

# MINUTES

## CANBY PLANNING COMMISSION

Regular Meeting  
January 8, 1996  
7:30 p.m.

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### I. ROLL CALL

Present: Chairman Schrader, Commissioners Ewert, Hartwell, Dillon, Gerber, Stewart.

Staff: Gary Spanovich, Planning Director; James Wheeler, Assistant Planner; and Joyce Faltus, Secretary.

Others: David Berge, Julie Buxton, Jim and Joann Free, Tony Marnella, John Watson, Phil Seale, Bob Brison.

### II. MINUTES

None

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

None

### IV. COMMUNICATIONS

None

### V. COMMISSION DISCUSSION OF PLANNING ISSUES

Commissioner Gerber moved to nominate Commissioner Ewert as the Vice-Chairman of the Planning Commission. Chairman Schrader seconded the motion and it carried unanimously.

For the benefit of the new Commissioners, Mr. Wheeler explained that on October 30, 1995, there was a joint meeting between representatives of the school district and the Planning Commission to discuss concerns about where the school district and Planning Commission stood regarding school capacity. One of the concerns discussed at that meeting were the number of apartment complexes in Canby, and the possible number of students that result from medium and high density developments. Mr. Wheeler explained that the **School District's Long Range Facility Planning Committee** conducted a non-scientific survey on the impacts of growth and development on school capacity and how it relates to the quality of education. The committee listed the various apartment complexes in Canby, called the managers, and surveyed the number of students attending from each complex. They also used a student address database to match the information received by address. The committee found that there are complexes that are for adults only, handicapped, etc., which does not necessarily mean there are absolutely no students generated from those complexes. Mr. Wheeler explained that he intends to do a comparison, using the 1990 census, to determine the ratio of medium and high density units as compared to the total number of housing units. With regard to single family structures, he stated that there is presently no differentiation between manufactured homes and stick-built homes. Staff distributed a summary of the survey, dated December, 1995, explaining that the 3-bedroom units were more family oriented than 1- or 2-bedroom units, which appear to be more adult oriented.

Commissioner Gerber stated that it appears, with the growing lack of affordable housing, that younger couples with younger children [K-5] are currently renting apartments, while older, more established families reside in single family homes. Further, Mr. Gerber stated that Committee is discussing plans to ensure sufficient facilities are available, and is considering regrouping of certain schools with the possibility of adding an additional middle school. They are also considering whether or not to designate space to accommodate after-school activities, although it was agreed that teaching responsibilities are the priority, while all other programs are secondary in nature.

The committee is in the midst of planning for long range school facilities which would determine what an adequate size for a school building is, what student/teacher ratio is acceptable, etc.

Chairman Schrader suggested staff distribute a copy of the summary of the October 30, 1995 workshop to the new Commissioners. He added that the summary of the workshop was discussed with the School Board, which responded favorably.

Commissioner Ewert read a statement referring to **Site and Design Review** and the Planning Commission's status:

"I would like to respectfully submit to our Chair and my fellow Commissioners my opinion on Site and Design Review. I feel that we work hard and do the best job that we can to plan this City within the criteria that we are given and with the vision that many hold for the City of Canby. Our time is volunteer and comes with combined years of experience. Our opinions are honest, well meant and without hidden agendas, political or personal, and, as I said before, based on the criteria that we have before us. Any team that is expected to win and work together needs to have the confidence that all of its members are playing with the same rules. In the area of design review for the City of Canby, it was felt that we, the Planning Commission, were part of the team and could best handle these issues due to our close decisions on land use planning. We were the first step, and accepted the additional second step, even if it meant doubling our volunteer workload. I might also add that I personally feel, and know that others hold the same opinion, that we have done and would continue to do an outstanding job of design review. The others that I mention obviously do not include our City Council, who have begun a pattern of overturning our decisions as far as Site and Design Review is concerned. In the past, I have seen the City Council as the quarterback of our team, but any team is doomed to fail if the quarterback begins a pattern of changing the plays after the ball is in play. We are all supposed to be working together as equals out of the same play book - in this case it would be the criteria. I do not want to be put into a position of second guessing any Council decisions and I will not be put into the position of wasting my time deciding issues by the rules and then having the plays change and then being chastised before the community for our efforts.

Mr. Chairman and fellow Commissioners, I would respectfully move that as of this date, our Commission remand any duties of Site and Design Review to the City Council, save our time and City staff's time, which I feel has been offered with the best of intent and met with rejection and disrespect for this Commission and the vision of our community."

Commissioner Ewert asked that this statement be passed on to City Council, especially if the present situation continues, of constantly overturning Commission decisions with regard to Site and Design Review. Further, he added that the Commission was designated the Site and Design Review Board because the Council's agendas were quite full and that the Commission is in the best position to conduct Site and Design Review. Another option, he suggested, might be to set up a separate entity just to hear Site and Design Review applications, possibly with volunteers with more training in the area of Site and Design Review, which is a critical area in the City's future. It is very important, Commissioner Ewert stated, for the Commission and Council to make decisions based on the same criteria, using the same rules.

Chairman Schrader stated that, in his opinion, the Council and Commission are mostly in sync when it comes to land use decisions, each knowing where the other is coming from. But, in the last six months, he added, it has not been the same with regard to Site and Design Review. He suggested it might be the fault of the Site and Design Review Ordinance, which was established as a first and best step. It does appear, he stated, that Council and the Commission are not on the same wave length and something does need to be done. Commissioner Schrader added that Council decided to implement the Site and Design Review Ordinance, feeling it would be in the best interests of the City of Canby, due to the growth it is undergoing. Input was received from many people regarding commercial and industrial growth as it relates to design review. Without a very, very intense Ordinance in place, the Design Review Ordinance is currently left up to interpretation. Possibly, direction from the Council might include a workshop to revise to the Ordinance, which would require immediate attention.

Commissioner Gerber agreed that, for the most part, Council and the Commission are on the same wave length, although he added that he was very displeased by some of the comments that resulted from the appeal hearing on the Chevron Station [corner of Highway 99-E and Ivy]. At the same time, he stated that he believes changes should be made, but the Commission should still handle the Site and Design Review Process.

Gary Spanovich, Planning Director, presented his thoughts and suggested options. He suggested creating a Design Review subcommittee, appointed by the Planning Commission. If the Commission prefers to retain the function, he suggested putting together a list of people who, from time to time, might be invited to offer advisory comments on applications. Regarding the communication issue, he suggested that the Commission and Council might have a retreat and bring in outside training relating to the issues in question and focus on communication and team-building training.

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Chairman Schrader suggested holding a mini-tutorial for the new Planning Commissioners at the first meeting in February. He explained that the Commission relies on various documents to make decisions. Issues that could be discussed:

1. A resolution that was passed to enable the Planning Commission to obtain information from applicants without overstepping its boundaries.
2. Landscape Ordinance.
3. Phased annexation.
4. To discuss how much low density, medium density, and high density residential lands are available. How it matches up to the Comprehensive Plan. Reviewing buildout and how it relates to school capacity.

5. METRO
6. Demographic data.
7. Updating Comprehensive Plan figures.
8. Devising traffic warrants for Canby.
9. The visioning effort.
10. Periodic review - Mr. Spanovich suggested updating the Comprehensive Plan with a more holistic approach, viewing how each part is related to the other and how it impacts land use decisions and housing. He suggested a community visioning or quality of life effort sometime in the Spring.
11. Quality of life in Canby.

Mr. Spanovich suggested a dinner meeting in February and bringing in Ardis Stevenson, who might hold a mini-training session for the new Commissioners.

## VI. OLD BUSINESS

**Pine Crossing** - Mr. Wheeler explained that an interpretation was made at the December 11th Planning Commission meeting to revise staff's interpretation of setbacks between manufactured homes [units] and either garages or carports on an adjacent site. The interpretation stated that a carport and/or garage that is attached to the manufactured unit is considered to be a part of the unit, and the required 14 foot setback to an adjacent structure is to be measured from the unit [including the attached carports or garage].

Mr. Wheeler explained that he was unaware of the situation on three of the permits which show an attached garage being proposed to be located closer than 14 feet to a structure on an adjoining site with an attached carport [Exhibit 2 attached to memo]. Therefore, Mr. Wheeler asked if the Commission is measuring the setback from unit to permanent structure on an adjacent site **through** a garage or carport. If so, he referred to Exhibit 3, attached to the memo dated December 28, 1995, which would become the final interpretation and would resolve the conflicts which have arisen. In this exhibit, units are shown that are 14 feet from an accessory structure on an adjacent lot, whether the accessory structure is attached or detached, as Exhibit 3 treats carports and garages the same way. Further, Mr. Wheeler explained that the setback between the adjacent garage/carport would still be a minimum of 6 feet, as required by the Building Code.

The Commission discussed the layout at Village on the Lochs, which staff explained has attached garages in front of the homes. An interpretation for Pine Crossing will not actually affect the homes currently existing at Village on the Lochs, but would apply to that development in the future under the Manufactured Home Ordinance, Section 16.44.030(F), where "a minimum of 14 feet of separation shall be maintained between

the individual units as well as between units and permanent buildings." Further, when the Planning and Development Ordinance is updated, this clarification would be included. The Commission also discussed whether being too stringent would limit housing affordability. The Commission further discussed whether having homes too close would cause hardship in the case of unsightly sites.

**John Watson** explained that he is not requesting anything different from the plans which were reviewed and approved by the fire department. He is just trying to have the homes placed according to the way the plans were originally submitted at time of the Conditional Use and Design Review applications, he explained. With regard to unsightly sites, Mr. Watson explained that he submitted a copy of his CC&Rs which covers many issues related to the possibility of unsightly sites, messy carports, etc. He explained that, with regard to parking issues, street parking is only permitted when guests are present, not as a general rule for residents. In addition, Mr. Watson stated that all the carports are 14 feet apart except for these last 2 or 3 lots.

**Commissioner Ewert** moved to accept Exhibit 3 as the Commission's interpretation. **Commissioner Stewart** seconded the motion and it carried unanimously.

## VIII. NEW BUSINESS

### **Interpretation 95-02 - Fence Height Restriction**

Mr. Wheeler explained that the residents at 1040 N. Birch Street constructed a fence which includes an arbor trellis, causing the overall structure height to exceed the permitted 3-1/2 feet within the street yard setback. After being cited for this violation, the residents contacted staff, who suggested they submit a written request for an interpretation of the fence requirements. They were advised that if they did not agree with staff's interpretation, they could appeal it to the Planning Commission.

Staff interpreted the fence requirements as follows:

Fences can be defined as an enclosure, barrier, or boundary made of posts, boards, wire, stakes, or rails Section 16.08.110 of the Land Development and Planning Ordinance defines a fence as a man-made barrier erected for the purposes of marking a boundary, or preventing escape or intrusion. Specific designs or types of fences are not regulated, only the location and height. Thus, an arbor trellis that is a part of the structure that marks a boundary, or prevents escape or intrusion, is a fence.

The question before the Commission is: Is an arbor trellis a part of a fence, if it is structurally attached?

Staff explained that he was advised that the contractor had contacted the City regarding fence restrictions, although he further explained that he does not know who the contractor spoke to. From what he has been told, there was no communication regarding the fence height. As best as staff can determine, the fence and trellis were not built in deliberate violation of the fence ordinance. Further, staff explained that as violations of this sort are brought to the City's attention, they are addressed. Staff believes there has been no previous interpretation permitting fences to be higher than 3-1/2 feet in street yard setbacks. Further, Mr. Wheeler requested, if staff's interpretation is overturned, that the Commission provide, as clearly and as comprehensively as possible, a suitable definition of what is or is not acceptable to be constructed over fences in street yard setbacks.

David M. Berge, 1040 N. Birch Street stated that he and Ms. Buxton took possession of the home at 1040 N. Birch on July 15, 1995. He further explained that they wanted to build a fence to ensure privacy when using the hot tub, and to provide safety for his children and her friends, as N. Birch is a very busy street. Mr. Berge stated that he drove around town viewing other fences to get an idea of what he might want to build. He was unaware, at that time, that some of the ones he saw were in violation of the fence ordinance [as per photos he submitted]. After viewing other fences, he decided to have a 3-1/2 foot fence built with a trellis effect as he intends to plant roses on the trellis. His contractor was told that there is no permit or inspection required, that all he had to worry about was the setback which is 1 foot behind the property line. After being cited by Officer Floyd, his contractor returned to the City offices and was given a copy of the fence ordinance handout. Mr. Berge asked the Commission that should it decide this structure is in violation of the fence ordinance, if the slatted boards were removed from the so-called fence and only the trellis remained, would it still be considered a fence, rather than just a trellis. Similarly, he asked if he would be violating the ordinance if he set a second row of posts behind the fence and built a trellis. Referring to violations of the ordinance in the photos he submitted, Mr. Berge pointed out that staff stated vegetation plantings are not considered to be a fence. He indicated that various lots around Canby have solid 10-15 foot tall arborvitae in front of the homes, presenting a very solid form of fencing.

Commission discussion included:

1. The pictures Mr. Berge submitted, indicating various violations of the fence ordinance.
2. That nothing in the ordinance refers to anything like a trellis that might be constructed over fences or gates, as long as it isn't hiding the home. That this is a grey area which must be defined and interpreted for future consideration.

3. Whether or not to consider a variance to allow the trellis.
4. The plan to grow roses along the trellis would beautify it versus the fact that if roses are not planted, or do not live, the stated purpose would be defeated.
5. That if the trellis is allowed to remain, the Commission could stipulate that if the trellis burned down, was blown down, or fell down, it could not be rebuilt in its present form.
6. The "fairness to the resident" issue and the possibility that if this violation is approved, it could set a precedent whereby violations would become commonplace.
7. That the fence ordinance sets height at 3-1/2 feet to encourage and maintain inviting, welcoming neighborhoods that are not "fenced in" and are safe, with proper vision clearance and a friendly open atmosphere.
8. That there will always be ways to "get around" the intentions of ordinances, but that the Commission should always try to see the criteria is met.
9. That in order not to restrict a homeowner's creativity, rather than rewording the ordinance, it should be modified with certain conditions and restrictions, especially to ensure it does not become completely filled in so as to present a walled effect.

Commissioner Ewert moved to approve the trellis, and to modify and add to the current ordinance as follows:

1. Arbors that are added to a fence that is constructed of proper design [height and setbacks] and in accordance with the City ordinance, should be allowed, given the following considerations:
  - a. The arbor should not exceed 8 feet in height.
  - b. The arbor, or any part of arbor, should not obstruct the view of drivers or pedestrians navigating streets and/or sidewalks in the area.
  - c. Greenery on the arbor shall not be allowed to grow solid at any time, creating a solid barrier that blocks visibility.
  - d. Greenery on the arbor will not, at any point, be allowed to grow over the 8 foot height limit.
  - e. Color, construction, and design must be consistent with other like arbors/fences in the immediate area.



- f. The arbor will not block, or in any way impede any present vistas enjoyed by neighboring homes and/or any other points of interest existing at the time of the building of the fence or arbor.
- g. Homeowners would be responsible for upkeep.
- h. The primary purpose of the arbor is to support and sustain foliage.

Commissioner Gerber seconded the motion.

Chairman Schrader proposed amending the motion to include a statement that if the greenery became too full, it would be the owner's financial responsibility to rectify the situation.

A short discussion was held regarding the possible lack of any greenery. The Commission agreed that if no greenery was planted, it would just be a fence which is in violation of the fence ordinance and that in order to be considered an arbor, it must support or sustain foliage.

Both Commissioner Ewert, who made the motion, and Commissioner Gerber, who seconded the motion agreed to amend the motion to include the foregoing statements. The motion was approved unanimously.

Mr. Wheeler explained that staff would try to incorporate this interpretation into a Code revision at the appropriate time.

## IX. FINDINGS

Commissioner Ewert moved to approve the Final Order for MLP 95-07 [Free], as submitted. Commissioner Stewart seconded the motion and it carried unanimously.

## X. PUBLIC HEARINGS

DR 95-20, an application by Jim and JoAnn Free [applicants/owners] for approval to partition a 17,250 square foot parcel into two parcels, 7,015 square feet, and 10,235 square feet, respectively. The site is located at 680 N. Grant Street [Tax Lot 100 of Tax Map 3-1E-33CB].

Chairman Schrader asked if any Commissioners had ex-parte contact or conflict of interest. None was indicated, other than visiting the site, but drawing no conclusions. He then reviewed the hearing process and procedures and applicable criteria, which was not posted on the wall, although copies were prepared and available in the room.

*Change description to DR 95-20*

Mr. Wheeler presented the staff report. He explained that Potters Industries would like to construct a warehouse for dry storage on the southwest portion of the developed area of the nearly 10 acre site, immediately west of one of the current storage units. The size, dimension, and appearance would be similar to the existing storage units, although the building would not be serviced by power or water as it would be utilized to ensure storage of products are moisture-free until shipping. It would be located between two existing drives that access N. Baker. Although the Code does require additional parking spaces for the additional warehouse space, the applicant has advised staff that they are not adding employees so there would be no increased demand for parking spaces. Unless specifically waived or reduced by the Commission, staff has included the additional parking spaces in the recommended conditions of approval. Along with additional parking, additional landscaping would be then required. The current landscaping that is within the developed area are Juniper shrubs, between the existing parking and N. Baker. Unless the Commission decides otherwise, staff is recommending that the area on the southwest corner of N Baker and N.W. 3rd Avenue, where landscaping [grass and trees] already exists, remain in landscaping, in order to meet the landscape requirements of 15% of the developed area. Should the applicant develop the site further, the landscaping issue would have to be reviewed. There are no sidewalks on any portion of the property frontage. Although the Commission generally requires sidewalks along the full frontage of the site, staff recommends that the Juniper shrubs on N. Baker be removed or set back, and sidewalks constructed all along N. Baker to N.W. 3rd Avenue, as nothing is being developed along N.W. 3rd Avenue.

### Applicant

Philip Seale, 715 N.W. Territorial stated that he concurred with the staff report. He requested that the Commission waive the additional parking requirements, explaining that Potters has 18 full time employees who work in four shifts. The existing 17 parking spaces are more than sufficient, he added. He requested that if the spaces are required, that they be permitted to stripe an area that is already paved. Further, he explained that they do not have, nor do they need, off-street parking. The applicant would prefer not to construct sidewalks, he added, but did not object to constructing them on N. Baker, from the northern driveway on N. Baker to the second driveway on N. Baker, and then south to the corner of N.W. 3rd, but not where the shrubbery is on N. Baker, nor on the north side of the shrubbery to Johnson Controls, as there is a utility pole there. In addition, Mr. Seale added that the applicant would be happy to designate the 110' landscaped, park-like area on the southwest portion of the site to meet the landscaping requirements.

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

1. The Commission discussed sidewalk construction along N. Baker Drive, and agreed a sidewalk along N. Baker is necessary in order to facilitate pedestrian traffic and access.
2. The Commission discussed the additional parking spaces that would be required with this development and agreed the required parking spaces can be housed within the currently developed area.
3. The Commission agreed that the two additional two (2) trees should be planted, but are not required to be provided within ten (10) feet of the new parking spaces.
4. The Commission questioned why no loading dock was shown on the site plan. Staff explained that the materials would be loaded and unloaded to and from the building by forklift, so no loading dock was needed.
5. The Commission discussed the issue of semi's parked along N. Baker. Staff explained that City Council had approved such parking on N. Baker. The Commission suggested staff contact the Traffic Safety Committee to see if such tractor/trailer parking could be eliminated for two reasons: 1) safety - due to the amount of foot traffic in the area, and 2) it is not desirable for the industrial residents to have people parking who are not conducting business there, as it interferes with deliveries and other business functions.
6. The Commission asked whether vehicles would be maintained in the proposed building. The applicant explained that the building would be used for storage only.
7. The Commission discussed the 110' area designated for landscaping on the southwest portion of the site and agreed it should be designated on the final design review plan.

Based on the findings and conclusions contained in the staff report dated December 28, 1995, on testimony at the hearing, and on Commission deliberations, Commissioner Gerber moved to approve DR 95-20 with the conditions recommended by staff, but included the construction of sidewalks along N.W. 3rd Avenue.

Commissioner Hartwell seconded the motion.

Commissioner Ewert stated that, based on Commission deliberations, he believed the conditions should be amended to reflect that no sidewalk would be constructed along N.W. 3rd Avenue.

Commissioner Gerber agreed to amend his motion, approving DR 95-20 with the following conditions:.

**Prior to the issuance of the Building Permit:**

1. The Data Disclosure Form shall be completed and submitted to the City's Sewer Department prior to the issuance of a building permit.

**For the Building Permit Application:**

2. Seven (7) additional parking spaces shall be provided. There shall be two (2) trees located with ten (10) feet of a paved surface.

**During Construction:**

3. 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. The sidewalk shall be constructed along N. Baker Drive, between the northern driveway and N.W. 3rd Avenue, ~~and along N.W. 3rd Avenue.~~
4. Erosion-control during construction shall be provided by following Clackamas County's Erosion Control measures.

**Notes:**

5. The area between N.W. 3rd Avenue and the new fence and existing drive along the southern perimeter of the developed portion of the property, and 110 feet east of N. Baker, shall be considered to be designated for landscaping. No other development shall be permitted without prior approval from the Planning Commission.

Commissioner Hartwell seconded the amended motion, which carried unanimously.

**XI. DIRECTOR'S REPORT**

DR 94-11A - Staff reported that the City Council, on appeal, overturned the Planning Commission decision with regard to the sign at the mini storage facility on Highway 99-E. Essentially, the Council felt the color was appropriate. Also, Council felt that compatible could be considered complementary and that blue and yellow are complementary colors.

**Cedar Ridge Pathway** - Staff explained that there is a pathway between S. Birch Court, behind the homes and on top of the bluff, toward the end of S.W. 13th Avenue. For the benefit of the new Commissioners, he further explained that this site is behind the high school ballfields and just east of Canby Disposal. A portion of that walkway was removed and there was concern expressed to staff. It turned out that the walkway was constructed on private property, with no easement for the walkway. Therefore, to avoid possible liability litigation, the homeowners involved removed that portion of the pathway that crossed on their property. The Commission agreed the problem belonged to the original developer and urged that the City to seek recourse. Further, the Commission directed staff to draft a memo to Council for approval to write the developer and try to rectify the situation. Staff explained that this pathway does not connect to the City pathway going to the park, but was part of the subdivision plan. Staff further explained that it appears the top of the bluff shown on the contour map was inaccurate, but the survey appears to be correct according to the plat. Staff believes there is still area for that pathway, not on private property, and still along the bluff and will investigate the issue further and report back to the Commission.

The Commission discussed considering a bonding measure requiring that no bond is returned until certain conditions are met, to insure that this does not occur again.

**Downed Trees** - Staff explained that during the wind storm trees were downed in the expansion of Elmwood Manufactured Home Park. One was ordered to be removed as it posed a safety hazard, and others were going to be reviewed by an arborist to investigate whether there are additional safety hazards. At Pine Terrace Apartments, towards Timber Terrace, a leaning tree caused the ground to crack. At one point, the manager ordered the residents out of apartments that appeared to be threatened. Staff permitted the removal of the tree. One of the five remaining fir trees at Redwood Meadows will also be investigated to determine whether it is a hazard.

**H.B. 3065** - The last Legislature passed a house bill which deals, in part, with a new procedure for dealing with land divisions. Staff submitted a copy of the bill and a memo from John Kelley recommending an increase in fees to cover the new costs. Council approved the increase on January 3, 1996.

Staff explained that the Council felt the Planning Commission was the appropriate body to make local government decisions to approve or deny the expedited applications, as per H.B. 3065, Section 8(4)(b).

The Commission expressed deep concern about this bill and suggested the City contest it on the grounds that it is unconstitutional. Chairman Schrader agreed to draft a memo to Council to encourage the City to challenge it on the basis that it is in direct violation of Oregon's tradition of encouraging a free discussion of all land use issues under Oregon's open meeting laws.

The Commission discussed writing a letter to the newspaper to bring this bill to the attention of the public, as it totally contradicts the land use system.

**XII. ADJOURNMENT**

The meeting was adjourned at 10:40 p.m.

Respectfully submitted,

Joyce A. Faltus