

MINUTES
CANBY PLANNING COMMISSION
Regular Meeting
January 6, 1997
7:30 P.M.

I. ROLL CALL

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

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

Others Present: Kathy Polley, Ivan and Roberta Arneson, Mike Duncan, Dennis Pahlisch, Tami Weimer, Donna Henden, Christopher Brand, Rob Petit, Eileen Bentz, Todd and Nancy Lucich, Roy Zimmer, Don Brattain, Rochelle Hamblin, Lori McKinley, Ray and Irene Burden, Gayle Johnston, Jeanne Wilson, Evelyn Murphy, Denise Truett, Charla Krahel, Cindy Nichols, Don Zimmer, Dean and Diana Boyer, Kate Gruetter, Mandy Yates, Dianne Yates, Mike Cocco, Jim Zupancic, Don Perman, Cliff Parsons, Tina Vedaa, Roger Reif, Dave and Georgia Hoover, Dave Anderson, Dan Anderson, Annte Buris, Linda Baker, Meg Doxtater, Dr. Don Perman, Darna Burton, Misty Baer-Forsman, Evelyn Murphy.

II. MINUTES

Commissioner Keller moved to approve the November 25, 1996 minutes, as submitted. **Commissioner Dillon** seconded the motion and it carried unanimously.

Commissioner O'Shea moved to approve the December 9, 1996 minutes, as amended. **Commissioner Stewart** seconded the motion and it carried unanimously.

III. CITIZEN INPUT ON NON-AGENDA ITEMS

None

IV. FINDINGS

- **CUP 96-05/PUD 96-01 - H.O.P.E. Village Master Plan** - **Commissioner Stewart** moved to approve the Final Order for CUP 96-05/PUD 96-01, as amended. **Commissioner Keller** seconded the motion and it carried unanimously.

- **DR 96-16 - H.O.P.E. Village** - Commissioner O'Shea moved to approve the Final Order for DR 96-16. Commissioner Keller seconded the motion and it carried unanimously.

V. COMMISSION DISCUSSION OF PLANNING ISSUES

The Commission discussed the issue of cellular towers. Commissioner Prince explained that the City of Lake Oswego is gathering information in order to revise its ordinance to be more restrictive in the number of communication towers that are approved. Mr. Wheeler explained that the League of Oregon Cities has organized a workgroup that is investigating various information in order to design a model ordinance for siting cellular towers. Canby is part of the group that is working towards that end, he added. When something is published, staff will bring it before the Commission for discussion and action. Commissioner Stewart explained that ODOT is very concerned about the number of towers that are placed on or near major arterials.

VI. PUBLIC HEARINGS

ANN 97-01, an application by Shimadzu U.S.A. Manufacturing, Inc. [applicant] and Ray L. and Irene E. Burden [owners] for approval to annex 58.47 acres into the City of Canby. Fifteen (15) acres will be reserved as the Logging Road Industrial Park, Phase 2, in the southwest corner of the site. This phase of the Logging Road Industrial Park will be accessed from S.E. 4th Avenue. The balance of 43.47 acres will remain in nursery production. The property is located east of the Logging Road, north of S.E. 4th Avenue [Tax Lots 700, 790, and 1700 of Tax Map 3-1E-34].

Chairman Ewert reviewed the hearing process and procedures. He referred to the applicable criteria posted on the wall and on page 2 of the staff report. Other than visiting the site but coming to no conclusions, no ex-parte contact or conflicts of interest were indicated.

Mr. Wheeler presented the staff report. He explained that the applicant is requesting approval to annex approximately 58 acres in Phase 2 of the Logging Road Industrial Park, into the City. Mr. Wheeler further explained that 3 tax lots are involved because the configuration of the lots were such that none of the lots were configured in such a way as to meet the applicant's requirements for 15 acres to develop industrially. Originally, the applicant only intended to annex a newly adjusted Tax Lot 790, but the County would not permit the lot line adjustment necessary to create the 15 acre parcel unless the property was annexed into the City. As time is of the essence and the property is located in Clackamas County, where rules for lot line adjustments are very time consuming, the applicant is making contemporaneous applications for annexation of all three lots and lot line adjustments, under the City's regulations, to create the required 15 acre parcel. The

newly created 15 acre parcel would be zoned Heavy Industrial, in accordance with the Comprehensive Plan, and the remaining acreage would be zoned Agricultural and remain in production of nursery stock until future development.

Mr. Wheeler explained that the majority of the lots are Priority "B," with a small portion designated Priority "C" for priority annexation. There are only approximately 10 non residential acres in the Urban Growth Boundary, located east of the Logging Road and Highway 99-E, which are designated Priority "A," and would be zoned commercial, manufacturing upon annexation. Mr. Wheeler further explained that there are no industrial properties in the Urban Growth Boundary, yet to be annexed, that are designated Priority "A." Therefore, for industrial type land to be annexed, it would have to be Priority "B" or Priority "C." A small eastern portion of Tax Lot 1700, near S. Walnut Street, is designated Priority "C" and is proposed for annexation only because it is attached to a parcel needed for this development.

Access to the site and utilities to the site will come from an extension of S.E. 4th Avenue, accessing onto S. Redwood Street. The road extension will be an overpass over the existing Molalla Rail spur and Logging Road, which will help industrial traffic to and from Phase 2 of this industrial park to avoid crossing the Molalla Rail spur at Township Road. The annexation will help fund the overpass project through an Advanced Financing District comprised of properties which will benefit from the road extension, to be paid at time of development.

Applicant

Jim Zupancic, 1300 S.W. 5th, Portland conveyed Mr. Fujimoto's apologies for not being in attendance. He offered, on behalf of Shimadzu, friendship and cooperation to establish a very positive and constructive relationship in this community. Shimadzu wishes to approach this project, he explained, with a spirit of openness and directness. Shimadzu develops a full range of scientific analytical instrumentation, he explained. At present, the plan is to assemble, not manufacture, the chromatograph at this location, which analyzes the chemical composition of certain substances. Shimadzu, he added, is extremely environmentally conscious and much of its equipment measures environmental contamination for other sites. In the future, Shimadzu is considering additional assemblies, and the potential for research and development as well. Mr. Zupancic concurred with the staff report and urged the Commission to adopt staff's recommendation.

Proponents

Ray Burden, 23230 S. Highway 99-E stated that Shimadzu would be a very good addition to Canby. Although this is some of the best agricultural land in the County, Mr. Burden stated that if it had to be developed, this is the best way to develop it for the community.

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 road overpass and agreed it was advantageous to the City that such overpass handle heavy industrial traffic and divert it away from residential neighborhoods.
2. The Commission discussed the cost of the overpass. Mr. Wheeler explained that it was part of a \$755,000.00 loan/grant package which would be funded through an Advanced Financing District. The loan portion of the financing package is \$127,000, half which would come from the industry and half from the Advanced Financing District.
3. Access at this area was discussed. Mr. Wheeler explained that there is a culvert being proposed under the overpass, with a probable 8 foot walking/bike path included to keep the pedestrian crossing open and accessible. At this point in time, there have been no drawings submitted for this path. Emergency access is also being considered onto the Logging Road further north (Canby Business Park).
4. The Commission asked whether the project includes hazardous materials like gasses or high pressured potential pollutants. Mr. Zupancic explained that there were no significant quantities of such materials involved and that Shimadzu would be working very closely with Clackamas County to review those issues, and with the Fire Marshal. Mr. Zupancic further explained that this is as clean a no-risk business that could be sited in this zone.
5. The Commission discussed the availability of jobs for local residents. Mr. Zupancic that there would be many jobs available for qualified local people.
6. The Commission discussed emergency access. Mr. Wheeler explained that the Fire Marshal did not request a second emergency access to this site, although the applicant will be obtaining a temporary construction access until the overpass is completed.

Commissioner Keller moved to recommend that City Council approve ANN 97-01 with the following understandings:

1. The zoning classification for the property upon annexation will be M-2 [Heavy Industrial] for the 15 acres and right-of-way dedication lands, and Ag [Agriculture] for the remaining lands.

2. All City and service-provider regulations are to be adhered to at the time of development.

Commissioner O'Shea seconded the motion and it carried unanimously.

CUP 97-01, an application by Rob Petit [applicant] for approval of a Conditional Use Permit to locate a gymnastic center in Building #3 of Bruce Broetje's industrial complex located at 365 S. Redwood Street. This project will consist of the relocation of an existing use at 1000 S. Ivy [Tax Lot 1806 of Tax Map 3-1E-34C].

As everyone in the audience was present when Chairman Ewert reviewed the hearing process and procedures, he did not reiterate them. He asked if any Commissioner had ex-parte contact or conflict of interest and, other than visiting the site but coming to no conclusions, none was indicated. He then directed the audience's attention to the criteria posted on the wall and on page 2 of the staff report.

Mr. Vasquez presented the staff report. He explained that this application is a follow-up to application TA 96-02, where the applicant requested that commercial/recreational uses be included as conditional uses in the M-1 Industrial Zone. This application requests approval to physically locate in Building #3 of Bruce Broetje's industrial complex located at 365 S. Redwood Street. A review of the history of this complex indicates that two of Mr. Broetje's building are already occupied, prior to bringing the buildings into full compliance with building codes or some of the conditions of approval for the development [DR 93-08 and DR 94-05]. In view of that, occupancy of Building #3 should not be permitted until all previous conditions of approval have been met and the buildings are brought into compliance. Mr. Vasquez drew the Commission's attention to the recommended conditions of approval #1 and #2, which deal with meeting building code requirements for all three buildings.

In his search for a new, larger location, Mr. Petit has found a shortage of large local commercial building facilities. Because Light Industrial development standards allow for larger warehouse-type structures which would provide adequate area and height for his facility, the applicant is hoping to locate on this site. Given the layout of the development, forty-nine parking spaces are provided. Buildings #1 and #2 require 28-1/2 spaces. In calculating parking for Building #3, staff finds 20-1/2 spaces are needed.

Applicant

Rob Petit, 100 S. Ivy Street explained that he was aware of Mr. Broetje's noncompliance issues. He explained further that his dilemma was such that he has already given notice of his intention to leave the facility on S. Ivy. Mr. Petit then described the attributes of gymnastics and all it offers to the children of Canby. Gymnastics offers children the chance to excel at an individual sport as opposed to team sports, improving their self-image

and enhancing their self-confidence, he explained. It teaches them structure, and they can progress at their own rate. Additionally it builds confidence, teaches them social skills such as waiting in line, taking turns, listening, sharing, and teaches them self-responsibility, etc. The move to the new site would improve the training possibilities by installing inground pits and ensure safer conditions. Furthermore, Mr. Petit explained that the proposed new site would be much safer. Due to the size of the present 4,500 square foot building, a lot of the equipment overlaps and can be dangerous, parking on S. Ivy is not sufficient, and the spectator seating area is too close to the bars. Mr. Petit then read the Champion Gymnastics goals and priorities, which include safety issues and building childrens' confidence. In addition, Mr. Petit stated that many of the students come from Wilsonville, Woodburn, Molalla, etc. When those parents drop off their children and shop in Canby, it benefits the Canby economy. He urged support for the application.

Proponents

Meg Doxtator, 7837 S.W. 4th Avenue, Portland 97219, U.S.A. Gymnastics State Chairman stated that she supports the application. She praised Mr. Petit as a good manager and business man. Ms. Doxtator was pleased to inform the Commission that In 1995, Mr. Petit was voted "Coach of the Year." Furthermore, Ms. Doxtator pointed out that because parents usually just drop children off, there is rarely any parking problems. Because competitions are held exclusively on weekends, there would be no parking conflicts as the heavy demand would take place on Saturdays. Many gymnastic centers are located in light industrial buildings, which are really conducive to the sport, Ms. Doxtator added, due to high ceilings and wide expanses of floor space. Inground pits are a good safety tool, Ms. Doxtator stated, and Mr. Petit has requested permission to install them already. She urged the Commission to approve the application.

Kate Gruetter (no address given) stated that 3 of her children are enrolled at Champion Gymnastics. She concurred with all previous testimony, adding that her children have gained so much self-confidence from the gymnastic classes they attend, more so than any other classes or lessons they've taken. Mrs. Gruetter offered to park down the road until the parking area is paved, and added that she lives in Molalla and shops in Canby.

Dr. Don Perman, 249 NW 3rd Avenue stated that the new facility is needed very badly to handle the growth that is taking place at Champion Gymnastics. From ages 3 to 8, gymnastics is critical for child development, he added.

Darna Burton, 1435 S. Birch Ct. stated that she is the coordinator for Champion Indoor Park, which is geared for children who are younger than school-aged, who play at Champion Gymnastics. Mr. Petit permits them to use all the equipment at his excellent facility and she supports the application and urges the Commission to approve it.

Misty A. Baer-Forsman, 11298 S. Bremer Road stated that she has been employed at Champion Gymnastics for a number of years. She pointed out that gymnastics is a year-round sport, as opposed to seasonal sports. Further, she explained that all coaches at

Champion Gymnastics are safety-certified. Due to the enormous rate of growth at Champion, a larger facility is imperative. The present facility lacks the space to coach the growing number of teenaged gymnasts in the various programs, she added.

Evelyn Murphy, 2334 "C" Street, Hubbard 97032 stated that she concurs with all previous testimony. Her daughter, who has been a gymnast for 3 years, has made great strides in her self-esteem, she added. Furthermore, after dropping her daughter off, she spends the time shopping in Canby, she explained. Mrs. Murphy added that most of the gymnastic classes and meets are held during non-business hours, which should alleviate concerns about parking because there will be excess parking in the complex during off-hours. She encouraged the Commission to approve the application, especially as there are no other gymnastic opportunities available for children in the Woodburn, Hubbard, Aurora, Oregon City area.

Dave Hoover, 1300 S. Ivy stated that he is speaking on behalf of his wife, Georgia, also, and they concur with all previous testimony. He explained that Rob Petit has moved to different facilities 4 times due to the growth of the gymnastic center participation. Of all the choices available, this site appears to be the best when considering future growth and safety issues.

Opposition

None

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

1. The Commission discussed the parking lot surface. Mr. Vasquez explained that the previous Broetje applications delineate the requirement for hard-surfacing the driveway in the conditions of approval.
2. The Commission discussed the previous conditions of approval that have not been met. Mr. Vasquez explained that building code requirements for occupancy have not been met for Buildings #2 or #3, nor have all the site improvement requirements for paving, landscaping, striping, or signage.
3. The Commission discussed class size and frequency. Mr. Petit explained that two pre-teen recreational classes are held at the same time, with a maximum of 10 students in each class. Some parents carpool and some just drop off the children and pick them up after class.
4. The Commission discussed competitions. Mr. Petit explained that some of the competitions draw people from all over the state. Approximately 4 competition events are held each year, with approximately 40 people attending each sessions, and the sessions do not overlap, he explained.

5. The Commission discussed parking and agreed that since meets and classes are held during non-business hours and weekends, the center could avail itself of the shared parking spaces.
6. The Commission discussed the site location and agreed that it is appropriate to site the gymnastic center in this zone.

Based on the findings and conclusions contained in the staff report dated December 27, 1996, on testimony received, and on Commission deliberations, **Commissioner O'Shea moved to approve CUP 97-01 with the following conditions:**

1. Prior to the occupancy of Building #3 all conditions of approval set forth by DR 93-08 and DR 94-05 shall be met.
2. Prior to the occupancy of Building #3, all three buildings shall meet all of the building code requirements for the businesses that are occupying them. Construction of the paved area of the property, including all areas surrounding Buildings #1, #2, and #3 shall be approved by the Canby Public Works Department.

Commissioner Prince seconded the motion and it carried unanimously.

The Final Order for **CUP 97-01** [Petit] was read and considered. **Commissioner Stewart moved to approve the Final Order to CUP 97-01, as submitted. Commissioner Prince seconded the motion and it carried unanimously.**

VAR 97-01, an application by Todd and Nancy Lucich [applicant/owner] for approval to construct a 12-foot wide gravel driveway from N.W. Territorial Road to the homesite, in variance to an order dated August 24, 1992 requiring a 20 foot paved driveway [Tax Lot 203 of Tax Map 3-1E-33BB].

As everyone in the audience was present when Chairman Ewert reviewed the hearing process and procedures, he did not reiterate them. He asked if any Commissioner had ex-parte contact or conflict of interest and, other than visiting the site but coming to no conclusions, none was indicated. He then directed the audience's attention to the criteria posted on the wall and on page 2 of the staff report.

Mr. Vasquez presented the staff report. He explained that the applicant is requesting approval to modify condition of approval #8 of MLP 92-06, which stipulated that an access strip to the subject parcel be paved for a full 20 foot width to 401 N.W. Territorial Road, in anticipation of the extension of N. Grant Street in the future. The applicant would like to construct a 12-foot wide gravel driveway instead. The subject property lies

north of a 10-acre parcel that is owned by the Canby School District. Previous to this application, the applicant submitted a building permit application which included a site plan indicating a 20 foot paved access strip.

Mr. Vasquez then reviewed the variance criteria with the Commission, pointing out that variances may be granted only upon determination that all the conditions of granting a variance are met. Using that criteria for making a recommendation, staff found that three of the six criteria have not been met. In addition, staff found that the granting of the variance would be materially detrimental to the intent of the Land Development and Planning Ordinance with regard to development of flag lots and the provision for providing access drives. Section 16.64.040(1)(2) states that flag lots with access strips over 100 feet in length are to be a minimum of 20 feet wide and shall be paved for the entire width from connection with the public street to the main area of the lot. With regard to criteria "B," the applicant argued that adjacent property owners are allowed to use gravel driveways. However, staff found are "grandfathered" because they existed prior to the existence of the Zoning Ordinance, or are in Clackamas County and are built to County standards. Further, staff finds that the variance requested is not the minimum variance that will alleviate the hardship, in that the applicant is requesting that both the width and surface of the driveway be modified.

After the date of publication of the staff report, the Fire Department returned its Request for Comments which stated that its approval would only be in effect until the extension of N. Grant to N.W. Territorial, at which time all surfaces would have to meet City standards for a paved road. Comments received from the County indicated that specifications for constructing an apron from the driveway to the connection to N.W. Territorial must meet County standards. Because the applicant has not met all the criteria, staff recommends denial of the application.

Applicant

Todd Lucich, 679 S. Lupine stated that he recently returned to Canby from Dallas, Texas. Mr. Lucich explained he has been totally unable to get any timelines with regard to the extension of N. Grant Street. In applying the test of reason to this situation, Mr. Lucich explained that it did not appear reasonable to construct a 20 foot wide paved driveway, for 233 feet, when the possibility exists that it could be torn up in a year or two, especially if the school district property is sold and developed. The Fire Marshal concluded that a gravel driveway would be acceptable because, under more usual circumstances, single family residential driveways are 12 feet wide. Mr. Lucich explained that he has provided for a hammerhead for vehicle turnaround with a 35 foot turning radius, large enough for fire trucks. Further, Mr. Lucich explained that he was aware of the conditions attached to the site when he purchased it. As the site is surrounded by the filbert orchards belonging to the school district and IFA land, the issue of dust should not be a consideration in making a favorable determination, he stated. After discussing this issue with the surrounding property owners, none were found to have objections to a gravel driveway, which he intends to maintain meticulously, he added. Mr. Lucich requested approval of the variance application.

Proponents

None

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 uniqueness of this lot, in that it is the only flag lot in Canby with a major street planned for extension through it.
2. The Commission discussed the definition of "all-weather" surface. Mr. Wheeler explained that, for the Fire Marshal's purposes, a gravel driveway that meets the 50,000 lb. load is acceptable, although it must be maintained for emergency service access all year round.
3. The Commission discussed the reality of N. Grant actually being extended through this property to N.W. Territorial. Mr. Wheeler explained that it is the City's intent that N. Grant Street would extend through the school district's property to the south and that the school district has been notified of this intent through its Long Range Planning process.
4. The Commission discussed the logistics of dividing the subject site in the event N. Grant Street is extended to N.W. Territorial. Mr. Vasquez confirmed that the site would basically be cut in half, adding that the conditions of approval for the minor land partition provided for the premises to be tied into the City sewer system because the extension of N. Grant would run over the existing septic tank.
5. The Commission asked if the applicant was the property owner at the time of partition. Mr. Vasquez explained that the applicant recently purchased the subject site.
6. To clarify the intention of the Ordinance requirements, Mr. Wheeler explained that, with regard to flag lot driveways, they must be 20 feet wide and paved when they are in excess of 100 feet. Although the Commission preferred not to set a precedence by approving a narrower access road, it agreed that this was an unusual situation in that the timing of the extension of N. Grant is very uncertain. Additionally, the Commission expressed desire to save the old growth Maple tree. Mr. Wheeler explained that when there are two flag lot accesses adjoining each other and shared, they are usually 10 feet apiece, for a total of 20 feet. A single flag lot access, less than 100 feet, requires a 12 foot wide access, while if it is more than 100 feet long, the access is required to be 20 feet wide. The Commission agreed to approve a 12' wide paved access drive, with no additional access to be taken from the subject access road unless it is brought up to City standards for flag lot driveways in excess of 100 feet, and must meet County access requirements.

7. The Commission discussed the comments received from the Public Works Supervisor, who did not see any problems connected with a gravel driveway, although he stated that the County requirements must be met for a paved apron 20 foot wide at N.W. Territorial, narrowing down to 12 feet at the property line. Meeting these requirements would prevent gravel from channeling from the driveway onto N.W. Territorial Road. The applicant stated that he interpreted the comments to mean that the apron was to be 20 feet long from Territorial Road.
8. The Commission discussed the future of an old growth Maple tree at the entrance to the subject site, on the east side. The applicant indicated he would like to retain the subject tree, and other trees, but if the apron had to be 20 feet wide at that point, it would have to be removed.

Commissioner Stewart moved to approve VAR 97-01 due to the uniqueness of the situation involving the possible extension of Grant Street in the indefinite future, with the following conditions:

1. The applicant shall construct a twelve (12) foot wide asphalt paved access drive for the full length of the strip to the main body of the lot.
2. The access strip shall meet all City and County required construction improvement standards for providing a paved apron and access onto N.W. Territorial Road and special attention should be given to allow for the retention of the mature trees, where possible.
3. There shall be no second access onto the 12' wide paved drive unless the drive is brought up to City standards (20' wide paved) for access roads for flag lots in excess of 100 feet in length.

Commissioner Keller seconded the motion and it carried unanimously.

SUB 97-01, an application by Dan Anderson for approval to develop a 5-lot subdivision, on an approximately 13 acre parcel located in the Logging Road Industrial Park, on the south side of the transition of S.E. 3rd Avenue and S. Redwood Street. The proposed subdivision will divide the 13 acre parcel into 5 smaller lots with the anticipation of attracting light industrial users needing smaller acreage. The five parcels will consist of a 4 acre lot, a 4.5 acre lot, two 2-acre lots, and a .5 acre triangular lot. The site is located at the transition of S.E. 3rd Avenue and S. Redwood Street, south of S.E. 3rd Avenue and north of S.E. Township Road [Tax Lots 1800 and 1802 of Tax Map 3-1E-34C].

As everyone in the audience was present when Chairman Ewert reviewed the hearing process and procedures, he did not reiterate them. He asked if any Commissioner had ex-parte contact or conflict of interest. Commissioner Keller explained that, as a realtor, he might have a potential conflict of interest if he is involved in the buying and selling of real estate 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. Chairman Ewert then directed the audience's attention to the criteria posted on the wall and on page 2 of the staff report.

Mr. Vasquez presented the staff report. He explained that the subject site was annexed into the City in 1991 [ANN 91-05]. The applicant proposes to subdivide the 13-acre parcel into 5 parcels and combine Parcel "G," a .039 acre parcel, with Parcel "A" in order to fulfill the conditions of a recent lot line adjustment [DR 96-12/CUP 96-04/LLA 96-01] that was approved on October 28, 1996. Mr. Vasquez explained that this property is part of the benefitted area of the Logging Road Industrial Park road improvements project. Those improvements include the S. Pine Street/S. Redwood Street road connection between Highway 99-E and Township Road, sewer mains, and water mains to service the southeastern quadrant of the City and the subject property. An advanced financing charge will be assessed to the properties in this development for the public improvement of S. Redwood Street, which was constructed by the City for the purpose of commercial and industrial development of both the subject property and neighboring properties. Service providers have indicated that adequate facilities and/or services are available to the subject site. Sewer is available on S.E. 3rd Avenue to service all the parcels in the proposed subdivision. Storm water drainage will be handled on-site, with the County reviewing storm water management for each individual lot upon its development.

The subject site, although zoned M-1, Light Industrial, in the Comprehensive Plan, is in agricultural use. It is surrounded by light industrially zoned properties and high density residentially zoned properties. There is an existing hazelnut orchard and the Orchards Apartment complex to the west; industrial land to the north, owned by the applicant, and scheduled for development as the Canby Business Center; light industrial land to the east; and residentially zoned County land to the south, across S.E. Township, which is designated as High Density Residential in the Canby Comprehensive Plan.

The subdivision under consideration will intensify the number of industrial uses that will be located near residential properties to the west and south. Restricting the size of the industrial uses will offset the adverse effect that occurs from increasing the number of industrial uses in the subdivision.

Four parcels, "A," "B," "F" and "G" will be accessed from S.E. 3rd Avenue and S. Redwood. Parcels "C" and "D" will be accessed from S.E. Township Road and, although the County has no established standards regarding access, it has recommended that both parcels share a single ingress/egress, preferring that access drives along arterials be spaced at least 500-600 feet apart. As the City does not access standards for access drive spacing, other than spacing from an intersection to an access drive, this issue will be further

reviewed during the Site and Design Review application hearings for Parcels "C" and "D." Both S.E. 3rd and S. Redwood are improved roadways with sidewalks in place. S. Township Road is a County road that has been designated as a minor arterial. A 70 foot right-of-way, with a constructed pavement width of 50 feet, curb-to-curb, will be required. Clackamas County will require improvements along the property's frontage on S. Township Road, to consist of half-street improvement, a six foot sidewalk, standard curbs, a six foot bike lane, storm sewer, and pavement tapers. The County will also require dedication of right-of-way along S. Township to permit construction of the required improvements in order to implement the County's standards for arterial streets. The Canby Utility Board has indicated that two utility poles will have to be relocated as part of the street improvements. Two major intersections, S. Pine/Highway 99-E and S. Redwood/S.E. Township, located near the subject site, are not considered to be problem intersections. Staff recommends approval, with conditions.

Applicant

Dan Anderson, 1056 NE 8th Place stated that the shape of the parcels (long and narrow) restrict locating larger businesses from locating on these lots. Further, Mr. Anderson explained that Mr. Hester's comments were strictly suggestions, and that there are cheaper ways to get approved sewer service to the site.

Proponents

None

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 February flooding over the road. Mr. Wheeler explained that it was silt runoff that clogged the drain in the street and caused the flooding, which has since been alleviated and stormwater drainage will be handled on-site upon development.
2. The Commission discussed access from Township Road with regard to traffic issues, the condition of the road, etc. Mr. Anderson explained that if access was not permitted from Township, there would have to be a 1500 foot flag lot to access.

3. The Commission discussed common access for Parcels "A" and "B" on S. Redwood Street. Further, the Commission discussed the possibility of extending S. Pine, or connecting another street to meet the western property line of Parcels "A" and "B." Mr. Wheeler explained that the only possibility of another access would be across the southern portion of the Borge's property, which lies to the western portion of Parcel "A." The Commission agreed it would not be advantageous to route truck traffic along S. Pine Street.
4. The Commission discussed half-street improvements. The Commission agreed that when either Parcel "C" or Parcel "D" was developed, half-street improvements should be constructed for both parcels.
5. The Commission discussed Parcel "F," the half acre parcel in the northeast section of the subject site, and questioned whether it was a developable parcel. The applicant explained that it could be attached to another parcel or developed separately.

Based on the findings and conclusions contained in the staff report dated December 27, 1996, on testimony at the hearing, and on Commission deliberations, **Commissioner Dillon moved to approve SUB 97-01 as recommended by staff. Commissioner O'Shea seconded the motion.**

The Commission discussed the street half-street improvements on S. Township Road. It was agreed that during deliberations the Commission decided to include a condition whereas when either Parcel "C" or Parcel "D" was developed, half-street improvements shall be constructed for both parcels.

Commissioner Dillon amended his motion to amend proposed condition #14 to state that when either parcel was developed, half-street improvements would be included across both parcels' frontage along S. Township Road. Commissioner O'Shea concurred and amended his second to include that condition.

SUB 97-01 was approved with the following conditions:

For the Final Plat:

1. Utility easements shall be provided as follows:
 - the interior subdivision lot lines shall be six (6) foot (excepting the lot line between Parcels a and C, which shall have no easement);
 - the exterior subdivision lot lines, and street frontages shall be twelve (12) foot.
2. An easement for the sewer line connection from S.E. 3rd Avenue shall be provided and approved by the Public Works Supervisor, if the sewer line is located outside of the standard utility easements conditioned above (#1).

3. The final plat shall reference this land use application - City of Canby, File No. SUB 97-01, 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.
4. 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.
5. The subdivision development fee, as provided in the Land Development and Planning Ordinance Section 16.68.040(G), shall be paid.
6. Parcels A and G shall be shown combined (as one lot).

Prior to the signing of the Final Plat:

7. Dedication of right-of-way property necessary for the improvement of S.E. Township Road shall be recorded prior to the signing of the final plat.
8. An 8" sewer line and laterals shall be constructed to service Parcels A through D, in accordance with City standards. The design and construction of the sewer line and laterals shall be approved by the Public Works Department.
9. 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.

Notes:

10. 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.
11. 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).

In conjunction with further development:

12. Any development of the properties must be preceded by Site and Design Review approval.

13. A traffic study shall be required with the application for development of Parcels C and D.
14. The half-street improvement to S.E. Township Road will be required with the development of Parcel "C" and/or Parcel "D." The improvements will be required to meet the City's and Clackamas County's specifications and standards.
15. Shared access is recommended for Parcels C and D.
16. A Street Construction and Encroachment Permit will be required for either Parcels C or D prior to development of either parcel.
17. At the time of development of either Parcel C and/or Parcel D the required half-street improvements for S.E. Township Road will be completed for both parcels.

The motion 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, which is located on the south side of S.E. 13th Avenue east of S. Ivy Street and west of S. Redwood Street [Tax Lot 2200 of Tax Map 4-1E-3].

As everyone in the audience was present when Chairman Ewert reviewed the hearing process and procedures, he did not reiterate them. He asked if any Commissioner had ex-parte contact or conflict of interest. No ex-parte contact or conflict of interest was indicated by any of the Commissioners.

Mr. Wheeler explained that Pahlisch Duncan Homes has appealed staff's interpretation regarding setback requirements and restrictions for single family lots. The side yard setbacks are 7 and 10 feet, respectively, and eaves are permitted to encroach no more than 2 feet into the setback. Staff interprets the Ordinance setback restrictions to include no additional encroachment from parts of the house structure into the setbacks. The Commission upheld staff's interpretation at the November 25, 1996 meeting. Pahlisch Duncan Homes requested, at the December 9, 1996 meeting, a rehearing in order to permit the applicant to submit information, basing the request on the fact that Pahlisch Duncan did not receive notice of the November 25, 1996 hearing. Section 16.04.680 defines yard to mean an open space on a lot which is unobstructed from a point 2-1/2 feet above the general ground level of the graded lot upward. Staff recommends no changes be made to the current interpretation, so as to maintain unobstructed space around homes.

Applicant

Mike Duncan, 15100 SW Koll Parkway, Suite E, Beaverton stated that he views this request as one of the least significant issues he has ever presented to a Planning Commission. Further, he explained that the applicant is requesting that 7 words be added to Section 16.16.030(C), which would allow fireplaces **and garden windows (but not bay windows)** to overhang into the setback no more than 2 feet. A list of builders who support the inclusion of fireplaces and garden windows within the side yard setbacks was submitted to staff, he added. He pointed out that heat pumps, fences, and RV covers are allowed in the side yard setbacks, adding that it would be consistent to allow fireplaces and/or garden windows (excluding bay windows) in the same space, as they add a positive aesthetic value to the visual area around homes. On a drawing, Mr. Duncan demonstrated the positive aesthetic difference between a plain wall and one with either a chimney or a garden window. He added that a chimney or garden window would be unobtrusive and would not impact anything. Mr. Duncan further explained that each lot has a maximum of 200 (one story) - 400 (two-story) square feet of living space that could be built on, which would gain more density of living area without increasing the number of units. Two more feet would provide the most square footage on the lot and the best aesthetic and living conditions for homeowners. Support for the amendment comes from builders, developers, and homeowners. Furthermore, Pahlisch Duncan sampled eleven other municipalities in order to demonstrate that the request is not unusual, excessive, or inappropriate. Of the eleven municipalities surveyed, nine had 5 foot side yard setbacks and one had 6 foot side yard setbacks and one had a 5 foot minimum on one side, for a total of 13 feet on both sides. All typically allowed the requested additions into the setback. The primary benefit of the additions to the side yard setbacks would be to the homeowners. There would be no negative impacts on the community, he added.

Dennis Pahlisch, 15100 SW Koll Parkway, Suite E, Beaverton 97006 stated that Canby is much more restrictive than most other communities. He pointed out that builders are permitted, in Beaverton, to build 40 foot wide homes on 50x100 lots, with 5 foot setbacks. Fireplaces are permitted to intrude into the 5 foot setbacks. In comparison, the narrowest lot in Canby is 60x120, with a 43 foot wide house. Being unable to extend the 2 foot fireplace into the setback would require a 2-foot reduction in the width of the house, to 41 feet. If the purchaser requests a second fireplace, the width of the home would be reduced to 39 feet. The only benefit of the amendment to the Ordinance is that the developer could build a nicer looking home for the end user, not a cost benefit for the builder. Builders are facing new Code restrictions for shear analysis and earthquakes and will have to put wider panels on the homes. The wider panels require decent width size to get shear. Furthermore, it is becoming commonplace for home buyers to request two gas fireplaces due to the heat compensation that a gas fireplace can provide to a home and because of the security gas offers, what with the flooding and power outages Oregon has experienced lately. With 2 gas fireplaces, a home can be adequately heated, without adding a lot of pollutants to the air, which has been a big selling point. Mr. Pahlisch suggested that, rather than leaving the number wide open for protrusions, the Commission could put a square foot limitation or a cubic foot limitation on the protrusion, to minimize the impact into the setback.

Proponents

Dave Anderson, 641 N. Baker Drive stated that when he was on City Council, side yard setbacks were reduced. Previously side yard setbacks had been 10 feet from the furthest projection of the house to the property line, which began at the outside of the rain gutter. This resulted in huge side yards which were rarely used, so the Council reduced it to 7 and 10 feet, measured from the foundation line of the house. Mr. Anderson stated that he concurred with Pahlisch-Duncan's reasonable request, which is beneficial to the homeowner. He pointed out that a 2 foot fireplace will not extend further than the eave of the house, nor will the garden window, and the side yard setbacks will remain 7 and 10 feet. Mr. Anderson stated that Canby has the most restrictive side yard requirements in the State of Oregon, which is further reason to approve this request.

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

1. The Commission indicated the desire not to turn Canby into a Beaverton-type city.
2. The Commission discussed the current setback requirements and agreed they are not too intrusive. The Commission discussed other permitted intrusions into the side yard setbacks. Mr. Wheeler explained that the wording and definitions for setbacks in the Ordinance are not specific when it deals with fireplace inserts and garden windows. He reminded the Commission that the issue before it was not an application for an amendment to the Ordinance before the Commission, but an interpretation of what is currently in the Ordinance. The Commission agreed to try to work toward an ordinance change that would specifically delineate what can and cannot intrude into the setbacks in the future, rather than set a precedent by approving each request individually.
3. The Commission agreed that the developer was aware of the setback limitations when he submitted his subdivision application. The applicant explained that he met with the building inspector when he bought the property, and discussed setbacks. Specifically, the intrusion of fireplaces and eaves into the setback were discussed, as they are the standards by which he builds elsewhere. The applicant added that this interpretation was not made specifically for Tofte Farms, but for all builders in Canby. He reminded the Commission that it actually represents the needs of the people who purchase homes in Canby, who will benefit from the ordinance change, not the builder. Mr. Wheeler reminded the Commission that the City has interpreted and enforced the setback portion of the ordinance consistently for quite some time. At one point, a gas insert that was added to an addition and intruded into the setback, had to be removed.

4. The Commission agreed that amending the ordinance to permit less space between homes as more is crammed onto the lots, could result in an environment that includes very small yards, where homes appear crammed together. Further, the Commission agreed that Canby is a desirable place to live due to the restrictive ordinance which is a result of careful planning that ensures it remains the way the residents want it to, based on feedback received.

Based on the staff report, on testimony at the hearing, and on Commission deliberations, **Commissioner Stewart moved to uphold staff's interpretation and deny the appeal of INT 96-01. Commissioner O'Shea seconded the motion and it carried 4-2, with Commissioners Prince and Dillon voting nay. Commissioner Prince determined that things like a heat pump were similar or even more intrusive than a fireplace, and Commissioner Dillon determined this was a very grey area in which to make a decision.**

VII. OLD BUSINESS

Regarding **VAR 96-01**, Mr. Wheeler explained that the conditions of approval required that the "carriage house" must comply with the Uniform Building Code requirements. Staff received a letter from the applicant stating that the conditions have been met, when actually only the utility services have been approved. As no structural plans have been submitted for review by the Building Inspector, staff forwarded a copy of the information that is required for plan review. The applicant was also informed that a copy of Clackamas County's certificate of occupancy, which is the final inspection approval for the electrical and plumbing in the "carriage house" is required. The Commission agreed the conditions were very clear and must be met.

Regarding **Township Village VIII**, Mr. Wheeler explained that there is a 40 foot right-of-way between the connection from the corner of SE 10th/S. Lupine to S. Ivy. A pathway was constructed just north of the right-of-way. Based on a letter the City received from Beaver Homes, who is building a home on Lot 104, Mr. Wheeler asked the Commission could clarify whether or not the developer will be required to construct a fence along the pathway, adjacent to the City right-of-way. Paul Seifert, of Beaver Homes, pointed out that not only do children use the walkway, but that people are driving on the 10 foot paved walkway, using it as a short cut between S. Ivy and S.E. 10th Avenue, creating a very unsafe condition. He requested that the Commission require that the Township VIII developer construct a fence on both sides of the 10 foot walkway, similar to other walkways in Township Village VIII, and place a barrier on one or both ends to prohibit auto traffic on the paved walkway. Chairman Ewert explained to the new Commissioners that when Township Village was laid out, the City Council accepted the deeded right-of-way because, at that time, it felt that S.E. 10th should be able to eventually connect to S. Ivy.

After a short discussion, the Commission agreed that if the homeowner on Lot 105 wanted to construct a fence at his property line, that would be fine, but that the City would not condition that the developer construct fences along the walkway, although barriers to prevent auto traffic on the walkway should be installed.

VIII. DIRECTOR'S REPORT

Mr. Wheeler reported that the City cut power and water services to Bruce Broetje's property in the Industrial Park. In May, City Council gave Mr. Broetje a deadline to complete all site improvements by October 31st which, after a request for an extension in September, it was extended to December 31st. The improvements were not completed by December 31st, and building #2 was occupied without meeting occupancy codes. After notice of service cutoff was given, Mr. Broetje's attorney met with City staff, but would not give any assurance, beyond their word, that improvements would be made. City Council was polled individually and agreed to cut off services. Mr. Broetje's attorney filed for a temporary restraining order, which was granted by the court and power and water service were restored. The hearing date is set for January 30.

Mr. Wheeler explained that the Commission should report such things like reading newspaper articles about an upcoming hearing, talking with the Fire Marshal, etc., as ex-parte contacts.

IX. ADJOURNMENT

The meeting was adjourned at 11:55 p.m.

Respectfully submitted,


Joyce A. Faltus