

**MINUTES**  
**CANBY PLANNING COMMISSION**  
REGULAR MEETING  
JANUARY 9, 1995  
7:30 P.M.

**APPROVED**

**I. ROLL CALL**

Present: Chairman Schrader, Vice-Chair Mihata, Commissioners Elliot, Ewert, Gustafson, Maher and Jackson.

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

Others Present: Rebecca Nugent, Carl Bighouse, Loretta Pryzbek, Cynthia Fair, Charlene Fair, Genevieve Hoffman, Duane Koser, Phillip Seale, Larry Fitzgerald, Doris Becker, Mary Chiaroni, Troy Nelson, Steve Sather, Pam Thompson, Joe Tackett, Dwayne Jones, Hope McEvoy, Bruce Wadleigh, Jacqueline Mangan, James A. Bergen, Jr., Nancy Bergen, James S. Bergen Sr., Jeff and Deanna O'Neil, Howard Lowrie, Loyd Alice Lowrie, DonnaJean McManamon, John E. McManamon, Joan Jones, Paul and Joyce Carone, Jan and Herb Kluth, Jan Love-Coyle, Dianne Yates, Brent Yates, Don Hopkins, Emma Kahut, Betty Foster, Roy Foster, Lonie Robinson, Annemarie Robinson, Tim Maples, Paul Bell, Christine Kloser, Karen Jackson, Alan Peterson, Steve Jessop, Dan Stoller, Andy and Sandy Kahut, Nancy Kahut, C. Killehen, Bob Tackett, Larry Boatright, Herb and Rikki Carter, Kathy Smith, Him Hart, Valerie Blair, Enad Mark Riseling, Leta Gray, Belva Clark, Rob Clark, Pam Walker, Chuck Walker, Gertrude Thompson, Leon Sampsel, Adelaide Sampsel, Mike Donovan, Dave Powell, Yvette Gerber, Brad Gerber, Catherine Olds, Brent Pavlicek, Mary Jo McGauvran, Ron McGauvran, Ashley McGauvran, Ronny Joel McGauvren, Kelly Green, Deborah Donovan, Eleanor and Dale Liberty, Karen L. Haynes.

**II. MINUTES**

None

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

None

**IV. COMMUNICATIONS**

None

**V. FINDINGS**

None

**VI. OLD BUSINESS**

None

**VII. NEW BUSINESS**

None

**VIII. PUBLIC HEARINGS**

**CUP 94-05/DR 94-14/LLA 94-08**, an application by Fred A. Kahut [owner/applicant] for approval to develop a portion of a 14.4 acre parcel of land, within the confines of the Logging Road Industrial Park, and operate a Solid Waste Transfer Station and Recycling Processing Center. The site is located in the southeast portion of the industrial park and is bounded on the south by Township Road; on the north by an easement for Fourth Avenue; on the east by the Logging Road; and on the west, by Redwood Street (Tax Lots 1804 and 1805 of Tax Map 3-1E-34C). *Continued from December 12, 1994.*

Chairman Schrader explained the hearing process and procedures. He asked whether any Commissioner had ex-parte contact or conflict of interest since the last hearing.

City Attorney, John Kelley, explained that when any Commissioner declared ex-parte contact, the audience should be asked if they had any questions, comments or concerns.

Chairman Schrader explained he read the articles in the newspaper, but not the letters to the editor. He visited the KB recycling site in Milwaukie. No questions, comments, or concerns were expressed by the audience.

Commissioner Ewert explained that he visited the Waste Energy Facility in Brooks, where garbage is burned, on January 5th. He asked what their capacity levels were, with regard to possibly being an alternative for Canby. They explained they were at capacity 9 months out of the year. He also met with an assistant planner in Wilsonville regarding a Transfer Station proposed for Wilsonville, and got copies of the final order and the Wilsonville's Commission discussion regarding the issue. Mr. Ewert also visited the site. Mr. Donovan explained that the facility being built in Wilsonville will not be a Transfer Station and will not accept municipal solid waste. No other questions, concerns or comments were expressed by the audience.

Commissioner Elliot stated that he visited both the proposed site and the existing site and read the letters to the editor. No questions, comments or concerns were expressed by the audience.

Commissioner Jackson stated he had testified before the Commission regarding this matter when it was before the Planning Commission some time ago, prior to becoming a Planning Commissioner, and he has had discussions with various people. Therefore, he will not participate in this hearing.

Commissioner Maher explained she read the newspaper editorials, visited the site again, and had an brief written ex-parte contact from an associate, who is also an opponent at this hearing, which was in the form of a Post-It note with "No On the Land Fill" written on it. No questions, comments or concerns were expressed by the audience.

Commissioner Mihata visited the site again and read the articles in the newspaper, the editorials, and the letters to the editor. Ms. Mihata also had conversations with high school students about whether or not they noticed odors from the current site. Joan Jones asked Commissioner Mihata if she was aware there was no garbage at the present site, so there would be no odor. No other questions, concerns or comments were made by the audience.

Commissioner Gustafson said he was a customer at both the existing site and the Oregon City site, read the newspaper articles, editorials and letters to the editor, and had casual conversations with relatives regarding this proposal. There were no questions, comments or concerns expressed by the audience.

Chairman Schrader explained that this item was held over for Commission deliberation. No additional testimony will be taken tonight. Any letters submitted by 5:00 p.m., December 27th, were distributed by staff and received by the Commission. He then explained the procedure that must be followed should anyone want to appeal the Commission's decision.

*Commission Deliberation*

**RE: LLA 94-08**

The Commission referred to the criteria for the Lot Line Adjustment application. Commissioner Maher stated that she believed the application meets the Lot Line Adjustment criteria. The Commission concurred with Commissioner Maher.

**RE: DR 94-14**

The Commission deliberated on the following issues:

1. Parking

Mr. Hoffman explained that 50 spaces are required. The applicant requested approval for 24 parking spaces, which they deemed sufficient. If that request is approved, they would be deficient by 26 spaces. Additionally, the applicant proposes that the parking be located between the office and transfer building. There is additional paved area available if the applicant finds additional spaces are necessary for the operation. Although the additional spaces would not be located as conveniently as the proposed spaces, adding more spaces would not necessarily reduce the proposed landscaping, Mr. Hoffman explained.

Mr. Donovan explained that the intention of the design is to minimize impervious surface and to maximize landscaping. The reason for the difference between the request and the Code requirement is the function of the building size - the number of stalls per square foot of building footprint. Although the building is quite large, there won't be the number of employees one would normally see in a typical warehousing situation. There will be approximately 6 full and/or part-time employees and 12 full and/or part-time fleet drivers who would leave their passenger vehicles daily, so 24 would be sufficient for employees and visitors. The applicant is amenable to adding additional parking, if conditioned, as there is certainly sufficient space to do so. None are really needed for recycling customers, as they just drive right up to the bins, drop off their recyclables, and leave the premises.

Section 16.10.050 of the City's Land Development and Planning Ordinance states that the parking standards set out in Table 16.10.050 shall be observed. Parking requirements for a business this size is usually dependent on the number of employees and the square footage of space in a warehouse type of environment, which would be 3.50 spaces per 1,000 gross square feet of office space, plus 1.00 spaces per 1,000 gross square feet of non-office warehousing space, with a minimum of 5 parking spaces overall. Mr. Hoffman explained that the standards are based on an average type of use, and that this is not an average use. He added that staff finds no problems with the number of reduced parking spaces (24) that the applicant proposes.

Regarding the 2 inch asphalt in the parking lot, Aaron Fagri explained that the asphalt would have a base under it, adding that this is the standard size thickness for truck-type areas. When potential concerns were brought up, Mr. Fagri stated that the applicant could stipulate to a regular maintenance and inspection program. Asphalt, he added, typically has a 10 to 15 year life cycle, so regular maintenance is very important. The water flow would be the same, whether the parking area is asphalt or concrete, he stated.

2. Landscaping/Irrigation

The Commission agreed the berm should be built entirely around the facility. Although an irrigation plan has not been submitted, Mr. Hoffman explained that irrigation plans are usually part of the final landscape plan.

*Conditional Use Criteria*

1. Regarding the consistency with the policies of the Comprehensive Plan and other applicable policies of the City, a majority of the Commission agreed that, with conditions, the proposed use is consistent with the policies of the Comprehensive Plan and that a conditional use is acceptable in this instance, as the site is zoned light industrial.
2. Regarding the size and shape of the parcel, the Commission found that the parcel is large enough to site the proposed use and can accommodate the proposed design.

3. Regarding traffic flow, the Commission found, due to the increase in traffic this development will cause, it would be necessary to condition that the traffic signal on Highway 99-E and Pine would be in place and operational prior to occupancy and use of the site.
4. With regard to flooding on Redwood, Mr. Hoffman reported that the Public Works Supervisor installed an additional drywell adjacent to Redwood to handle the additional runoff, and does not believe there will be further flooding problems at the Redwood and 3rd Avenue area. Further, an easement was obtained to do so, and once the open fields in the area are developed, they will have on-site drainage included with the development. In the past, even when it was flooded, he added, trucks were able to get through even though cars were not.
5. Regarding monitoring the site, concern was expressed that the City did not have the staff or time, or people well qualified to monitor the enforcement of conditions placed on the development. Mr. Hoffman briefly discussed his own training, and the expertise and training of Mr. Godon, Mr. Hanson, and Steve Floyd. The bioswale is an exception, he stated, and staff would need expert assistance in order to monitor that regularly. The Commission agreed a definite procedure was needed for monitoring the condition of the premises itself, the condition of the asphalt, the material on-site, etc., and that documenting the visits was a very important part of the monitoring process. Additionally, the importance of hiring an expert in the field of bioswales was discussed. The Commission discussed performing monitoring visits bi-monthly and inviting a representative from the Trost Elementary "Local School Committee" to participate. Further, the Commission agreed the site should be inspected every two months during the first two years, quarterly the second year, and semi-annually thereafter. The Commission discussed the penalties that might be imposed if conditions were not adhered to.

Steve Donovan explained that prior to construction, the applicant would be happy to retain the services of a licensed professional engineer to render an opinion regarding the adequacy of the depth and of materials required for the impervious surfaces and, in consultation with the Public Works Supervisor, stipulate whatever depth of asphalt would be most appropriate. He suggested this might offer a more focused opinion than what the design team put together.

6. Regarding the licensing of the facility by DEQ, Mr. Hoffman explained that DEQ will add, as part of their licensing, any of the conditions of approval that have been placed on the land use approval by the City. Mr. Kahut explained that, at the present site, there is nothing that requires DEQ license approval because no municipal solid waste is handled on the site. Mr. Donovan explained that since solid waste will be transferred at the new site, it will require DEQ guidelines and licensing. According to DEQ applications, transfer stations are called low-risk applications, as they are not landfills. A very technical engineering analysis of the facility is performed by DEQ. Mr. Hoffman explained that Mr. Hanson is required to survey the operation and do a pre-treatment analysis before the site is in operation. Mr. Hanson will then develop a program to insure that the sewage treatment will not receive materials that are hazardous, or difficult to maintain or treat. He also deals with the aspects of the hard-surfacing to insure that there won't be pollution of the ground table through either the bioswale or the drywell. There is a process that has been used successfully with other industries which would also be applied rigorously with this industry. Additionally, he added that the County has experts available to assist Canby in monitoring the site.

Regarding the franchise agreement between KB and the City of Canby, Mr. Hoffman explained that there is an opportunity to make revisions to the agreement every year, under a continuous process of reappraisal. Mr. Kelley discussed proposed condition #33, where lack of performance or violations of the conditions could be considered grounds for breach of the franchise agreement, but that the City Council would hold a hearing to make that decision, not the Planning Commission. Mr. Hoffman further explained that the applicant and Mr. Reif reviewed the proposed condition and concurred with it.

7. Regarding rate-making issues, Mr. Donovan explained that rate payers are responsible for paying back the principle and interest on municipally owned system bonds and the payment of principle becomes rate-payer equity in a system. In this case, it is an investor-owned facility. The debt service for rate-making purposes, would be the interest expense only. Principle is not allowed to be used for rate-making, although depreciation expense is an allowable expense and has a different impact on rates. Further, he explained, the applicant is allowed a return **on** investment, not a return **of** investment through the debt service.

8. The Commission discussed traffic flow and agreed all trucks going to and from the site should be routed via Highway 99-E, S. Pine, S.E. 3rd, S. Redwood, and S.E. 4th Avenue and that such route would be usually enforced by code enforcement officials, rather than the police.
9. The Commission discussed where the recyclables would be brought to the site from, which would, most likely, cover a large area. The Commission agreed that the solid waste should, preferably, be limited to the Canby franchise area. Steve Donovan explained that the franchise area is specifically delineated by a map, which boundaries are drawn by the County, that is included with the franchise agreement. Mr. Kahut explained what is included in the franchise area, which area has been consistent for many years.
10. The Commission discussed terminating the franchise agreement if the applicant did not follow the conditions imposed. Mr. Kelley explained that the City could terminate the franchise agreement in that case within the City of Canby, although it would not necessarily affect the County's agreement with Mr. Kahut, which controls a large area around the City limits. Mr. Hoffman discussed various enforcement procedures, especially that the City could notify people who do not comply with conditions of approval, or laws, that their electric and water could be in jeopardy of being disconnected. The Canby Utility Board, he explained, has used it as a means of enforcement. Additionally, he explained, there are numerous steps that could be taken through the local courts. The City, he added, has been tightening up on many mechanisms to ensure enforcement.
11. The Commission discussed Criteria "D," which concerns the surrounding properties. The majority of concerns included limiting the possibility of foul odor for nearby residents. The Commission felt that imposing a strict time limit that solid waste could remain at the facility would mitigate this concern.
12. Regarding wastewater, the washdown of the transfer building was discussed, as would be prescribed by the Wastewater Treatment Plant Supervisor, Steve Hanson. Mr. Donovan explained that under the reauthorization of the Clean Water Act, Canby is responsible for all the permitted industries that discharge wastewaters into the system. Canby, as the ultimate treatment authority, then discharges into the Willamette River under a NPDES Permit issued by the DEQ. Mr. Hanson is responsible for the Transfer Station, which is a significant industry. In



anticipation of that, the applicant has given Mr. Hanson information regarding discharges of the METRO Central Station in Portland and discharge information and chemical analyses from Forest Grove, which is managed by the Unified Sewage Agency in Washington County. The applicant is proposing to plumb the domestic strength sewage from sinks and restrooms into the municipal sewage system, which would be charged out under the current commercial domestic strength like any home. Discharges from the wash rack and tipping floor would be plumbed separately, and prior to getting into the sewer system there would be a holding tank with a sampling manhole. Prior to any discharges from that holding tank, the industrial pretreatment officer would require that samples be taken and then determine if it could be discharged into the system. Fees would be charged for the sampling and for the supervisor's time, so it would be in the best interests of the applicant to become a zero discharge facility. The applicant proposes not to become a customer of the Canby sewer system by becoming a zero discharge facility and proposes to minimize the amount of discharges that go into that tank and when it needs to be emptied, it would be pumped out like a septic tank, by a private company, who then incinerates it, where the ash and residue is then taken to Arlington, Oregon where it is handled as special waste. Further, Mr. Donovan explained that the reauthorization of the Clean Water Act puts the target on the City of Canby as the responsible party. The Commission asked that Mr. Donovan's explanation be worked into the conditions, so that in the event that the site ever changes ownership, it would be preconditioned. Mr. Donovan explained that whoever is at that site is a significant industry automatically and would, by default, fall under the Industrial Pretreatment Code.

13. Regarding the types of materials that are recycled on the site, the Commission agreed to exclude tires, batteries and yard debris, and reviewed the proposed conditions referring to recyclable materials - glass and metal, which are the only ones allowed to be stored in outside containers. Mr. Kahut explained that they have participated in the leaf pickup program sponsored by the City twice and also did Christmas trees. The applicant has no intent, he added, to handle yard debris on-site. Whatever has been picked up in the past under those programs, has been immediately taken to a yard debris facility.
14. The Commission discussed storing recycling materials outside the recycling center, as per Mr. Hanson's memorandum, with reference to metals that are exposed to water. Mr. Hoffman explained that this was

an issue prior to the addition of a proposed condition directing that the recyclable containers be leakproof and covered. The Commission questioned why, if the applicant is proposing that this be a zero discharge facility, the containers must be leakproof. Mr. Hoffman explained that if the containers are stored outside and are rained on, the liquids would run onto the hard surface. The usual method of handling hard surfaces is through some form of drywell. The yard may not be intended as zero discharge, as it will be an outside storage area. A biofilter for handling the rainwater in the yard is proposed. Kurt McLeod, the City's Contract Engineer, revised the design, as he felt it was not adequate, and suggested the addition of a drywell system. Mr. Donovan explained that the applicant would prefer the phrase "covered" or "leakproof" in proposed condition #16, due to the expense of "covered and leakproof" recyclable containers. He added that the applicant would be agreeable to building a covered shelter for the recyclable containers. Further, he added that the recyclables are not poisonous or hazardous commodities. The Commission preferred that the wording "leakproof and covered containers" be retained.

15. The Commission discussed constructing a fence inside the landscaped area. Mr. Donovan explained that the applicant is proposing to construct a fence inside the landscaped area, entirely around the site, for security purposes.
  
16. The Commission asked the applicant or staff to summarize the potential benefits to the City, for locating a Recycling Center in Canby. Mr. Hoffman explained that, in contrast to the current operation, smaller trucks would transfer their load to a larger truck and two or three of the larger trucks would transfer the materials elsewhere, which would amount to significant cost-savings, which would ultimately affect rates. Additionally, he explained, this operation would incur substantial energy savings in terms of fuel usage. Further, he stated he would expect that the current site operation would be closed as the application so states. Mr. Donovan enumerated certain benefits to the City. He explained that it gives the applicant the flexibility to supply service into the future, as there is not enough room at the present site. Further, he explained that recycling is fairly new and is not even addressed in the current franchise agreement. Previously, recyclables were taken to Yamhill County for burial. Now they are stored and recycled, which requires more room. Cost is another issue, he added. The applicant is in a position to negotiate potential long term disposal contracts which would offer rate stability and predictability, versus being at risk to depend on other sites, which raises the issue of price and stability. Another benefit would be getting more efficiency out of the current equipment, he added, along with energy savings.

17. The Commission discussed the benefits to closing the existing site, especially as a bypass around the south part of the City has been long considered, and Berg Parkway is a major part of that plan. Additional benefits include Canby's tax base, with this facility on the site, which would boost the City's revenue and, with less trucks on a regular basis, there would be less road repair needed. Potentially, there would be better control over this facility, due to the grandfathered use of the present site.
18. The Commission asked whether there was any other area this industry could be located. Mr. Hoffman checked with the County regarding zoning for such an industry. The County would permit such a use, as a conditional use, in their light industrial zones. There are areas zoned for light industrial on the other side of the Molalla River, he added, if the applicant could find a site to purchase. The railroad-owned property in the City, at the northern end of Berg Parkway, recently came on the market, he stated, but has no sewer and water, is zoned properly. Other possible sites were discussed. Mr. Reif stated that property in Barlow was researched for availability, but there was trouble with a nearby gravel operation. Traffic near the potential site near the sewer plant was viewed as a problem, Mr. Reif added, and a school was denied on that site for the same reason. Mr. Reif further added that the County would not permit this industry sited in exclusive farm use zones.

Based on the findings and conclusions in the staff report dated November 4, 1994, the revised staff report dated November 18, 1994, and the December 9th memorandum, testimony received at the hearings of November 14, 1994, November 28, 1994, December 12, 1994, and January 9, 1995, letters received prior to January 9, 1995, and on Commission deliberations, **Commissioner Mihata moved for approval of CUP 94-05/ DR 94-14/ LLA 94-08 with the following proposed conditions amended:**

Mr. Hoffman reviewed the amendments to the staff's proposed conditions, which included that the use is not permitted until the traffic light is in operational on Highway 99-E and Pine; that if the public was to abandon dropoff waste and recyclables, there would be a 24-hour attendant required; that the required traffic routing for all trucks to the subject site would be only via Highway 99-E, S. Pine, S.E. 3rd, S. Redwood, and S.E. 4th Avenue, and enforcement would be by the Code Enforcement Officials, rather than the police, and cost of enforcement borne by the site operator; that bioswales will be regularly tested by a competent bioswale maintenance expert to be approved by the City Planner, whose recommendations would be used to

correct any problems that were found; that tires, batteries, and yard debris would not be permitted on the site and that the only recyclables to be stored outside in the partially filled containers would be glass and metal, but that the metals not be oil or grease coated; that recyclable oil must be stored under cover in a manner to protect against spills; that the paved surface in the storage processing area be constructed with an impervious layer below the hard surface; that all processing of waste and recyclables would be within the building; a strict monitoring and enforcement condition to include definite procedures established to include a bioswale expert review the site, that the general condition of asphalt be retained in impermeable condition, and for checking the materials being processed on the site; that the applicant retain a licensed professional engineer for a recommendation as to the design for the hard surfacing and how to maintain it; that the Trost Local School Committee be part of preconstruction meetings and initial on-site inspections; rigid inspections with appropriate documentation required; that the solid waste handled at this facility be from the Canby Franchise Area, as determined by Clackamas County; keeping the materials on-site a minimum time, dropping the phrase, "except during weekend emergencies" from the proposed condition; the berm be extended all around the site, with automatic irrigation; including odor control in the monitoring process; the site to be inspected every two months for the first two years, every three months for the next year, and every six months thereafter, unless infractions are found, and then as needed to ensure compliance; water handling; retaining leakproof, covered containers in the wording; and to strongly recommend that the City Council review the franchise agreement to include a timed review.

**Commissioner Maher seconded the motion and it carried 5-1, with Commissioners Schrader, Maher, Elliot, Gustafson, and Elliot voting yes, and Commissioner Ewert voting no.**

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*MLP 94-09*, an application by James A. Bergen to partition a 80,973 square foot parcel (1.86 acres) into three parcels, 9,790 square feet, 9,843 square feet, and 61,340 square feet. The site is located at 640 N. Pine Street, on the east side of N. Pine Street, south of N.E. 8th Place [Tax Lot 1700 of Tax Map 3-1E-34BC].

Chairman Schrader explained the hearing process and procedures. He asked if any Commissioner had ex-parte contact or conflict of interest regarding this application. None was indicated, except that Commissioners did visit the site.

Mr. Wheeler presented the staff report. He explained that the Tax Assessor's map shows this property as 2.4 acres, but after being surveyed, it appears to be only 1.9 acres. The property is zoned R-2, High Density Residential. The proposed use, after the partition, is R-1, Low Density Single Family Residential, which is permitted in the R-2 zone. This is a triangular lot, with another reversed triangular lot immediately to the northeast that is also vacant, and zones R-2. The partition will create 2, approximately 9,000 square foot lots. A portion of the lot to the north will be islanded by the remaining vacant property, which will create some difficulty for future R-2 development to its highest development and best use of the property. Referring to Page 49 of the Comprehensive Plan, Measure "H" states that it should be continued to work toward a gradual increase in the density and intensity of development. . . and discouraging wasteful development practices and designs. For R-2 development, this could be construed as a wasteful design in that there are 2 R-2 vacant properties which, if combined, or developed individually, could be designed to allow for a combination of traffic flow and use as R-2 land as a more efficient use. The applicant has explained that he has attempted to contact the owner of the adjoining property, to no avail. The City has made attempts to facilitate a meeting of the two parties, to no avail.

The minimum single family residential lot size in an R-2 zone is 5,000 square feet, approximately half of the size of the proposed lots. North Pine Street would need a 10 foot dedication from this property as part of the overall design for N. Pine, ultimately a 60 foot right-of-way, to be consistent with right-of-way dedications required of developed properties further north on N. Pine Street.

In 1984, the North Pine Addition, on N.E. 8th Place, at the northern tip of this property, was constructed. Money was required to be given to the City for their portion of improvements deemed to be needed on N. Pine. There is a vertical curve, a hump in the road, which is more severe than standards would permit, which must be corrected. Once development is made to the other side of the road, that improvement would be made. N. Pine is a County road, and the Public Works Supervisor is attempting, with some difficulty, to have the County come out to get specifics on what would be required. Sidewalks, curbs, and street trees would be required on the applicant's side of N. Pine. There are existing trees, which do not appear to be approved street trees, in the right-of-way that would have to be removed due to sidewalk construction and road widening improvements, and replaced with appropriate street trees.

The application does not meet the solar standards due to the orientation of N. Pine Street, but Mr. Wheeler explained that this is the only orientation available for the proposed lots. Solar setback lines are possible because, as proposed, the lots are large enough to allow such setback lines. There is a provision in the ordinance that would permit the layout without further setbacks, depending on the Commission's decision. The proposed development of the two new lots does not comply with implementation measure "H" of Policy 1 or 2 of the Land Use Elements, specifically that the design of the partition is wasteful and that it discourages an increase in density of residential development, especially in light of the difficulties in dealing with densities and where they are occurring higher or lower than what is determined. At the time of annexation of this parcel, it was changed to high density residential zoning. While there is still a 61,000 square foot parcel remaining, there is 18,000 square feet that will not be developed high density residential.

### *Proponents*

*James Bergen, Jr., 163 NW 3rd Avenue* stated that he has been a resident of Canby for 34 years. Further, he stated that there is no hump in N. Pine where this property is located, that the property is level with the road. The North Pine Addition property, he added, was located in a hole and, therefore, the houses had to be built lower. He stated that he and his father are aware that they would have to build sidewalks and remove the huge tree that is presently on N. Pine. Mr. Bergen added that the design of the partition has allowed for emergency access to the back lot. Further, he stated that he has contacted the property owner to the northeast, and the only solution that seems feasible is that one property owner buy the other out. So far, no agreements have been reached.

*James Bergen, Sr., 640 N. Pine* stated that he believed he had 3 acres for the last 34 years, and recently found out he has nearly an acre less. He asked, and the Commission confirmed that the remaining portion of the parcel could be developed with duplexes. Mr. Bergen also said he was not opposed to building apartments on the site, and pointed out that all services were available to the site. Further, Mr. Bergen stated that he intends to remain in the original house.

### *Commission Deliberations*

Commission deliberations included the following issues:

1. Regarding the vertical curve, Mr. Wheeler explained that it is necessary to determine the specifics of the improvements to the road, and it must

be done in conjunction with Clackamas County in order to inform the applicant of the costs associated with that improvement. The previous development, North Pine Addition, set aside \$6,214.50 for the road improvements, including curb and sidewalks.

2. Regarding the density issue, the Commission discussed the increased density in Canby, due to the manufactured home parks. Staff explained that the Comprehensive Plan calls for a certain amount of land be developed R-1, R-1.5 and R-2, and one must look at what portion is being met within those categories. There is also a significant amount of development that has occurred in higher density zones, at a lower density in recent years, which causes some balance to occur. The concern with this property is that it is zoned R-2 and, to this point, it has not been developed at all. Mr. Hoffman added that when Mr. Bergen annexed into the City, he stated that his purpose was to eventually partition the parcel so his children could build homes. With each step of the process, Mr. Bergen's intention has been consistent. The Commission agreed that this partition had special circumstances attached to it and, therefore, the Commission was willing to permit development at a lower density because the entire parcel was not being developed R-1, but some was reserved for R-2 development.
3. Regarding the solar ordinance, the Commission agreed that the building setback line will be about the same as the solar setback, so no additional conditional regarding compliance with the solar ordinance is needed.
4. Mr. Hoffman explained that both he and Mike Jordan have had discussions with the property owner to the northeast, and explained to him that if anything is to be done, now is the time to do it. As is apparent, no steps have been taken.
5. The Commission discussed, in response to a question from Mr. Bergen, Sr., the curb-to-curb width of N. Pine. Mr. Wheeler explained that the curb-to-curb width would be 40 feet, plus a 5 foot sidewalk and a 5 foot setback to the end of the driveway.
6. The Commission agreed to only require the standard street improvements, not the road leveling reconstruction and not include the vertical curve in N. Pine as part of this partition.

**Based on the findings and conclusions contained in the staff report dated November 18, 1994, on testimony at the hearing, and on Commission deliberations, Commissioner Ewert moved to approve MLP 94-09 with the following conditions:**

1. A final partition plat modified to illustrate the conditions of approval, shall be submitted to the City Planner for review and approval. The final partition plat shall reference this land use application -- City of Canby, Planning Department, File No. MLP 94-09.
2. The final partition plat shall be a surveyed plat map meeting all of the specifications required by the Clackamas County Surveyor. Said partition map shall be recorded with the Clackamas County Surveyor and Clackamas County Clerk, and a copy of the recorded map shall be provided to the Canby Planning Department.
3. A new deed and legal description for the new parcels shall be prepared and recorded with the Clackamas County Clerk. A copy of the new deeds shall be provided to the Canby Planning Department.
4. All monumentation and recording fees shall be borne by the applicant.
5. Permanent utility construction and maintenance easements including, but not limited to, electric and water cables, pipeline conduits and poles shall be provided as follows:

6 feet in width along all lot lines, except;  
12 feet in width along street frontages.
6. All utilities must meet the standards and criteria of the providing utility authority.
7. 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 surety bond, personal bond, or cash bond for improvements, for any improvement not completed prior to the signing of the final plat. The bond shall provide for the City to complete the required improvements and recover the full cost of the improvements.
8. A pre-construction conference shall be held prior to the construction/extension of services to the properties.
9. Ten (10) feet of land for road right-of-way shall be dedicated. Road improvements to N. Pine Street shall be completed to the road standards of the City and Clackamas County. Curbs and sidewalks shall be constructed, and street trees shall be planted along the subject property's frontage of N. Pine Street. The sidewalk shall be constructed against the curb and shall be five (5) feet wide, including the curb. Where mailboxes, newspaper boxes or other obstructions (such as fire



hydrants) are located at the curb, the sidewalk shall be set away from the curb such that the sidewalk remains unobstructed for a full five-foot width.

10. The address for the home on the flag lot shall be posted at the driveway entrance from N. Pine Street.

**Commissioner Gustafson seconded the motion and it carried 6-1, with Commissioner Schrader voting no, citing the density issue as his concern.**

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

Mr. Hoffman welcomed Commissioner Jackson and congratulated Commissioners Mihata and Elliot on being reappointed to the Commission.

Mr. Hoffman called the Commission's attention to the letter from METRO regarding the projected population of Canby. He added that the Consultant who is doing the study regarding the signal on 13th and Ivy will present his report and recommendations on Friday afternoon, January 13th, at Ackerman Junior High School.

Regarding Pat Harmon's small subdivision, Noble Addition, on N.E. 10th, Dr. Schrader explained his reservations about signing the plat. The concrete sidewalk from 10th comes in about 15 feet and stops. Then where the property elevates to the back, the asphalt becomes the sidewalk and road, with a curb serving to separate the asphalt sidewalk from the road asphalt. Sidewalk and road surfaces were discussed, and the Commission agreed that since it was a private street, it was acceptable. In the future, unless otherwise stated, the Commission agreed all sidewalks, whether public or private, would be concrete. Mr. Wheeler also explained that the Fire Marshal was satisfied with the emergency turnaround, although Dr. Schrader explained that he could hardly turn his small car around.

#### **X. ADJOURNMENT**

The meeting was adjourned at approximately 11:30 p.m.

Respectfully submitted,

  
Loyce A. Faltus