

**MINUTES**  
**CANBY PLANNING COMMISSION**

November 13, 2000  
6:00 PM Workshop/Measure 7 Impacts  
Regular Meeting Followed  
City Council Chambers, 155 NW 2<sup>nd</sup> Avenue

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**I. WORKSHOP**

**PRESENT:** Teresa Blackwell, Jean Tallman, Jim Brown, Geoff Manley, Keith Stewart, John Williams, Planning Director, Clint Chiavarini, Associate Planner, Carla Ahl

John Williams explained that the topic of the workshop had been changed due to the passage of Ballot Measure 7, which requires land owners to be compensated if they are negatively impacted by any rule or regulation enforced upon their property. John explained this measure amends Oregon's Constitution and overrides existing state and local laws. John stated that long range benefits of ordinances and land use regulations could be overridden by short range profits for land owners.

John explained that Federal Regulations are exempt from the measure, but that Oregon programs such as the Salmon Recovery Plan would not be allowed unless the owners were compensated. He explained there would be 90 days from submission of an application to decide if the regulation would be waived or the owner compensated.

John stated that the full impact of the measure is unknown at this time. Prior to the election the state hired ECONorthwest to prepare an evaluation of the financial impact Measure 7 would have if passed. ECONorthwest identified 90 rules/regulations that could trigger compensation, which include but are not limited to comprehensive land use plans and zoning ordinances such as urban growth boundaries, open space preservation programs, setback requirements, density requirements, etc.

There was a discussion regarding how Measure 7 may affect projects that are already underway, should projects be suspended until major questions regarding Measure 7's impacts are answered, or if taking conservative approach to projects would be better. John stated that the City Council will be addressing these issues in their next City Council Meeting.

## II. ROLL CALL

**PRESENT: Commissioners:** Blackwell, Tallman, Brown, Manley, Chairman Keith Stewart

**Planning Staff:** John Williams, Planning Director, Clint Chiavarini, Associate Planner, Carla Ahl

**ABSENT: Commissioners:** Paul Thalhoffer, Corey Parks

**OTHERS PRESENT:** Geoffrey Siebel, Thomas Tracy, Margi Borchers, Toni Tracy, Tom Scott, Darlene Key

## III. CITIZEN INPUT ON NON AGENDA ITEMS

None

## IV. PUBLIC HEARING

NCS 00-03 An application to replace an existing nonconforming structure with a structure that would be more in conformance with existing setbacks.

Chairman Stewart reviewed the hearing process, procedure and format. He referred to the applicable criteria posted on the wall and on page 2 of the staff report. When asked if any Commissioner had a conflict of interest, none was stated. When asked if any Commissioner had ex-parte contact, Commissioners Tallman, and Stewart had visited the site but drew no conclusions. No questions were asked of the Commissioners.

Clint Chiavarini gave the staff report for the property located at 780 S. Ivy. He explained that staff usually approves non-conforming expansions administratively as long as they are consistent with current land use regulations, and the nonconforming aspect of the structure was not made less conforming. He asked the Commission if they would want staff to approve applications such as this one if the structure was made more compliant with existing codes, or if they wanted applications such as this one to come to them for a decision.

Clint stated the applicant was asking to replace a nonconforming 2 story structure located 2' from the property line, with a new 2 story structure that would be built 5' from the property line. Clint explained the code requires a minimum 10' setback when abutting residential property, in this case the abutting property is a parking lot for a church (which

is a conditional use in a residential zone).

Mr. Brown questioned why the structure couldn't be designed to fit within the existing regulations. Clint responded that the structure would be used for the office of an existing mini storage facility, plus the living facility for the on site manager. He explained the facility requires a 20' driveway width, and the applicant had studied the possible configurations and thought this was the best design.

Clint explained curbs and sidewalks were a condition of approval for the Mini Storage Facility, but they have not been built. He stated there was a letter in the file requiring payment be made to the City in lieu of sidewalks, and there is no record in the file that this payment has been made. Clint has recommended that the applicant be responsible for installing curbs and sidewalks along the frontage at the time South Ivy is improved, the applicant shall sign a waiver of remonstrance to cover the cost of these improvements when directed by the City. This condition would be void if the applicant can provide proof of previous payment to the City for this work.

Mr. Stewart opened the Public Hearing

**APPLICANT:** Tom Scott explained that the existing structure is in such need of repair that it is not being occupied at this time, the electrical system, the plumbing system, and the roof are worn out and at this point it makes more sense financially to demolish the structure and then rebuild it. He stated that the proposed structure would be more conforming to existing standards by being 5' from the property line instead of 2', it would be making a bad situation better and that all other code issues would be met.

Mr. Scott stated that he had been asked not to install the sidewalks until other sidewalks in that area were installed, but would be willing to install them at this time if required.

Mr. Brown asked the applicant how he had arrived at the submitted design, and if other designs for 20' structures had been considered. Mr. Scott stated that the structure would serve as the office space for the Mini Storage facility and as the residence for the onsite manager, the applicants had looked at 20' designs but felt none of them produced a product that was livable and didn't shrink things up to the point of losing value for the building, and having an undesirable dwelling.

**PROPOSERS:** None

**OPPOSERS:** None

**REBUTTAL:** None

Mr. Stewart closed the Public Hearing and opened Commissioner Deliberations.

Mrs. Tallman stated that there were several mitigating factors for this application, and believed this design was the best that could be done in this situation, with the adjoining property being a church parking lot, and the design of the structure being an improvement over the existing structure.

Mr. Manley stated he agreed with Mrs. Tallman, and stated the church is not a residential use which makes this a different situation than the code was intended for, he stated the structure would be more conforming than the existing structure and was in favor of the application.

Mr. Brown suggested the code language for 16.52.060 needed to be looked at during periodic review regarding what situations a property owner may apply to the Commission to restore a structure, it currently reads "destroyed by any cause" and he thought the intent of the code was for "acts of God" ( hurricanes, earthquakes, fires, etc.) and the code needs to reflect that.

Mr. Brown stated he had reservations regarding the application since the structure could be designed to fit within the existing setbacks for the property by creating a narrower building, and if a reasonable structure can be built, he did not believe a nonconforming structure should be allowed.

Ms. Blackwell stated that the proposed design was closer to conforming to current setbacks than the existing structure, and that the design was more aesthetically pleasing than the existing structure. She asked if approving this application would be setting a precedent. Clint responded that if the Commission decided staff could only approve applications that strictly adhere to the letter of the code, and everything else would come before the Commission, then a precedent would not be set by approving this application, based on it being adjacent to a designated CR zone in the comp plan, and being adjacent to a parking lot.

Mr. Stewart stated the code precludes what the Commission can force the applicant to do. He agreed this will be a better structure, but as a matter of policy does not believe tearing down nonconforming structures and allowing them to be replaced with nonconforming structures to be a good idea.

Mr. Brown stated that there was nothing that precludes the applicant from building

a conforming structure on the site, it would be narrower but not undoable.

Mr. Scott responded that he wanted to design a house that is a long term investment for the owners instead of a home that would be unlivable for anyone else.

Mr. Manley stated he understood Mr. Brown's concerns, but with the mitigating circumstances of the comp plan and the church use next door, he was agreeable to allowing it to go forward as proposed, without those mitigating circumstances the Commission would need to require the applicant to build a structure that was conforming.

It was moved by Mr. Manley to approve NCS 00-03 as amended by the condition regarding the applicant signing a waiver of remonstrance agreeing to cover the cost of improvements when directed to by the City. Seconded by Mrs. Tallman. Motion carried 4-1 with Mr. Brown voting no.

## V. FINDINGS

**MLP 00-05** An application to divide a lot into two parcels for the purpose of developing an industrial manufacturing facility on one lot.

It was moved by Mr. Manley to approve the Findings, Conditions, and Final Order of MLP 00-05 as written. Seconded by Ms. Blackwell. Motion carried 4-0-1 with Mrs. Tallman abstaining.

## VI. NEW BUSINESS

### CANBY'S NOISE CONTROL ORDINANCE

Mr. Stewart explained that Canby's noise control ordinance has the latest hours allowed by any local municipalities, which enables businesses such as parking lot cleaning companies that use the large vacuum devices to schedule Canby as their last stop of the day since the noise restrictions do not start until 10:00pm.

Mr. Stewart asked the Commissioners to consider if the existing time frame of 7:00am to 10:00pm was appropriate, especially in areas where commercial zones adjoin residential zones, where children and older citizens are trying to get to sleep. He stated he experienced how uncooperative these businesses can be, and that they are well aware of the effective noise ordinance times, which is why they schedule their work here after 9:00pm since they can legally work until 10:00pm.

Mr. Stewart stated that Knight School no longer allows basketball until 10:00pm because they are in the middle of a residential zone and it was inappropriate to have basketball played that late. He agreed with the 7:00am starting time, but felt some thought should go into how late businesses could produce noise in the evenings. Mr. Stewart recommended having the City Council, residents, and some businesses discuss how to mitigate against unwanted sound when you have residential, and commercial areas in close proximity to one another. We have to start thinking about ourselves as a community and having more respect for each other, he gave as an example church services that are allowed to set up amplifying systems in Wait Park that start at 7:00am on Sunday mornings.

Mr. Brown stated part of the problem with looking at the ordinance for most people is that they have no reference for how loud 70 decibels are. He stated he would like to have citizen input, especially from anyone is knowledgeable in the field.

Mr. Stewart stated that if the City is serious about mixing uses, such as businesses downstairs and residences upstairs, this is an area that will need to be addressed. Mr. Brown suggested defining what constitutes a sound barrier, and agreed now is the time to be looking at the ordinance.

Mrs. Tallman agreed that allowing noise until 10:00pm is too late and questioned if 9:00pm was appropriate. Mr. Stewart explained this is an older area of Canby that was built in the early 1900's and businesses have built up around this area, stressing that it is not a case of residence encroaching upon businesses, but the other way around.

## **VII. MINUTES**      October 9, 2000

It was moved by Mr. Manley to approve the minutes of October 9, 2000 as written. Seconded by Ms. Blackwell. Motion carried 3-0-2, with Mr. Brown and Mrs Tallman abstaining.

## **VIII. PUBLIC HEARING**

CPA 00-02/TA 00-02 An amendment to modify several sections of the City's Historic Preservation Ordinance and update relevant sections of the Comprehensive Plan.

When asked if any Commissioner had a conflict of interest, none was stated. When asked if any Commissioner had ex-parte contact, none was stated. No questions were asked of the Commissioners.

John Williams stated that this is the first code amendment/comp plan amendment to come out of the periodic review process. John explained that the Historic Review Board has been around for a few years but there are few designated buildings, one reason being there is not a lot of resources or money to work with.

John explained there were three reasons for reviewing the ordinance.

1. To be eligible for grant money from the Federal Government. He explained that Canby has had a very active Historical Society, but a Historical Review Board is needed to be eligible for Federal money and to make historic designations.
2. The current ordinance is lengthy and complex, the goal is to create a document that is simpler and easier to understand.
3. To remove parts of the current ordinance that is obsolete due to State changes.

John explained some of the other changes affecting this ordinance.

- The number of categories has been reduced to 2, "Landmark" and "District"
- The category of Contributing Resource has been removed and it will now apply to a building or an item in a district.
- An official inventory of property eligible for designation to be created.
- The approval criteria has been consolidated into one list that will apply to Landmarks, Districts, and Contributing Resource.
- The process has been streamlined by the removal of the requirement that the City Council have a Public Hearing.
- Moving the list of conditional uses into a different section of code.

John explained that the Historical Review Board has approved these changes and is recommending the Planning Commission approve the ordinance.

Mr. Stewart explained that he has been involved with 3 versions of the ordinance over the last 5 ½ years and there were a few issues he was concerned with, he hoped to avoid known pitfalls in the future.

Mr. Stewart was concerned that voting members of the Historical Review Board were not required to be residents of the City of Canby. Mr. Stewart stated that City Council Members must live within the City limits, Planning Commission Members must live within the Urban Growth Boundary, and he believes people who make the rules should have to live within the rules.

John explained that rule was unchanged from the previous ordinance, and to change

it would mean the existing Chair Person and one other member of the Review Board would be ineligible to serve. Clint responded that when the Historical Review Board was first started the City had a difficult time finding interested persons to serve on the board, this was a concern with the City Council, but they decided to make appointments based on qualifications and desire, rather than on geographical location. Mr. Manley stated he realized recruiting qualified volunteers is a problem and suggested adopting a requirement that the majority of the Board be required to live within the Urban Growth Boundary.

Mr. Stewart questioned the procedure that allows the Historic Review Board to review and render decisions on all historic landmark and historic district applications, where will the Planning Commission and City Council be involved in the decision making process. John explained that the current procedure requires the board to hold a public hearing, make a recommendation to the Council who then holds a second public hearing to decide to adopt or not, the proposed change would eliminate the need for the second public hearing by the City Council.

Mr. Stewart expressed his concern that the Board would be making land use decisions, and suggested that the Board make recommendations to the Planning Commission. John clarified that this section is unchanged from the existing code. He explained the reasoning behind this section is that the Historic Review Board would have the expertise to make design decisions on applications for alterations and additions to designated historic property. John stated the purpose of reviewing the ordinance is to make the process less onerous to property owners, minimizing steps and encouraging registration.

Mr. Stewart suggested the Historic Review Board would make recommendations to the Planning Commission in regards to partitions, and subdivisions on designated properties. Mr. Brown suggest the Board be used as a service provider, given the opportunity to comment on land use applications with in the Historic Overlay Zone.

Mr. Stewart suggested changing the wording from "the Historic Review Board will act as a coordinator" to "the Historic Review Board will act as a consultant" for projects. John replied that this section of the code had not been changed, but did not see a problem with changing to consultant.

Mr. Stewart questioned the wording of the overlay zone. John explained that the overlay allows for bed & breakfasts, gift shops etc. in historic structures no matter what the current zoning is, unless the City Council determines that it is not appropriate for a piece of property, but they still want to recognize it as a historical structure.

Mr. Stewart stated he would like the Planning Commission added to the list of who



can initiate historic district designations. Mr. Brown questioned if the City Council can initiate historic designation upon private property. John stated that the original ordinance allowed the City to designate property against the owners wishes, since then a state law has been adopted that requires owners consent.

Mr. Stewart questioned if public hearings scheduled by the Historic Review Board should come to the Planning Commission for approval before going to the City Council. After discussion it was decided to add a condition to the ordinance that the Planning Commission shall receive notice of all public hearings held by the Historic Review Board.

Mr. Stewart questioned the City Council not needing a Planning Commission recommendation regarding Historic Overlay Zone designation. John stated this process is unchanged in the new code, but if the Planning Commission would like land use applications to go before the Commission, he would change all corresponding sections. It was agreed zone designations should go before the Planning Commission with a recommendation from the Historic Review Board.

Mr. Stewart expressed his concern regarding the moving or demolishing of any historical landmarks unless approved by the Historic Review Board. John explained that this section was unchanged. Mr. Stewart stated that the City Council needs to be informed if a designated historic structure is to be torn down. It was agreed to require that any structure designated a historic landmark needs approval by the Historic Review Board to be moved, with City Council approval needed for demolitions. John stated he would look into the State requirements and rewrite this section and all sections dealing with this process accordingly.

Mr. Brown questioned what the incentives are in place for owners to have a structure designated as a historical landmark. John stated that there needs to be more incentives for people to have their homes listed as historic, right now the only people who do list their homes are ones who wish to preserve the work they have put into the property. John stated it was important to be able to offer grant money for needed repairs, or property tax reductions for incentives to increase the amount of homes that are on the designated list.

Mr. Stewart asked about the maintenance section where an owner must replace items with "like" items (such as wooden gutters) which could cost thousands of dollars. John explained this section deals with what things owners can do without input from the City, what items the Historic Review Board may have suggestions for, and types of items are prohibited.

Mr. Stewart questioned if the list of alteration standards (16.110.080 (5) (A-J)) would prohibit infill of a neighborhood. John explained the list is from federal guidelines, and Darlene Key (member of the Historic Review Board) explained the guidelines apply only to designated property, not to the neighbors. Mr. Stewart asked how the restrictions would be regulated. John stated that is one reason to have the expertise of the Historic Review Board.

Mr. Stewart questioned what "special" setbacks where, and where could they be required. John stated that there could be special setbacks established in the overlay zone. Darlene Key explained that if there was a historic district where a visual line was made by the placement of homes, a special set back could be established that would prohibit someone from placing a new structure closer to the property line.

Mr. Stewart stated that he did not agree with the penalty section, and thought charging violators per each day of violation was excessive.

Mr. Stewart questioned why there wasn't an "opt out clause", which would give people 18 months to change their minds if they found it was not right for them.

Mr. Stewart questioned the appeals process, and would the Planning Commission need to be involved. Mr. Manley commented that having it come before the Planning Commission would be requiring an additional step, and if the applicant didn't like the Planning Commissions decision they would appeal to the City Council anyway.

Mrs. Tallman stated she would like John to see if it was legal and how people could choose to "opt out". John stated that under state law people are allowed to "opt out" of any historic designation that was imposed on them, but was unclear if it allowed people to "opt out" of rules they had agreed to.

Darlene Key explained that people who have their homes designated as historic, care about the history and wish to preserve the property.

Ms. Blackwell stated that people who are willing to purchase that type of property are willing to go through the steps because they care about the history of the area. She emphasized that a process needs to be in place that would make people eligible for funding as an incentive to have their homes included, it does not mean just because your house is 50 years old you will have to deal with this issue, it is just for people who choose to protect the historic value of their property.

John asked for clarity on some of the changes the Commission had suggested.

- Residency requirements for the Historic Review Board. It was decided that a majority of the members must live within the UGB.
- The "opt out clause". It was decided that it would be 18 months after designation, but would not apply to changes of ownership, if it is legal with State regulations.

John explained that the list of properties will be removed from the Comprehensive Plan since it becomes out of date as things are demolished, and an official list is being created. He added that and a history of Canby, along with pictures are being put into the Comp Plan with the goal of making the Comp Plan user friendly.

Mr. Stewart opened the Public Hearing.

**PROPOSERS:** None

**OPPOSERS:** None

Mr. Stewart closed the Public Hearing.

Mr. Stewart suggested John bring back the recommended changes at the next meeting for the Commissions approval to the City Council. The public hearing was held over until the next Planning Commission Meeting on November 27, 2000 at 7:00pm.

#### IV. DIRECTORS REPORT

John stated the terms of Jean Tallman, Geoff Manley and Paul Thalhoffer are expiring, Mrs. Tallman has already written a letter stating her interest in serving another term, Mr. Geoff Manley stated he was interested in reappointment.

John stated there will be an opening for a Planning Commissioner after Ms. Blackwell is appointed to the City Council. Mr. Stewart stated there were 2 people who have shown interest in applying for the position.

John informed the Commission that Jean Tallman had been attending the Transportation Task Force meetings, and that a public survey has been done and it contains interesting information.

John stated there will be 2 Public Hearings at the next Planning Commission meeting: the continuation of the Historic Review Ordinance and a partition in the Industrial Zone by Ray Burden.

John explained that the Periodic Review process is on hold pending analysis of Measure 7. He stated there may be a need to hold another joint workshop with the City Council to make a coordinated response to the measure. Mr. Manley stated a concern that the City Council refrain from making any substantive decisions until after the new City Council is in place. John stated the Council should be considering an ordinance by December 7th and the next due date for Periodic Review is December 30, 2000.

John stated the Transportation Task Force has a meeting scheduled for November 16, 2000, and Mrs. Tallman is the Planning Commission representative.

John stated that the Traffic Safety Issues addressed by the Planning Commission in past meetings (chirping signals at crosswalks, a pedestrian refuge on Hwy 99E, steps down from the Logging Rd) were passed on to the Traffic Safety Committee who agreed they were good ideas and are now being looked at by the Traffic Engineer who will make specific recommendations.

Mr. Brown asked about the redistricting process for the School District. John stated any member who has an interest in being involved should contact the School District directly. Mr. Manley and Mr. Stewart stated they will be involved in the Bond Oversight Committee, and Mr. Brown volunteered to contact the School District regarding redistricting.

## V. ADJOURNMENT