

# **MINUTES**

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

*August 23, 1993*  
*7:30 p.m.*

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### **I. ROLL CALL**

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

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

Others Present: Michael C. Robinson, Kevin Howard.

### **II. MINUTES**

The minutes of **July 26, 1993** were approved unanimously, as amended.  
The minutes of **August 9, 1993** were approved unanimously, as amended.

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

None

### **IV. COMMUNICATIONS**

None

### **V. FINDINGS**

CPA 93-01/ZC 93-01 - Northwood

The Commission reviewed the draft findings, especially with reference to the number of units approved over the last few years and that relationship to the number of permits issued.

The Commission questioned whether or not to include in the findings, the question of school district capacity, as the district responded, in its Request for Comments, that there is capacity available. Chairman Schrader stated that the schools, by law, are forced to serve anyone who lives in the community, but that it is the Commission's job to decide if the total capacity of the system is able to handle the onslaught of development. Dr. Schrader further stated that this is an issue to take into account in future deliberations. City Attorney Kelley stated that if the Commission is making a finding that the school district does not have the capacity to support a new development, it should be in the findings. Whether or not there is evidence to support that finding would be up to LUBA. The Commission agreed that since this finding was based on data submitted from a school district patron who obtained school capacity data from the district, it would be retained, even though there was conflicting testimony on this issue. The Commission asked that staff request someone from the school district attend a Commission meeting to discuss this issue.

The Commission again questioned whether or not to include in the findings, the amount of money the City subsidizes for residential development, as it has not been included in previous denials. The Commission agreed it was a concern because the applicant was attempting to annex land into the UGB, as opposed to annexing land within the UGB into the City, for an approved use.

Mr. Hoffman pointed out that the Commission acted to deny both the Comprehensive Plan Amendment and Zone Change amendment, but that there was nothing in the findings or conclusion referring to the Zone Change. He suggested amending the findings to include wording that would refer to the Zoning Criteria, Section 16.54.040(A), which requires that the rezoning be consistent with the Comprehensive Plan.

A discussion was held regarding the finding which refers to the amount of money the City subsidizes for residential development. Chairman Schrader stated that this was a valid concern for people who would have to subsidize such development because this was different from other applications in that the land lies outside of the UGB.

**Commissioner Mihata moved to approve the Findings for CPA 93-01/ZC 93-01, Northwood Investments, as amended. Commissioner Fenske seconded the motion and it carried unanimously.**

## **VI. NEW BUSINESS**

None

## **VII. COMMISSION DISCUSSION OF PLANNING ISSUES**

This discussion was postponed until later on the agenda, in order to hear application MLP 93-02.

## **VIII. PUBLIC HEARINGS**

**MLP 93-02**, an application by **Kevin Howard (applicant) and Wilhelm Guttormsen (owner)** for approval to partition a 7.41 acre site into two parcels containing 3 acres (Parcel 1) and 4.41 acres (Parcel 2), respectively. The applicant intends to develop Parcel 1 into a 300-unit self-storage facility, which will include an office, restrooms, and an apartment. The facility will be paved, lighted, well-landscaped, and include electronic security. The parcel is located on the south side of Highway 99-E, near the Logging Road Bridge (Tax Lot 300 of Tax Map 3-1E-34C).

Chairman Schrader asked if any Commissioner had ex-parte contact or a conflict of interest. Though most Commissioners visited the site, none came to any conclusions and no conflicts were announced..

Chairman Schrader explained the hearing process and procedures, and reviewed the criteria.

Jim Wheeler presented the staff report. He explained that the northern boundary of the parcel abuts Highway 99-E, the Logging Road and Molalla Rail Spur runs along the northeast portion of the property. The property is zoned Commercial/Manufacturing. The applicant is proposing to divide the property into two parcels, a 3 acre parcel on the north and a 4.41 acre parcel on the south, with the intention of developing Parcel #1, the northern parcel, into a self-storage facility, which use is consistent with uses permitted outright in the zone. There is an existing residence on the northern part of Parcel #2 and a driveway exists from Highway 99-E to the existing home. Mr. Wheeler pointed out that a change in use of a parcel requires State Department of Transportation review for access along a State highway. The difficulty, he continued, lies in the City approving a parcel without access from the highway, so if approved, it would have to be conditioned upon the State's approval of access. Such approval would not occur without a specific site development plan, which is not a part of this partition application and, since the proposed use would change traffic generation enough that the City is sure O.D.O.T. would not grant blanket approval, staff has included a proposed Condition #5, that prior to the signing of the Final Plat, approval for such access must be obtained from the State. Once the written findings are

approved, there is a one year time frame for the final plat to be approved, within which time the specific site development plan would need to be approved by the State Department of Transportation; otherwise City approval would be considered null and void.

Utilities exist in the area, with adequate capacity to service the parcels. Approximately 195 feet west of the parcel on Highway 99-E is an existing water main which CUB would like extended to the property - a 10 inch water main to the property and an 8 inch main down the western property line of Parcels #1 and #2, which would fit into CUB's master plan for utility service. Oversizing could be reimbursed through the advanced financing process. Water is presently available to Parcel #2 and would have to be extended to Parcel #1. The existing residence is not hooked up to the City sewer, which is available in S.E. 2nd, nor is it required at this time, but probably would be required when the sewer is brought within 100 feet of the home. Sidewalk construction would be required along Highway 99-E as part of a minor land partition application, and would be appropriate prior to occupancy of Parcel #1.

Due to the fact that the application describes the development of Parcel #1 as part of this application, some of the requirements are more pertinent to such development, than to a minor land partition itself, so Mr. Wheeler reminded the Commission that the application under consideration is not for a storage unit facility, but for a Minor Land Partition of the parcel. Staff recommends approval with conditions.

### ***Applicant***

***Kevin Howard, 12033 N.E. Marx Street, Portland 97220*** described his involvement with mini-storage development, which included over 150 projects in the northwest in the last 18 years. In addition, he explained that what users require is convenience, visibility, and access, security and price. Due to these types of needs, he explained that they build upscale units with a store-front look, lap siding, electronic digital access security gate, very wide drives, and very well lit with high pressure sodium lighting. The American Planning Association [APA] recently did a study of mini storage developments, which determined that these units have been mislabeled as warehouses and for industrial uses, when they really should be considered commercial uses, and should be placed between commercial and residential areas. In fact, Mr. Howard added, they generate the least amount of traffic for commercial uses, as most tenants do not "visit" their goods on a regular basis, but store them for long periods at a time, even paying rent by mail. Based on these studies, the City of Forest Grove recently changed its Zoning Code to allow these units as a Conditional Use in a commercial zone. Mr. Howard stated that he began to

study Canby approximately 3 years ago and found the need for these units does exist. Initially, the applicant intends to build on two acres to start, and eventually expand onto the 3rd acre. The development will have a store-front look; a light blue-grey background with a blue awning; and approximately 300 heated storage units to start, with electronic digital access gates. He further explained that there would be a husband/wife resident manager apartment, a public restroom, and that the storage units are not designed for manufacturing uses or as workspace for tenants.

Mr. Howard stated he concurs with the staff report and is aware of the development costs, but is concerned about on-site water retention and expects to be working closely with staff regarding that issue. Further, Mr. Howard expressed his concern over the utility setbacks which are required along the interior lot lines. Chairman Schrader explained that the guidelines are set out on pages 10 and 11 in the staff report and that the Commission has no control over those utility requirements. He further explained the Capital Improvement Plan that the City and CUB have agreed on, and that the oversizing, which a developer is reimbursed for, is part of that Plan. Mr. Howard then described where he would want to build with little or no setbacks, in order to provide a perimeter design for security purposes, and where he believed the utilities should run. Mr. Wheeler explained that it is standard procedure for CUB to run utilities along all property lines, requiring a 6 foot easement setback. Further, Mr. Wheeler suggested that it might not be necessary to require a utility easement along the northeast property line of Parcel #1, along the Logging Road, and the eastern property line of Parcel #1, but that there should be one between Parcels #1 and #2 in the event it is needed to provide utilities to the adjacent commercial/manufacturing property. Although the applicant could discuss this matter with CUB officials at the pre-construction conference, Mr. Wheeler explained that the partition plat would have to meet the conditions, as provided in this approval and, once established, would be difficult to change. The Commission suggested tabling this hearing to the next agenda so this matter could be decided by the utility providers.

Mr. Howard explained that his main concern centered around the issue of access to 99-E, and referred to proposed Condition #5. He explained that a mini-storage facility generates the lowest traffic of all commercial uses. Further, Mr. Howard referred to a deeded access that Mr. Guttormsen believes runs with the land for any use whatsoever, and that the proposed condition would kill the development at any stage. The applicant's position is that the deeded access (Warranty Deed) is very specific and very clearly runs with the land even to the grantor's heirs or assignees, for any purpose whatsoever, and that it should not hinder the partitioning process. Instead of conditioning the access approval from O.D.O.T. at the partitioning process, which puts undue

bargaining power in the hands of the State, Mr. Howard requested, instead, that access be conditioned as a part of the building permit.

**Michael C. Robinson, 900 S.W. Fifth, Portland 97204**, attorney for the applicant, stated that this is not the appropriate time to determine whether or not the parcel will have access from 99-E. O.D.O.T.'s access management rules require that such decision be made when there is a change of use. At this time, the Commission is looking at a Minor Land Partition, where the issue of access is not germane. Thirty-three years ago, Mr. Guttormsen and O.D.O.T. exchanged deeds. What O.D.O.T. gave Mr. Guttormsen in exchange for his surrender of access to the Highway Engineer's Station was unrestricted access to this particular location. The deed describes the access as unrestricted and runs with the land. The deed does not state that O.D.O.T. can reexamine the access issue at the time the use changes. Mr. Robinson acknowledged that the applicant would have to go through the O.D.O.T. process and apply for a permit, which O.D.O.T. could add conditions to, but could not deny. Further, Mr. Robinson stated that, 33 years ago, O.D.O.T. gave up its right to determine that a change in use allowed them to reexamine whether access would be permissible. If proposed condition #5 is imposed at this time, Mr. Robinson stated that it would be similar to a Catch-22 situation, as most applications would not want to go to the time and expense of preparing a detailed site plan without any indication the access was approved. If the partition plan is not signed until access is granted, O.D.O.T. could simply weed out the applicants whose site plans they do not like, which would leave the City with a series of partitions that are never recorded because there would never be any acceptable access approval from O.D.O.T. This parcel is within the U.G.B. and is appropriately zoned and this proposed development hinges on approval from O.D.O.T. regarding access, which was decided 33 years ago when O.D.O.T. issued the unrestricted deed. Mr. Robinson recommended the condition be deleted or changed to read: "The access permit be granted prior to building permit." which would put the access issue under consideration at the appropriate time, when a change of use occurs. Mr. Robinson added that Parcel #2 has access to 2nd. O.D.O.T.'s access management rules and the State Legislative laws, guarantee "reasonable" access to every parcel with access only to a State highway, he explained.

Mr. Wheeler explained that after the staff report was completed, a Request for Comments was received from the Police Department, which has no major concerns about the application, but would rather see traffic routed to 2nd Avenue via S. Pine, rather than from Highway 99-E.

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

1. The Commission asked if the existing 6 inch main going to the property would eventually be replaced with a 10 inch main. Mr. Hoffman explained that it would probably all become a looped system. Commissioner Fenske explained that there was a 12 inch line presently working its way down Redwood. With regard to Criteria E, Chairman Schrader explained that the application should be aware there might be considerable costs involved in infrastructure development. The applicant indicated he was aware of this.
2. The Planning Commission directed staff to discuss revision of the requested utility easement dimensions and locations with the Canby Utility Board.
3. The Planning Commission also directed staff to discuss the access issue with the City Attorney, John Kelly, with respect to the warranty deed presented by the applicant and how it would affect approval from O.D.O.T. The applicant argued that the warranty deed for access to the current lot suffices in providing legal access for Parcel 1 and that the partition should be approved without requiring ODOT's approval for the access (staff's proposed Condition #5).
4. The Commission discussed the time frame in the application process that access should be conditioned. It was agreed that at time of building permit might be too late in the process, and that prior to Site and Design Review would be the best wording.

**Commission Wiegand moved to continue MLP 93-02 to September 13, 1993 in hopes of resolving the access and utility issues. Commissioner Fenske seconded the motion and it carried unanimously.**

#### ***IX. COMMISSION DISCUSSION OF PLANNING ISSUES***

Chairman Schrader explained, with regard to the joint Council/Commission meetings, it would most likely be held in October and, possibly, on a Saturday. Two especially important ordinance issues, Parking and Carports, would be discussed. Hopefully, advance financing and trees would be discussed also. Dr. Schrader also suggested a discussion regarding the City's fee structure.

Re Advance Funding - Commissioner Fenske explained that he has reviewed everything done to date and has started to write the portion that would give the Planning Commission the power to compel a developer to enter into an Advance Financing agreement as a condition for a Major/Minor Land Partition

or a Subdivision. He has also investigated wording which would more fully explain the procedure if the City acted as the advance financier.

Mr. Hoffman explained that staff has discovered a concern about the operation of advance financing which is that there is probably some point, after construction has occurred, where it is no longer reasonable for a person to ask for a credit. He referred to a facility which was built more than two years ago, where the person wants to apply for advance financing now. He suggested a Sunset Clause be included. Commissioner Fenske explained that there was a limit on the time advance financing could be requested, and he believed it was a 5 year period. Mr. Hoffman explained it should be worded where someone would not be eligible to apply for credit after some point after construction. Chairman Schrader stated that staff should have some methodology in place to identify what were off-site improvements that a particular development might be held accountable for. Mr. Wheeler explained that the properties would be identified in a tax lot file, and in the record, as to whether or not they were tagged for reimbursement. Additionally, there is the Capital Improvements Plan which lists public improvement items eligible for advance financing. For reimbursement of public improvements, one must apply for Advance Financing and in the application process the properties identified as benefitting from such improvement are required to reimburse the developer when benefit is gained, and their tax lot files are tagged.

Mr. Hoffman explained that at the present time, payment is due when a person gains benefit from the improvement. Further, the spirit of Advance Financing is similar to that of an L.I.D., which charge is in proportion to the benefits gained from the improvement.

There is no assessment against a property until the benefit is gained. Mr. Hoffman then explained that there is a study underway now to see if Traffic Systems Development Charges or Storm Water S.D.C.'s should be imposed, as opposed to having it conditioned as part of the application approval process.

The intent of the S.D.C. is to be a charge where funds become available to make improvements to an entire system, wherever there are additions to the capacity of the system. The intent of the Advance Financing is where it is a specific local facility to serve a particular area, necessary to serve a particular development, which passes intervening parcels that might gain benefit.

Re the Tree Issue - Commissioner Mihata stated that she would like to present City Council with a draft Tree Plan, and samples of other tree plans, to see if the City desires to adopt one. Mr. Wheeler explained he is looking at a revision to the recommended street tree list, which would also be solar friendly, and plans to work with a consulting arborist on it. The end result



would possibly be a revised Tree Master Plan. Chairman Schrader suggested Mr. Wheeler talk with the City Administrator about the idea of a tree plan, and Mr. Jordan could discuss this matter with the City Council, to see if they consent to the hiring of a consultant. If agreeable, by the time the joint meeting takes place, a Tree Plan could be worked on.

The Commission discussed the City's fee structure. It was suggested the City be reimbursed for costs borned by others: bonding to guarantee things get done after Commission approval of applications, and enforcement of such conditions. It was agreed that a mechanism should be found to try to insure that the City does not lose money on every lot that is developed, such as a fine for failure to comply, or a fee charged, after a certain time period expires, or a bond assessment which, if the conditions are adhered to, would be returned. The Commission agreed that the two SDC's under consideration would be a good start. A better system, other than staff or Commissioners having to check on the conditions, must be devised. Further, it was suggested that fees should cover all staff time spent on applications, and all costs incurred.

Mr. Hoffman referred to another city who was considering an initial charge for an application and then they would keep records of the time and costs that went into the application until completion. Then, at some point, the applicant is charged the full cost, or if the cost was less, reimbursed the difference. Canby is considering this system, or a modification of the system. In this way, a small proposal would not subsidize a large development. The difficulty lies in the ability for an applicant to estimate their costs.

Mr. Hoffman then explained the general services and miscellaneous activities available to the residents of Canby, which utilizes a lot of staff time.

The Historic Review ordinance was discussed. Mr. Hoffman explained that the Legislature passed a law which included owner-consent, and that under that, the owner could veto having the home designated as a historic structure. It has not been signed by the Governor yet, but once it gets approved, Canby could move ahead also.

Chairman Schrader suggested that the Commissioners pick one specific topic that is of enough concern to the community, from the list of 30 concerns, to discuss at the next Planning Commission meeting. Commissioner Fenske asked that the Commission be given a copy of staff's report regarding goal achievement which will be submitted to Council for the budget.

**IX. DIRECTOR'S REPORT**

Mr. Hoffman explained that the Tree Ordinance, regarding subdivisions and partitions, should be going to Council shortly, most likely at the September 15th meeting. It will be an open meeting. On October 6th, the Council is holding a meeting on the Northwood application, which will be held at the Adult Center. The Council, at its last meeting, approved a resolution authorizing the initiation of condemnation proceedings on 3,500 square feet of the Faist property. In the meantime, staff is to propose an offer to the Faist family which will, hopefully, resolve the issue. At the September 1 Council meeting, the resolution regarding street naming will be heard. Mr. Hoffman also advised the Commission that there is an APA Conference in Eugene in September and the City Council would be happy to sponsor any Commissioner's attendance.

**X. ADJOURNMENT**

The meeting was adjourned at 10:30

Respectfully submitted,

  
Joyce A. Faltus