

MINUTES
CANBY PLANNING COMMISSION

Regular Meeting
October 14, 1996
7:30 P.M.

I. ROLL CALL

Present: Acting-Chairman Ewert, Commissioners Stewart, Dillon, Hartwell and Keller.

Staff: James Wheeler, Planning Director, and Joyce Faltus, Secretary

Others Present: Nancy Jones, Mike Jones, Wayne Scott, George Wilhelm, Bruce Sloan, Roger Reif, Sharon Behrendt, Lois Larson, Dan Anderson, Dave Anderson, Daniel Onion, Mike Eichenberger

II. MINUTES

Commissioner Stewart moved to approve the minutes of **September 9, 1996**, as submitted. Commissioner Keller seconded the motion and it carried unanimously.

Commissioner Keller moved to approve the minutes of **September 23, 1996**, as submitted. Commissioner Stewart seconded the motion and it carried unanimously.

III. CITIZEN INPUT ON NON-AGENDA ITEMS

None

IV. FINDINGS

DR 96-10/CUP 96-03 - Willamette Valley Country Club

The Commission agreed not to include a condition limiting membership in the country club. The Commission further agreed that, should a later governing body of the Willamette Valley Country Club decide to increase the membership, if the traffic conditions on N. Maple Street, or in the immediate area, remain as they presently are, the Conditional Use Permit would have to be reopened and reconsidered. Therefore, the Commission agreed to amend Findings #2 to read:

2. The Planning Commission finds that the country club membership will not increase with the new clubhouse facility. It will continue to operate with no more than 500 members. Because of this assurance, the Commission will not find it necessary to require a condition limiting the number of members. The Planning Commission finds that an increase in membership would have an adverse effect on the local traffic and would require the Conditional Use Permit to be revisited.

The Commission discussed the timing of the removal of the temporary clubhouse. It was agreed to add a condition #18 as follows:

18. The temporary structure will be removed within six months of occupancy of the new clubhouse.

As this issue had not been discussed during the formal hearing, the Commission requested that staff contact the applicant and advise them of the additional condition.

Commissioner Stewart moved to approve the Final Order for DR 96-10/CUP 96-03, amending Findings # 2 and adding, under Notes, Condition #18. Commissioner Keller seconded the motion and it carried unanimously.

ANN 96-04 - Wayne Scott/Evangelical Church

Commissioner Hartwell moved to approve the final order for ANN 96-04, as submitted. Commissioner Keller seconded the motion and it carried unanimously.

V. COMMISSION DISCUSSION OF PLANNING ISSUES

Mr. Wheeler reported to the Commission that the amendments to the Planning and Development Ordinance and the Right-To-Farm Ordinance were both approved by the City Council on first reading, with minor changes. The second reading will be held on October 16, 1996.

Commissioner Stewart advised the Commission that the Planning Commission decision to deny **Country Club Estates #4**, was upheld by the City Council unanimously.

Vice-Chair Ewert summarized the **City Council/School Board meeting** that was held recently. He explained that the school board was very concerned about lack of financing if Measure #47 passes. The school board also reported that the district targeted all but .3 of 1% of the enrollment projections. Further, Commissioner Ewert reported that the school district suggested it might benefit both the district and the City to work together on park projects to conserve manpower and equipment.

VI. PUBLIC HEARINGS

ANN 96-03, an application by Wayne Scott Estates, Inc. [applicant] and Calvary Baptist Church [owner] for approval to annex a 5.04 acre parcel on the south side of N.E. Territorial Road, north of Highway 99-E, and adjacent to Willow Creek Estates I [Tax Lot 600 of Tax Map 3-1E-27DB]. **Continued from September 23, 1996**

Vice-Chair Ewert reviewed the hearing process and procedures and referred to the applicable criteria posted on the wall and on page 2 of the staff report, explaining that the Variance criteria and Zone Change criteria were available on handouts in the rear of the room. He asked if any member of the hearing body had ex-parte contact or conflict of interest. None was indicated.

Mr. Wheeler explained that, since the last hearing, he received a letter from Sonya Kazen of O.D.O.T. In her letter, Ms. Kazen states that the Region One Traffic Unit will be sending a recommendation to John Grassman, the State Traffic Engineer, to place the intersection of Highway 99-E/Territorial Road on the statewide list of locations that meet signal warrants. Further, Ms. Kazen states that there is no project programmed, nor money available through ODOT to design or construct a signal at this location. Additionally, concerns that would need to be addressed during design include: the grade difference between the rail crossing and the highway, side street capacity, railroad protection.

Mr. Wheeler discussed the issues that must be resolved with regard to the annexation:

1. The signalization of the intersection and level of service.
2. The classification of the property as Priority "B" for annexation purposes.

Mr. Wheeler reviewed the options concerning the signalization. First, Salem could refuse to approve Region One's recommendation. That being the case, he added that this intersection would only get worse regardless of whether or not this application is approved. The Commission could either recommend that the application be denied, or recommend approval of the application without concerning itself with the development issues until ODOT permits signalization. The Commission might want to consider the that without further development, ODOT might delay approving the signalization, or that with development, a situation is created that continues to get worse, causing ODOT to have to pay attention to signalizing this intersection. If further development is approved, the timing of the signalization would have to be considered as ODOT will not be funding the signal. Mr. Wheeler further explained that the City is considering amending its SDC methodology and charges to include signalization of this intersection into an SDC-paid project which would be added to the 1-5 year timeframe in the Transportation System Plan. The City will probably review the SDC methodology regardless of the action taken on this application, Mr. Wheeler explained. Amendments would have to be made in the form of a resolution by City Council, Mr. Wheeler added.

Considering the foregoing, Mr. Wheeler outlined the Commission's options:

1. The Commission could recommend denial based on the Priority "B" designation and undefined improvement to a failing intersection.
2. The Commission could recommend approval but recommend delaying development of the property until the signal is in place.
3. The Commission could recommend approval but recommend delaying development of the property until the SDC methodology is in place which would allow development, with the SDC fees that are collected paying for the signalization of that intersection. It would be, probably March or April of 1997 before the new methodology would be in place, Mr. Wheeler explained.
4. The Commission could recommend approval without delaying development at all.

Applicant

George Wilhelm, P.O. Box 561, Woodburn 97071 addressed the traffic concerns. Mr. Wilhelm concurred that the City should amend the Transportation SDC charges to include this signal. Further, Mr. Wilhelm stated that the most significant contribution to the traffic problem at this intersection is the excessive speed and increased traffic on Highway 99-E. The Traffic Study concurs with the fact that increasing traffic on Territorial Road has no significant impact on the problem intersection, Mr. Wilhelm added. Additionally, Mr. Wilhelm further stated that delaying development of this site would delay installation of a signal at this intersection. Approving development of this site, he added, will produce a very negligible impact on the intersection but, at the same time, would provide needed funding and numbers to justify funding from the County and State to address and correct the traffic problem on Highway 99-E.

With regard to the Priority "B" designation of the site, Mr. Wilhelm pointed out that other sites with "B" or "C" priorities have been annexed in the recent past, including the site for the Trost Elementary School, Willow Creek Estates I and II, Redwood Meadows, and a portion of the Logging Road Industrial Park.

Mr. Wilhelm concurred with the alternatives presented by Mr. Wheeler, and with the staff report, and urged the Planning Commission to recommend approval to City Council.

Proponents

Mike Eichenberger, 15895 SW 246, Tigard explained that he is the realtor who is representing both the buyer and seller of this property. He reminded the Commission that the Church serves this community in a variety of ways and wants to continue to do so. But the church is in the position of being unable to move along in its mission for this community without being able to sell this piece of property. In order to get financing,

religious institutions get matching funds and the only way a value can be established for this property is by selling it. Although the church wanted to remain on this site, after an extensive process of investigating the costs of developing the site, they realized it was entirely cost-prohibitive to remain. After putting the property on the market to establish its value, there were 13 offers to buy, and the property is selling at well above the asking price.

Roger Reif, 3310 N. Maple stated that he travels on Territorial Road several times a day. He urged the Commission not to concentrate its efforts on a signal at the intersection, as the problems are less with Territorial than with Highway 99-E, where the traffic problems exist. The only way to prove to the State that signalization is necessary at this intersection is to allow development.

Opposition

None

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

1. The increased cost of the signalization at the intersection based on ODOT's requirements some of which include preemption signals, emergency vehicle preemption, and traffic crossing signal.
2. The Commission agreed there was less of a concern with the Priority "B" designation of the site than with safety issues at the intersection, as the land has been designated for residential development since 1984.
3. The necessity of proving to ODOT that the need exists for signalization at this intersection. The Commission agreed that the SDC methodology must be updated.

Wayne Scott explained that he contributed with Willow Creek and would be interested in being similarly involved with this site, depending upon how the SDC methodology is updated. Mr. Scott asked that development of the site not be delayed until the SDC methodology is revised, adding that he would prefer to have some sort of advanced financing or bonding of the SDCs as part of the conditions. Posting a bond would be a way to insure that the additional SDC funds would be available for the signal.

Commissioner Stewart moved to recommend that City Council approve ANN 96-03 understandings:

1. The zoning classification for the property upon annexation will be R-1, Low Density Residential.

2. All development and recording costs are to be borne by the developer when the property is developed.
3. All City and service provider regulations are to be adhered to at the time of development.
4. Development of the property will not occur until one of the following is completed:
 - a) the City's Transportation Systems Plan and Transportation System Development Charge methodology is changed to include the signalization of the intersection of Highway 99-E and Territorial Road as a Transportation SDC funded project in the 1-5 year time frame; or
 - b) another funding source for the signalization of Territorial Road and Highway 99-E is found; or
 - c) a bond, or similar mechanism approved by the City Attorney, will be posted for the estimated increase in the Transportation SDC due to the inclusion of the intersection's signal as a Transportation SDC funded project.

Commissioner Hartwell seconded the motion and it carried unanimously.

ZC 96-01, an application by Dan Onion for approval of a zone change from R-1 [Low Density Residential] to C-R [Commercial Residential]. The property is located on the east side of S. Ivy Street, between S.E. 7th Avenue and S.E. 8th Avenue [Tax Lot 1500 of Tax Map 4-1E-4AB].

As everyone in the audience was present when Vice-Chair Ewert reviewed the hearing process and procedures, it was not necessary to reiterate it. He referred to the applicable criteria on page 2 of the staff report and available as a handout in the rear of the room. Commissioner Ewert asked if anyone on the hearing body had ex-parte contact or conflict of interest. None was indicated.

Mr. Wheeler presented the staff report. He explained that the subject site, 0.21 acres, is located between Canby Electric which is zoned Commercial-Residential, and Wilco Farmers, which is zoned Highway-Commercial, both in accordance with the Comprehensive Plan. The subject site is currently zoned R-1, Low Density Residential, and the applicant proposes to change it to Commercial-Residential. The site is listed as an Area "C" "area of special concern" in the Comprehensive Plan, which refers to ever-increasing traffic on S. Ivy necessitating special treatment for access, especially if developed commercially or in multi-family development. Mr. Wheeler explained that the subject application is only a request for a zone change and that traffic concerns would be addressed

when an application is received which relates to further development of the site. Changing the zoning would change the use permitted within the existing structure and, due to the small size of the site, a significant amount of additional development is unlikely. Based on the size of the site, the commercial possibilities for this site in a Commercial-Residential zone would be low-impact types of uses. During discussion, the applicant has mentioned the possibility of using the site for an upholstery shop. Staff recommends that the Planning Commission recommend approval of this application to the City Council.

Applicant

Dan Onion, 2200 N.E. Country Club [mailing address 790 S. Ivy] stated that the purpose of the zone change application is to conform to the long-range Comprehensive Plan zoning. He further explained that although the possibility of a upholstery shop locating on this site no longer exists, his investment in the application drove him to follow-through with the zone change. Mr. Onion explained that the home is presently vacant and, although he expects to rent it, he does not anticipate a high volume of traffic to or from S. Ivy. Mr. Onion pointed out that there is a 12 foot easement between his Electric Shop and this site and he cannot combine them as Wilco Farmers will not agree to a lot line adjustment. Further, he explained that the site will be best served as a commercial property than as a residential property, especially as it is surrounded by Wilco Farmers, a mini-storage facility, the Electric Shop, and a church. He urged approval of the application.

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

1. The Commission questioned whether staff was recommending the construction of a sidewalk along S. Ivy. Mr. Wheeler explained that staff was not recommending sidewalks as no development is taking place with this application.
2. Traffic along S. Ivy. Mr. Wheeler explained that staff does not anticipate any significant additional traffic with commercialization of this property, based on the small size.

Commissioner Keller moved to recommend approval of ZC 96-01 to City Council. Commissioner Stewart seconded the motion and it carried unanimously.

VAR 96-01, an application by Mike and Nancy Jones [applicant/owner] for approval to convert a detached garage into a dwelling unit on a 5,750 square foot lot. The property is located on the north side of N.W. 3rd Avenue, between N. Cedar Street and N. Douglas Street [identified as 654 N.W. 3rd Avenue] [Tax Lot 700 of Tax Map 3-1E-33CC].

As everyone in the audience was present when Vice-Chair Ewert reviewed the hearing process and procedures earlier, it was not necessary to reiterate them. He asked if anyone on the hearing body had any ex-parte contact or conflict of interest. Commissioner Keller explained that he had a potential conflict in that this property was listed through his real estate firm and he showed it on some occasions. The possibility exists that he could be involved in the sale. No one in the audience questioned Commissioner Keller. Other than visiting the site but drawing no conclusions, no other conflicts of interest or ex-parte contacts were indicated.

Mr. Wheeler presented the staff report. He explained that the applicant is requesting a variance to reduce the lot size from 7,500 square feet for two units to 5,750 square feet for two units. The property is zoned R-2, High Density Residential and the standard requirements in this zone is 5,000 square feet for the first unit, and 2,500 square feet for each additional unit. In approximately 1971, the carriage house/garage was converted to a dwelling unit and is only defined as such, because it is detached. Normally, a dwelling unit is described as having a standard kitchen facility and 220 wiring, which this does not have. There was no building permit issued for the garage conversion to a dwelling unit. At the time of the conversion, the zoning required 7,000 square feet as the minimum lot size for two units; therefore, the conversion was not in compliance with the zoning requirements at that time either.

Since the conversion, the carriage house/garage has been used as a dwelling unit, and is still used as a dwelling unit. The current owners purchased the property with the understanding that the dwelling unit was a permitted use. When the property was recently listed for sale, an interested party visited the City offices to ensure the legal use of the second unit, which brought the existence of the second dwelling unit on the site, to the City's attention. The options offered to the current owners were: 1) show that it is a legally permitted use or that it was converted prior to the permit requirements of the zoning ordinance; 2) terminate the use as a dwelling unit; or 3) apply for a variance. The property owners chose to apply for a variance.

Based on the variance requirements, staff believes that neither criteria "B" nor criteria "E" has been met because an addition to the existing house could be used in the same fashion as the second dwelling and would be legal and conforming as long as it did not have a kitchen facility or 220 wiring. Further, staff recommends that the application be denied because the variance is not necessary for the owner to have substantially the same property rights as owners of other property similarly zoned and located, and that the variance is not required to remedy the hardship. Mr. Wheeler added that although no complaints about this use have been received in the last 25 years, and although it appears that the use has not been adversely affecting nearby properties, the ordinance does require that the all the variance criteria must be met in order to approve a variance application.

Applicant

Roger Reif, 273 N. Grant explained that the home and carriage house was originally built in 1910 and the conversion of the carriage house into a living unit took place in 1971. As no records pertaining to the conversion are available, the date was determined by talking with neighbors. Mr. and Mrs. Jones purchased the property in 1990. There were between 4-6 previous owners who all used the carriage house as a residence-type structure, after Mrs. Yoder, the original owner, converted it. Mr. Reif submitted photos of the property which included the 900 square foot main house, and the carriage house, including photographs taken inside the carriage house depicting the quality of workmanship. He pointed out that occupancy of the carriage house does not cause any traffic problems in the area. Mr. Reif then submitted a petition signed by all of the property owners who reside in the affected area, voicing no objections to the continued use of the carriage house as a dwelling unit.

With regard to Criteria "A" - "Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the City and within the same zone. These exceptional or extraordinary circumstances result from tract size or shape, topography or other circumstances over which the owners of the property have no control." Mr. Reif stated that the long-standing use of the building, with no records available which indicate any cognizant knowledge of any violations, establishes exceptional or extraordinary circumstances.

With regard to Criteria "B" - "The variance is necessary to assure that the applicant maintains substantially the same property rights as are possessed by the owners of other property in the City and within the same zone." Mr. Reif submitted a letter from Elroy Knutson, who did a market analysis of the property, which states that without the carriage house, the market value of the property would be worth \$120,000. With the continued use of the carriage house as a dwelling, the property would be worth \$135,000. Mr. Reif referred to a variance application for the Knight Street School that came before the Commission in the early 1980s. He drew a diagram of the site, showing the main building which was built before the Zoning Ordinance took effect, which turned out to be sited within the setback. When an application for expansion came before the Commission, a variance was approved because, due to the siting of the existing building, the hallway to the addition would have to be severely jogged, due to current zoning requirements. There was absolutely nothing in the records that addressed why the original grade school, with all its remodeling, was sited in the setback. The then Commission realized, too, that such a jog would have wasted essential space, he added.

Mr. Reif addressed Criteria "C" and concurred with staff's analysis, that the granting of this variance will not be materially detrimental to the intent or purpose of the City's Comprehensive Plan or the Land Development and Planning Ordinance.

Criteria "D" was addressed by the petition submitted earlier, Mr. Reif explained, which clearly indicates that the granting of this variance will not be materially detrimental to other property within the same vicinity. With the approval of the existing carriage house

dwelling, nothing new will be created, Mr. Reif added, but by denying the application economic waste will be created. Mr. Reif further explained that having to create a common wall would ordinarily create no problem, had the carriage house originally been attached to the primary dwelling. But, Mr. Reif added, according to the ordinance the carriage house is not a "dwelling unit" because a dwelling unit is considered something with kitchen facilities. The only kitchen-type appliance is a plug-in microwave and the unit does not have 220 wiring.

With respect to Criteria "E" - "The variance requested is the minimum variance which will alleviate the hardship." Mr. Reif described the quality construction of the "carriage house," explaining that it would be impossible to recreate the materials used as they are of lesser quality today. The minimum amount to alleviate the hardship, he stated, is to do nothing and to recognize and give credence to what has been existing for more than 25 years, especially as there have been absolutely no objections to the structure or use.

Regarding Criteria "F" - "The exceptional or unique conditions of the property which necessitate the issuance of a variance were not caused by the applicant, or the applicant's employees or relatives, acting in deliberate violation of these or other City regulations." Mr. Reif pointed out that this is a unique and extraordinary situation in that there are not many carriage houses in Canby that could even compare to this one, nor similar circumstances surrounding any that might exist.

Mr. Reif urged the Commission to approve the variance, but to require that there be an inspection made to insure safety requirements have been met.

Proponents

Lois Larson, 677 NW 3rd Avenue explained that she has resided in the area for 30 years. When she discussed the petition with other neighbors, Mrs. Larson explained that some people were totally unaware of the existence of the carriage house. In her estimation, Ms. Larson said the carriage house is basically just a bedroom. The current owners, she added, have made many improvements to the property and are assets to the community. If the application is denied, the City of Canby would be penalizing the current owners because the original owner may not have applied for a permit 25 years ago. Ms. Larson pointed out that, over the years, there have been instances where City files have not had copies of some permits that were issued on her property, and suggested that the carriage house might have been inspected and approved 25 years ago. Nothing detrimental to the neighborhood has ever resulted from the use of the carriage house as living quarters, she added, but not having the rental unit approved would cause a financial hardship to the owners of the property. She urged the Commission to approve the application.

Nancy Jones, 654 NW 3rd Avenue explained that she was unaware this issue even existed until she was in the process of selling the property, which sale, once the prospective purchasers were advised the carriage house was illegal.

Opposition

None

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

1. The Commission asked staff if the dwelling unit was ever inspected. Mr. Wheeler explained that staff was not aware of any building inspections on the property. The Commission agreed the carriage house should be inspected and brought up to Code specifications.
2. The Commission discussed the use of the "carriage house" as a dwelling unit. The Commission agreed that a rental unit on a site zoned R-2 was suitable. It was agreed that since it was in use as a dwelling unit for the last 25 years, the conversion occurred without any intent to bypass City regulations and ordinances.
3. The Commission discussed whether approving this application would be setting a precedent. It was agreed that the property is zoned R-2, which permits rental units, and that the only thing lacking is the required square footage for the lot.
4. The Commission discussed the fact that no complaints have been received by the City over the last 25 years.
5. The Commission agreed that because of the long-standing use of the "carriage house" as a dwelling unit, adding on to the house to connect the two buildings as an alternative way to retain the same use would cause a hardship to the present owners.
6. The Commission discussed the variance criteria and found that the variance request is the minimum necessary to alleviate the hardship.

Commissioner Stewart moved to approve VAR 96-01 with the following conditions:

1. Within 180 days from the final date of approval, the "carriage house" shall be brought up to current Uniform Building Codes.
2. The "carriage house" will be connected to utility services in a manner approved by the utility providers, specifically, water, sewer, and electric. Documentation of approved connection shall be provided to the Planning Office prior to 180 days from the final date of approval. (Final date of approval is the 15th day after the date of the mailing of the final order.)

Commissioner Hartwell seconded the motion and it carried unanimously.

SUB 96-04, an application by Wayne Scott for approval to develop a 6-lot subdivision. The site is located on the southeast corner of Territorial Road and N. Pine Street. The subdivision will include the existing house [1159 N.E. Territorial Road], two new single family lots [approximately 5,100 square feet each], and three duplex lots [approximately 7,600 square feet each]. A new cul-de-sac is proposed for the access to the new lots and will connect to N. Pine Street [Tax Lot 1200 of Tax Map 3-1E-27C].

As everyone in the audience was present when Vice-Chair Ewert reviewed the hearing process and procedures, he did not reiterate them. Commissioner Ewert asked if anyone on the hearing body had a conflict of interest or had ex-parte contact. Commissioner Keller explained that, as a realtor, after development he might be involved in some of the transactions for compensation. No one in the audience had any questions of Commissioner Keller. Other than visiting the site, but coming to no conclusions, no ex-parte contact was indicated on the part of any Commissioner.

Mr. Wheeler presented the staff report. He explained that the subject property was annexed in 1983. This application requests approval to subdivide the site into 6 lots. An existing home located on the northeastern portion of the property, with access onto Territorial Road, is proposed to remain on Lot 3 in the proposed subdivision. With the right-of-way dedication and road improvements, the existing home will become nonconforming, as the front yard setback will be greatly reduced. Of the 6 proposed lots, two will be single family residential lots and three will be duplex lots, with the existing home remaining on one of the lots. Both the Comprehensive Plan designation and the zoning of the lot is R-2, High Density Residential. The Comprehensive Plan calculates an average of 14 units per acre on R-2 land. This site will be developed at a lower density than the maximum permitted, approximately 9 units per acre. In order to maintain density as high as possible and still allow for development flexibility, staff is recommending that restrictions be placed on lots 2, 4 and 5 to require construction of duplexes. Staff is also recommending that the new construction be restricted to taking access from N.E. 19th Court. Mr. Wheeler pointed out that the centerline distance between the intersection of N.E. 19th Court with N. Pine and the intersection of Territorial and N. Pine is 135 feet, with no street jog in existence, which would then require a 150 foot separation distance. A concern has been raised regarding safety issues for traffic traveling westbound, turning southbound on N. Pine. Staff has reviewed a similar situation at the N. Redwood/ Territorial intersection with regard to the 57-unit Redwood Apartment complex that has access both onto Territorial and Redwood, and has determined that both situations would not cause safety problems at those intersections. Mr. Wheeler pointed out, too, that the dimensional depths of the two sites are similar. Alternatives, should the Commission find safety concerns do exist, are to move the proposed 19th Court to the south property line, which could be accomplished by reducing the number of lots, having access to the new road from flag lots, which are not as marketable, or taking access from Territorial, which is potentially more hazardous. Regarding delays at the intersection, it is estimated that any traffic generated on Territorial to Highway 99-E from this project, would increase the delay by 1%, which is a relatively insignificant impact. Mr. Wheeler then pointed out that the Planning Commission had discussed, during the annexation hearing for

another parcel, that both the annexation and development of that site might justify signalization at the intersection, as well as contribute to the SDCs. With regard to the Solar Ordinance, Mr. Wheeler explained that there is an existing home on lot 3, which is exempted from meeting the Solar Ordinance. Of the remaining 5 lots, four must meet the Solar Ordinance. Lot 2 meets the basic solar requirements, and lots 1, 5 and 6 can meet the requirements for a protected solar building line, which is an alternative for meeting the Solar Ordinance. The protected solar building line would not encroach any further into the lots than normal setbacks would and does not provide any greater protection for solar access than the building setbacks. Therefore, it is staff's opinion that the layout of the subdivision complies with the requirements of the Solar Ordinance.

Applicant

George Wilhelm, 546 S.E. Township Road, urged the Commission to approve SUB 96-04, T&J Meadows Subdivision.

SOME OF MR. WILHELM'S TESTIMONY WAS INAUDIBLE ON THE TAPE DUE TO A PROBLEM WITH THE RECORDER.

Mr. Wilhelm explained that the cost of improvements and utility extensions on N. Pine and Territorial make the cost of development extremely difficult. Regarding alternative designs for the subdivision, Mr. Wilhelm explained that if the developer was required to move the cul-de-sac to the south, the creation of flag lots would have a very costly impact. It would reduce the desirability for the lots and increase the cost of construction, with the end result being only 70 additional feet separating the road from the intersection of Pine/Territorial and an overall increase in cost per unit. Additionally, it would mean that 2 additional lots would take access from Territorial Road. Other than this issue, Mr. Wilhelm stated that the applicant concurs with the staff report and believes the application meets the subdivision approval criteria.

SHARON FAZIO-BEHRENDT, 112 Deerbrook, Oregon City 97045 explained that the Portland Metropolitan Boundary Commission approved annexation in 1983. At that time, the Portland planners said all facilities were in place and adequate for the development of the property. In the past, City planners have indicated that because it is a corner property that would connect development on Pine and Territorial there would be restrictions on improvements because if the City did not get them at time of development, they were afraid they would not get them at all. Even though adequate facilities were available for the utilities, when the City reassessed all the properties along Territorial Road in 1992, an additional \$3,800 was assessed on this property for a larger water line which would service more of the northeast Canby area. The dedications, for streets and sidewalks that will be required from this development are very extensive for a small development. Therefore, Ms. Fazio-Behrendt stated that she believes that certain considerations should be given this property because it is a key point where the City will connect its improvements and because there will be a minimal amount of use on the proposed cul-de-sac. Reducing the number of lots, or relocating the cul-de-sac, would be,

in effect, penalizing the developer, she added. As the congestion at the Highway 99-E/Territorial intersection has increased over the last 30 years, Mrs. Fazio-Behrendt stated, she has found herself using Redwood instead of Territorial, and has found that visibility is superior at Redwood, making it a lot easier to access Highway 99-E. In her opinion, she added, this particular property is picking up the burden for other properties that will benefit from the services.

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

1. Whether it was wise to build at lower densities than recommended in the Comprehensive Plan. Mr. Wheeler explained that the calculations in the Comprehensive Plan indicate the average amount of development density for each zone. The Commission agreed that the mix of residential development, even though it generates a lower density than what the Comprehensive Plan calculates for R-2, is permitted by the Zoning Ordinance.
2. The Commission discussed the proximity of the proposed N.E. 19th Court to the intersection of N.E. Territorial Road and N. Pine Street. The Commission agreed that this situation is similar to accesses at the Redwood Terrace Apartments, which do not appear to create safety hazards in their proximity to the Redwood/Territorial intersection.
3. The Commission discussed the location of N.E. 19th Court to the intersection of N. Pine/N.E. Territorial, and agreed it will not adversely create traffic safety hazards at the intersection.
4. The Commission discussed the fact that this development could impact the intersection of Highway 99-E/Territorial Road, and agreed that development that impacts this intersection might justify signalization at the intersection and help provide the funding via SDCs. Further, the Commission discussed ODOT's determination regarding signalization at this intersection and agreed that more development in the area would assist in bringing the City's concerns regarding to ODOT's attention, because the volume of traffic would increase.
5. The Commission discussed the proposed layout of the subdivision, concurring that the flag lot concept was unfavorable. Further, the Commission concurred that drivers would have to take due caution when turning south from Territorial onto Pine, which is no different from many other streets in the local area.

Commissioner Stewart moved to approve SUB 96-04 subject to the following conditions:

For the Final Plat:

1. The interior lot lines shall have six (6) foot utility easements. An easement for street tree planting shall be recorded for the twelve (12) foot utility along the N.E. Territorial Road and along N. Pine Street.
2. The final plat shall reference this land use application - City of Canby, File No. SUB 96-04, 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. The name of the cul-de-sac street shall be N.E. 19th Court.
5. The subdivision development fee, as provided in the Land Development and Planning Ordinance Section 16.68.040(G), shall be paid.

As a part of construction:

6. 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, 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, storm water, sewer, water, electric, telephone, gas, street lights, mail boxes and street trees. The street tree planting location shall be determined as a part of the pre-construction review process.
7. Any necessary utilities shall be constructed to the specifications of the utility provider.
8. Street name and traffic control signs shall be provided at the developer's expense. This shall include "Stop" street signs where required by the Director of Public Works.
9. 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.
10. The construction of the sewer system and street storm water system for the subdivision shall be approved by the Public Works Supervisor.

11. The local road shall be constructed to the City specifications and standards. The improvements shall include: thirty six (36) feet of paving, curb to curb; ten (10) inches of crushed rock and two (2) inches of Class "C" asphalt concrete pavement - with another one and a half (1-1/2) inches of Class "C" asphalt concrete pavement overlay applied one (1) year later; curbs; five (5) foot sidewalks, including the curbs; street trees; storm water drainage; extension of the utilities; and street lights.
12. 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 sidewalks that are adjacent to the existing sidewalks shall be adjusted from the existing sidewalk setback of two feet to the new location against the curb. This adjustment shall occur in the shortest distance that is practicable.
13. Nine (9) street trees shall be planted. The trees shall be planted eleven (11) feet from the street curb.

Prior to the signing of the Final Plat:

14. Dedication of right-of-way property necessary for the improvement of N.E. Territorial Road and N. Pine Street shall be recorded prior to the signing of the final plat.
15. 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.
16. One of two options shall be fulfilled for the planting of street trees prior to the signing of the final plat: Option 1, a contract, with a licensed landscape contractor, shall be executed. The contract shall include the City as the contractee: Option 2, the developer shall pay the City \$1485 for the 9 trees to be planted (\$165 a tree). If option 2 is chosen, the City becomes responsible for the planting of the street trees.

Notes:

17. The existing home on Lot 3 shall be considered a non-conforming structure in providing for the necessary right-of-way dedication for the improvement of N.E. Territorial Road.
18. Development of lots 2, 4, and 5 shall be limited to duplexes. Single family residential units shall not be permitted for these lots.

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.
20. Access to lots 1, 2, 4, 5, and 6 shall be restricted to N.E. 19th Court. Access to these lots shall not be permitted from N. Pine Street or N.E. Territorial Road.
21. "As-built" drawings shall be submitted to the City within sixty (60) days of completion. A copy of the "as-built" drawings shall be submitted on a computer disk in an autocad format.
22. 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.
23. 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 plant by the chairman of the Planning Commission (Section 16.68.070).

Commissioner Keller seconded the motion and it carried unanimously.

DR 96-12/CUP 96-04/LLA 96-01, an application by Dan Anderson for approval to construct a 46 unit commercial/industrial business park encompassing 52,930 square feet of building space on 4.67 acres. The development will be completed in two phases. The purpose for the conditional use is to permit either manufacturing and/or commercial operations. The lot line adjustment will reconfigure the existing two lots such that a 1.55 acre vacant parcel remains to the north. The site is located on the north side of the transition between S. Redwood Street and S.E. 3rd Avenue [Tax Lots 200 and 1800 of Tax Map 3-1E-34C].

As everyone in the audience was present when Vice-Chair Ewert reviewed the hearing process and procedures, he did not reiterate them. Commissioner Ewert asked if anyone on the hearing body had a conflict of interest or had ex-parte contact. Other than visiting the site, but coming to no conclusions, no ex-parte contact or conflict of interest was indicated on the part of any Commissioner.

Mr. Wheeler presented the staff report. He explained that the proposal is for a 46 unit commercial/industrial business park. The site and design review portion of the application was for the buildings themselves, which would be constructed in two phases. The conditional use portion of the application requests approval to permit either manufacturing and/or commercial uses to occur within the buildings in accordance with the light industrial zone, which is a conditional use in the commercial/manufacturing zone, where this property is located. The lot line adjustment portion of the application requests approval to reconfigure the existing lot lines to allow an acre and a half in the northern

portion of the site to remain vacant. An access drive is proposed along the western boundary. The applicant has concurred with staff's recommendation for dedication of a 30 foot right-of-way, with a 20 foot half-street with curb and sidewalk on one side, for future connection to S.E. 2nd Avenue. Such right-of-way would permit eventual construction of a looped road between Pine, 3rd, and Redwood, and would enhance access to the northern portion of this site, and to Mr. Guttormsen's parcel to the west. The applicant has concurred with this recommendation. The applicant is proposing to landscape 25 percent of the developed site area, ten percent more than is required. Mr. Wheeler explained that Cleveland Norway Maples would have to be planted along 3rd and Redwood rather than Sunset Maples. The evergreens proposed along the street portion of the access drive would have to be eliminated as they are not considered suitable street trees. Thirty-two trees are proposed in and around the parking lot area, although 29 are required. Eighty-nine parking spaces are required, the applicant is proposing 103 spaces, with 2 loading berths. Based on the individual unit sizes, no loading berths would be required. Mr. Wheeler then described the proposed architecture and color of the buildings. A 30 square foot monument sign is proposed for the site at the entrance to the 3rd/Redwood Street access point. Tenant signage is also proposed, amounting to 24 square feet per tenant which, according to the ordinance, exceeds the limits by approximately 3 square feet per unit. In anticipation of the text amendment revisions to the Ordinance, 50 square feet would be permitted and, at that point in time, the proposal would be conforming. Mr. Wheeler added that the City is requesting expansion of the storm water easement which would be located along the southern property line, and extending it to include bike and walking paths connecting to the Logging Road. Staff recommends approval, with conditions.

Applicant

Dan Anderson, 1056 N.E. 8th Place explained that 18-wheelers are not an issue as there is an easy flow of traffic getting in and out, large trucks included. In addition, Mr. Anderson stated that the applicant is not planning to use smooth face block for the buildings, but a broken block effect, more like that used on the Thriftway building. After a discussion regarding the bike path with the City Administrator, Mr. Anderson explained that the City was willing to incur part of the costs involved. Mr. Anderson urged approval of the application.

Dave Anderson, 641 N. Baker Drive requested approval to plant wildflowers as groundcover in the bike path/pedestrian pathway area in the southern portion of the site, rather than grass, as shown on the landscape plan, because the area is largely unseen. When the new road was built, the City took out hundreds of yards of boulders and dumped them in this area, where cottonwoods and briars are now growing out between the boulders. Mr. Anderson added that he intends to clean up his portion and would like the City to clean out its debris. Then the area could be planted in wildflowers.

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

1. The Commission discussed previous problems with half-street improvements. Mr. Wheeler explained that the proposal called for an access drive of at least 20 feet. When taking into account that SE 2nd dead-ends, the proposal appeared to be a good design for a connection and would not inhibit the access more that what could be otherwise provided.
2. The Commission discussed the possibility of 18-wheelers turning into the site via the access drive. Mr. Wheeler explained that it might be somewhat difficult, but that it was unlikely, with the size of the proposed buildings, that 18-wheelers would be loading/unloading at the site. The Commission felt that it was conceivable that someone could rent more than 1 of the units to be used as a small manufacturing facility, which could invite the use of 18-wheelers loading/unloading, as it appeared there were no restrictions on the amount of units someone could lease. The Commission discussed the layout of the proposal and agreed that the layout of the business park, as designed by the architect, does include the possibility that 18-wheelers will be able to access the development through the internal circulation drives, one off Redwood and one off 3rd.
3. The Commission discussed screening of the loading berths from public ways. Mr. Wheeler explained that required screening has been extremely loosely enforced. In this case, it would be a designated space area for loading, with no specific facilities.
4. The Commission discussed the use of the Phase 2 area as graveled building pads to be used for parking and/or storage until it was developed. It was agreed that a note would be added to the conditions clarifying that such would not be the case.
5. The Commission discussed the applicant's request to plant wildflowers as groundcover instead of the grass that is shown on the landscape plan where the bike/pedestrian path will be located. The Commission agreed it was a suitable alternative for the southern landscaped area.
6. The Commission discussed the bike path and asked if the applicant objected to adding the agreement to work with the City towards construction of the path as a note in the conditions, as well as the storm drain easement. The applicant had no objections.
7. The Commission discussed the proposed signage with regard to the amendments to the Ordinance. The Commission questioned how to deal with this issue should the amendments be amended or denied. It was agreed to note that it would fall under the current ordinance in the event that the amendments are not approved by City Council.

Commissioner Stewart moved to approve DR 96-12/CUP 96-04/LLA 96-01 with the following conditions and notes:

Prior to the issuance of the Building Permit:

1. A preconstruction conference shall be held prior to the issuance of the building permit. The conference shall be coordinated through the Planning Office.

For the Building Permit Application:

2. A detailed landscape construction plan shall be submitted with the building permit. The detailed landscape plan shall show: the number of plants, plant spacing/location of planting, the type of plants, the size of plants, the schedule of planting, and irrigation plans.
3. The landscaping shall be planted at such a density so as to provide a minimum of 95% coverage of the landscape areas with vegetation, within a 3-year time period. Bark mulch and similar material shall consist of not more than 5% of the total landscape area after the 3-year period. The plant spacing and starting plant sizes shall meet the ODOT plant spacing/starting size standards. Trees are to be a minimum of 2" in diameter at the 4-foot height.
4. Planting and spacing of the flowering Pear street trees along the half-street local road will be in accordance with the City Street Tree List specifications. The Hogan Cedar trees along the half-street local road will be omitted from the landscape plan.
5. All ADA parking spaces are to have access aisles. A minimum of one access aisle shall be a minimum width of 8 feet. All other access aisles are to be a minimum width of 6 feet.
6. A five (5) foot wide ADA walkway shall be located between the front ends of the two opposing rows of ADA parking spaces.
7. Wheel stops shall be provided for all parking spaces located adjacent to landscaping or walkways. The wheel stops shall be placed two (2) feet in front of the end of the space. The A.D.A. parking spaces shall be designated as such with signs.
8. All stripes designated parking spaces shall be a minimum of 18 feet in depth.

Prior to Construction:

9. The address for the job site shall be posted and shall meet the Uniform Fire Code 901.4.4 requirements.

During Construction:

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

11. The half-street local road will be constructed to public road standards, including curbs, sidewalks, necessary utility construction along the east side. The pavement width shall be a minimum of twenty (20) feet, and the access to the parking lots and the vacant parcel to the north shall be by driveway approaches.

Prior to Occupancy:

12. If necessary, due to construction, a new easement for the existing storm drainage line shall be recorded with Clackamas County.

Notes:

13. Signage for the individual tenants shall have a strong element of consistency with other tenant signage and with the buildings, specifically regarding the appearance and style of the signs. Until the sign ordinance is amended to permit more signage, individual tenant signage shall not exceed 21 square feet per unit.
14. The applicant will work with the City for the stormwater easement to be expanded to include a bicycle and pedestrian access between the S.E. 3rd Avenue/S. Redwood Street public sidewalk and the City-owned Logging Road.
15. The graveled building pads that will be placed for buildings in phase 2 of the development, during phase 1 construction, shall not be used for storage or parking.
16. Wildflowers are acceptable as an alternative ground cover for the southern landscaping area.

Commissioner Hartwell seconded the motion and it carried unanimously.

VI. DIRECTOR'S REPORT

Mr. Wheeler advised the Commission that Dr. Schrader submitted his letter of resignation from the Planning Commission, effective immediately. He requested that Commissioner Ewert submit a letter stating he would like to continue to serve. Mr. Wheeler explained that the Commission would now have to select a new Chair and Vice-Chair.

The Commission discussed various places to hold the Annual Planning Commission dinner. It was agreed December 12th would be a convenient date for all, and that it would be held at the St. Joseph's Winery on S. Barlow Road.

The Commission discussed the reversal of the Commission's decision regarding the requirement for construction of sidewalks on N.W. 7th/N. Grant. Commissioner Stewart asked that Mr. Wheeler investigate the process that led to the reversal of the decision.

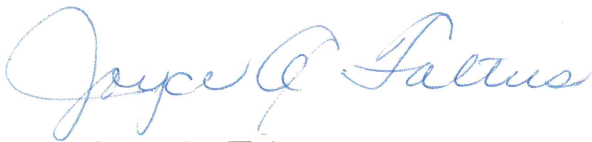
Due to receiving Dr. Schrader's resignation letter, the Commission agreed to consider recommendations for the positions of Commission Chair and Vice-Chair. **Commissioner Stewart moved to nominate Commissioner Ewert as Chair and Commissioner Gerber as Vice-Chair. Commissioner Dillon seconded the motion and it carried unanimously.**

Mr. Wheeler advised the Commission of a training session for Planning Commissioners to be held in the Gresham City Hall on Saturday, November 23, 1996. The fee will be picked up by the City, he explained and asked, if any Commissioner was interested in attending, that they notify us prior to November 15, 1996, the registration deadline.

VII. ADJOURNMENT

The meeting was adjourned at 10:50 p.m.

Respectfully submitted,



Joyce A. Faltus