

CANBY PLANNING COMMISSION
Regular Meeting
March 11, 1991

7:30 p.m.

APPROVED

I. ROLL CALL

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

Staff Present: Robert Hoffman, Planning Director and Joyce Faltus, Secretary.

Others present: Roger Reif, Bob Kauffman, Moe Sommers, Roxy Lighty, Christine and William Devine, Brynda Starner, Violet Burley, Frank Morris, Maynard Nofigs, Leo Schlegel, Helen McMartin, Beverly Gornick, Donna Petty, Cam Sivesird, Eugene Gascho, D. Gingerich, Ruth Hostetler, Abe and Helen Reznicrek, John Manley, Harold Yoder and Jay Boxberger.

II. MINUTES

The **February 25, 1991** minutes were approved unanimously, as amended.

III. BUSINESS FROM THE AUDIENCE

None

IV. COMMUNICATIONS

Mr. Hoffman suggested changing the order of the agenda, moving the Commission interpretation after the two public hearings. The Commission agreed to make the change.

V. UNFINISHED BUSINESS

None

VI. PUBLIC HEARINGS

CPA 91-03, an application by **H.O.P.E.** (Housing and Outreach Project the Elderly) for a Comprehensive Plan Amendment to change the current land use designation from Low Density Residential to Medium Density Residential for Tax Lot 800 of Tax Map 4-1E-4D. The applicant ultimately will propose to develop the 32.57 acre parcel into a Planned Unit Development for the elderly, to include 138 independent living units, 210 units in a congregate housing unit, a health care nursing facility, and a community center. The community center is proposed to house an auditorium, chapel, bank, activity rooms, swimming pool and convenience store. The grounds are proposed to have outdoor activity areas, including a tennis court and a perimeter walking trail. The site is located at the southwest corner of 13th Avenue and Ivy Street.

Mr. Hoffman presented the staff report. He explained that only the Comprehensive Plan Amendment is being considered at this hearing. The proposed senior citizen housing sites will provide opportunities for homes for Canby senior residents. It will add to the supply of needed senior citizen homes and service facilities. Mr. Hoffman reviewed the applicable criteria explaining that the request must be consistent with the policies of the Comprehensive Plan. The site has been a filbert orchard for many years. The filbert orchard is not an urban-type use and has been determined to be in the last phase of its life cycle. At the time of annexation, the applicant described the intended use of the property as senior citizen housing. Staff anticipates that, at a later date, the applicant will request rezoning to R-1.5 (Medium Density Residential), approval as a PUD, approval as a "Special Housing Project for the Elderly," and approval will be required under Site and Design Review. Mr. Hoffman described the site characteristics.

As the site is within the Urban Growth Boundary and City limits, and is appropriate for urban development, it meets the intent of the Urban Growth goals and policies. Utility service is available in Ivy Street and, to some degree, in S.W. 13th Avenue. Phase I can be readily served, but further stages will require some improvements to the utility system. A solution to the major sewer problem in this part of the City, will begin

July 1. Improvements will be initiated with a Pine Street connection from Ivy/Township/Knott.

Current zoning would permit 160 units without any bonus. With a Senior Citizen and PUD bonus, up to 276 units would be permitted. Under medium density residential zoning, with Senior Citizen and PUD bonuses, the proposed 378 units would be permitted. With the nearby swimming pool and adult center, it appears to be an ideal location for senior citizen housing. As a PUD development, the proposal will need to provide at least 10% of the site as park land. Presently, the open space area is proposed as a private greenway, to be maintained by the development.

Ivy Street and 13th avenue are considered arterials. They will need to be widened in the rights-of-way, and half-street improvements made, including curbs and sidewalks, and a bike path provided. As they are both designated truck routes, they must meet County and City construction standards. Ultimately, a condition will have to be imposed, to cover these standards.

In addition, Mr. Hoffman brought to the attention of the Commission, a memorandum to the Mayor and City Council from the Canby Traffic Safety Committee regarding safety at the intersection of S. Ivy and 13th Avenue. The memorandum discusses factors which add to concerns about the safety at that intersection and offers recommendations to reduce the dangers. He explained that Rusty Klem communicated these concerns to Mr. Christensen, of the Clackamas County Department of Transportation and Development. The correspondence addressed: a) the possibility of installing a series of "nubs" placed in the northbound lane (of Hwy. 170) to better alert the drivers that they are entering a reduced speed zone, and b) a process for installing a traffic signal at the intersection of Highway 170 and S. 13th Avenue. The City requested that the County activate a study analyzing the situation. If a study finds no justification for a full cycle signal, the County was asked to explore the possibility of a flashing red light for S.W. 13th Avenue and a flashing yellow light for Highway 170, with the capability of switching to a 4-way flashing red during school dismissal hours.

Based upon an analysis of the application, and without benefit of public testimony, staff believes that the proposal is consistent with the Comprehensive Plan policies and that the Comprehensive Plan Amendment criteria can be fulfilled, provided public facilities and services are extended concurrent with development. Therefore, staff

recommends that the Planning Commission recommend approval of CPA 91-03 to the Canby City Council.

Chairman Schrader explained the public hearing procedures and asked if any Commissioner had ex-parte contact or conflict of interest. None was indicated.

In response to inquiries from the Commission, Mr. Hoffman explained the County criteria for warrants, on which they base the need for traffic signals. He also explained that the City plans to make the sewer system improvement connection from Pine to Ivy, which would relieve the congestion and capacity problems in the south part of the City. Ultimately, there would be a new interceptor on the Pine Street alignment from 13th to 99E.

Applicant

Roger Reif, 273 N. Grant, Canby, submitted three charts depicting projected Life Expectancy, Number of Citizens 65 or older, and Number of Citizens 85 or older up to the year 2020. He referred to the last Legislative Session which passed two bills, House Bill 2289, dealing with the promotion of living arrangements for the elderly, and Chapter 693 - relating to the financing of Continuing Care Retirement Facilities, and pointed out that the City of Canby has been addressing these Legislative goals in its plans. He described the clustered living arrangements with smaller yard areas to reduce the need for extensive individual senior maintenance, with walking pathways and open areas. Mr. Reif discussed the approximate cost per unit, and how it could be reduced by rezoning the site to a higher density, especially as this is a non-profit corporation.

Frank Morris, 10992 S. Toliver Rd., Molalla, President of H.O.P.E., described one of the goals of H.O.P.E. as trying to meet the needs of the middle income residents. Another goal is to establish a non-profit housing retirement housing corporation to function as a self-supporting entity. The charges would be based on the maintenance and operating costs only. If the proposed density is approved, independent living garden apartments (Phase I) will be built for residents over 55 years of age. Additional phases would include a nursing facility.

Kim Arbuckle, 570 Liberty Street SE, Salem, 97301, stated he is the architect for H.O.P.E. He explained that the Master Plan was designed

with the help of future residents, who are extremely concerned with the quality of life for the seniors who will be living there. The facility, as designed, would provide an environment for the elderly who are capable of both independent living situations and those in need of full time care. He pointed out that the pathways are planned with no curbs, to ensure safety for the seniors. He referred to a letter from Ron Tatone regarding the existing utilities that will serve the site. Regarding density, Mr. Arbuckle explained that higher densities left too little open space, and the lower densities forced the costs per unit up to an unacceptable level. This project is not intended as low-income housing, but for retirement housing at an affordable cost. The proposed development consists of 138 independent living units on the north side of the site, similar to garden apartments. Mr. Arbuckle described the circulation and access system built into the facility. Describing the Master Plan, he explained that a 30-unit multi-story independent living facility and a 210 unit congregate living facility with an efficiency kitchen built into each unit, with a common dining area shared by all residents is proposed. Additionally, a nursing care unit with different levels of health facilities, a community center with a chapel/auditorium, shops, classroom areas, a heated indoor swimming pool, local post office, small bank, coffee shop, and small convenience store are also proposed for the facility. From the developer's viewpoint, most of the needs of the residents can be fulfilled on-site.

The 378 units proposed will cover only 22% of the total site, while the remaining 25+ acres will consist of landscaped open space, access road, and parking areas with built-in landscaping. This conceptual Master Plan does not address public streets or sidewalks or fire access/turnarounds, which will be addressed in the final plan. To fit in with the surrounding residential area, the lowest density areas, one story independent living units, are situated on the north side of the site. He described the minimum access planned for the site as maximizing security for the residents. The Master Plan, he explained, has been designed as a means of increasing density, responding to the needs of the elderly as they progress from independent living, to congregate care, to nursing facilities.

Douglas Gingerich, 7972 S. Three Gait Lane, Canby, stated the he concurs with all the information that has been presented in support of this development. He added that as the residents age, they prefer to remain in Canby, and this project will satisfy that need. With regard to compatibility with the neighborhood, and especially the schools, Mr. Gingerich explained that the elderly often volunteer at the public schools.

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

Mr. Hoffman explained the reason for the Comprehensive Plan change application coming before the Commission, rather than a Zone Change, at this time. He explained that the applicant initially requested a zone change from R-1 to R-2 on the southern portion of the site. The City explained it was not consistent with the Land Use Element of the Comprehensive Plan, which proposes this entire area for low density residential. For the City to consider R-2 zoning, the Comprehensive Plan would have to be amended and, as the applicant was considering developing the entire site as a PUD, the density for the entire project would have to be considered. It was decided that medium density over the entire site would permit all of the applicant's proposed plans to be included. Mr. Hoffman recommended submitting a Comprehensive Plan Amendment first, with the understanding that a request for rezoning to R-1.5 over the entire site would be submitted afterwards. Additionally, Mr.

Hoffman explained that the applicant will probably also be requesting a senior citizen consideration, as that would permit reducing the parking and, therefore, densities can be higher.

Issues discussed:

- a. The Commission discussed the need for a traffic impact analysis, which should include other approved development projects in the area, but specifically showing the impact of this development on the intersection of S. Ivy Street and 13th Avenue.
- b. The Commission discussed the open space concept and the need for recreation land, other than the pathways shown in the proposed master plan, which would be dedicated to the City and used to benefit residents of Canby. Under a PUD application, and as part of the Master Park Plan of the Comprehensive Plan, the community should gain some benefit from a portion of this acreage designated as a mini-park for, perhaps, senior residents. The Commission agreed to condition that park land be provided at the scale of two to three acres for Citywide use.

- c. The Commission discussed the sewer relief plans for Ivy/Township/Knott and its relationship to this proposal. The Commission discussed whether the sewer connection should be in place prior to the issuance of any building permits. Mr. Hoffman explained that the analysis shows that Phase I (the northeasterly corner) could be accomplished without major changes to the present system (other than the Ivy/Township/Knott connection forecast for this year) using gravity flow systems, but that the ultimate total build out would require major extensions and lift stations. The Commission agreed to a condition where the development of Phase I does not begin until that connection is complete.
- d. The Commission discussed the proposed parking for the development.
- e. The Commission discussed the applicable criteria.
- f. The Commission discussed a time frame for initiating Phase I. The Commission agreed to having John Kelly, the City Attorney, word a condition recommending that the approval of this amendment to the Land Use Element of the Comprehensive Plan designating this site Medium Density Residential, rather than Low Density Residential, for the entire parcel (Tax Lot 800 of Tax Map 4-1E-4A), shall be subject to a 3 year time frame for the initiating Phase I, subject to the review of the City Attorney and City Staff.
- g. The Commission discussed the applicable criteria.

Based on the staff report, public testimony, and Commission deliberations, **Commissioner Mihata moved to recommend approval of CPA 91-03 (an amendment to the Land Use Element of the Comprehensive Plan from Low Density Residential to Medium Density Residential) to the City Council, with the following conditions:**

1. **The applicant (as a part of the PUD conditional use process)**

shall submit a traffic impact analysis, which shall include other approved development projects in the area, but specifically showing the impact of this development on the intersection of S. Ivy Street and 13th Avenue.

2. The applicant (as a part of the PUD conditional use process) shall provide park land, at the scale of two to three acres, for Citywide use.
3. Development of Phase I (the northeast one-quarter of the project area) shall not begin until the Ivy/Township/Knott sewer connection has been completed.
4. The designation of Medium Density Residential shall remain on this parcel, provided construction of Phase I (i.e. northeastern quadrant of total parcel) shall commence before the expiration of three (3) years from the date of approval of this Comprehensive Plan Amendment. "Commencement of construction" shall mean that all necessary building permits must have been issued by the appropriate authorities, including City and County. Should commencement of construction not occur within three (3) years of the date of approval, this approval is null and void, and the land use designation shall revert to Low Density Residential.

Commissioner Zieg seconded the motion and it carried unanimously.

MLP 91-01, a request by Ernest W. Laitinen (applicant) and Walter R. Devine (owner) for approval of a minor land partition to divide a .46 acre parcel into 2 parcels containing .15 acres and .29 acres, respectively. The property is located east of S. Elm Street and south of S. 3rd Avenue (Tax Lot 700 of Tax Map 4-1E-4BA).

Chairman Schrader asked if any Commissioner had ex-parte contact or conflict of interest. None was expressed.

Mr. Hoffman presented the staff report, explaining that the applicant is requesting approval to divide an 0.46 acre lot into two parcels containing approximately 6,460 and 12,555 square feet, respectively, in order to ultimately build a 4-plex on the rear parcel. The front parcel consists of a home, 377 S.W. 3rd Avenue. The property is zoned High Density

Residential (R-2). Mr. Hoffman discussed the criteria that must be met for panhandle-shaped lots, explaining the standards that must be met. He explained that the existing house and its placement on the lot does not permit more than a twelve foot access, nor does it permit the minimum building setback of five feet from the proposed access strip. The applicant is proposing two one-way easements, 12 feet each, which would be shared with the existing house, all accessing onto S.W. 3rd Avenue. Staff has requested that the applicant investigate access to 4th Avenue, which appears physically feasible. As a multiple structure application would have to go through Design Review, Mr. Hoffman explained that under the current Design Review Criteria there is a requirement for a 24' accessway with a 5' area between the accessway and the lot line, and a 5' sidewalk. It is unclear whether the 5' sidewalk is in addition to the required 5 feet between the accessway and the lot line. He explained that staff is investigating this conflict between flag lot requirements versus Design Review requirements. Usually, where there is a conflict between provisions, the more limiting provisions apply. Under current Design Review requirements, the application, as presented, will not work. The Design Review Ordinance would need to be amended to allow a 4-plex if a 34 foot easement cannot be gained. Staff finds that the partition will have adequate frontage on a public street to insure safe and efficient access for a single family or duplex structure, but that further steps would need to be taken to apply access to a 4-plex. Sewer service is available from either 3rd or 4th, but staff recommends it be served from 3rd Avenue, which would require utility easements. Staff finds the application meets the basic intent of the Comprehensive Plan (aside from the access problem) and recommends approval, subject to conditions. He read condition #9, which stresses that approval of a 4-plex on the rear parcel is not implied by this action, as further approvals would be necessary for a 4-plex. Mr. Hoffman read a letter into the record from the applicant, requesting a definitive decision be made. The applicant said it would be ridiculous to approve the partition, subject to further approvals of access.

The Commission discussed the fact that this application hinges on the access issue. With regard to Section 16.64.040(i)(3), and the 12 foot easement on both sides of the lot, the Commission discussed the required 5 feet between the access strip and the existing house, and questioned whether it was specific to the existing house on the lot in question or adjacent houses. On the right side of the existing house on the lot, there is only 4 feet between a part of the living area and the proposed access.

Applicant

John Manley, Heritage Realty, 7250 S. Hwy. 22, Canby, stated that he is representing the applicant, who is out of the country. He stated he is in the process of making a good faith effort to gain access to 4th Avenue. If this is not possible, the applicant is requesting approval for a 4-plex subject to Design Review approval. The applicant further stated that this application, in order to go forward to Design Review, depends on approval for a 4-plex.

Jay Boxberger, Heritage Realty, 27308 S. Gribble Road, Canby, explained that with reference to the ingress on the right side, where there is only a 4' easement, that part of the house is only used as a porch for a utility room.

Proponents

Walter R. Devine, 377 S.W. 3rd Avenue, explained that he owns the existing house on the lot, is the seller of the property, and approves of the application. Mr. Devine explained that the lots on this street are very deep and the rear portions of the lots are virtually land-locked. This application could be instrumental in opening the rear section, he added.

Chris Devine, 377 S.W. 3rd Avenue, explained that she, too, lives in the existing house on the lot, and approves of the application. She explained that her washer and dryer are on the porch due to her bad leg and her inability to use them in the basement. The utility was previously used only for boots, extra pots and pans, etc. Without the utility room, there would be approximately 6-7 feet between the house and the access road. The actual living area of the adjacent homes would not be near the access roads, she added, just the garages. She asked if the application would meet the ordinance requirements if the utility room was removed.

As there was no opposition to the application, and no additional testimony, the public portion of the hearing was closed for Commission deliberation.

Issues discussed:

1. The Commission agreed the access is the main issue as the other criteria appears to have been met. If the applicant was permitted access onto 4th Avenue, there would be no access problem. Mr.

Hoffman explained the applicant was going to continue to make a good faith effort to gain access onto 4th. The Commission agreed it would probably use the criteria in the flag lot section of the Ordinance, rather than access criteria under Design Review because 34 feet does not usually work for flag lots.

2. The Commission discussed whether a variance would be necessary. Mr. Hoffman explained that the ordinance, under flag lot requirements, only requires one 12' accessway with 5 feet between the road and house. One of these accessways does meet the requirement, and the applicant is proposing two one-way access roads.
3. The Commission discussed whether the criteria referred to only the existing homes on the lot, or adjacent houses also, and asked staff to investigate an interpretation for use with future applications.
4. The Commission discussed delaying action on the application until the applicant hears from the adjacent owner with reference to access from 4th Avenue. Further discussion included the applicant's desire for a decision, one way or the other, at this hearing.
5. The Commission discussed the fact that the lots in that area are very deep and development was probably inevitable. The Commission was unsure whether a 4-plex was the realistic solution.
6. With regard to meeting the requirements if the utility room was removed, the Commission agreed the flag lot requirements would be met, but not necessarily the Design Review requirements. Mr. Hoffman explained that the 24 available feet would be adequate, if the Commission used the flag lot ordinance to interpret the access question, but it would require an amendment to the Design Review Ordinance. For a 4-plex, the applicant would still have to go through the Design Review process, as it stands, which requires 24 feet plus 5 feet from the existing house, plus a sidewalk -- or the applicant could apply for a variance, in which case, he would have to prove hardship.

7. The Commission discussed whether the application would work if there were two flag lots, each with a duplex and a 12' access, with reciprocal easements. One alternative was for the applicant to apply for a variance to the 5' setback between the house and access road or, a second alternative would be for the City to initiate an amendment prior to the Design Review process, which would take approximately 40 days.
8. The Commission discussed restricting parking on the access roads and agreed that such restrictions should be posted along the access roads.
9. The Commission agreed this was an especially deep lot and that the owner should be able to develop it if there was a feasible way to do so reasonably.
10. The Commission discussed the variance criteria, which must **all** be met, and includes the fact that a hardship must not be self-imposed. As it could be developed with a single family home or a duplex, it could be interpreted that a four-plex would be a self-imposed hardship.

Commissioner Zieg moved for approval of MLP 91-01, 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, 6 feet in width, shall be provided on the**

exterior and interior lot lines of each lot in the proposed development.

- 4. A final plat, modified to illustrate the conditions of approval, shall be submitted to the Director of Public Works for review and approval. The final plat shall reference this land use application -- City of Canby, Planning Department, File No. MLP 91-01.**
- 5. Plans to extend the sewer 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 reciprocal agreement to share the driveways shall be made a part of the final partition.**
- 9. In order to consider a multiple residential structure on the rear lot, the developer shall apply for Site and Design Review. At such time, the applicant shall show a good faith effort to obtain an adequate sized driveway easement to S.W. 4th Avenue or Fir Street. Approval of a 4-plex on the rear parcel should not be implied by this action. Further approvals are necessary.**
- 10. No parking shall be allowed on either access drive, at any time, and such restrictions shall be posted along each access drive.**

11. **A 5 foot setback shall be provided between the existing house and each access drive.**

Commissioner Fenske seconded the motion and it carried unanimously.

VII. FINDINGS

Commissioner Fenske moved for approval of SUB 90-06 [Phase 1 of Willow Creek Estates], as amended. Commissioner Zieg seconded the motion and it carried unanimously.

INTERPRETATION BY COMMISSION REGARDING REAR YARD REQUIREMENTS FOR SETBACKS IN AN R-1 Zone.

Robert Hoffman explained that an existing single-story home has been built with a fifteen foot rear yard setback and meets the current ordinance for single-story houses. The owner would like to build a two-story addition and expand the home. The ordinance requires a twenty foot rear yard setback if the building is **two** story. The owner proposes to build the portion of the addition between 15 and 20 feet, as a single-story only, and the portion that is beyond 20 feet, as a two-story. It appears to meet the intent of the ordinance related to need for light and air. However, Section 16.04.680 defines "yard" as the "open space two and one-half feet above the ground level of the graded lot upward, **except as otherwise provided in this title.**" "Rear yard" is then defined in Section 16.04.700 as follows: "Rear Yard" means a yard lying to the rear of the principal building on the lot and generally opposite the lot front." This home is situated on a corner lot. The homeowner could be permitted to build the single story portion. However, Section 16.08.010 does not seem to permit the two-story portion to be built without the **twenty** foot yard being provided. A similar problem exists if a person has a two-story home with a twenty foot rear yard and wants to build a single-story addition and provide only the fifteen foot rear yard for the addition. One story "accessory" structures have traditionally been allowed to be built in yards provided they are at least 60 feet from the street, and have at least 3 feet around them. Corner lot rear yards are 5 feet less than other lots. Mr. Hoffman asked if the Planning Commission saw any way to interpret the Code to permit construction, as proposed.

A person that is ready to submit an application has a 14 foot rear yard with the existing house, on a corner lot. They want to put a second story addition on, and lack one foot. Mr. Hoffman suggested they purchase one foot additional from an adjacent neighbor, or set the addition back 15 feet. The resident feels it would look bad if it was offset one foot. He explained he is working on wording that would, in effect, say that for second stories, measure at the second story, not at 3-1/2 feet above the ground, to get an offset.

The Commission discussed granting a minimal variance if none of the neighbors objected to the addition, but agreed it would be less inclined to grant a larger variance. The Commission also discussed the difficulty involved in granting a variance as the applicant must meet **all** the criteria.

Mr. Hoffman explained that, as it stands, he could grant denial administratively when they apply for a permit, and they could appeal it to the Planning Commission.

The Commission discussed delegating such minor decisions to the Planning Director, but Mr. Hoffman stated that, as written, he did not believe he could grant such approval because, under State law, it could only be a ministerial decision if no judgement was involved. When discretion is involved, it must be heard before the Commission. A discussion was held regarding the process various other communities use for Class I and/or Class II administrative decisions. Mr. Hoffman explained the procedure for noticing, with regard to administrative decisions. The adjacent neighbors are noticed of a **pending decision by staff**, and given time to submit objections, if they so desire. After staff's final decision is made, a report is sent to the applicant, and the adjacent neighbors are sent a final **Notice of Decision**, with a fifteen day timeframe allowed for appeal to the Commission. The Commission agreed that if it did delegate such decision to staff, a 'no-fee appeal' would be included in the recommendation to Council. Further, the Commission directed staff to draw up an Administrative Rule to this effect, limiting it to this type of setback problem, and submit it for Council consideration. The Commission suggested drawing up this Administrative Rule in such a fashion, as to be able to add other areas of responsibilities eventually.

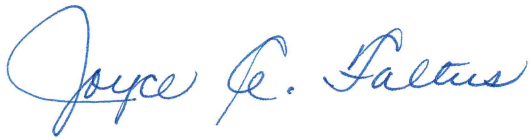
Chairman Schrader addressed the need for an additional City planner. He

also advised the Commission that, if they have an interest in any specific part of the Comprehensive Plan (or Ordinance) they would like to see updated/amended, to bring it to staff's attention.

VIII. ADJOURNMENT

The meeting was adjourned at 10:45 p.m.

Respectfully submitted,

A handwritten signature in blue ink that reads "Joyce A. Faltus". The signature is written in a cursive style with a large initial 'J'.

Joyce A. Faltus