

MINUTES
CANBY PLANNING COMMISSION
Regular Meeting
November 25, 1996
7:30 P.M.

I. ROLL CALL

Present: Chairman Ewert, Vice-Chair Gerber, Commissioners Dillon, Hartwell, O'Shea and Keller.

Staff: James Wheeler, Planning Director; Larry Vasquez, Assistant Planner; and Joyce Faltus, Secretary

Others Present: Bruce Broetje, Rob Petit, Marty Lawrence, Chris Tigh, Eland Grove, Councilman Terry Prince

II. MINUTES

Commissioner Keller moved to approve the October 14, 1996 minutes. **Commissioner Dillon** seconded the motion and it carried unanimously.

The **October 28, 1996** minutes were partially reviewed in light of the continued Airtouch Cellular application [DR 96-14], but carried over for full consideration to the December 9, 1996 meeting.

III. CITIZEN INPUT ON NON-AGENDA ITEMS

Councilman Prince, 1103 N.E. 12th Way stated that since the City is going to review the Comprehensive Plan, it would be a good idea to reviewing the priority designations for annexations. At a recent meeting, the Council discussed combining the Priority "A" and Priority "B" designations. He requested Commission input regarding this potential decision. Mr. Prince discussed the possibility of requiring a buffer zone between the industrial zones and residential zones, especially along S. Township Road. As interest has been received about opening the second phase of the Industrial Park, the zoning ordinance could be amended to accomplish this by possibly limiting building heights in the industrial zones to 1-story buildings, with less intensive uses near residential zones. Mr. Prince explained that although many communities require a greenbelt as a buffer between residential and industrial uses, such a requirement would create less jobs in the community. As there will be a Commission/Council workshop on December 4th at the

Canby Library, Mr. Prince suggested the Commission consider the prioritization issue and buffer issue and give direction to Council at that time.

Further, Mr. Prince reviewed the sidewalk issue on N.W. 7th. He explained that the Council was given the information and a decision was made. Councilman Prince suggested it might have been more appropriate for the Commission to reconsider the issue.

IV. FINDINGS

- DR 96-11 - Walt West

Commissioner Gerber moved to approve the Final Order for DR 96-11, as submitted. Commissioner Hartwell seconded the motion and it carried unanimously.

- DR 96-13 - Canby Telephone Association

Commissioner Keller moved to approve the Final Order for DR 96-13, as submitted. Commissioner O'Shea seconded the motion and it carried unanimously.

- DR 96-15 - Tom Scott

The Commission discussed the parking issue. Mr. Wheeler explained that at least 5 additional spaces were available in the public parking area across Ivy, to the west, within 500 feet, as per Section 16.10.030(D) and (G).

Commissioner O'Shea moved to approve the Final Order for DR 96-15. Commissioner Keller seconded the motion and it carried 5-1, with Commissioner Gerber abstaining.

V. PUBLIC HEARINGS

DR 96-14, an application by **Airtouch Cellular** for Design Review approval to replace the existing monopole with two additional carriers. The site is located at the southeast corner of the Mini-Storage facility on the south side of Highway 99-E, east of S. Pine Street [Tax Lot 300 of Tax Map 3-1E-34C]. **Continued from October 28, 1996.**

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

Mr. Wheeler presented the staff report. He explained that the applicant is proposing to replace the existing 130 foot cellular communications monopole tower with a 175 foot

lattice structure tower. Two additional carriers will be added, with additional cabinets to house equipment. The tower itself will be 175 feet high, but with the 3 sets of antennas included for the three separate communication carriers, it will actually measure 199 feet in height. Mr. Wheeler recapped that at the previous hearing the Commission discussed ODOT's Aeronautics Division's comments which were submitted the same day as the hearing. The hearing was continued for further review and consideration of ODOT's comments. ODOT had requested that either the tower be marked, which means it would be painted in 7 equal orange-and-white segments for day marking with a red rotating beacon for night marking, or installing a white strobe light at the top for day marking with a red rotating beacon at night. Mr. Wheeler explained that he spoke with an ODOT official today, who reiterated that day marking would be acceptable either as marked or strobed. ODOT prefers strobe lighting to orange-and-white markings as the strobe light would be easier to see, especially in foggy conditions during daylight hours, although some kind of marking will still be required.

Applicant

Chris Tigh, 100 Kerr Parkway #16, Lake Oswego 97035 explained that Airtouch received endorsement from LifeFlight, as well as a final determination from ODOT, requiring a strobe beacon light during the day and red-rotating beacon at night, plus intermediate point red lights at half the height of the tower. Additionally, ODOT indicated alternating red-and-white marking are acceptable. He reminded the Commission that by co-locating carriers, the impact of a proliferation of towers is minimized. The facility itself, Mr. Tigh reminded the Commission, replaces the existing monopole facility, and it is a permitted use in the C-M zone. In addition, the applicant concurs with the staff report and recommendations.

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

1. The Commission discussed the timeline for removing the tower that will be replaced and agreed that it should be removed within 90 days after the new tower is installed and on line.
2. The Commission discussed ODOT's Division of Aeronautics requirements. The Commission agreed that the tower would be lighted by a rotating red beacon at night, and a medium intensity white strobe light during daylight hours. In addition to the strobe lights, there would be red, steady-burning side lights approximately at the mid-point of the tower.
3. The Commission discussed the lighting/banding options. The Commission agreed that, after seeing other towers marked in 7 equal bandings of orange-and-white markings, a painted galvanized grey color would be preferable to having the tower painted in orange-and-white banding.

4. The Commission discussed the lease between the Airtouch Cellular and the mini-storage and agreed that the lease for the operation of the tower should include a clause for the tower's removal upon the termination of use of the tower, and restoring the site to its former state. Mr. Tigh explained that removal of the tower and restoration of the site is standard in every cellular tower lease agreement.
5. The Commission discussed adding additional carriers to the tower and agreed that any future reconfiguration of the antennae array should be considered a substantial change, requiring further Site and Design Review by the Planning Commission.
6. The Commission discussed the benefits of the tower to the community, especially the fact that it provides better cellular service to its customers in the local area. Additionally, the Commission discussed the fact that this is a permitted use in the zone.

Based on the findings and conclusions contained in the staff report dated October 18, 1996, on testimony at the hearings, and on Commission deliberation, **Commissioner Hartwell** moved to approve DR 96-14 with the following conditions:

Prior to the Building Permit Issuance:

1. Written approval stating the adequacy of existing utility easements from the Canby Telephone Association and the Canby Utility Board shall be furnished to the Planning Office.
2. Proof of notification, giving the latitude and longitude coordinates of the unlighted tower, of the following agencies shall be furnished to the Planning Office:

Office of Emergency Management, Clackamas County
Oregon Department of Transportation, Tom Highland, Salem
McMinnville Flight Service, Pat Cates, McMinnville
LifeFlight, Larry Edeal, Portland
3. A copy of the FAA permit approving the structure, or a letter stating that no permit is required shall be furnished to the Planning Office.
4. A copy of the lease that is to be recorded shall be filed prior to the issuance of the building permit. The lease shall have a clause that states that the tower shall be removed and the site restored to its pre-construction state within 60 days of the termination of the lease, unless a new lease for the facility is recorded within thirty (30) days of the termination of the lease. Any new lease shall have the same clause.

During Construction:

5. The tower shall be painted a "galvanized grey" color. The tower shall be lighted in accordance with Oregon Department of Transportation Division of Aeronautics requirements, as follows:

A red flashing obstruction light, operated during nighttime hours.

A medium intensity white strobe light during daylight hours.

Red, steady burning side lights, located at the approximate mid-point of the tower.

Notes:

6. No more than the proposed 7 omni-directional antennas, 9 panel antennas, and 2 microwave dishes shall be placed on the tower without prior Site and Design Review approval.
7. The existing monopole structure shall be removed within ninety (90) days of the completion of the construction of the new tower. The removal of the existing monopole structure shall be accomplished as soon as it is feasibly possible.
8. Any reconfiguration of the antennae equipment permitted on the facility at any one time, shall require further Site and Design Review by the Planning Commission.
9. A copy of the recorded lease shall be submitted to the Planning Office within thirty (30) days of the completion of the construction of the tower.

Commissioner Keller seconded the motion and it carried 5-1, with Commissioner Gerber voting no, based on Site and Design Review criteria B, as the development is not compatible with the design of other developments in the same general vicinity, due to its size, and color and materials of the exterior and in light of the fact that the existing monopole is not lighted or beacons.

TA 96-02, a Land Development and Planning Ordinance Text Amendment, initiated by Rob Petit [applicant] for approval to amend Chapter 16.04, Section 16.04.128 - Uses Permitted Outright - to include a commercial recreational use to the light industrial zoning classification, and Section 16.32.010 to include commercial recreational uses.

As everyone in attendance was present when Chairman Ewert reviewed the hearing process and procedures earlier, he did not repeat it. He asked if any Commissioner had ex-parte contact. Commissioner Gerber explained that he had a brief discussion with the parent of a child who currently attends the gymnastic center, and he explained that due to

the upcoming hearing it would be best if they did not have an intense discussion of the matter. The parent was totally unaware that an application was submitted. No one in the audience questioned Commissioner Gerber. Commissioner Ewert then asked if any Commissioner had a conflict of interest. None was indicated.

Mr. Vasquez presented the staff report. He explained that the applicant's gymnastic center is currently housed in a small building on S. Ivy and that he is in need of a more adequate place to accommodate the clients and to provide a safe and efficient facility in which to operate, especially as the building height of the present building is much too low. When special programs are held for relatives of the children, outside parking is insufficient and there is very limited viewing room inside the building for observers. Mr. Petit, he explained, is requesting an amendment to the ordinance to include commercial recreational uses in the lighting industrial zone, as he has located an adequate facility for the gymnastic center in Building #3 of Bruce Broetje's industrial complex at 365 S. Redwood. Mr. Vasquez explained that the ordinance has very limited provisions to provide for the location of such commercial recreational users who require large oversized facilities. Furthermore, there is no clear definition of 'commercial recreation' facilities or where they could locate. The applicant has been seeking a new location and has found that there is a shortage of local, large commercial building facilities that could provide sufficient space for use as a gymnastic center. In the light industrial zone, he has found larger warehouse-type buildings that could meet his needs for adequate space and height.

Applicant

Rob Petit, 591 NE 22nd stated that he concurs with the staff report. Mr. Petit explained that it is essential to get into Mr. Broetje's building in order for his gymnastic center to survive. At his present location there is no seating area for observers and the limited height and space presents a safety hazard to his clients. Additionally, he added, parking is limited at the present location.

Proponents

Bruce Broetje, 381 S. Redwood pointed out that the bicycle path down Redwood Street mixes truck traffic and bicycle traffic.

Opponents

None

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

1. The Commission discussed the need for flexibility in land use planning. It was suggested that commercial recreational uses might make a good buffer between commercial and residential zones, except for the fact that Mr. Petit needs to move his gymnastic center right now.

2. The Commission discussed the commercial recreational use in the light industrial zone in light of truck traffic in that zone and the safety issues that could ensue.
3. The Commission discussed the need to support commercial recreation uses in Canby. At the same time, the Commission discussed its concerns for maintaining the critically limited, valuable industrial land in Canby. The Commission also discussed the economic development task force's visions for Canby, especially the family/life wage portion of the vision, and the jobs that could ensue with development of the industrial land to its fullest. The Commission also discussed the minimal number of employees in the subject commercial recreational use.
4. The Commission discussed the request for amending the ordinance. It was agreed that it is more appropriate to allow the expansion of uses in the light industrial zone classification (M-1) to include commercial recreation uses as a conditional use, rather than as a text amendment for such use permitted outright so that future requests could be reviewed on a case-by-case basis.
5. The Commission discussed the lack of opportunities for commercial recreational uses in Canby.
6. The Commission discussed similar recreational uses in Portland, that are located in industrial park environments.

Commissioner Gerber moved to recommend that City Council amend the Planning and Zoning Ordinance to include commercial/recreational uses in the Light Industrial [M-1] zone as a conditional use. Commissioner O'Shea seconded the motion and it carried 5-1, with Commissioner Keller voting nay.

The Commission asked why a variance application was not submitted, rather than a text amendment. Mr. Wheeler explained that in order to approve a variance application, which is actually an **exception**-type application, six criteria **all** have to be met. In staff's opinion, it is very rare for any variance application to meet **all** the criteria, and rarely will staff recommend approval of a variance.

After a short break, Chairman Ewert explained that the expense incurred by having to submit a new Conditional Use application would be a financial burden on Mr. Petit. Mr. Petit also was concerned about the timelines involved in submitting a new application, as he had hoped to move into the industrial park by the first of the new year. The Commission agreed, to try to expedite the process, to hold its first meeting in 1997 on January 6, 1997 instead of January 13, 1997. Mr. Wheeler explained that he would talk with Mr. Kelley, City Attorney, about the possibility of recommending an amendment to the proposal by recommending that City Council grant the commercial/recreation use as a Conditional Use as part of the approval of the text amendment application. Chairman

Ewert agreed, stating that the Commission actually would see that kind of recommendation as a modification to the original application to achieve the same end results.

VI. OLD BUSINESS

None

VII. NEW BUSINESS

ANN 96-05, an application by Canby United Methodist Church to annex 4.71 acres into the City of Canby. The site is located east of N. Holly and south of Territorial Road, behind the Canby United Methodist Church building, at the proposed extension of N. Ivy Street [Tax Lot 1700 of Tax Map 3-1E-28CD].

As everyone in attendance was present when Chairman Ewert reviewed the hearing process and procedures earlier, he did not repeat it. He referred to the applicable criteria posted on the wall and in the staff report. Mr. Wheeler explained that this was not a public hearing, as annexation applications are optional with the Planning Commission, but mandatory with City Council.

Mr. Wheeler presented the staff report. He explained that the site is in the Priority "A" classification for annexation purposes and is just over 4-1/2 acres in size. An orchard owned by the school district and in the City limits, lies to the west. To the east is a one and one-half acre site that was recently annexed and will be developed as single-family residential. All the property to the south (except one parcel just southwest, on the same side of N. Holly), is within the City limits, and is developed single-family residential. The Church has requested a waiver of the annexation application fee and the Portland Metropolitan Boundary Commission annexation fees in exchange for dedication of land for right-of-way purposes. Whether or not the application is approved, the land has already been dedicated, he explained. Future development of the property will be the extension of the parking lot and a possible gymnasium facility for the Church. The Church intends to hook up to the City water supply and sewer system, and will benefit from the extension of N. Ivy Street to Territorial Road with the increased visibility.

Commissioner discussion included the following:

1. The Commission asked if the development to the east could still be developed if this annexation was not approved. Mr. Wheeler explained that when the staff report was written, the dedication had not yet been approved by City Council, but that the applicant for that development dedicated land for right-of-way purposes, as did the Church, so N. Ivy could be extended to Territorial Road.

2. The Commission discussed the waiver of application fees. Mr. Wheeler explained that the City agreed to pay both the Canby Annexation fee of \$1,500 and the Portland Metropolitan Boundary Commission's fee of \$545.
3. The Commission discussed the islanded property to the southwest of the subject site. Mr. Wheeler explained that the City could legally force annexation of the property, but the City has never forced annexation. The Portland Metropolitan Boundary Commission has always expressed concern about islanded properties, he added.
4. The Commission discussed the extension of N. Ivy to Territorial Road. Mr. Wheeler explained that the City will pay for half the costs of extending N. Ivy.
5. The Commission discussed the issue of sidewalks on N. Holly and on Territorial. Mr. Wheeler explained that sidewalks will not be constructed until further development on the Church property. When the parking lot is expanded, or the building is expanded, or if the Church does build the gymnasium, the applications would come before the Planning Commission and the subject of sidewalks would then be addressed.

Based on the findings and conclusions contained in the staff report dated November 15, 1996, on additional current information from staff, and on Commission deliberations, Commissioner Keller moved to recommend approval of ANN 96-05 to City Council. Commissioner Hartwell seconded the motion and it carried unanimously.

INT 96-01, an appeal by Pahlisch Duncan Homes, of staff's interpretation regarding setback restrictions for Phase I of Tofte Farms Subdivision.

Mr. Wheeler explained that the setback restrictions require that all structural elements of a home, with the exception of roof eaves, which can overhang into the setbacks by no more than 2 feet, must meet the setback distances. Decks and porches which are less than 30 inches high are permitted to be built within the setbacks, he explained. Pahlisch Duncan has stated that Section 16.04 allows heat pumps to extend into the setback area, and since they extend into the setback area more than garden windows and fireplaces would, garden windows and fireplaces should be permitted to extend into the setback area also. Mr. Duncan requested that the Commission approve permitting garden windows and fireplaces to extend into the side setback area no more than roof eaves, or approximately 2 feet. Mr. Wheeler further explained that the purpose of the yard setback is to keep visually unobstructed space around a home and the applicant is requesting approval for vertical features that do visually obstruct the open space around the home. He added that he has less concern for the fireplace inserts than he does for the garden window intrusion, because if garden windows are approved, approval can then be requested for various sized bay windows and cantilevered houses. Fireplace inserts are easily identifiable and unique

and could be dealt with reasonably, he added. Further, Mr. Wheeler explained that the Canby Utility Board also has concerns about any encroachment over the easements although it does depend on the location of the intrusion. If it was on the 10 foot setback side where there is a 6 foot easement, there would be no intrusion. If it was on the 7 foot setback side, a 2 foot intrusion would encroach by 1 foot.

The Commission discussed the 5 percent allowance it approved to reduce the solar setback for this subdivision, because the applicant would have lost one lot otherwise, and raised the price of a lot approximately \$1,400.

Commissioner Keller moved to deny Pahlisch Duncan Home's appeal of INT 96-01, and support staff's interpretation and for safety reasons. Commissioner Dillon seconded the motion and it carried unanimously.

DR 96-02, an application by Marvis R. Mackey requesting approval of a 48 square foot monument sign. The sign is to be placed at the N.W. 2nd Avenue entrance to the parking lot of the new Mackey Building on the southeast corner of N.W. 2nd Avenue and N. Douglas Street (Tax Lot 4500 of Tax Map 3-1E-33CC).

Mr. Wheeler explained that a condition of the original Site and Design Review required that the applicant return to the Commission for approval of any signage. The ordinance permits a sign up to 400 square feet, and the applicant is proposing to install a 2-sided, non-illuminated monument sign that is 4 foot high by 6 foot wide, a total of 48 square feet on both sides. The sign will be grey with burgundy lettering, with an off-white plastic background, and will be located near the entrance on N.W. 2nd Avenue. Staff recommends approval of the sign permit application on the basis that it would have been approved as submitted, had it been part of the original design review application for the Mackey Building.

The Commission questioned whether there would be other tenants in the building, and if there would be additional signage. Mr. Wheeler explained that the applicant preferred to occupy the entire building, although there might be one additional tenant and could be an additional sign.

Commissioner Gerber moved to approve DR 96-02 sign application, as submitted. Commissioner Keller seconded the motion and it carried unanimously.

As a set of findings had been prepared in the event DR 96-02 was approved, **Commissioner Gerber moved to approve the Final Order for DR 96-02 [sign permit], dated November 25, 1996. Commissioner Keller seconded the motion and it carried unanimously.**

VII. DIRECTOR'S REPORT

Mr. Wheeler explained that a public hearing was scheduled for December 4th, before City Council, for TA 96-02. As the draft Final Order is not appropriate for the decision that the Planning Commission made, staff will forward the Commission's recommendation in an informal staff report to Council. The Commission agreed that including the Commission's recommendation in an informal staff report was preferential to delaying the hearing to drawn up another set of Findings.

Mr. Wheeler reported that the applicant for SUB 96-04 [T&J Meadows] on Pine and Territorial, are requesting approval to combine two lots to make a tri-plex lot, as opposed to a duplex or single family lot, because there is a very tight footprint for building in the cul-de-sac. A tri-plex lot would give them more flexibility, he added. He advised the Commission that a tri-plex would come back before the Commission for site and design review. The Commission approved the request.

Mr. Wheeler reported that City Council recommended approval of ANN 96-03 [Calvary Baptist Church] and ANN 96-04 [Evangelical Church] to the Portland Metropolitan Boundary Commission. Council also approved ZC 96-01 [Dan Onion]. ANN 96-04 was recommended for approval on a 4-2 vote, as there were concerns about traffic at the intersection of Territorial/Highway 99-E. The dissenting votes did not feel that approving this Priority "B" property for annexation in order to push approval for a signal at the intersection was an appropriate reason for recommending approval. Further, with regard to ANN 96-04, new information was received about storm water drainage on N. Redwood, dealing with the existing storm drainage pipe coming across the Logging Road from existing developments on the opposite side. In recommending approval, the Council agreed that the drainage issue was separate from the annexation issue.

With regard to the subdivision at the north end of N. Maple, Mr. Wheeler reported that it is going to Circuit Court on a Writ of Mandamus for trial on January 20, 1997, based on violation of the 120-day State rule. If it is found that the 120-day rule was violated, the Court will decide whether or not it should have been approved in the first place, which is where the Comprehensive Plan's goals and policies come into play, and the entire matter is then out of the City's control. Decisions can be appealed though, through the Court of Appeals and Supreme Court. If it is found that the 120-day rule was not violated, it comes back before the City Council, who will approve the Final Order denying the subdivision. Then it probably goes to appeal before LUBA.

Mr. Wheeler explained that the H.O.P.E. applications will have exceeded the 60-day limit on January 13th, when the final orders would be reviewed, because there is only one meeting scheduled in December. He suggested changing the first meeting date in January, 1997 to January 6th instead of the 13th. The Commission concurred. In addition, there is the possibility of a high profile industry submitting an application to locate in Phase 2 of the Industrial Park and the timing of a recommendation on the

annexation from the Commission, with findings to the Council, would be best served by holding the meeting on January 6th.

When asked by the Commission about amending the Ordinance to delete the City's 60-day/60-day limitations, Mr. Wheeler explained that he expects that new amendments to the Ordinance will be made by summertime, depending on the outcome of the N. Maple Street subdivision hearing, because there is the potential for a mandate that we have to include limited land use. If so, all subdivision and design review applications would have to be limited land use decisions and the only way to use Comprehensive Plan goals and policies as criteria, would be to specifically list, in the ordinance, which ones of those apply to the application in question and not just reference them as Comp Plan goals and policies. Mr. Wheeler explained that he planned to do that ahead of time, and start reviewing applications that way, so no questions will arise in the future.

Mr. Wheeler reminded the Commission of the joint workshop for the Commission and Council on December 4th, at the library, at 6:00 p.m., where prioritization designations for annexation would be discussed. On January 15th, there will be another workshop, at 6:00 p.m. in the library, to discuss the Transportation System Plan amendments. Amendments to the Highway 99-E Access Management Plan that will be incorporated into the Transportation System Plan will also be discussed, as they must be incorporated by April, or the State plan goes into effect instead.

Commissioner Gerber requested that staff find out who is responsible for paving S.E. 13th Avenue, where it was cut to extend the sewer line near S. Pine, as the two cuts are about 1 to 1-1/2 inch deep.

The Commission asked Mr. Wheeler to review the variance application process and procedures and criteria at the next meeting, as some of the Commissioners are unclear about them.

Commissioner Gerber nominated Commissioner Stewart as Vice-Chair. Commissioner Hartwell seconded the motion and it carried unanimously.

VIII. ADJOURNMENT

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

Respectfully submitted,


Joyce A. Faltus