect on streams and wetlands shall be made to the relevant agencies.

Such proposed roadway and utility plans to be reviewed and approved by the Director of Public Works with input from the City Engineer and CUB for consistency with the approved plan and all conditions.

23. To assure public awareness of flood potential, past and potential flood heights shall be prominently displayed by a number of signs in the designated flood plain areas on the site.

24. For any portions of property within the Hazard Overlay Zone area, approval of the City Forester shall be obtained prior to removing any trees over six inches in diameter, to help preserve the wetlands as wildlife habitat. Grading plans for such area shall be provided to the Director of Public Works, who shall review such plans for consistency with the Hazard Overlay Zone.

25. **Noise mitigation construction methods, as recommended by Van Gulik/Oliver, Inc., Engineers, or a comparable certified Acoustical Engineer, shall be utilized on Lots 61-68 and 80-81, inclusive, as a part of building permit requirements of the City of Canby. All buyers of the above described lots shall be notified by the seller, prior to sale, that a main line railroad track exists nearby, and that a number of trains are scheduled daily (some at night and some during the day). Prior to sale, the seller of each lot shall also provide the buyer with a copy of the "Noise Impact Analysis" report dated March 21, 1991, by Van Gulik/Oliver, Inc., Engineers, including the letter and attachments of April 29, 1991, from Van Gulik to R. G. Hoffman, Canby Planning Director. Such letter and attachments shall supplement the March report. The applicant for a building permit on the above described lots shall present to the Canby City Planner a signed affidavit certifying that he/she has received the noise impact analysis report.**
  
26. **The area of the stream and the area between the stream and new roadway adjacent to Lots 45, 46, 54, 55 and 57 shall be treated as common area and maintained by the subdivision association.**
  
27. **A jogging trail, as part of the recreation area, shall be proposed and submitted to the Division of State Lands for review and approval, wherever it affects wetlands. Mitigation shall be proposed where needed.**

**Commissioner Westcott seconded the motion and it carried 4-2, with Commissioners Schrader and Mihata voting no.**

Chairman Schrader explained he voted against the motion because he believed it should be tabled until the formula for working out the "fair share" is in place, and because the buffer strip issue is not finalized.

## **VIII. OLD BUSINESS**

Mr. Hoffman brought the Commission up to date regarding various applications the City has received.

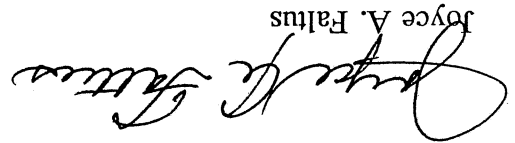
John Kelley discussed the SDC Ordinance. He explained that the ordinance the City was working on is similar to Lake Oswego's ordinance, which allows both the required dedication of land and/or fees. That ordinance was challenged before LUBA

and LUBA's decision upheld the validity of the ordinance. That decision has been appealed to the Court of Appeals. The City now plan to move along with it and model it along those lines, with some modifications that may answer the problems that have been raised in the LUBA issues. Our ordinance, regarding the issue of land or fees, will be tied to the Master Parks Plan and whether or not the developments in question lie within those areas we have designated for mini or neighborhood parks. If not, the developers, most likely, would be contributing a fee. Additionally, there is a model SDC Ordinance distributed by the League of Oregon Cities which has been rewritten to take the passage of Measure #5 into account which trying to remove SDC charges from property tax bases. Mr. Kelley is reviewing that ordinance now.

## IX. ADJOURNMENT

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

Respectfully submitted,

  
Joyce A. Falus