

MINUTES

CANBY PLANNING COMMISSION

Regular Meeting

January 22, 1996

7:30 p.m.

I. ROLL CALL

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

Staff: James Wheeler, Assistant Planner; John Kelley, City Attorney; and Joyce Faltus, Secretary.

Others: Chad Meadows Mike Birnduf, Mike Cocco

II. MINUTES

The December 11, 1995 minutes were approved, as submitted.

The January 8, 1996 minutes were approved, as amended.

III. CITIZEN INPUT ON NON-AGENDA ITEMS

None

IV. NEW BUSINESS

None

V. FINDINGS

DR 95-20 - Potters - Commissioner Ewert stated that he reviewed the site plan that was submitted. He explained that the entire frontage along N. Baker, from the northernmost

property line where Potters and Johnson Controls meet, should be a sidewalk, rather than from the northern edge of the northernmost driveway. Since the applicant requested that no sidewalk be required north of the northern driveway at the last meeting, Mr. Wheeler suggested that the applicant be notified and the hearing reopened to make the change. He also asked if street lights would be installed automatically. Chairman Schrader explained that in order to bring up the issue of street lights, the hearing would have to be reopened. Mr. Wheeler stated that the issue of street lights was not brought up by any service-providers and that, often, they are only on one side of the street. Chairman Schrader pointed out that condition #3 includes sidewalks built along NW 3rd, which was not the intention of the Commission. **Commissioner Gerber moved to reconsider DR 95-20 Final Order and notify Potters that the hearing would be reopened on February 12, 1996 to require that sidewalks should be constructed from the northern property line on N.W. Baker to the corner of N.W. 3rd Avenue. Commissioner Ewert seconded the motion and it carried 6-1, with Chairman Schrader voting no.** Mr. Wheeler stated that another set of findings would be available on February 12, 1996 so there would be no further delays.

VI. COMMUNICATIONS

HB 3065

John Kelley, City Attorney, reviewed the Commission's concerns about challenging HB 3065 as unconstitutional. He explained that when an application is received for an expedited land division, it is reviewed by staff to determine if it, in fact, qualifies as an expedited land division application, under the section 9 criteria of HB 3065. Once it is determined to meet the criteria, the City has 63 days to make a final decision. Time deadlines are very critical under this process he explained, because under additional legislation, if a decision is not made within the 63 day time frame, the applicant can go to the Circuit Court and get a Writ ordering the City to approve the application and pay the attorney fees. Mr. Kelley explained that some cities are utilizing their planning staff to make these decisions, while others are utilizing the Planning Commission or City Council. The Canby City Council discussed this issue and decided the Planning Commission should hear and decide expedited land division applications.

Once the application is deemed complete, prior to coming before the Commission a notice goes out to the all adjoining property owners within 100 feet and all community planning organizations, who are given an opportunity to submit concerns **in writing** to the governing body to review; they cannot come before the Commission to testify at the hearing. By statute, a public hearing cannot be held. Once the decision either is made approving or denying the application (and the Commission can support its decision in writing) the applicant or opponents can appeal the decision within 14 days to an independent hearings' officer, who must be hired by the City to make a decision within

42 days, either upholding the decision or denying the appeal. The legislation only says the hearings officer must conduct a hearing that is fair, but does not go into detail about the format of the hearing. It can only be remanded back if the hearings' officer makes a determination that the application should not have been originally filed as an expedited land division application. In all other cases, the referee shall seek to identify means by which the application can satisfy the applicable requirements, which is almost a presumption that the hearings' officer must approve, or seek to approve, an application that is before him. If a hearings' officer's decision is appealed, it then goes directly to the Oregon Court of Appeals, who only reviews it to determine whether or not the application initially qualified under the criteria for an expedited land division application, whether or not it was an unconstitutional decision, or whether there was bias or interest on the part of the referee in making the decision - - not on the merits of the decision.

Mr. Kelley explained that the City of Salem had intended to challenge the bill on the grounds it violated the home rule. Their City Attorney researched the issue and recommended that they not challenge it because it was fairly well grounded in law because people were given an opportunity to present testimony and there was an appeal process, which are the nuts and bolts of procedural due process. Further, Mr. Kelley explained that although this bill became effective in October, he has not been advised of any jurisdiction receiving an expedited land division application. He advised the Commission that he was going to two training sessions in February with regard to this issue and afterwards, the City would possibly be able to put a process into place to deal with these types of applications.

Mr. Kelley explained the 120-Day Rule. After an application is deemed complete, a local jurisdiction has 120 days to make a final decision, which includes all appeals. If the jurisdiction fails to do so, and violates the 120-day provision, the applicant could go to the Circuit Court which would order approval of the application and all attorney fees would be paid by the jurisdiction. Originally, if the applicant submitted new information at the time of the hearing, there was a provision for an automatic continuance to the next available hearing, and the 120-day provision would be suspended during that period. Now, the 120-day period runs straight through, no matter who is responsible for the new evidence being submitted unless the applicant waives that period of time. Further, Mr. Kelley explained that the 120-day rule applies to regular applications, not the expedited land divisions and that the expedited applications have their own time frames built in, even though the remedy, the Writ from the Circuit Court is the same -- ordering approval of the application and payment of attorney fees.

Mr. Kelley further clarified, that under the expedited applications, the Commission would still review the application and could attach whatever conditions to the approval that it deems necessary based on the criteria under which the application is being reviewed. If the application is denied, it then goes to the hearings officer who must look at it with an

eye toward approving it. If an approved application is appealed to a hearings' officer, the officer could uphold the approval, with the conditions. The Commission expressed concern that if an application was not approved, the applicant would automatically have it approved on either appeal to the hearings' officer or the Circuit Court. He added that the City could approve a decision by the hearings' officer to the Court of Appeals only under the limited issues that: (1) it should not have been an expedited land use application in the first place, (2) that it was an unconstitutional decision, or (3) that the referee was biased.

The Council recently approved a \$1,400 fee for expedited land division applications, Mr. Kelley explained. When the Commission suggested this was a reactive gesture, Mr. Kelley suggested that this issue be discussed at the joint meeting with City Council on February 21st.

New Commissioner Training

Mr. Kelley advised the Commission that there would be a training session held for new commissioners. The training session offered by the League of Oregon Cities will not be held until April or May. Ardis Stevenson, a planner, offers a training session which is geared more toward the role of the planning commissioner and how the commission deals with the public. There is a more legalistic approach to decision-making offered by two attorneys. He asked the Commission which they would prefer, adding that both parties are relatively flexible with regard to dates and times for the sessions. The Commissioners could meet with staff to discuss the issues they would like covered so the presentation could be tailored to those issues of concern. It was agreed that the Commission would prefer a session with Ardis Stevenson, to include some legal issues.

VII. PUBLIC HEARINGS

DR 96-01 an application by Western PCS [applicant] and Warren Ltd. Partnership II [owner] for design review approval to construct a 130-foot cellular monopole with associated equipment cabinets. The 1,024 square foot site is located in the southeast corner of the Highway 99-E Mini-Storage facility, on the south side of Highway 99-E next to the Logging Road overpass [Tax Lot 300 of Tax Map 3-1E-34C].

Chairman Schrader reviewed the hearing process and procedures. He referred to applicable criteria handouts which were available on a chair in the back of the room. He then asked if any Commissioner had ex-parte contact or conflict of interest. Other than visiting the site, but drawing no conclusions, none was indicated.

Mr. Wheeler presented the staff report. He explained that the monopole is actually a cellular radio communications tower which is proposed to be located on the southeastern corner of the Highway 99-E Mini Storage property. Access will be provided to the tower

and equipment cabinets on a paved drive through the Mini-Storage facility for the monthly maintenance of the facility. The monopole is proposed to be 130 feet high. Although the structure height limitation for the zone is 45 feet, there are exemptions for monopole-type structures. The pole is proposed to be gray, and the equipment cabinets will be approximately 6 feet high. There will be an antenna housing structure at the top, which will be approximately 4 feet wide, and triangular in shape, Mr. Wheeler explained. Additionally, there is a possibility of future satellite dishes being attached. Utility easements specifically to the site of the tower will be needed for telephone and electric service and will have to be recorded prior to the issuance of a building permit. When the property was originally partitioned prior to the mini-storage development approval, the easements were placed down the access drive and along Highway 99-E, but not along the southern or eastern property boundaries. The Police Chief requested that some coordination occur with regard to vandalism and/or trespassing.

Although a separate issue from this application, Mr. Wheeler explained that it has come to the City's attention that the Mini-Storage facility is renting U-Haul vehicles which are being stored on a gravel area. Under the Site and Design Review approval, storage vehicles of any kind were to be stored on a paved surface and that Site and Design Review would be necessary for that additional paved surface. The Code Enforcement Officer has visited the site and there are currently enforcement procedures underway. It has been discussed with, and agreed to by the applicant, that the conditions of approval include a stipulation that the building permit for this structure will not be issued until the violation is resolved.

Applicant

Chad Meadows, 7535B NE Ambassador Place, Portland 97220 stated that he concurs with the staff report and conditions of approval. Further, he stated that Western PCS is a part of Western Wireless, which company provides cellular telephone communications to many jurisdictions in the western United States. Western PCS stands for Western Personal Communications Services. He reviewed some of the FCC history from 1995, where it was determined that existing cellular technology which was in place in areas like Portland, was inadequate to bring the U.S. into the 21st century. As a result, licenses were auctioned off to various companies to distribute a new type of technology. PCS's new technology, which is essentially only available and operational in the Portland area and Washington, D.C., allows the cellular telephone user to send and transmit FAX's and data while speaking on the same phone line. It operates on a much higher frequency than typical cellular phones and, therefore, does not interfere with other communications. PCS is also entirely self-contained. There are no buildings or other structures proposed, other than the equipment cabinets, so PCS takes up a lot less land for its transmitting equipment. It also uses a much lower radiated power, thereby using much less electricity to run the equipment. There is no water, ventilation, or air conditioning required and, therefore, no external noise is generated. In summary, Mr. Meadows stated that PCS operates at about a thousand times below the safety standards set by EPA, FCC, and by

the American National Standards Institute - - operating better, with less resources and less danger. Western PCS has been licensed to install monopoles across the northern Washington area, along I-5 into Oregon to the tip of southern California, with 84 facilities in the Portland metropolitan area alone. Typically, the criteria for siting these types of towers, include typography, height of local trees, and surrounding land uses. These towers are often opened up for, and other companies are encouraged to co-locate their own antenna on them to transmit their signals from a Western PCS tower, rather than having to build new towers.

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

1. When asked about the minimum height required for a rotating beacon for low flying single-engine aircraft, Mr. Meadows explained that the FAA sets the height limits. Further, he explained that PCS has someone in-house who is in constant contact with the FAA for all the sites and, should the FAA require a beacon on any site, it would be installed. PCS prefers not to do so unless required, as it tends to draw more attention to the pole, he added. Typically, if the pole is under a threshold of approximately 136 feet, a light is not necessary.
2. When asked about the amount wind velocity the pole could sustain, Mr. Meadows explained that Oregon requires that these types of facilities be tested to withstand a wind of 95 miles per hour. The pole manufacturer starts wind testing at 95 miles per hour. To date, Mr. Meadows stated that his research has not turned up any incidents of monopole failure or collapse in the United States. The incident in Florida, during hurricane Andrew, with winds in excess of 120 miles per hour, consisted of a 15-degree lean in the pole. The jury is still out whether or not it was a footing malfunction or another type of structural problem.
3. With regard to the microwave dishes attached to the structure, Mr. Meadows explained that the dishes are 2 feet in diameter and grey in color, and are designed to augment the existing telephone capacity that is available in the area. PCS does not intend to install them at this time, but they may be installed later if the cellular use patterns begin to change, in order to make the entire system work as a whole and add extra capacity, without installing another pole.
4. When asked about the number of dishes that would be attached to the pole, Mr. Meadows stated that there would probably be no more than 2 dishes attached to the pole. If the structural integrity of the pole could handle additional dishes, PCS would like to be able to add more dishes because revenue would be increased. Typically, he added, PCS prefers 15 feet of maintenance room between the dishes for safety purposes. When asked if PCS would object to restrictions on the number

of dishes on the pole, Mr. Meadows stated he would have to discuss it with his supervisors before he could agree to such stipulations. He stressed that these dishes are intended to augment the existing telephone capacity in the area and that extra capacity probably would not be needed in the next 5 to 10 years.

5. The Commission discussed its concern about the siting of the pole and whether interference would impede other industrial users from siting in Canby. Mr. Meadows explained that the effective radiated power of the facility would be 100 watts or less, which is less than the full wattage coming out of the Council Chambers at the present time. The interference issue, Mr. Meadows further explained, is the reason why this type of cellular service is being used now. It is 1000 mH above other cellular signals, so that interference is impossible, and no one else can use the 1840 to 1930 mH band width which is provided solely to PCS by the FCC.
6. The proximity of the monopole to the Logging Road, which will eventually be a major walking/bike path, was discussed in relation to the amount of dishes mounted on the pole and its aesthetic appearance.
7. The security system for the monopole was discussed, with relation to the concerns expressed by the Police Department. Mr. Meadows stated that PCS will respect whatever the Canby Police Department feels is appropriate.
8. The Commission discussed the possibility of future structures being installed on the tower. Staff suggested that the Commission include a condition in the final order that no additional structures could be installed on the tower prior to site and design review approval.
9. The Commission discussed the possible violations that might be existing by the Mini-Storage with regard to its being the host site and storing vehicles on a grass-surface area of the site. It was agreed that any violations need to be cleared up prior to the issuance of a building permit for the monopole cellular tower.

Commissioner Gerber moved to approve DR 96-01 with the following conditions:

Prior to the Building Permit Issuance:

1. All necessary utility easements shall be recorded to the satisfaction of Canby Utility Board and Canby Telephone Association.
2. Any violation of the Canby Land Development and Planning Code, Section 16.10.070(3), or the conditions of approval of the mini-storage (DR 94-11, DR 94-11a), shall be cleared up prior to the issuance of a building permit for the monopole.

During Construction:

3. Erosion-control during construction shall be provided by following Clackamas County's Erosion Control measures.
4. No rotating beacon shall be mounted unless it is required by the Federal Aviation Administration, and/or other laws.

Notes:

5. No more than two (2) microwave dishes, that are each no more than two (2) feet in diameter, shall be placed on the monopole structure without prior Site and Design Review approval.
6. The Police Chief has requested that the operator of the facility coordinate with the Police Department for vandalism/trespassing control.
7. If the FAA does not require a rotating beacon, or other type of lighting for aviation safety purposes, the County Emergency Services Coordinator should be notified that an unlighted, 130-foot monopole tower will be constructed at this location.

Commissioner Ewert seconded the motion and it carried unanimously.

VIII. DIRECTOR'S REPORT

Mr. Wheeler referred to the Notice of Interpretation 95-02 [of Chapter 16.08.110], dated January 23, 1996, which was enclosed with the Commission agenda, which would become effective about the end of February. He asked the Commission to review the interpretation to ensure it accurately relayed the Commission's interpretation.

Commissioner Stewart moved to approve INT 95-02. Commissioner Ewert seconded the motion and it carried unanimously.

IX. ADJOURNMENT

The meeting was adjourned at 10:45 p.m.

Respectfully submitted,



Joyce A. Faltus