

CANBY PLANNING COMMISSION

Regular Meeting

January 27, 1992

7:30 p.m.

I. ROLL CALL

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

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

Others Present: Councilman Prince, Councilman Smith, Dave Anderson, George Wilhelm, Cathe Franz, Ray Franz, Assistant Planner Jim Wheeler.

II. MINUTES

The minutes of **December 9, 1991** were unanimously approved.

The minutes of January 13, 1992 were unanimously approved, as amended.

III. CITIZEN INPUT ON NON-AGENDA ITEMS

Councilman Terry Prince, 1103 N.E. 12th Way, advised the Commission that City Council was requesting a Planning Commissioner to sit on the committee to choose a new Commissioner. It was decided Vice-Chair Linda Mihata would sit on the committee. Councilman Prince said a new Commissioner, hopefully, would be on-board by the beginning of February.

IV. COMMUNICATIONS

Mr. Hoffman advised the Commission that Dave Nelson requested postponement of DR 91-08, which was scheduled to be heard at this meeting, to February 24, 1992. By unanimous consent, the Commission agreed to this request.

V. FINDINGS

None

VI. OLD BUSINESS

None

VII. PUBLIC HEARINGS

SUB 91-01, a request by David Anderson to develop a 17-lot single family subdivision, North Pine Addition II. The property is located east of N. Pine Street and north of N.E. 14th Avenue (Tax Lot 1500 of Tax Map 3-1E-34B). (Continued from January 13, 1992)

Chairman Schrader asked if any of the Commissioners had ex-parte contact or conflict of interest since the last hearing on this application. None was indicated, other than Chairman Schrader stating he had listened to tapes from the previous meeting. For the benefit of the audience, Mr. Kelley, City Attorney, explained that the City held a workshop for the City Council and Planning Commission. The workshop discussed the issue of the problems with the sewage treatment facility, including a discussion about a possible moratorium and whether or not additional permits should be issued.

Cathe Franz, 980 N.E. 14th, asked if any conclusions were drawn at the workshop, or if any recommendations were made.

Chairman Schrader explained that most of the workshop centered on technical aspects with regard to the plant, including engineers' opinions. A moratorium was discussed, but the City Council appeared to have no interest in going that route in building permits at this stage, he explained. The general consensus appeared to be that new annexations of land into the City would be scrutinized very severely. No absolute decision with regard to other land use decisions were made.

Ms. Franz asked if any minutes or literature was available with regard to the workshop. Mr. Kelley advised her she could listen to the tapes and, if she wanted to stop by the office, she could pick up the written packet that was distributed prior to the meeting.

Mr. Kelley explained that since Mr. and Mrs. Franz were allowed to submit additional material, in all fairness, Mr. Anderson should be permitted rebuttal time. After a short discussion, it was agreed the hearing would be reopened for public testimony.

Mr. Hoffman responded to the opponents' complaint. With reference to the "First Complaint" in the opponents' statement:

Where it is stated, "The city has prejudiced the opponents substantial rights by making false and misleading statements in regards to the adequacy of available sewer services during the original annexation proceedings," Mr. Hoffman stated that he was unaware of that charge being previously made, is not aware of any evidence regarding that matter, and that this is the first time this issue is being raised with regard to the subdivision proposal.

With reference to the opponents' statement that, "It is our contention that City officials knew at that time and choose not to disclose to the public or the council that there was in fact a problem that would be aggravated by additional inflow," where the Canby Herald is quoted as the primary source of that information, Mr. Hoffman stated that page 3 of the staff report states that the City has a plan and implementation process underway to make improvements to the plant. The City has never, to Mr. Hoffman's knowledge, denied there are problems at the treatment plant. The City has, in fact, paid substantial money for a Facilities Plan, drawn up by experts.

Where the opponents' state that, ". . . the City's fire chief French Smith, states that the existing fire station "would have to be replaced and a substation in north Canby is needed," Mr. Hoffman responded that a substation is needed, but that it was never stated that service was inadequate now. In fact, he added, there is a report in the record from the Fire Marshal, who has requested some improvements to the plan, and staff has recommended conditions for dealing with the concerns he raised.

With regard to school services, Mr. Hoffman stated that the bond issue provides the money to make the necessary improvements; a new school has been approved; there are additions to the elementary school with temporary units; and additional items have been submitted for making necessary corrections and improvements to the school system to ensure adequate school services provided.

With regard to the "Second Complaint" in the opponents' statement:

Mr. Hoffman explained that the Boundary Commission did not state 13 areas need improvement. Instead, after talking to the director of the Boundary Commission, the 13 Findings are not areas needing improvement or conditions of approval of the annexation, but statements of fact, which is the usual case with regard to findings. With regard to Findings #10, staff's own report included a statement that improvements are needed and/or desirable at 99E and Pine and proposed a Condition #16 for widening at that location, proposing too, a waiver of remonstrance regarding necessary improvements in that vicinity. Mr. Hoffman added that the major cause of the problem at 99E is the Fairgrounds, not one that is appropriate for resolution due to additional traffic

from the subdivision. With regard to Finding #11 from the Boundary Commission, relating to the need for surface water runoff, Mr. Hoffman advised that proposed Condition #17 requires approval of the solution for surface water runoff and Condition #18 requires a waiver of remonstrance for any necessary improvements to public facilities.

In terms of the "Third Complaint" in the opponents' statement:

This complaint deals with criticism of flag lots as a design method which, in the opponents' opinion, promotes poor block design. It further implies that the subdivision approval criteria discourages flag lot design. There has been no evidence submitted with regard to this allegation or the allegation that if enough space is not allocated, it would turn into a slum.

With regard to the density question, Mr. Hoffman stated that there is no evidence that density itself causes problems, especially when the lots in question are at least 7,000 square feet, which is permitted under the ordinance.

In terms of the "Fourth Complaint" in the opponents' statement:

The allegation is that the design puts an undue hinderance on the development of the property to the north and south. Alternatives were investigated by the developer, at staff's request. The submission is only one possibility for developing the property, certainly not the only solution. Street-wise, without the cooperation of adjacent property owners, no design would be perfectly harmonious. The owner of the property to the south was not interested in participating in the costs of accessing it through the subdivision.

In terms of wildlife habitats, Mr. Hoffman explained that there is no evidence of the existence of any wildlife, other than birds.

The roadway of 15th, if it were extended to the north, would not destroy all the trees on the Franz property. There are a number of alternatives for developing the Franz property in order to save most of the trees. The placement of 15th Avenue in this subdivision in no way requires that it be extended. It is just assumed that someday, the City would like to see the property to the north relate to this, rather than just having a series of cul-de-sacs or dead-end streets.

In terms of the "Fifth Complaint" in the opponents' statement:

Mr. Hoffman stated that the fence problem is caused by the electrified and barbed wire fence that exists on the property to the north and the Franz' concern with liability. This will be discussed further during the testimony and deliberations portion of the hearing.

Opponents

Cathe Franz, 980 N.E. 14th stated here concerns:

1. That when the property was annexed, the City claimed the sewer plant could handle the increased use and that the plant was no where near capacity.
2. That the extension of 15th Avenue will hinder the development of the Franz property. She stated there should be an option to having the street extend through the Franz property, where there is a large cluster of trees. Unless the treed area is left as open space, the trees would have to be removed.
3. That since there will be public access to the Logging Road, she was concerned about the City's liability due to the barbed wire and electrical fencing along the Franz property.
4. The opponents' concerns are all based on City Council meetings and newspaper articles. Ms. Franz added that though there are lots of suppositions, there is no solution to the sewer capacity problem.
5. Ms. Franz suggested that there are several other options for developing the property in question, and the property to the south, other than the present design.

Ray Franz, 980 N.E. 14th Avenue, stated that he concurs with his wife's testimony. Had there been a flat statement with regard to the capacity of the sewer being inadequate, he would have pressed for a moratorium at the time of annexation and addressed the issue at the County level. With regard to his property, he stated that the design for this subdivision leaves no choice regarding the removal of trees. With 15th Avenue dead-ending as it does, the value of his property is greatly reduced, as he cannot afford to set aside the entire treed area, nor would he want a lot that has a dead-end coming right up to the backyard.

Rebuttal

Dave Anderson, 641 N. Baker Drive stated that when he purchased the property, there was no mention of a capacity problem at the sewer plant. When he submitted his application for preliminary subdivision approval in the latter part of October, there was still no mention of a capacity problem at the sewer plant. Having come this far, Mr. Anderson stated that the outcome of this application should not be dependent upon the sewer capacity problem. He added that he realizes the risk he is taking by building this subdivision, because sewer permits could be terminated until the capacity problem is solved. Mr. Anderson stated that he was in attendance at the joint Council/Commission workshop and he concluded that the Council preferred not instituting a moratorium. He stated that Council did emphatically state, at that meeting, that no matter how the bond issue turns out, the sewer plant will be improved. He also stated that if 15th Avenue were bent on a 45 degree angle it would miss almost all the trees. With regard to the fence along the walkway, Mr. Anderson stated that the walkway could be moved south, so as not to interfere with the electrified/barbed-wire fence. All pruneland, which has been broken down into 5 acre tracts, are very limited in the way they can be developed. The proposed design appears to be the most desirable. The property to the south is only 150 feet wide and suggestions have been offered as to how to improve the road design for that site.

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

Issues discussed:

The Commission agreed the main issues under consideration were:

1. The access walkway and whether or not some safeguarding should be instituted for the home that will abut along the edge of the Franz property.
2. The overall road design for 15th Avenue.
3. The Public facilities issue.

With regard to the public facilities issue, The Commission discussed the data referred to at the workshop, which outlined the exact wording of the Comprehensive Plan criteria and how it related to every land use decision.

Mr. Hoffman reviewed the criteria, noting that the Commission must make a finding that it conforms with the text and applicable maps of the Comprehensive Plan, with other applicable requirements of the Land Development Planning Ordinance, and that the overall design and arrangement of the lots shall be functional and adequately provide building sites, utility easements, and access facilities deemed necessary for the development of the subject property without unduly hindering the use and development of adjacent properties. He noted that none of the foregoing explicitly discusses the adequacy of public facilities, but the Comprehensive Plan, in the Land Use Element, under policy #3, states that "Canby shall discourage any development which shall result in overburdening any of the community's public facilities and services." Implementation measure "C" under the same element reads, "Continue to encourage applicants to offer creative methods of minimizing adverse impacts on public facilities and services. . . ." The goal under the Public Facilities and Services Element reads, "To provide the provision of a full range of public facilities and services to meet the needs of the residents and property owners of Canby." Policy #1 says "Canby shall work closely and cooperate with all entities and agencies providing public facilities and services." The implementation measure under section C, reads, "To continue to stress the adequacy of services and facilities and to review each development proposal. To encourage developers to approach projects in phases as a means of assuring that rapid development outstripping essential services does not occur. To approve only those applications where it is found that public facilities and services are adequate." The keys, Mr. Hoffman added, is that Canby shall discourage any development which will result in **overburdening** any of the community's facilities or services, and that the only applications that should be approved are those where it is found that public facilities and services are **adequate**.

The Commission discussed some of the difficulties occurring at the treatment plant and that it appears that there are plans in place to solve them. Some of the problems appear to be erratic and not tied to a specific problem. From the discussion at the workshop, it appeared there was a plan to solve the problem, depending on where the monies come from to meet that need. The biggest hurdle, the Commission agreed, is how to perceive **adequacy**. With regard to the concurrency concept, Mr. Hoffman explained that when any lot, subdivision, or partition, that causes a load to be placed on a public facility of any kind, that the public facility must, at that point, be adequate in terms of its full capacity and conditions for handling the load. Oregon law encourages that we meet the needs, but does not require that we have **absolute** concurrency. We must be sure the service is available in the near horizon. With that concept in mind, he referred to the January 3 staff report, under public facilities and services, where

it says, "The City has a plan and implementation process under way to make improvements at the sewer plant. There are numerous possible way of funding this mechanism to make these improvements. The City Administrator has publicly stated that funding will be provided from some alternative source if the vote on the initiative rejects revenue bonds."

Three Commissioners felt that to deny this application on the issue of inadequate services would, in fact, be imposing a moratorium without following all the legal procedures. They also agreed that, according to the discussion at the workshop, although there are problems at the sewer plant, the Commission was given no direction as to denying applications for the present, other than careful scrutinizing of annexation applications. They further stated that they understood the sewer problems would be fixed whether or not the bond issue passed. One stated it was reassuring when Mr. Anderson commented that he realized he was at risk in developing property when the possibility existed of not getting sewer permits. Further, the Commissioners felt that although the capacity might not be available **now**, during the time it takes to secure financing and the time it takes to develop property, the services might become fully available when the projects are complete. The Commissioners also agreed that the result of the March vote will be **how** the improvements will be funded, not **if** they are funded. It was also brought up that this application was submitted in November of 1991, and not as recently as the March bond issue was scheduled. As the funding will be in place no matter how the bond issue fairs, the Stipulated Final Order will be relatively straight forward since it requires the commitment that the road to improvements is in place. The terms and conditions of a Stipulated Final Order are usually such that violations such as the City has received, will cease to exist in a routine fashion, and the fear of future fines will diminish radically.

Two Commissioners felt that the issue exists at the present time, and that the earliest indication they have for the capacity to be available for new development would be two years because, at the joint workshop, it was brought out the design of the expanded facility was not complete yet. At the joint meeting it appeared the present violations are sporadic and do not indicate a major problem at the plant, but the engineers strongly advised against any adjustments to minimize the violations, at the present time. Although DEQ has filed the appropriate letters with the City, the City has not been denied a Stipulated Final Order and is working with DEQ toward that end. Concern was also raised that due to the increased number of building permits, and approved land use application projects, the present design capacity of the sewer plant is limiting out earlier than expected. Concern was raised about not closing doors

on already approved projects until the funding mechanism is in place, the sewer permit discharge permits are in place, and the Stipulation of Final Order is in place from DEQ, but new projects should not be approved. The alternative to denying this application was discussed with the idea that, due to the appeal process that is possible, the subdivision come before City Council and the decision could be made Council level.

After a straw poll was taken, it appeared four Commissioners agreed there are adequate facilities and services available at the present time.

The Commission further discussed:

- a. That the storm water disposal system issue has been resolved with Condition #16.
- b. That the access to the Logging Road should be further defined at a later time, and not as part of this subdivision review.
- c. Mr. Hoffman explained that if the applicant owns adjacent property, he must submit traffic pattern options. Mr. Anderson did address this issue, although in this case, it was not a requirement.
- d. The Commission agreed the needed hammerhead for emergency vehicle access is addressed in proposed Condition #1. Mr. Hoffman explained that it is considered a **temporary turnaround** because the adjacent property will eventually be developed, and the road may be extended at that time. Mr. Hoffman further explained, with regard to Condition #6, that a 1 foot plug is often added to the conditions when other property is adjacent, so that the City would retain a piece of land which would not permit access to or from adjacent property until a plan is approved for the adjacent property.
- e. The Waiver of Remonstrance for road improvements in Condition #17, should specify that the road improvements are along **Pine Street**, but also includes other possible utility improvements.
- f. In response to a question from the Commission, Ms. Franz explained that there were no hazardous chemicals used on their property.

- g. With regard to a possible condition regarding a fence along the Logging Road, as suggested by staff, the Commission agreed it is redundant because it is against the law to throw trash on public property. Requiring a 6 foot fence may not be consistent with the City's intent for the Logging Road to be part of the bike path. The Commission also questioned whether property owners along the Logging Road would want the 6' fence.
- h. The Commission considered suggesting that the developer place the 10 foot accessway between Lots #7 and #8, instead of adjacent to the property line so people using it would not be exposed to barbed wire or electric fencing - or the possibility of fencing along the walkway to prevent such exposure. Mr. Hoffman explained that the accessway is also a sewer easement and the sewer in 15th Avenue must be extended to the property line, but that it could function between Lots #7 and #8. Condition #10 provides for either option. It is not intended for motor vehicle use.
- i. In response to a question from the Commission, the developer responded that the homes in this development would run about \$130,000 and up.
- j. With regard to the footage between the sidewalk and the face of the garage, the Commission asked Mr. Hoffman why the condition said 19 feet, as opposed to Mr. Klem's suggestion of 20'. Mr. Hoffman explained that if the sidewalk is built at the curb, then there would be 20', but where the sidewalk is set back, 19 feet is sufficient. A recent survey was made and, after measuring vehicles, showed that 19' is sufficient.
- k. The Commission discussed whether the subdivision design would be a "hinderance" to the development of property to the north or south. It concluded that there were a variety of alternatives for developing these sites and that the proposed subdivision design would be a factor to consider, but not a hinderance.
- l. The Commission discussed whether or not it was under the Commission's jurisdiction to limit the number of flag lots a developer could design into the project.

Based on the November 15, 1991 Staff Report, the January 3, 1992 Supplemental Staff Report, and all testimony received, and on Commission deliberations, **Commissioner Mihata moved for approval of SUB 91-01 (North Pine Addition II), with the amended proposed conditions, as follows:**

1. Temporary turnarounds, meeting the requirements of the Fire Marshal and Director of Public Works, shall be provided at the ends of 15th Avenue. A full-width barricade shall be placed, at the developer's expense, at the end of the new street.
2. Any necessary utilities shall be constructed to the specifications of the provider.
3. Utility easements shall be provided and are to be twelve (12) feet along all streets and exterior parcel lines. Exterior lines of the subdivision adjacent to other platted subdivisions with easements, 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. The utility easement between Lots #2 and #3 of Block #1 shall also provide utility access for servicing Lot #1.
4. "As-built" drawings shall be submitted to the City within sixty (60) days of completion.
5. Street name and traffic control signs shall be provided at the developer's expense. This shall include "dead end" signs for the end of 15th Avenue.
6. A one foot plug shall be provided at the end of 15th Avenue to prevent access to the north until annexed and platted.
7. The final plat shall reference this land use application - City of Canby, File No. SUB 91-01, 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.
8. The final plat mylars must contain, in the form specified, all information necessary to satisfy all matters of concern to the County Surveyor, or his authorized Deputy, including, but not necessarily limited to, various matters related to land surveying, land title, plat security, and plat recordation.

9. The existing septic tank on Lot #2, Block 1, shall be pumped out, filled with granular material, and inspected, at the time of connection to the City system.
10. The 10-foot wide access on Tract "A" is limited to pedestrians or non-motorized vehicles. If the accessway to the Logging Road remains at the northern property line, it shall be protected by a barrier from the barbed wire and electrified fence. If the developer chooses to have the accessway as the boundary between Lots # 7 and #8 of Block 2, a barrier is not required.
11. The proposed sewer on 15th Avenue shall be extended to Pine and a manhole with stubs shall be provided at such termination and shall be designed to the satisfaction of the Director of Public Works.
12. While building setbacks are normally required to be measured from the property line, in situations where the sidewalks are built on private property, the driveways and parking areas shall be designed to provide a minimum of 19 feet of parking area between the sidewalk and the face of the garage (or some equal outdoor parking provided on-site).
13. The driveway areas to provide access to Lots #8 and #9 of Block 1 shall provide for reciprocal access.
14. Erosion-control during construction shall be provided by following the recommendations of the "Erosion Control Plans Technical Guidance Handbook," by Lori Faku and Rick Raety, dated November 1989, as revised (currently January, 1991).
15. Half-street improvements shall be provided along Pine Street, including 10 feet of dedication, curbs, sidewalks, and additional street paving, as approved by the Director of Public Works.
16. The stormwater disposal system shall be reviewed and approved by the Public Works Director.
17. The developer and owner shall submit a Waiver of Remonstrance against establishment of any needed L.I.D. for road improvements along Pine Street, and any other needed facilities.

18. The utility easement between Lots #2 and #3 of Block #1 shall also provide utility access for servicing Lot #1 of Block 1.

Commissioner Maher seconded the motion and it carried 4-2.

VIII. DIRECTOR'S REPORT

Mr. Hoffman reviewed the conditions for the Conditional Use approval for Village on the Lochs, which was approved approximately one year ago, and which lapses at the end of the business day on February 3, 1992. He reviewed each condition individually and updated the Commission as to how the conditions have been complied with as of Friday, January 24, 1992. Further, Mr. Hoffman explained that he, Bob Godon and John Kelley met with Mr. Nelson and Roger Reif and reviewed the remaining items necessary for Mr. Nelson to accomplish before a building permit can be approved. In summary, Mr. Hoffman explained that Mr. Nelson is purchasing the property, which is currently owned by John Torgeson, who signed the application. A licensed contractor is required to sign the application and, as Mr. Nelson's license has expired, he is requesting renewal. If that does not take place shortly, he will have another licensed contractor to take responsibility. It appears all the geotechnical concerns have been corrected, but Mr. Godon has not heard that **officially** from the geotechnical engineer. The most recent developments have included drawings showing the placement of mobile homes on the lots such that they are right on the edge of the new fill at the edge of the embankment. The City understood the setback was to be 5 feet. Modifications were supposed to be made to accomplish that. He then referred to three different sets of engineering working drawings that were submitted. With each set, additional changes were made to accommodate various requirements the City found was lacking, many of which had to do with State requirements for mobile home parks. Many legal documents transmitting various things to the City are being prepared, i.e. the roadway coming down the hill and over to the development, which the Commission required to be a dedicated public road. The County Traffic Engineer is supposed to review the final working drawings to ensure that they are adequate. Mr. Nelson stated that they are only going to look at the design in terms of the fill, the stream crossing, and the embankment area. Rusty Klem will look at the actual engineering drawings with respect to the road if the County doesn't ensure that it will be designed to City standards, which are more rigorous than County standards, and include sidewalks on both sides of the road. The area that was proposed to be dedicated as public land for park land doesn't

exactly match up with the land Cedar Ridge dedicated for public land, to the north. Evidently, the two deeds read differently, so the City will require a quit-claim deed for the area in between the two pieces. DOGAMI reviewed the plans and feel it is approvable, but they are too busy to write conditions at this time. The lift station is double-headed, with redundant features of all kinds, basically the same as in Willow Creek, which design satisfies Public Works.

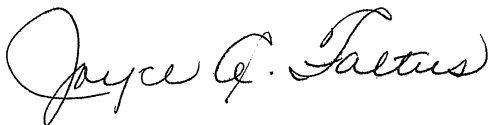
With regard to Design Review, Mr. Hoffman explained Mr. Nelson has applied. As there are areas where the two sets of drawings are not in agreement, modifications must be made so as not to conflict with State law requirements for mobile home parks with regard to fill in wetlands. Mr. Hoffman explained further that in some places Mr. Nelson is adding 10 feet of fill on gravel in order to get it up out of the flood plain. In so doing, Mr. Hoffman explained that Mr. Nelson is creating a 600 foot long, 200 foot wide, 35 foot deep lake on Torgeson property which is located in the County. Initially, Mr. Nelson submitted drawings with only four layouts for the lots. Mr. Godon required layouts on all 128 lots. The initial set of drawings did not show the distance requirements between units and where the lots are on the periphery of the development for the required setbacks from the boundary. As a result of other changes, the landscape plan will need modification. Mr. Hoffman also explained how the access issue was resolved with Mr. Nelson purchasing the Lingle property and coming to agreement with the owners of Elmwood Mobile Home Park to cut across their recreation vehicle parking area and trade a piece of his property for the piece he will use. There is some question about whether or not Mr. Nelson has to come back for revision of his original Conditional Use application, since the amount of land involved amounts to approximately 200 square feet. Vacation approval by City Council is also required.

Chairman Schrader asked that the approval conditions be followed exactly, and that if there is any cause for interpretation, that the Commission be advised. Further, he stated he would not sign any final plats until all conditions of approval have been met.

IX. ADJOURNMENT

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,



Joyce A. Faltus