

AUG 11 1992

**CANBY PLANNING COMMISSION**  
**Regular Meeting**

**December 14, 1992**

**7:30 p.m.**

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**I. ROLL CALL**

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

Staff Present: Robert Hoffman, Planning Director; Jim Wheeler, Assistant Planner; John Kelly, City Attorney, and Joyce Faltus, Secretary.

Others Present: Councilman Prince, Mr. and Mrs. D.J. Canny, Peggy Sigler, Ronald G. Tatone, Lowell W. Morse, Norman Kenagy.

**II. COMMISSION DISCUSSION OF PLANNING ISSUES** *(approximately 1 hour)*

Although Commissioner Fenske was not present, he submitted his comments with regard to **Advance Financing** and his evaluation of the ordinance, based on the input he received from other Commissioners. Mr. Fenske indicated that, for the most part, the Ordinance is okay, but needs more implementation and some resolutions activating advance financing in certain improvement areas, specifically the Capital Improvement Plan. In the notes he submitted, Mr. Fenske thought some work should be done to improve existing definitions and add others, and that work should be done to develop an Advance Financing Agreement, including proportional share and benefitting property, to make a clear distinction between this and an L.I.D. Mr. Fenske envisions working with staff to develop this agreement and having City Attorney Kelley reviewing it. Mr. Fenske also indicated he wanted to add a purpose statement, to accurately include the intent for using such Advance Financing as a means to create public improvements, not just to reimburse developers. Wording would need to be developed which would give the Planning Commission leeway to approve such financing. Time limits also need to be established for submitting applications for advance financing, to meet legal requirements. Mr. Fenske indicated the cumbersome noticing requirements and suggested limiting the

requirements in this type of situation to one newspaper notice and posting in City Hall. Mr. Fenske also wanted to make sure the wording included transportation and traffic signal needs, park plan needs, and not just sewer and water needs. The comments Mr. Fenske submitted also indicate that rates need to be taken into consideration, and to make the distinction between intervening property owners and future property owners, for the most equitable way to handle these agreements.

With regard to the **Tree Ordinance**, Commissioner Mihata explained that her committee needs more direction from the Planning Commission. Chairman Schrader suggested tying the street tree aspect in to relate more to the Solar Ordinance; tying new development in with stricter guidelines on City lots, to preserve existing trees which are already in the City, although it was not considered prudent to restrict what present homeowners could do with trees on their own property. Ms. Mihata asked whether the Commission thought a tree program for the downtown area was of concern, especially along Highway-99E. It was suggested that the committee ask for input from the Chamber of Commerce. Another suggestion was made to develop an incentive program, as part of Design Review, in the hope of preserving existing trees. It was agreed the committee would review other city's ordinances regarding trees in downtown areas. Staff has exerted efforts in this direction for the Industrial Park Plan's street trees. It was agreed that in order to protect trees in properties slated for annexation into the City of Canby, that Clackamas County's cooperation would be needed. Mr. Hoffman pointed out that an Urban Cooperation Agreement now exists between the County and the City. Councilman Prince stated that he was aware of many people who only considered living in the northern section of town because so many large, older trees already existed, whereas the south side of town was somewhat devoid of large trees. A little history was given regarding a Tree Beautification Plan that took place many years ago. Examples were Maple trees lining First Avenue and those near Knight School. It was agreed that it would be nice if the Tree Ordinance could encourage the planting of trees, even on private properties.

Peggy Sigler was present, representing the **Historic Task Force** and the "Draft" Ordinance that was recently completed. A copy of the "draft" ordinance was distributed, which was reviewed at the City Council workshop/meeting of December 2, along with slides of homes that had an initial County landmark evaluation. Chairman Schrader and Vice-Chair Mihata attended that meeting. A joint workshop is planned with the Planning Commission, to be held in February. It appears the Council is interested in going forward to implement the ordinance. Ms. Sigler explained that the Task Force reviewed approximately 15 other ordinances in order to develop this draft.

A concern was expressed about the hearing process involved for people who already own homes deemed "historic" if they might want to make modifications to the home. Ms. Sigler explained that there would be no hearing involved with maintenance type modifications. A problem would occur with changes which might make the home/property less historical. At this point, the Board hearing this type of application would be the Clackamas County Historic Review Board, although the option does exist to establish a review board in Canby. Ms. Sigler explained the pros and cons of both, especially the time constraints involved in using the County board. The two main qualifications for a local board are that one member must be knowledgeable with regard to the building trade and that someone would have to represent the local historic group, in order to qualify for grants. Mr. Hoffman explained that in order for decisions to be enforceable, the Board would have to be made up of knowledgeable people, who know something about historic preservation and history, building, architecture, etc., and how they relate. Participating staff would also need some expertise in the area. Training could also be provided, but it is very costly, and the County already has it all in place. Ms. Sigler explained that West Linn felt the County board was a good place to begin training.

Councilman Prince explained his concern about property rights for existing historic property owners and about homeowner's consent. He reviewed the incentives offered to historic property owners to maintain the property. Mr. Prince suggested it might be best to keep the decisions at the County level. Recommendations of properties deemed worthy of historic designation by whomever was sitting on a board, would be brought before the Council and hearings would be held. Such decisions could be made without the owner's consent. LCDC does permit a process allowing the City Council to make the final determination. It is doubtful whether any City would force someone to designate the property against their will. A discussion was held regarding an State incentive system and protecting the rights of property owners as opposed to how much importance the City places on historic properties. Discussion was also held regarding Contributing Resources and whether it should be kept in the ordinance. Ms. Sigler explained that a Contributing Resource is a property that has been inventoried and researched but does not have a landmark designation or it is a secondary structure in a district. The areas the County targeted for district potential was the S.W. 3rd and Elm, east of Ivy, and N. Grant to N. Douglas, between 1st and 3rd. The reason for the contributing resource designation is to open a dialogue on demolition - to possibly relocate or recycle. If the property was to be torn down, the materials could possibly be salvaged for another building that needs restoration. Ms. Sigler then reviewed additional definitions the ordinance contains.

Ms. Sigler explained that the County inventoried 10% of the historic properties, countywide, in 1984. Of those 10%, there were 80 in Canby, 16 of which were lost between 1984 and 1992, when the County returned to do more in-depth research. Ms. Sigler further explained that the task force did a block by block survey within the entire Urban Growth Boundary, using the same criteria as the County, and identified properties that they felt was worthy of further consideration to have further research done and evaluated.

The point system was discussed. Ms. Sigler said it was not part of the City ordinance, but that certain qualitative criteria was a part of the ordinance. Points can be more graphic and, sometimes, make everything more equal, but leaves little room for interpretation.

Mr. Hoffman explained there is no mandate from the State regarding Historic Preservation, other than the element in Goal 5 mandating that the City decide what are historic resources and what the City was going to do about them. Although Canby's current historic preservation ordinance has not been tested, Mr. Hoffman did not believe it would be upheld. The draft ordinance is similar to many that have been tested and would be upheld. The draft ordinance is the result of a long study by a local group who is concerned about the loss of historic resources in Canby.

### **III. MINUTES**

The minutes for **October 26, 1992** were approved unanimously, as submitted. The **November 9, 1992** minutes were continued to January 11, 1993.

### **IV. CITIZEN INPUT ON NON-AGENDA ITEMS**

None

### **V. COMMUNICATIONS**

Mr. Hoffman explained that the City received two plats (Cedar Ridge and Valley Farms) for signature. Staff called Chairman Schrader to sign them, and the Chairman found misunderstandings contained in the plats and preferred to bring them back before the Planning Commission, although staff believed the requirements of the ordinance were met and recommends approval.

Chairman Schrader explained that there were a number of conditions he felt the Cedar Ridge developers had not met. After visiting the site he found the development specifically did not meet certain conditions and discussed those he felt were unmet. He referred to Section 16.68.050 of the Ordinance. He noted from the previous plat and the present plat, that there were a number of trees that were cut that the Commission was explicit about not cutting; heavy landscaping along the recycling plant was not installed; some of the landscaping was not kept up; the trails were not completed; the value of the trails appears dubious; and dead or dying vegetation was supposed to have been replanted. From the time the application was approved in September, to the time Dr. Schrader visited the site in early December, ample time had passed where the conditions could certainly have been met and Dr. Schrader felt no attempt was made to do so. Based on past performance, Dr. Schrader felt it might not be done. At the date of review, there was no bonding provision to assure the conditions would be met. Further, he added that at the time he was called to sign the plat, the Tot Lot boundary definitions were unclear. The applicant has opted to create two building lots instead of having RV storage and Dr. Schrader was concerned whether adequate utilities were available for the two additional lots. Since then, he has been assured the utilities are available, but there is still no landscape buffering behind them. Dr. Schrader discussed his concerns regarding the safety issues, specifically the erosion of the embankment where there is no new gravel fill, where the trails and walkways were to be installed. Although 4 X 4's were installed along most of the trails, the intent of the Commission was not treated as seriously as expected and the trail appears to peter out, rather than extending down the hill. Chairman Schrader explained that he did not sign the plat because all conditions were not met, in his opinion and he was disgruntled with the degree of compliance.

Additionally, Chairman Schrader explained that he is further concerned since the developers of Valley Farms plat has come in without any work having been done at all. The developer is requesting a bond for the total amount of construction before doing any work at all. Therefore, he would be signing a plat with only bonding in place, when the first condition states, in essence, that the land divider shall follow the provisions of Section 16.64.070, Improvements, in particular, but not limited to subparagraph O, Bonds, which requires a performance bond for subdivision improvements. Dr. Schrader finds it is still questionable whether the bond will guarantee complete performance.

His concern with Cedar Ridge, in particular, is that the improvements have not been installed according to what he believes the Commission had required of the developer, which is why he wanted it brought back before the Commission. Even since his visit, he does not believe the improvements made, are up to what the Commission had required. He feels the Commission should review it and decide if the improvements made since, are reasonable. Chairman Schrader further explained that he has spoken with the City Attorney regarding whether or not the City has to accept bonding, and

what the role of the Planning Commission Chair is in evaluating the final plat, as opposed to the role of the City Engineer. Dr. Schrader said he prefers that staff review the mylar beforehand to see that it is in compliance because policy is very clear-cut. The problem seems to lie in the aesthetic issues, where certain people don't take them as seriously as the Commission intends, and they are not completed in an acceptable manner. He asked Mr. Hoffman to report about what has been done since his site visit.

Mr. Hoffman referred to Section 16.68, the purpose of signing the plat. He stated that if the City Engineer determines that the final plat is in full conformance with the approved plat and other regulations, he shall so advise the chairperson of the Commission. Thereafter, the Chairperson may sign it without further action or he may bring it back to the Commission. Staff advised Dr. Schrader that the plat was the approved plat and, as to the question about the fulfillment of the conditions of approval, many of the conditions are types of things that may be done prior to or after final plat. Therefore, the issue before the Commission is: which ones have to be complied with before final plat, and which ones can be complied with after the final plat is signed. Dr. Schrader left the office concerned that the landscaping was not done, even though staff had explained that the developer was committed to having the landscaping completed by spring, or when the weather permits. Dr. Schrader was advised that if he was not comfortable with the developer's promise to fulfill the conditions completely, the developer was willing to post a bond to assure such fulfillment. Mr. Hoffman explained that he was now in possession of such a bond and showed it to the Commission. The City Engineer determined that the \$10,000 bond was in compliance. Since the plat arrived at City Hall, the landscaper has been working in the field every single day. As of late today, December 14, 1992, all the large vegetation was in place in the common areas, and the small vegetation was in place, the bark dust was placed around the landscaping and in the tot lot, and the sod has not been installed. In Mr. Hoffman's opinion, the sod in the common areas and in the tot lot are all that need completion. The landscaping along the far western boundary, which was to replace what did not take during the heat was in process of being planted this morning. The landscape architect's estimate of the work remaining to be done includes only the grassy areas and landscaping along the far western boundary, and the estimate was determined, by the City Engineer, to be well within the bounds of the bond. Mr. Hoffman read from the Ordinance regarding bonds: "Before the Commission approval of a subdivision plat or partition map, the land divider shall either install required improvements and repair existing streets and other public facilities damaged in the development of the property, or execute and file with the City Engineer an agreement specifying the period within which required improvements and repairs shall be completed, and provided that work is not completed within the period specified, the City may complete the work and recover the full cost and expense, together with court costs and reasonable attorney fees necessary to

collect the amounts from the subdivider. The agreement shall also provide for reimbursement to the City for the cost of inspection by the City which shall not exceed 10% of the improvements to be installed. He then described the three different types of bonds which are appropriate and explained that the City Engineer determined the amount of the bond that the developer submitted. He submitted the bond for the Commission's review, along with the landscape architect's specifications. Mr. Hoffman added that the utilities are already in and have been inspected. He further advised the Commission that the high school would not have the fiber optics cable if the developer had not cooperated in providing easements for laying the line across this site for the school's use. Mr. Hoffman then explained that the bond does not have a clause to cover the loss of trees now being planted, but that there is a maintenance contract which does cover such losses. Mr. Morse explained that there is a one year agreement from both the bonding company and the landscape contractor.

Ms. Mihata asked if the City has ever accepted a bond in lieu of meeting the conditions. Mr. Hoffman said he has never encountered accepting a bond in the past three years and the bond was offered after Dr. Schrader raised the issue. Mr. Hoffman offered to accept a bond as an alternative, as provided for in the Ordinance, if Dr. Schrader was not comfortable with the assurances the developer offered in writing. Ms. Mihata asked why the plantings were not accomplished between September and December. Mr. Morse explained that a landscape plan had to be prepared and it had to be approved by the City, which took one month. Final approval was not secured until the beginning of November. Planting began in the middle of November. Dr. Schrader said that nothing had been planted in the middle of November. Mr. Morse explained that the irrigation had to be installed before the plants could actually be put in, and the 4 X 4's, which required regrading, had to be put in, and sidewalks had to be put in. Mr. Morse explained he did not believe all the landscaping had to be installed prior to occupancy. He explained that he believed the tapes would confirm that in order to have the plat signed, the fence, sidewalks and utilities would have to be in place. Mr. Hoffman explained that the sidewalks had to be in prior to occupancy. He further explained that the City is adequately protected, that the conditions necessary for signing of the plat have been met and that the City was adequately protected before the bond was in place because there is very minimal amounts of work still to be done compared to the total value of the development. The proper time to do the plantings, he added, is in the springtime when it is more likely to "take." Chairman Schrader added that it is not in the province of the planning department to review the conditions, that it is a question of making the Commission's concerns very clear. He questioned the staff time involved in the City pursuing these things if they are not accomplished. In the past, final plats have been signed in good faith, expecting the developer to complete the improvements, but it is hard to keep up with these things and bonding is a way to handle it, he added. Mr. Morse explained that a developer cannot get financing to build the subdivision until the final plat is

signed. The developer puts up a bond so the lender gives him the money to put in the improvements, which is why developers usually don't put in improvements until the final plat is signed. As this is a replat, most of the improvements were done earlier. The developer has lost one sale because the final plat has not been signed and the "lock" on another loan expires Thursday. As the lot cannot be described until the final plat is signed, this sale might be lost too. Mr. Morse explained that 40 trees are being delivered Tuesday, December 15, and the irrigation for the trees and the sod are the only things left to be done. The City Engineer has already signed off on the plat and the \$10,000 bond is, more or less, an overkill to ensure the signing of the plat.

Chairman Schrader asked why the trail going down the hill is not mentioned on the bond. He stated he understood that the pagoda was being delayed until Village on the Lochs was completed, but that he is concerned about the trail. Dr. Schrader asked City Attorney Kelley about final procedures, recordation, and whether improvements must be complete before signing of the final plat. He asked if the option is at the City's discretion. John Kelley explained that Section 16.64.070(N), which Mr. Hoffman read earlier, states that the developer shall **either** install the improvements or execute and file with the City Engineer an agreement specifying the period within which the required improvements and repairs shall be completed. . . Mr. Kelley explained that he reads it as giving the option to the applicant. If it is the Commission's intent to prevent subdividers from doing that in the future and, instead, having all improvements completed before signing the final plat, then this section would have to be amended. Ms. Mihata questioned why the bond was given only after the Chairman refused to sign the plat. Mr. Hoffman explained that there are other avenues the City can take to assure compliance - building permits can be withheld, and certificates of occupancy can be withheld. In fairness to the applicant, Mr. Hoffman explained that he'd spoken with the applicant, who explained that some things are appropriate to be done in the spring. Staff had explained to the applicant that a letter was required, breaking down what would be done when. The letter was submitted to the City and shown to the Chairman, and read into the record. Historically, it has not been the practice of the City to require a bond. Chairman Schrader said this should become standard practice, but that an objective third party should bid the job rather than the developer filling in the figures. Mr. Kelley explained that the provision for bonding is intended to give the City a source of money if improvements are not completed and the developer walks away from the project, to complete the major capital improvements. It is not intended for minor improvements, such as landscaping. He agreed with Mr. Hoffman, that the City has mechanisms to assure compliance and has used them previously. Commissioner Maher suggested breaking down the conditions into timeframes, denoting at which stage each one had to be completed.



**Dave Anderson** stated that, in the past, the City has accepted from him and from other developers, cash in lieu of bonds. He added that he would like that option to remain.

Chairman Schrader directed staff to add a timeframe to conditions, by which time they would be accomplished, whether it was prior to building permit issuance, issuance of the certificate of occupancy, signing of the final plat, or if posting of a bond was the alternative to signing of the final plat. He added that landscaping should be included in the bonding, not just the capital improvements, and that the bonding should be very detailed. Mr. Hoffman circulated a draft agreement spelling out what the developer agrees to, including a list of improvements he is committed to providing and the timeframe. This agreement would be used if the improvements are not completed prior to signing of the final plat. Dr. Schrader stated then, that the Commission should realize that after the final plat is signed, there would be no further review by the Commission and it would be up to staff to review whether or not the bond was carried out per the Commission's intentions. He added that he would like to see, noted on the bond, some reference to the trail going down the hill because, on the landscape plan, it only shows it on the top of the hill. Mr. Morse said he would submit a copy of the signed contract with the landscape architect which denotes the trail going down the hill. The Commission agreed, by consensus, that the Chairman should sign the Final Plat. Chairman Schrader then agreed to sign the Cedar Ridge plat.

With reference to the Valley Farm plat, Chairman Schrader explained that it was less controversial because it includes less aesthetic components. The walkway is shown on the plat and the waiver of remonstrance has been satisfied. Based on the previous discussion, he said he would review the bond and sign the final plat.

## **VI. FINDINGS**

*The Findings, Conclusions and Order for DR 92-11 [Village on the Lochs - Phase II] were unanimously approved, as modified, with Commissioner Gustafson abstaining.*

*The Findings, Conclusions and Order for MLP 92-11 [Bill Garmire] were unanimously approved, with Commissioner Gustafson abstaining.*

## **VII. NEW BUSINESS**

**ANN 92-07**, an application by Tony Pizzuti for approval to annex two parcels, 4.24 acres and .46 acres, respectively, on the west side of N. Maple, north of Territorial Road and south of N.E. 21st Place (Tax Lots 600 and 601 of Tax Map 3-1E-28DB).

The applicant ultimately intends to construct a single family home on the parcel, which is presently zoned County RRFF-5 and would be zoned R-1, Low Density Residential, upon annexation.

Jim Wheeler presented the staff report. He explained that the original application only included Tax Lot 600, and Tax Lot 601, a .46 acre parcel, was added afterwards. The parcel is entirely within the Priority A area for annexation. Utility providers have reported there is sufficient capacity to service any development of these parcels. There is no sewer service in N. Maple in front of the parcels, but sewer is located nearby and is readily accessible at the intersections of N. Maple and N.E. 20th and 21st. If the parcels are hooked up to the City sewer, dedication of land for road widening purposes will be necessary although the actual road widening and improvements will not occur until the parcel is developed beyond one single family home. Water, electricity and gas is readily available in N. Maple. Storm water drainage will be handled on-site. If annexed to the City, the property would be zoned R-1, Low Density Residential, so staff has recommended an understanding that if one single family structure is constructed on the larger lot (4.24 acre parcel), it should be situated so as not to inhibit further development of the parcel.

The applicant proposes to develop Tax Lot 600, which is currently farmed, with 1 single family home. There is already a single family home on Tax Lot 601 and the owner does not propose further development of the parcel. The owner of Tax Lot 601 intends to hook into the City sewer system.

Mr. Wheeler noted a letter that was received from Craig W. Shinn explaining his concerns. Staff recommends that the Commission recommend City Council recommend approval of this annexation to the Boundary Commission.

The Commission asked staff who would pay for the improvement in front of Tax Lot 601. Mr. Wheeler said the responsibility is by the developer of Tax Lot 600. This has not been explicitly explained to the parties. The Commission discussed whether more explicit wording should be included in the recommendations so the applicants would be aware that Tax Lot 600 would be responsible for the improvement in widening the road across the frontage of Tax Lot 601, at such time that Tax Lot 600 is developed. The Commission then agreed that this could be a staff responsibility, rather than a condition of approval.

Based on the staff report dated December 4, 1992 and on Commission deliberations, **Commissioner Maher moved to recommend that the City Council recommend approval of this application, ANN 92-07, to the Portland Metropolitan Boundary Commission. Commissioner Gustafson seconded the motion and it carried unanimously.**

## VIII. PUBLIC HEARINGS

**CUP 92-11**, an application by Ronald G. Tatone (applicant) and Canby Christian Church (owner) for approval to extend the asphaltic concrete and stormwater drainage system to provide additional parking for the church. The site is located at 444 N. Holly Street, between N.W. 4th Avenue and N.W. 5th Avenue (Tax Lots 10500, 10600, 10700, 10800 and 10900 of Tax Map 3-1E-33CA). *Continued from November 23, 1992.*

Chairman Schrader asked if any Commissioner had ex-parte contact or conflict of interest. Other than Commissioner Gustafson explaining that she was a member of the church and preferred to abstain, there was none. He then explained the hearing process and procedure.

Jim Wheeler explained that at the last hearing, the Commission asked for some landscape plan revisions for the parking lot expansion, per the Design Review Ordinance. The applicant brought in a revised site plan which includes landscaping, which was distributed to the Commission. He referred to the revised staff report, in the form of a memorandum, dated December 4, 1992. The additional amount of paving involved in the parking lot expansion is about 10,900 square feet. The existing parking lot has 41 spaces. On the original proposed expansion, the number of parking spaces was brought up to 94. The revised proposal was submitted showing 90 spaces. Since then, one more space has been added to the revised site plan, bringing the number of spaces to 91 (50 in the expansion). As the Commission stated that the landscaping requirements will only apply to the expansion, 545 square feet will need to be landscaped, including seven trees. The applicant proposes to plant 6 flowering dogwood trees and that the existing walnut tree shall remain. The applicant is proposing more than 800 square feet of landscaping. A change, not related to landscaping, is noted in the revised site plan. Handicapped parking requirements state that there must be a path to a sidewalk in a non-motorized area. Spaces #12 and #13 do not have this pathway. Therefore, the applicant will move the handicapped parking spaces next to spaces #10 and 11. Two 3-foot wide cuts will be made in the existing arbutus hedge along N. Holly Street to allow people using the handicapped parking spaces access to the sidewalk. Condition #9 of the original staff report dated November 13, 1992 should be revised to read:

9. The handicapped parking spaces shall be located adjacent to N. Holly Street with cuts in the arbutus hedge at least three (3) feet wide.

Spaces 1-7 will be designated compact spaces, #12 and 13 will become three regular spaces, resulting in one additional parking space.

Staff recommends approval with conditions as proposed and amended.

With no testimony forthcoming, as the Commission continued this application while in the deliberation portion of the previous hearing, the hearing body returned to its deliberations. Issues discussed included:

1. The Planning Commission incorporated the revised site and landscape plan into its findings.

Based on testimony presented at both the November 23, 1992 and December 14, 1992 public hearings, and based on the November 13, 1992 staff report, December 4, 1992 memorandum, and Commission deliberations, **Commissioner Zieg moved for approval of CUP 92-11, with the following conditions:**

1. The parking lot lighting shall meet the standards of the Canby Utility Board and shall be deflected so as not to shine or create glare on any adjacent dwelling, or any street right-of-way in such a manner as to impair the use of any such way.
2. The stormwater drainage design for the parking lot shall be approved by the Director of Public Works.
3. The walnut tree that is located partially in the N.W. 5th Avenue right-of-way shall be retained.
4. Any damaged section of the sidewalk along N.W. 5th Avenue shall be replaced.
5. All driveway approaches and sidewalk replacements shall be approved by the Department of Public Works.
6. The sidewalk next to the existing walnut tree shall be a full five (5) feet in width.
7. The driveway closest to the intersection of N. Holly Street and N.W. 5th Avenue shall not be widened. It shall be for exit only and the exit traffic shall be "right-turn" only. Signs shall be placed identifying the driveway as such.
8. The two middle driveways, accessing N.W. 5th Avenue, shall be located two (2) feet to the west.

9. The handicapped parking spaces shall be located adjacent to N. Holly Street with cuts in the arbivtae hedge at least three (3) feet wide.

**Commissioner Wiegand seconded the motion and it carried 5-1, with Commissioner Gustafson abstaining.**

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**DR 92-12**, an application by Norman Kenagy to construct a new building in order to expand an existing business to accommodate additional seating. The new building will be located on an adjacent lot to the east and will be of similar design to the existing building. The site is located on the south side of Highway 99-E, east of S. Locust and west of S. Pine (Tax Lot 902 of Tax Map 3-1E-33DA).

Chairman Schrader asked if any Commissioner had ex-parte contact or conflict of interest. None was noted. He then explained the hearing process and procedures.

Jim Wheeler presented the staff report. He explained that this proposal is for a new building which will be used to expand Fultano's Restaurant, which is currently located in the Canby Plaza, into a new building to the west of the current restaurant. The main access to the proposed development will be from a shared driveway on Highway 99-E. A secondary access point will be on the adjoining lot to the east and reciprocal access easements will be needed, as will an access permit from the State Department of Transportation. The purpose of the shared access point is to minimize the overall number of access points along 99-E, per State Department of Transportation goals. Canby Plaza has an unspecified parking easement on the subject parcel. There are 14 spaces currently being used on the parcel where the restaurant will be relocated. There are a total of 37 spaces, including those 14, for Canby Plaza. Parking also takes place in the rear, diagonally, which has not been taken into account since it is on City-owned land. If the current restaurant becomes office space, the parking requirements for the Plaza would decrease by at least nine spaces, five of which would belong to Canby Plaza, leaving the new restaurant 5 spaces short. The existing parking easement would need to be limited to five spaces. The owner of the property to the west, Dave Anderson, has agreed to allow the applicant to use 5 spaces on his parcel. Those 5 spaces would need to be paved. D.O.T. reviewed the original site plan and requested one minor change in the parking configuration. Since further changes occurred in the site plan, and were submitted to the State, staff has heard nothing further. The new building will be compatible with the architecture in Canby Plaza, with brick veneer and wood siding, and a dark brown metal roof. No signs have been proposed as part of this development. Service providers have not indicated any problems in serving this proposed use. Mr. Wheeler described the landscape plan. The applicant has provided more landscaping than is required. Based on the site plan received by staff on December 2, 1992, staff recommends approval with conditions.

### Applicant

**Norman Kenagy, 24037 S. Meridian, Aurora 97217**, concurred with Jim's presentation and staff report. He discussed the parking and explained that there was no conflict with other businesses in the complex due to the restaurant having its peak traffic when the other businesses were closed. He also showed samples of the colors and materials, explaining that the building would have brick and wood siding.

### Proponent

**Dave Anderson** explained that there would be no parking problems in this shopping plaza. He is associated with Coldwell Bankers Real Estate which has offices in this plaza. Mr. Anderson explained that there will be a reciprocal easement agreement with Sam Jones for 5 parking spaces, but that an easement could jeopardize his parcel, and therefore requested that it not be a **recorded** easement as people will just park there anyway. Mr. Anderson further suggested that the sidewalk along Highway 99-E be reduced to 6 feet as there would be no room for landscaping.

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

1. Incorporating the revised site plan, received by staff on December 2, 1992, and the revised landscape plan received December 7, 1992.
2. The need for reciprocal access agreements for the two shared driveways.
3. The need for a State Highway Access Permit for the new access onto Highway 99-E.
4. The need to draw up a parking agreement with the parcel immediately to the west, whose owner has agreed to allow the restaurant to use 5 parking spaces, to insure sufficient parking.
5. The need to pave the City-owned alley" on the south side of the parcel.
6. The Commission discussed the amount of parking that can be provided on this and adjacent parcels. It was agreed that there is not enough parking available to support two restaurants. It has been made clear by the applicant, that it is the intent of Fultano's Pizza to move from its current location in the adjacent Canby Plaza to the proposed building. It has also been implied that it is not the intention of the owner of Canby Plaza to lease, or otherwise allow another restaurant to move into the space vacated by Fultano's Pizza.

7. All landscaping will need to be completed before the Certificate of Occupancy is issued.
8. The Commission discussed that review of any sign for this development can be conducted administratively by the staff for the Planning Commission.
9. The Commission agreed that consideration of signs would be necessary under Design Review, as well as landscaping, architecture, etc.

***Based on the staff report dated December 4, 1992, and on testimony at this meeting and on Commission deliberation, Commissioner Mihata moved for approval of DR 92-12, with the following conditions:***

1. ***A reciprocal access easement between Tax Lot 902 and Tax Lot 802, and between Tax Lot 902 and Tax Lot 900, is submitted to the City and recorded with the County.***
2. ***Approval of the driveway access to State Highway 99-E shall be obtained from the Oregon Department of Transportation.***
3. ***An agreement to provide a minimum of twenty-eight (28) parking spaces on Tax Lot 802 and a minimum of twenty-four (24) parking spaces on Tax Lot 902, to the satisfaction of the City Attorney, shall be filed with the Planning Office. If additional parking spaces are needed on the vacant parcel immediately to the west (Tax Lot 900), the additional parking spaces shall be paved prior to the occupancy of the proposed building on Tax Lot 902.***
4. ***The City-owned twenty (20) foot alley to the south of the proposed development shall be paved to provide access to the southern parking spaces. The alley shall be paved for its full width, and the full length that tax lot 902 adjoins the alley. The paving shall not disturb the existing sewer line in the alley.***
5. ***The sewer lateral to the proposed building shall be connected directly to the sewer line in the alley to the south.***
6. ***The seven (7) compact spaces shown on the revised site plan (12/2/92) shall have signs designating the spaces as such.***

7. *This approval is being recommended with the understanding that the commercial space in the adjacent Canby Plaza (Tax Lot 802) that Fultano's Pizza currently occupies, will not be used as a restaurant after Fultano's Pizza moves into the new building. There is not enough parking for two restaurants in this area, and the approval of the proposal is not to be construed as allowing two restaurants in this area.*
8. *Prior to occupancy of the new building, a Data Disclosure form must be completed and submitted to the Supervisor of the Sewer Treatment Plant for evaluation.*
9. *All landscaping and paving shall be completed prior to issuance of the Certificate of Occupancy.*
10. *Any sign shall be reviewed under the Site and Design Review criteria by staff, administratively.*

Commissioner Zieg seconded the motion and it carried unanimously.

#### **IX. DIRECTOR'S REPORT**

Mr. Hoffman explained that Mr. Kahut withdrew the Request for Planning Commission interpretation of outright permitted uses within an M- 1, Light Industrial Zone as per Section 16.32.010(V), and that there will be a public meeting, before the Planning Commission application-scheduled hearing, for input from the public.

#### **X. ADJOURNMENT**

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

Respectfully submitted,

  
Joyce A. Faltus