

**MINUTES
CANBY PLANNING COMMISSION**

Regular Meeting

June 12, 1995

7:30 p.m.

APPROVED

I. ROLL CALL

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

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

Others Present: Forrest Kuehne, Colleen Kuehne, Harold S. Jeans, Nancy Salber, Ed Sullivan, Lee Buckley, Joe Van Haverbelbe, R. A. Smith, Pat and Glenn Baars, Virgil and Norma Vandenburg, Sally Harbert, M. Olson, Norman Carrigg, Ron Yarbrough, Nancy C. Murphy, Shirley Musch, Walt West, Ron Jackson.

II. MINUTES

None

III. CITIZEN INPUT ON NON-AGENDA ITEMS

None

IV. COMMUNICATIONS

None

V. NEW BUSINESS

None

VI. FINDINGS

Commissioner Maher moved to approve the Final Order for MLP 95-03 [Sharpcor]. Commissioner Jackson seconded the motion and it carried 4-0, with Commissioner Mihata abstaining.

Commissioner Ewert moved to approve the Final Order for DR 95-08 [N.W. Refractories]. Commissioner Maher seconded the motion and it carried 4-0, with Commissioner Mihata abstaining.

Commissioner Jackson moved to approve the Final Order for CUP 95-02 [Joe and Robin Marcinkiewicz]. Commissioner Ewert seconded the motion and it carried 4-0, with Commissioner Mihata abstaining.

Commissioner Maher moved to approve the Final Order for CUP 95-01 [Church of Christ]. Commissioner Jackson seconded the motion and it carried 4-0, with Commissioner Mihata abstaining.

VII. PUBLIC HEARINGS

PUD Overlay 95-03/DR 95-10, applications by Walt West Construction for approval of a Planned Unit Development Overlay and Site and Design Review application proposed to be named "Willamette Commons." The purpose of the applications is to ultimately allow development of a "40-attached single family units on eleven (11) platted lots...". Total area involved is approximately 4.6 acres. The site is located just northwest of the intersection of N.E. Territorial Road and the "Logging Road." [Tax Lots 100-1100 plus Common Area, Tax Map 3-1E-C - Willamette Green Phase II, 2991].

Chairman Schrader asked if any Commissioner had ex-parte contact or conflict of interest. Other than visiting the site but coming to no conclusions, none was indicated. He then reviewed the hearing process and procedures and directed the audience's attention to the applicable criteria posted on the wall.

Mr. Hoffman presented the staff report. He explained that the site is located adjacent to City-owned property and the golf course and Willamette Green I. It is a subdivision comprised of 11 lots within a common area with an accessway to Territorial Road. The Comprehensive Plan designation is High Density Residential and the zoning designation is R-2, with a Planned Unit Development Overlay. Only a few parcels in Canby fall under the overlay regulations, which means any land use application must

go through the PUD process and meet all those procedures and criteria. The purpose of the application for approval of a site and design review and planned unit development application, to ultimately allow development of 40 attached single-family units on 11 platted lots on 4.6 acres. Under the Planned Unit Development procedures, Mr. Hoffman explained, it could be reviewed either as a conditional use on the entire parcel, or if the property is being divided, it could be reviewed under the subdivision criteria. As there are no proposals for further subdivision of this land, staff reviewed this project as a conditional use.

Mr. Hoffman explained that It may come to light later in the hearing that there is concern over the ownership status of the property and how previous restrictions might apply to it. There are those, he added, who contend that it was originally approved as a condominium project and should be continued as such. Additionally, there are concerns about the relationship of the proposal to the court judgement and the conditions of approval of the original planned unit development. A copy of the original subdivision, as it was approved and recorded by the County, was referred to. It is entitled "Willamette Green, Phase 2" - a Planned Unit Development, and shows the entire area, with 11 lots within a common area. The court judgement provides that the City must approve of the original development that was initially approved in the 1980's, including reference to the architecture being similar to what was originally approved. The judgement does not provide for modification and since there are modifications to the architecture, the request is being processed as a new PUD application. The original approval included 54 units and the applicant is currently proposing approval of 40 units on the same 11 acres. Staff reviewed the application under the current PUD criteria and concluded that it appears to meet those requirements. There are some missing details, such as the table illustrating the total number of units and lot coverage and how it meets the requirements related to percentages, although the information was submitted with which staff could compute whether the necessary requirements were met. A provision in Section 16.76.030 requires that a draft Homeowners Association By-laws and CC&Rs be provided, but none was submitted, although the summary page in the application states that such documents will be provided at a later date. The summary sheet that shows how the width of the access drive would change as the number of units decreases is new information. Additionally, another set of drawings was submitted recently which illustrate the changes in architecture, elevations and floor plans.

As staff sees it, the applicant intends to modify the originally approved development only insofar as the number of units, the architecture, and the parking. The setback requirements have been modified - the setback to the golf course is approximately 8 feet at one point and the distances between buildings, in all cases, is greater than 20 feet. In reviewing the individual lots, it is found that, in most cases, the buildings are either

at or very close to the lot line, but with the 20 feet separation between buildings, in staff's opinion, the layout is workable. Further, in staff's opinion, the design can be reviewed as a whole by combining all the lots. In fact, Mr. Hoffman added, the purpose of the Planned Unit Development is to look at the entire development as a whole. The site is irregular, a very difficult site to develop, and staff feels the proposed scheme works and is within the parameters of the original PUD. The design meets the spirit and intent of the ordinance as it relates to PUD requirements, Mr. Hoffman explained. Additionally, there is a requirement that 30% of the area be landscaped, and the applicant is proposing to landscape approximately 42% of the site, retaining the largest treed area within the common area. With reference to the access drive, Mr. Hoffman explained that the first stretch is 30 feet wide, but beyond Building "D" it narrows down to 24 feet, with a turnaround proposed at the end, where it meets Willamette Green Phase 1. Mr. Hoffman reviewed the proposed conditions of approval, noting that proposed condition #1 refers to the court judgement by Judge Brockley, which should be respected, except for the architecture, amount of parking, and the reduction in the number of units.

Mr. Hoffman explained that late in the review, a question was posed regarding the relationship between the original conditions of approval and the proposed development. Ultimately, he stated, the court judgement amended City Council's original conditions of approval. The judgement clearly states that this development could be built, but it is not crystal clear which set of conditions apply and how that relates to the project. Staff believes the original conditions adopted by City Council apply; that there are enough modifications in the judgement that causes this to be regarded as a new application under the subdivision that was recorded with the County. Additionally, City Council did not specify whether it must be developed as a condominium project or apartment project.

Questions of Bob Hoffman, by the Commission:

1. The difference between a single family unit and condominium was discussed regarding ownership. Mr. Hoffman explained that the issue was not division of land such that there would be individual ownership of the units. Instead, from two to five units are proposed on each of the 11 lots and, in each case, there would be a single owner of multiple units. Therefore, some would be rental units as opposed to owner-occupied units. The condominium arrangement, as originally described, would have further divided the lots and each unit would be individually owner-occupied. There appears to be nothing in the Canby ordinances which explicitly limits uses in a Planned Unit Development to condominium uses. Some of the earlier versions could have been interpreted to mean strictly condominium units, but the way the current ordinances are written, either is permitted.

2. Current ownership of units at Willamette Green was discussed. Mr. Hoffman explained that it was his understanding the current units are, for the most part, owner-occupied condominium units, although some are rental units.
3. The site plan was discussed, including location of lot lines. When the space between lots was discussed, Mr. Hoffman explained that there is common area space between each of the lots and that there is parking in part of the common area.
4. The Commission asked if a separate tree plan was submitted. Mr. Hoffman explained that other than showing trees on the site plan, which is not very specific, no tree plan was submitted. Some of the trees, he added, would have to be changed to solar-friendly trees in order to meet the solar ordinance.
5. The Commission questioned how much the court decision applied to this application since the current proposal appears to be a new application.
6. The emergency access was discussed. Mr. Hoffman explained that residents of either of the areas would be prevented, by virtue of a barrier, from using the emergency access.
7. Mr. Hoffman explained that Clackamas County did not comment on the current proposal. The comment sheet attached to this application was taken from the previous application.
8. The Commission questioned why no reference was made to a tot lot. Mr. Hoffman explained that no tot lot is proposed, but it has been found that in multiple type developments there usually are children, and in staff's opinion it would be desirable to have a tot lot. Further, a swimming pool is proposed, he explained, as it is required by the court judgement.
9. The width of the access was discussed. Mr. Hoffman explained that it was 30 feet wide for the first part, and the rest of the access drive is 24 feet wide.
10. Regarding input from the school district, Mr. Hoffman explained that nothing was received to date. Mr. Hoffman explained that he estimated the number of children, using the Citywide numbers, in the form sent the school. The Commission requested a student count from the district as to how it relates to the total number of classroom seats available.
11. Regarding a traffic report for Territorial Road, Mr. Hoffman explained that a report was submitted as part of the subdivision approval. Kittleson did it in

order to satisfy the County that the number of units was workable, coming out of the access drive next to the Logging Road. The County did not conclude there was a problem, and approved of the subdivision in 1992.

12. The Commission asked if there was a way this application could be considered under the subdivision criteria. Mr. Hoffman explained that it would have to be continued and a new staff report analyzing the subdivision criteria would have to be prepared. But, he added, the applicant is not proposing a further division of the land which has already been subdivided. In staff's opinion, it is not a subdivision, he explained.

Applicant

Ron Jackson, P.O. Box 426, Wilsonville 97070 explained that in his review, he found that there was a larger demand than he anticipated for townhouse units with a master bedroom on the first floor. Therefore, referring to the new design plans, each "Unit A", which is on both ends of each building, has been made narrower and has a bedroom on the first floor; the other units have the living units downstairs and the bedrooms on the second floor. Additionally, the elevations have been redesigned to site the buildings at lower elevations. Almost every building has horizontal lap siding, all in muted tones, and there is a brick veneer on the garage fronts. The redesign gives the entrance and streets of the project a very rich look, he added. There are only duplexes and fourplexes in the project, and the duplexes adjoin the golf course, he added.

Nancy Salber, 1580 NE 19th Loop reviewed the history of Walt West's developments both in Canby and elsewhere. In redesigning this project, she added, based on the previous subdivision of lots, condominium development does not appear to be viable. Due to the history of this property and previous disputers, Walt West Construction has tried to communicate with the Willamette Green Homeowners Association to remain sensitive to the Association's needs and their own. The Association was concerned about protecting a certain grove of trees, and the applicant has taken measures to ensure protection of those trees. Originally, the applicant wanted to construct a tennis court, or another alternate form of recreation which is year-round and conducive to both adults and children, rather than a swimming pool, but as part of the judgement, and due to the Association's concerns, the plans for a pool cannot be amended. Ms. Salber further explained that to minimize the neighbors' concerns about rentals and renters, strict CC&Rs will be enforced. Part of the idea that helped conceive this project was the fact that a huge segment of the population is getting older and, rather than living together, families tend to want to live very close to one another. This appeared to be the perfect solution to that need. Furthermore, Ms. Salber stated that the financing for condominiums is extremely difficult to obtain.

Walt West, 7885 S.W. Fairway Drive, Wilsonville explained that lending institutions consider up to 4 attached units to be classified as single family dwellings. Five attached-unit dwellings are considered to be apartments. The Comprehensive Plan classifies this property as R-2 and, as such, the site could be developed with apartments. The proposed design will be very upscale, he added, with beautiful landscaping, which will fit in very well with the ambience of the golf course. Mr. West further stated that if a person invests in a 4-unit complex, not only will it be well cared for, but future renters will be thoroughly scrutinized in order to protect the investment. If the project is approved, the applicant explained that he would like to appeal the construction of a swimming pool and, instead, build a very nice recreational facility.

Opponents

Ed Sullivan, 111 S.W. 5th, #3200, Portland 97204 stated that he is representing the Willamette Green Homeowners Association and submitted background material dating back as far as 1967. Mr. Sullivan explained that the Association was concerned about building for investors versus homeowners, promises made over the last 30 years, and the threats of building at higher density than originally planned for. Along with this property comes a sordid history of mistakes and land use problems, and the Association wants to avoid seeing the same mistakes made again. What was represented to the Willamette Green I homeowners' when they started purchasing property in the late 1960s, was that this parcel would be developed with condominiums. Such promises were also represented to the public and the City, which are referred to in newspaper articles from 1969, which were included in his submission. Mr. Sullivan referred to the zoning ordinance, and especially the Planned Unit Development ordinance, that were in effect at the time of the original hearings. He noted that rentals would be a major change from the original plans which were upheld by the court system. In 1966, the zone change from R-1 to R-2 was approved by the City with the idea that there would be a planned unit development. In 1968 the City adopted and amended several planned unit development ordinances to take the two-track approach the City now has now. One was through a conditional use process and one was through a subdivision process. Since the present application is a continuation of the previous development approval, he suggested the Commission review what was in effect at that time. In a September 12, 1968 newspaper article, it is stated that one of the reasons for the adoption of the planned unit development ordinance was to place that restricted use on this property. The final order for the development of Willamette Green and the minutes of that meeting appear to be lost, but later pieces of correspondence from the City indicate that this is a condominium development and that in order for apartments to be built, the Planning Commission would have to approve such application. In 1979, then-Planning Director Stephen Lashbrook reported that the City received a building permit application for apartments, which was referred to the then City Attorney and City Council for its response. A later letter accompanying the returned

plans for the apartments suggested that changes could only be made from the original concept of condominium approval, as represented by all the City records. Mr. Sullivan submitted four pictures of a model condominium development which was presented to the City in the late 1960s or early 1970s. The 1979-1980 proceedings were precipitated from the application for apartments instead of condominiums, which was referred to City Council, who stated that the Planning Commission would have to give approval of the new proposal. The Planning Commission approved it with conditions and the developers appealed it to the City Council, who approved it with conditions that the developer did not like. In the corresponding findings, the City Council said that the developer must show there is a public need for any new land use change, but Council did find there was a need for 54 condominium units. That approval was appealed to the Circuit Court, under the Writ-of-Review procedure which then existed pre-LUBA. After hearing both sides, the court made an arrangement whereby the development could go forward. That judgement is part of the record in this application. Mr. Sullivan stated the judgement contains the original City approval and, superimposed upon that, there were the court's conditions of approval. From 1980, when the agreement was reached, to 1991, there was no activity regarding the parcel. In 1991, the original developers came to the City, wanting to complete the plat. The City responded that the Sunset Clause took affect and they could not proceed, so a second case was brought to the Circuit Court, and the Association intervened. Mr. Kelley and Mr. Sullivan represented the City and the Association against the developer, and a second arrangement was reached by the court, which is the judgement in the record which indicates that if they build in accordance with the original plans and the modifications, it would be okay, but does not indicate whether it would be apartments or condominiums. The current applicant has chosen not to submit plans in accordance with the original plans. It must be treated as if it was under the original planned unit development regulations and therefore, they must meet all the requirements, plus they must conform to the plat that was filed, which divides up the land and makes other arrangements to the common areas.

Mr. West's original proposal was entitled "Site Plan, Canby Condominium Project." Afterwards, the Association realized it was, in fact, apartments, which generated some discussion and led to the opposition testimony at this hearing. The Association members are concerned about rental units being a major change from the concept that was sold to them at the time they purchased their units. Additionally, the declaration filed in 1969-1970 indicates, by the property description, that the Association owns the common area and controls the accessway and has design review authority over anything that is built on the entire site. Therefore, the Association believes the project cannot proceed without its approval. Another concern centers around the access to the Molalla Forest Road. The City has shown interest in having access onto the Molalla Forest Road; there are driveways shown at that location; and there is an agreement that the developer signed in 1992 offering to seek such access if the City requests it. Proposed

condition #8 seeks such access. Caffall Brothers correspondence requests that a fence be erected and requests assurance that there is no relationship between the traffic on that road and Willamette Commons, which raises transportation issues.

Regarding the common area, Mr. Sullivan called the Commission's attention to the swimming pool, the paths, the common space between buildings, and the tot lot. Such things must be approved by the Association, he stated.

Mr. Sullivan stated that this application cannot be treated as a subdivision, but conditions of approval could be framed similar to the time limits that are conditioned in subdivision approvals. Additionally, the Commission must consider whether this is a "continuing" development and, if so, the possibility exists that the ordinances in place at that time still apply. For the record, he then listed the numbers of the ordinances and the dates they were adopted, that applied at the time of the original approval.

Regarding the setbacks, Mr. Sullivan stated that any adjustment of setbacks must be done on an individual basis in a PUD. Issues for the Commission to consider are: how close the buildings should be to one another and to the golf course, and whether or not any modifications are justified. Staff had stated earlier that there is usually a declaration attached to a PUD Subdivision that offers additional more information. The declaration that was attached to the original development gives the Homeowners Association control over the ownership and regulation of the common area. Referring to the 28 foot common access shown on the plat, Mr. Sullivan stated that the rest of that area is common area. The applicant is apparently proposing to enlarge the access area into the common area, without approval of the Homeowners Association. Mr. Sullivan agreed with staff that the original 1979-1980 City Council conditions of approval apply. With regard to the controversial 'crash gate,' Mr. Sullivan stated this would also be a problem because the Association also has control of all accessways. He agreed with the Commission that figures from the school district regarding capacity and availability of space should be included in the record. The traffic report, he reminded the Commission, was done in 1992 for a different project and a different demographic set. Regarding the number of units that the applicant suggested could be constructed on the site, Mr. Sullivan agreed 60 units could be built if it was strictly R-2, but reminded the Commission that a PUD overlay was attached to the application. Financing the development is not a land use concern, Mr. Sullivan added.

Based on a series of representations by the former developer to the City, to the public, and to the Association, that this would remain a condominium project and based on the myriad of documents available to attest to that, Mr. Sullivan suggested the Commission make a decision to assure that representation continues.

Because new material has been submitted, a continuance is in order. But, Mr. Sullivan added, the opposition was not requesting a continuance because, in his opinion, there is enough in the record for the Commission to base its decision. He recommended denial.

Virgin Vendenburg, 1200 N.E. Territorial Road #33 stated that he purchased his condominium in 1976 and did so because of the display Mr. Sullivan referred to earlier and because of literature that was distributed which stated that the entire development would be light architecture condominium units. The sales material he was shown also contained a schematic map of Willamette Green which was entitled "Willamette Green - a proposed new condominium development in Canby, Oregon by the Willamette Green Developers and Design Consultants." He stated he is adamantly opposed to the construction of apartments because experience has shown that there are many problems that come with having rental units. Mr. West's design could still be marketed as condominiums he added, and sold to one owner. To do anything else, he stated, would be a great miscarriage of justice.

R.A. Smith, 3040 N. Maple stated that he is on the board of Willamette Valley Country Club. The board is in favor of condominiums in single-family ownership, rather than an apartment complex.

Norman Carrigg, 200 N.W. 9th Avenue stated that his concerns include environmental issues such as noise and pollution involving new proposals. At the present time, there is too much traffic on Holly, without enough speed regulation. New development will add to the problem and an apartment complex will depress property values and the quality of life in the neighborhood.

Mr. Hoffman summarized a letter into the record from Caffall Bros. regarding their concerns about the affect of the residents of this area on the Logging Road and their ability to control the usage of the road. They specifically request that if it is approved, the Commission require that a fence be installed to separate the two properties. Mr. Hoffman explained that conversations with Caffall Bros.'s counsel indicated they are willing to talk about whether or not the Logging Road adjacent to this area could be used for access to this property.

Rebuttal

Walt West addressed some of the concerns that were raised by the opponents. Reducing the number of units from 54 to 40, and leaving a large number of trees, is a big item for this size parcel, he stated. Further, he added that the judgement does not specifically state that "condominiums" must be constructed on the site.

Furthermore, there is nothing to stop the developer from "condominium-izing" by owning the entire subdivision and renting each unit. Rather than do that, Mr. West explained he was "laying it on the line." In fact, Mr. West stated, a letter was received from a resident of Willamette Green I condoning the development, and informing Walt West that there are 17 rental units in Willamette Green I. He questioned whether the residents of Willamette Green I were 'discriminating' against renters, adding that he did not believe rental units were a basis for denial. Another option could be "co-tenancy," where four people could buy a four-plex together, each living in their own unit.

Regarding property values, Mr. West stated that he felt a development such as this, would raise property values in the area and especially next door at Willamette Green I. This is a subdivision and the property is zoned for subdivision, R-2. Mr. West then explained that there is 20 feet between units for aesthetic purposes. Should the City come to own the Logging Road, Mr. West stated that he would gladly change the entranceway for ingress and egress from the Logging Road. Because the present proposal is for less units than previously approved, Mr. West stated that he believed the traffic study's result should still remain valid.

John Kelley, City Attorney, asked Mr. West if he was aware of the declarations that apply to his portion of the property. Evidently, because the Homeowners Association of Willamette Green I has an interest in a legal area that cover his property, they have to agree to this application. Further, he explained that Mr. Sullivan eluded to the fact that the covenants apply to the entire area and, therefore, the homeowners in Willamette Green I should be part of the application process. Mr. West said he was totally unaware of such an agreement, that he was under the impression he purchased a piece of property that 'shared' a common area with Willamette Green I. He believed that the only area they had any jurisdiction over, according to the court document, was in retaining the swimming pool, as opposed to a different form of recreational area. Mr. Kelley asked if Mr. West wanted time to research the materials. Mr. West stated he would like a continuance to research the materials and find out what he actually purchased.

Mr. Hoffman reviewed the time limit for the Commission to act on an application. Mr. West waived the 120 day time limit for his application.

The Commission asked Mr. Kelley if it was necessary for them to review the old ordinances referred to by Mr. Sullivan in order to make a legal decision. Mr. Kelley stated he would look into that issue. The Commission also asked Mr. Kelley if anyone had a right to change the court judgement. Mr. Kelley explained that since Mr. West is proposing to develop in a manner different from the Court's judgement, the terms of the judgement say that the court has continuing jurisdiction to deal with problems that arise in the future. If the problems cannot be mediated to an amicable solution, then it

would have to go before the judge for mediation. The Commission requested that the City Attorney summarize the court judgement in order to ensure total understanding of the document.

The Commission asked Mr. Kelley to what extent the conditions apply if the application before the Commission is totally new. Mr. Kelley explained that he is unsure how to respond to that question. At this point, the issue really is "Who is the applicant?" If the applicant is part of Willamette Green I, and they have not agreed to this application, then the application might not even be valid.

The hearing was continued to August 14, 1995.

SUB 95-03, an application by Deuce Development [applicant] and Ronald E. Dyches [owner] for approval to demolish an existing home and construct a 7-lot single family subdivision. The property is located at 735 Territorial Road [Tax Lots 2200 and 2300 of Tax Map 3-1E-28DD].

Chairman Schrader asked if any Commissioner had ex-parte contact or conflict of interest. Other than visiting the site but drawing no conclusions, none was indicated. He then reviewed the hearing process and procedures and indicated where the applicable criteria was posted on the wall.

Mr. Wheeler presented the staff report. He explained that proposed lots 1 and 2 front on N.E. Territorial Road and that the 5 southern lots of the proposed subdivision will take access from the extension of N.E.17th Avenue, which will have access to N. Maple Street. The existing home on lot 1 is proposed to be removed. This site is considered a unique area in the Comprehensive Plan [the portion along Territorial, slightly west of N. Maple, to N. Pine, and possibly to N. Redwood], and upzoning would require that the area, which is currently single family, be developed R-2, the Comprehensive Plan designation for the site. But in 1992 a zone change application for this property, to change the zoning from low density residential to high density residential, was denied by City Council. The City has a pending lien against part of the subject property because in 1992 the high grass was considered to be a fire hazard and the area was mowed by City staff. The City billed the property owner and the bill, \$87.98 plus 9% interest, must be paid prior to the signing of the subdivision plat.

With development of this site, N.E. Territorial Road, a County arterial road, will require road improvements on parcels #1 and #2, which must meet both County and City road standards. The County has requested that parcels #1 and #2 share a mutual

access drive. Staff suggests that the two parcels share at least the first 50 feet, to ensure only one driveway accessing onto N.E. Territorial Road. The applicant proposes that N.E. 17th Avenue be built as a 40 foot right-of-way, with a 36 foot road, which meets local road standards. The Public Works has requested that a 40 foot road be conditioned, which would amount to a 50 foot right-of-way, to continue the existing N.E. 17th Avenue paved width, at least to N. Oak Street. Including proposed condition #4(a) would ensure the current width continue. The extension of N.E. 17th Avenue would be less than 450 feet, which is the maximum length for a cul-de-sac. With the eventual development of the property to the east, N.E. 17th Avenue will connect to N. Oak Street. A turnaround for emergency vehicles will be required and, since Canby has a new Fire Marshal, who had not yet responded to staff's request for comments at the time the staff report was written, the applicant diligently included anything and everything that might be required, some of which has been found to be unnecessary since discussions with the Fire Marshal have recently taken place. Therefore, staff recommends somewhat looser language than what has been proposed in the recommended conditions of approval for the turnaround. The applicant is exploring the possibility of a gravel surface turnaround, with an easement, on the property to the east. With such a turnaround, staff is exploring the possibility of an emergency vehicle barricade to ensure emergency vehicle access only. If this is agreeable with the property owner to the east, and the Fire Marshal is amenable to it, staff will propose an amended condition of approval for the turnaround.

A traffic study for the proposed Country Club Estates Annex No. 9 Subdivision at the north end of N. Maple Street pointed out that with a 25-lot development at the north end of N. Maple, the intersection of N.E. Territorial and N. Maple would not be adversely impacted. Since that application was denied, staff does not believe a 7-lot development would have an adverse impact on that intersection. The subdivision layout meets the Solar Ordinance requirements with the exception of the flag lot, which is oriented east-west, as opposed to north-south.

Staff recommended approval of the subdivision with conditions, which staff reviewed. Proposed condition #4 should be reworded to read: "The turnaround should meet the standards of the County Fire District." Staff suggested the Commission consider whether or not Lots #1 and #2 should share access off N.E. Territorial which, in staff's opinion, would be functional, and would not create any hardship or difficult for Lot #1 or #2. If the Commission so agrees, staff suggested the following wording: "Lots #1 and #2 shall share a common driveway off N.E. Territorial Road. A mutual access and maintenance easement shall be placed on a minimum of the first 50 feet off N.E. Territorial Road."

Applicant

Lee Buckley, 738 E. Burnside Street, Portland 97214 stated that he has corresponded with the Fire Marshal, who agreed that since N.E. 17th Avenue will eventually be extended to N. Oak, a gravel turnaround would be acceptable. Additionally, Mr. Buckley has spoken with the neighbor to the east, Tom Holmes, who agrees with the turnaround. He requested that the Commission accept staff's recommended amended condition regarding the turnaround. Further, he requested that the Commission approve N.E. 17th Avenue as a 36 foot wide street, paved curb-to-curb with a 40 foot right-of-way, as it is sufficient. A 50 foot right-of-way will reduce the size of the large lots that border N.E. 17th Avenue. Regarding the common driveway, Mr. Buckley stated that the applicant opposes a shared access, based on experience, as it creates maintenance and congestion problems. There will be two fire hydrants, he added, one on N. Maple and one on N.E. 17th Avenue.

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

1. The Commission questioned whether the Fir trees on the far east side were on the property or off the property. Staff explained they were not on the property.
2. The Commission discussed the flag lot driveway on the west side which accesses the house in the rear. Staff explained that the owner of the property visited the Planning office and expressed concern about the overgrown vines along the driveway, which provides a barrier for children trying to access the driveway with staff and expressed concerns that removal of the vines would increase the existing concerns about increased pedestrian traffic on their driveway.
3. The Commission discussed the common access requested by Clackamas County. The Commission agreed that two driveways accessing onto an arterial road, in close proximity to each other, has the distinct potential for creating traffic congestion. Further, the Commission agreed that a common access driveway approach for lots 1 and 2, off of N.E. Territorial Road should reduce the potential for traffic congestion problems.
4. The Commission agreed that the design for the extension of N.E. 17th Avenue which meets the minimum requirements of the local road standards is acceptable and that the forty width requested by the Public Works Department, is unnecessary.
5. The Commission agreed that the alternative design for the emergency vehicle turnaround is acceptable if it meets the Fire Districts requirements and year-round maintenance of the turn-around is provided.

Based on the findings and conclusions contained in the staff report dated June 2, 1995 staff report, on testimony at the hearing, and on Commission deliberations
Commissioner Mihata moved to approve SUB 95-03 with the following conditions:

For the Final Plat:

1. Twelve (12) foot utility easements shall be provided along all exterior lot lines. The interior lot lines shall have six (6) foot utility easements as proposed by the applicant. A utility easement shall be provided along the full width and length of the access drive to lot 2.
2. The final plat shall reference this land use application - City of Canby, File No. SUB 95-03, and shall be registered with the Clackamas County Surveyor's Office and recorded with the Clackamas County Clerk's Office. Evidence of this shall be provided to the City of Canby Planning Department prior to the issuance of building permits requested subsequent to the date of this approval.
3. The final plat mylars must contain, in the form specified, all information necessary to satisfy all matters of concern to the County Surveyor, or his authorized Deputy, including, but not necessarily limited to, various matters related to land surveying, land title, plat security, and plat recordation.
4. A turn-around shall be provided at the east end of N.E. 17th Avenue. The turn-around shall be either: 1) at least sixteen (16) feet wide and at least twenty (20) feet deep located either on the north side or the south side of the east end of N.E. 17th Avenue; or, 2) a gravel turn-around located on the property immediately east of the the terminus of N.E. 17th Avenue. If option 2 is used, an easement from the adjoining property owner and an agreement for the maintenance of the turn-around shall be filed with the subdivision plat, and a barricade to restrict use of the turn-around to emergency vehicles only shall be constructed.

As a part of construction:

- 4a. The driveway approaches for lots 1 and 2, onto N.E. Territorial Avenue, shall be shared. The shared approaches may be on the common property line. If the shared approach is solely on the access for lot 2, a mutual access and maintenance easement shall be file with the subdivision plat. If the shared approach is on each individual property, but at the common property line, the driveway cut shall be no more than forty (40) wide in total.

5. A Street Construction and/or Encroachment Permit shall be obtained from the Clackamas County Department of Transportation and Development prior to road construction and/or work along N.E. Territorial Avenue.
6. "No parking" signs shall be posted in the turn-around at the east end of N.E. 17th Avenue. The curbs shall be painted for no parking.
7. Two new fire hydrants shall be provided. One shall be provided at the east end of N.E. 17th Avenue, opposite of the turn-around. The second shall be provided on the south side of N.E. Territorial Road, between N. Maple Street and Country Club Drive.
8. Any necessary utilities shall be constructed to the specifications of the utility provider.
9. A pre-construction conference shall be held prior to construction. The pre-construction plans shall be reviewed and approved by the Canby Utility Board, the Canby Telephone Association, Clackamas County (Territorial Road) and the City prior to the pre-construction conference. The City's review and approval shall be coordinated through the Planning Office. The construction plans shall include the street design, sidewalks, storm water, sewer, water, electric, telephone & cable, gas, fire hydrant location, street lights, and street trees.
10. Street name and traffic control signs shall be provided at the developer's expense.
11. Erosion-control during construction shall be provided by following the recommendations of the "Erosion Control Plans Technical Guidance Handbook," as used by Clackamas County, dated August 1991, and as revised.
12. The construction of the sewer system and street storm water system for the subdivision shall meet the standards and specifications of the City for the local streets and the County for Territorial Road.
13. All local streets shall be constructed to the City specifications and standards. The widening of N.E. Territorial Road shall be constructed to the City and the County specifications and standards. The improvements shall include the street, curbs, sidewalks, street lights, and street trees.
14. The sidewalks shall be located against the curb, and shall be five-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.

15. Street trees shall be planted along all streets. The type of street trees to be planted along all the streets shall be selected from the Recommended Street Tree list. The trees shall be a different variety for each street. The number of street trees to be planted shall be in accordance with the recommended spacing for the selected tree. The trees shall be planted eleven (11) feet from the street curb.

Prior to the signing of the Final Plat:

16. The subdivision development fee, as provided in the Land Development and Planning Ordinance Section 16.68.040(G), shall be paid.
17. 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 subdivision 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.

After construction:

18. "As-built" drawings shall be submitted to the City within sixty (60) days of completion.
19. Garages shall be set back a minimum of nineteen (19) feet from the back of the sidewalk. The distance shall be measured from the closest edge of the sidewalk at the driveway.

Additional Notes:

20. The final plat must be submitted to the City within one (1) year of the approval of the preliminary plat approval according to Section 16.68.020.
21. The approval will be null and void if the final plat is not submitted to the County within six (6) months after signing of the plat by the chairman of the Planning Commission (Section 16.68.070).

Commissioner Ewert seconded the motion and it carried 4-1, with Commissioner Schrader voting nay.

DR 95-09, an application by Mark Crorey [applicant] and Michael Vigus [owner] for approval to construct a 2,492 square foot building to be used for either retail commercial use or office use. The property is located on the northwest corner of S. Ivy and S.W. 2nd Avenue [Tax Lot 8000 of Tax Map 3-1E-33CD]. **Continued to June 26, 1995 at the applicant's request.**

VII. DIRECTOR'S REPORT

Staff explained that at the present time there are 108 lots approved, most of which are owned by builders who have not yet applied for building permits.

VIII. ADJOURNMENT

The meeting was adjourned at 10:58 p.m.

Respectfully submitted,


Joyce A. Faltus