

**MINUTES**  
**CANBY PLANNING COMMISSION**  
**Regular Meeting**  
**June 10 , 1996**  
**7:30 p.m.**

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**I. ROLL CALL**

Present: Chairman Schrader, Commissioners Stewart, Hartwell and Keller.

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

Others Present: Nathan Clayton, Ed Buschow, M.M. Olson, Tom Olson, Harry Sayles, Troy Winklebleck, Mike Neiswender, Hans Kautz.

**II. MINUTES**

The minutes of April 8, 1996 were approved unanimously, as submitted.  
The minutes of May 13, 1996 were approved unanimously, as submitted.

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

None

**IV. COMMUNICATIONS**

None

**V. OLD BUSINESS**

None

**VI. NEW BUSINESS**

None

## VII. COMMISSION DISCUSSION OF PLANNING ISSUES

The Commission discussed the status of proposed ordinance changes. Chairman Schrader suggested submitting the amendments/changes to City Council by August 12. He suggested sending a memorandum to all the Commissioners to remind them to have their proposed changes to staff by June 24th, so staff could review them and bring them before the Commission on July 8th for additional review by the Commission as a whole, after which a public hearing would be scheduled.

The Commission discussed the items under review.

1. Commissioner Hartwell would review the sign ordinance. Chairman Schrader explained that some applicants were having trouble with the ordinance, the way it is written. Mr. Wheeler, he explained, was working on how the square footage is determined. DR. Schrader offered to review his notes to see what generated the concern to amend the ordinance. He suggested Commissioner Hartwell work with Mr. Wheeler on the revision.
2. Chairman Schrader explained that the issue of revisions was generated by a discussion with City Council regarding the Design Review Ordinance, and developing a matrix to help make the Design Review process a bit more comfortable. Commissioners Stewart, Ewert, and Gerber have been meeting with Mr. Wheeler to develop the matrix. A matrix encompassing five different areas has been developed. The team will meet once more to finalize the matrix and submit it on June 24th.
3. Commissioner Ewert has completed his work on the screening requirement for loading berths.
4. The work has been completed for the review of compact parking spaces.
5. Criteria will be added under required public facilities with regard to traffic for apartment complexes.
6. A Right-to-Farm ordinance was proposed and submitted by Dr. Schrader.
7. It was agreed that final orders would be prepared by the prevailing attorney, and submitted to staff for review before coming before the Commission for a vote.
8. Delayed annexation is under review by City staff, with information from Sandy and West Linn. The City is incorporating this issue into an Urban Growth Management Intergovernmental Agreement with Clackamas County, Mr. Wheeler explained.

9. Protecting downtown Canby from heavy industrial use is another issue. Commissioner Keller explained that the Chamber of Commerce's Economic Development Committee has reviewed this issue and information is available about the types of businesses that downtown Canby should/would encourage, and the rationale behind the decisions. Commissioner Keller offered to work on this committee, adding that he has been part of the Business Revitalization Committee also. He added that an architectural firm drew up renderings of what the downtown area might look like about a year ago, with special attention paid to streets, signs, sidewalks, lighting, parking areas along 1st Avenue, etc., in the first phase. Wait Park was zeroed in on also, as it is the center of the community. The committee is now in the process of submitting a grant application for rural investment funds of \$90,000 to put a formal program in place, with a full time staff member heading the project. He offered to make copies of the grant application for anyone who would like one.
10. Commissioner Ewert and Mr. Wheeler are working together on transportation issues, and the traffic engineer's study.
11. Mr. Wheeler is working on the issue of time limits for filing lot line adjustments and Commissioner Ewert was working on the time limits for filing conditional use permit extensions.
12. Commissioner Stewart is working on the issue of accessory structures.
13. Commissioner Gerber gave the Commission an update on the school growth issues.
14. Commissioner Schrader has completed his work on the fence issues.
15. Commissioners Dillon and Mr. Wheeler are working on the issue of maximum lot coverage for residential buildings.
16. Commissioner Ewert is working with Mr. Wheeler on the issue of mobile home park owners informing homeowners about landscaping requirements.
17. Commissioner Ewert is working on the issue of occupancy regulations with regard to apartments and also on the issue of the responsibility of off-site owners.
18. The Commission reviewed a handout regarding reconfiguration of development standards off of private drives which Commissioner Dillon submitted to staff. Mr. Wheeler noted a correction to the handout - - that parking is allowed on both sides of a 36 foot road, whereas parking is only allowed on one side of a 28 foot road, whether it is public or private. Adding another access point to a development would permit an increase in the number of units, he added. As an example, he

noted that Township Village will ultimately have 6 two-lane access points and will end up with approximately 340 units with 5 access points - with 382 the maximum number permitted, the additional access points earning the 10% bonus. The Commission was not comfortable with the number of lots in Willow Creek I and II due to it having only one access point. Phased development, with additional proposed access points has been acceptable in the past though.

19. Mr. Wheeler is going to work with Mr. Hester on the issue of minimum distance points between residential driveways and intersections.
20. Chairman Schrader is working on the issue of density reduction for solar ordinance, but is finding that making a final recommendation is difficult, after talking with various other communities.
21. Mr. Wheeler is working on C-R zone development standards.

## VIII. FINDINGS

### SUB 96-02

Jeff Kleinman's draft final order was incorporated into final form by staff, with minor corrections, and presented to the Commission. After discussion and suggested amendments, **Commissioner Stewart moved to approve the final order denying the application for Country Club Estates #4, as amended. Commissioner Hartwell seconded the motion and it carried unanimously.**

### MLP 96-02

**Commissioner Stewart moved to approve the final order approving the application for a minor land partition for the H.O.P.E. project. Commissioner Hartwell seconded the motion and it carried unanimously.**

## IX. PUBLIC HEARINGS

**DR 96-04, reconsideration of an application by Tracey and Melody Boyce [on behalf of OBC Northwest, Inc.] for approval to add 7,500 square feet to an existing 7,500 square foot metal warehouse. The site is located on the east side of S. Berg Parkway, north of Highway 99-E [Tax Lots 200 and 201 of Tax Map 4-1E-5A].**

Chairman Schrader reviewed the hearing process and procedures and referred to the applicable criteria posted on the wall. He asked if any Commissioners had ex-parte

contact or conflict of interest since the last hearing. None was indicated, other than revisiting the site, but coming to no conclusions. It was noted that the applicant was not in attendance to offer any testimony.

Mr. Wheeler reviewed the previous hearing and explained that the Planning Commission had reviewed the application and approved it with a condition included that OBC Northwest, Inc. would dedicate a minor amount of land of right-of-way for road improvements on S. Berg Parkway. In his testimony, the applicant did not cite any opposition to that condition of approval. Since then, he notified the City of his intent to appeal on that issue. Mr. Kelley, City Attorney, reviewed the issue with staff under the Dolan vs. the City of Tigard case, which dealt with taking land without compensation as part of a land use approval. Staff recommended reconsideration of the approval by the Planning Commission, which is where the application stands at this hearing, and staff recommends that condition #4 be deleted.

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

1. The Commission reviewed a memo from Mr. Wheeler outlining his recommendations and options. A memo from John Kelley, giving his legal opinion, was also reviewed, along with a letter to Mr. Kelley from OBC's attorney.
2. The Commission asked how S. Berg Parkway could be improved without this dedicated right-of-way. Mr. Wheeler explained that the City could purchase the right-of-way from OBC.
3. The Commission agreed that, as per the applicant's testimony at the previous hearing, the proposal would not add new employees to the business, or add traffic to S. Berg Parkway, and since the materials presently stored outside would only be moved into the expanded warehouse, condition #4 would be deleted. The Commission further agreed that such reasoning should be included in the "findings" second of the final order.

Based on the information contained in Mr. Wheeler's memo and Mr. Kelley's memo, and on Commission deliberation, **Commissioner Hartwell moved to approve the final order for DR 96-04 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.

2. A waiver of remonstrance against improvements to S. Berg Parkway shall be submitted to the City prior to the issuance of a building permit.
3. The parking lot shall be paved, in its entirety, by October 31, 1998. A bond, or set-aside letter from a bank, or a similar form of assurance that is acceptable to the City Attorney, shall be filed with the City for the completion of the paving, prior to the issuance of a building permit.

**For the Building Permit Application:**

4. The landscape plan, with a planting schedule (when the planting of the landscaping is to occur) shall accompany the building permit application. The landscaping shall be completed or bonded prior to occupancy of the new building.
5. A minimum of three (3) trees will be planted along the southwestern property line. A minimum of five (5) trees shall be planted along S. Berg Parkway, between the existing and future entrance to the property. The type of trees to be planted along S. Berg Parkway shall be selected from the City Recommended Street List.

**During Construction:**

6. Erosion-control during construction shall be provided by following Clackamas County's Erosion Control measures.

**Commissioner Keller seconded the motion and it carried 3-1, with Commissioner Stewart voting nay.** Commissioner Stewart felt that if the applicant opposed the right-of-way dedication, he should have testified to the effect at the last hearing because by not openly opposing it, he, in essence, approved inclusion of the condition.

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**MLP 96-03**, an application by Hans Kautz for approval to partition a .62 acre parcel into 3 parcels. The two new parcels will be approximately 7000 square feet each. The rear eighteen feet of the existing home, identified as 522 Knights Bridge Road, will be removed so the house will be situated on the lot with the proper rear yard setback. The property is located on the north side of Knights Bridge Road, between N. Grant and N. Cedar Streets [Tax Lot 6200 of Tax Map 3-1E-33BC].

Chairman Schrader reviewed the hearing process and procedures, and referred to the applicable criteria posted on the wall. When asked if there was any conflict of interest or ex-parte contact, Commissioner Keller explained that he could have a potential conflict of interest as he is a realtor in Canby. No one in the audience questioned Commissioner Keller. Other than visiting the site, but coming to no conclusions, no other ex-parte contact or conflict of interest was declared.

Mr. Vasquez presented the staff report. He explained that only 8 feet will be removed from the rear of the existing two story home, not 18 feet, as 8 feet is sufficient to meet the proper rear yard setback. There is curb along the frontage of the property. The partition will create 2 flag lots, each approximately 7000 square feet. The remaining portion of the property, parcel 3, which houses an existing home, will be in excess of 9000 square feet. The partition of this site will permit more in-fill development which will help increase the housing density in Canby. No road construction or improvements will be required for Knights Bridge Road, which already has curbs and is at its full width. Roy Hester, Public Works Supervisor, has requested that a sidewalk should be built along the parcel's frontage on Knights Bridge Road and, according to Commission practice to require sidewalks, construction of same should be required prior to the occupancy of Parcel 1 or Parcel 2. The intersection of N. Grant and Knights Bridge Road, which is nearest to the subject site, is not considered to be a problem intersection and the proposed partition will not significantly impact this intersection. To allow for adequate access for emergency vehicles, an access strip to the new flag lots is required. It will be hard surfaced, 20 feet in width, and continuous from Knights Bridge Road to the main body of the lots. The newly created lots may require a lift sewer pump station on each of the parcels, in the event that a gravity flow system to the sewer main may not be possible, due to slight downward slope of the site. The home on Parcel 3 is connected to the City sewer system. The orientation of the subject lots partially meets the basic solar access standards. The rear parcel, Parcel 1, will need to comply with solar access design standards 16.95.030, performance options, that state that a lot is in compliance if habitable structures built on the lot have their long axis oriented within 30 degrees of true east-west axis, and at least 80% of the ground floor south wall is protected from shade by other structures and non-exempt trees, using appropriate deed restrictions; or if the habitable structure built on the lot orients at least 32% of its window areas and at least 500 square feet of its roof area to face within 30 degrees east or west of true south and if the window areas and roof area is protected from shade by structures and non-exempt trees. There are large existing trees on the site, Mr. Vasquez explained, some of which would have to be removed and/or trimmed in order to site a home. In evaluating the application as to how it meets the minor land partition criteria, Mr. Vasquez explained that it is in conformance with the text and applicable maps of the Comprehensive Plan, and is in conformance with all other requirements of the Zoning Ordinance. Staff recommends approval of the application with conditions.

### **Applicant**

**Hans Kautz, 18949 S. Pease Road, Oregon City 97045** stated that the lift station pumps are like septic systems with a pump inside it. They are usually called "grey water systems." A 2" PVC pipe would be run up to Knights Bridge Road to connect to the City system, instead of the usual 3 or 4" pipe, because it would be under a pressure feed into the system. After shooting the grade on the site, Mr. Kautz stated that if the house on the parcel behind the existing home is built to the south of the lot, gravity feed to the sewer system could be accomplished, but the back lot would need the lift pump station because

of the requirement of a 1/4" grade per foot to the sewer system. Regarding the trees, Mr. Kautz explained, from the plan, which trees would be removed and which would be retained. He concurred that the existing home is hooked up to the City sewer system. Mr. Kautz stated that a problem is created by the requirement of a 12 foot easement along the street frontage and along the common access point. He requested that the Commission reduce that requirement. Mr. Kautz concurred with the balance of the staff report and the proposed conditions.

Mr. Vasquez explained that there is no requirement for a 12 foot easement on the west side of Parcel #3.

### **Proponents**

**Troy Winklebleck, 502 Knights Bridge Road** addressed his concerns:

1. Regarding safety, Mr. Winklebleck stated he would like a fence constructed on the west side of the subject site, so children would not wander onto the site during construction.
2. Mr. Winklebleck requested that the branches on the walnut tree be trimmed, as they hang over his house and his property. He would not oppose removal of that tree as the walnuts clog his gutters.
3. Regarding the sidewalk issue, Mr. Winklebleck stated that there is a sidewalk in front of 478 Knights Bridge, which stops at his driveway. He asked if a 20 foot gap would remain between the current sidewalk and the proposed sidewalk.
4. Mr. Winklebleck referred to an Oak tree that is not pictured on the plan. He was unsure of who owned it or who was responsible for it. He stated that it is very close to the 5' sidewalk and that construction of the sidewalk might cut into the root system.

**Mike Neiswender, 478 Knights Bridge Road** stated that the Oak tree provided excellent shade for his property, and he hoped it would not have to be removed in order for the sidewalk to be constructed. Mr. Wheeler explained that he would visit the site to review the situation. Other than that issue, he concurs with the staff report.

### **Opponents**

**Tom Olson, 835 N. Elm** stated that he is strongly opposed to the application due to the following concerns:



1. Mr. Olson stated that the application was incomplete and that there was uncertainty about the emergency access, vegetation, etc. There was no narrative submitted with the application describing the proposed development, nor any supportive documentation showing how the particular design conforms with the Comprehensive Plan, or meets the applicable Minor Land Partition approval criteria. Furthermore, nothing in the application addressed how the application complied with the Zoning Ordinance or the partition's compatibility with surrounding land use patterns. No information was supplied about the location and size of sewer or water lines, drainage, location of power poles, significant areas of vegetation, parcel layout indicating size and relationship to utility easements, etc.
2. Traffic and safety hazards will be caused by the nature of the land partition. The proposal requests approval for three potential homes sites in a flag lot configuration. The standards and criteria for minor land partition applications states, in part: "No minor land partitioning shall be allowed where the sole means of access is by private road unless it is found that adequate assurance has been provided for year-round maintenance sufficient to allow for unhindered use by emergency vehicles, and unless it is found that the construction of a street to City standards is not necessary to insure safe and efficient access to the parcels." The application, Mr. Olson stated, indicates that the sole means of access to all three parcels would be a single, 20 foot wide, private road. There would be one access off Knights Bridge Road, with no rear egress. He stated that the Commission should consider the safety hazards of ingress and egress of traffic from three different parcels onto Knights Bridge Road, a very busy street. Further, he asked the Commission to consider the safety hazards that would be generated if a fire or medical emergency were to occur in one of the three homes. The application gives absolutely no assurance of unrestricted access for fire or other emergency vehicles to this proposed private road. If this application is approved, Mr. Olson stated that the Planning Commission and City Council would be setting a precedent for further minor land partitions to cause more safety hazards all in the interest of high density development.
3. The proposed partition poses a serious threat to property values of adjacent land owners. The application shows a total disregard for the aesthetics of the existing neighborhood, he stated. Referring to three photographs of the current structure on the property, he noted that it is in serious disrepair and is an eyesore. With two additional structures built on the property, property values of nearby properties will be seriously eroded. On page 11 of the staff report, it states that: "The proposed development is not a mobile home development. Future development of the property may include mobile/manufactured homes." Allowing such a mobile/manufactured home development would propose an additional threat to the values of the other homes and property in the neighborhood, Mr. Olson stated.

The adjacent property owners show great pride of ownership and appreciation for aesthetics and it would be a tragedy to allow this development to destroy the property values to the good Canby citizens who have worked long and hard to create a neighborhood that, excepting the current home on the subject site, is exemplary in appearance, he added.

Mr. Olson respectfully requested that the Commission deny the application.

**Harry Sayles, 635 N.W. 8th Place** stated that he lives just to the north and west of the subject site, is totally opposed to this application, and totally supports Mr. Olson's testimony.

**Ed Bushow, 555 N.W. 8th Place** stated that he lives immediately to the north of the rear of the subject site. Mr. Bushow stated it would be a shame to incorporate high density housing into an already established neighborhood comprised of larger lots. Should the application be approved, he requested that the owner of the property construct a fence along the northern portion of the site to restrict the flow of children, pets, etc., onto his property. Furthermore, he concurred with Mr. Olson's testimony, as does the overwhelming majority of the neighborhood.

#### **Rebuttal**

**Hans Kautz** explained that if the size of the three parcels are averaged, they are larger than many lots in the neighborhood. The developer intends to build quality site built homes that are at least as big as the other homes in the neighborhood. The existing home will be re-sided, re-roofed, new windows installed, etc., at a cost in excess of \$15,000.00. Mr. Kautz stated that there is no reason to construct a fence on the northernmost property line as Mr. Bushow already has a line of arborvitae. Children, he explained, are more likely to veer toward Knights Bridge Road, than to cut across Mr. Bushow's yard. There is an existing access from the house on Parcel 3, with driveway cuts, and it will be extended to the rear parcels. Mr. Kautz added that Clackamas County permits 7 homes on a 20 foot access. The accessway will permit passage of two cars in opposite directions, he added, or for one car to pass a parked vehicle. Therefore, emergency access would not be hindered. The applicant intends to retain as many trees as possible, he added.

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

1. The Commission agreed the possible need for the lift sewer pumps on Parcels #1 and #2 should be included under "notes" in the conditions of approval, in the event they are required. Each home would be required to have its own lateral sewer connection to the sewer system.

2. The Commission discussed maintenance of the 20 foot wide shared access road [a recorded easement]. Mr. Wheeler explained that maintenance would be covered by an agreement between the property owners.
3. The Commission asked if parking would be permitted on the access road. Mr. Wheeler stated that the City does not restrict parking on driveways, which is what this access road is, essentially.
4. Regarding tree retention, Mr. Vasquez explained that the trees on the western portion of the property would probably be removed to install the access strip. The large Pine tree would need to be removed to site a home also. The ones that would be retained after siting the homes, would require trimming as they are quite mature and very large. After visiting the site, staff has determined the trees to be healthy.
5. The Commission discussed the allegation that the application was incomplete. Mr. Wheeler explained that the Commission had to decide whether or not it had enough information to make a decision.
6. The Commission agreed that although the lots are smaller than many in the neighborhood, they do legally meet the requirements for 7,000 square foot minimum lots in the R-1 zone.
7. The Commission discussed the property lines or lack thereof. Mr. Wheeler explained that the property would be surveyed as part of the partition. Mr. Kautz added that the outside perimeters have been surveyed already, in 1961, and the neighbor owns the Oak tree, which lies to the west of the 97 foot property frontage.
8. The Commission discussed the construction of the sidewalk, with reference to the location of the Oak tree. The Commission requested that a condition be added to the effect that the sidewalk will meander around obstructions, including the Oak tree in the southeast corner of the property.
9. The Commission discussed the safety issue with regard to traffic entering and exiting onto Knights Bridge Road from the access road. Although the staff report states that the intersection of Knights Bridge Road and N. Grant is not a problem intersection, the Commission agreed that it does not know what the potential impact would be without a traffic study of that area. Mr. Wheeler explained that the City has not generally required a traffic study when an intersection or road does not appear to be problematic, when only two lots are added. The Commission also expressed concern about safety issues with the continuance of the bike lane on Knights Bridge Road.

The Commission requested input and guidance from the Traffic Safety Committee, and agreed it did not have enough information to make a decision and, therefore, would like to continue the hearing for input from the Traffic Safety Committee. For the applicant's benefit, the Commission specified its concerns:

1. Trees - The applicant indicated an interest in retaining the Walnut and Fir trees on the south side, and the Commission expressed concern that they would be appropriately maintained so as not to intrude on the neighboring property.
2. Existing House on Lot 3 - The applicant should submit, more formally, his intent regarding the existing house on the subject site.
3. Sewer - More information is needed, including feedback from Roy Hester, Public Works Supervisor.
4. Sidewalk - Mr. Wheeler explained that there would be a gap remaining between the existing sidewalk to the east and the new sidewalk that will be constructed.
5. Fence - The neighbors have expressed an interest in having a fence on the north and east sides of the subject site. A cyclone fence is already existing on the west side of the site for its full length.
6. Traffic Safety - The Commission needs input from the Traffic Safety Committee.
7. Property Lines - The Commission expressed a need to know where all the property lines actually are.
8. Sight Distance - The Commission expressed concern with the heavy vegetation that could cause sight distance obstruction
9. Mobile/Manufactured Homes - Mr. Wheeler explained that, according to State law, manufactured homes are permitted on any City lot. The City does have control over what type of manufactured homes can be sited. There are certain conditions that must be met. Criteria that must be met are listed in Section 16.16.010(G), which Mr. Wheeler reviewed.

**Commissioner Stewart moved to continue MLP 96-03 to July 8, 1996 for more information from the Traffic Safety Committee and from the applicant.**

**Commissioner Hartwell seconded the motion and it carried 3-1 with Commissioner Keller voting nay.** Commissioner Keller said he did not share the other Commissioners concerns because he felt there was no need to force the applicant to do a survey at this point because the City has recourse if it is not as represented, and because this driveway was no different from any other driveway coming out onto Knights Bridge Road, or any other busy road.

**IX. DIRECTOR'S REPORT**

**MLP 95-07 - FREE**

With respect to a previously approved partition on N. Grant/NW 7th Avenue, Mr. Wheeler explained that there was a recommended condition of approval for a sidewalk. Roy Hester has spoken with Mr. Wheeler and explained that placing a sidewalk on that property, because there are no curbs, will cause a drainage problem. He is requesting that the condition be eliminated and no sidewalk be constructed on this specific property because it is unique and will require the construction of a stormwater collection system to handle that runoff.

Due to disagreement in the Commission, it was agreed to wait until the full Commission was in attendance before making this decision.

**X. ADJOURNMENT**

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

Respectfully submitted,  
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Joyce A. Faltus