

MINUTES

CANBY PLANNING COMMISSION

7:00 PM April 12, 2004
City Council Chambers, 155 NW 2nd

I. ROLL CALL

PRESENT: Chairman Jim Brown, Commissioners John Molamphy, Tony Helbling, Geoffrey Manley, Randy Tessman, Robert Able, Dan Ewert

STAFF: John Williams, Community Development & Planning Director, Darren Nichols, Associate Planner, Carla Ahl, Planning Staff

OTHERS PRESENT: Jamie Netter, Nick Netter, Pat Sisul, Neil Fernando, Jeff Barrow, Pam Barrow, Frank Cutsforth, Leonard Walker, John Kimball, Dan Leischaer, Tony Reber, Heidi Yorkshire, Jamie Johnk

II. CITIZEN INPUT

Dan Leischaer presented the Commission with a letter from the NE Canby Neighborhood Association regarding their meeting with the developer for the Postalwait Estates project on N Redwood. They recommend that when N. Redwood is improved a bike lane be established to allow better connectivity from Territorial to Hwy 99E. He added that the intersection at Territorial and Hwy 99E is a major concern of the Association and encouraged the Commission to be sure the intersection remains a high priority.

III. NEW BUSINESS

None

IV. PUBLIC HEARINGS

SUB 04-02 An application by Nick and Jamie Netter to subdivide two parcels into eleven building lots for the construction of single-family homes. The parcels contain 2.98 acres located at 2147 NE Territorial Rd, west of Highway 99E.

Mr. Brown read the public hearing format. When asked if any Commissioner had a conflict of interest, none was expressed. When asked if any Commissioner had ex-parte contact, none was stated. No questions were asked of the Commissioners.

Darren Nichols, Associate Planner presented the staff report. He explained that there is one existing house the applicant has proposed to remain on the site for approximately 2 years. The surrounding property to the west is R1 Low Density with property to the north, south and east of the site outside the city limits.

Darren stated the applicant is asking for a waiver of the solar requirements due to the 45% orientation of the lots. The applicant suggests that the phasing of this project will coincide with the improvement of the intersection at Hwy 99E and Territorial Rd. The Traffic Engineer has

stated the increased traffic from this development would not have a significant impact on the intersection at Territorial and 99E; it functions at an F level and will continue to do so.

Darren explained the applicant is asking for the Planning Commission to approve the subdivision with the existing house not meeting the setback requirements since they live on the property and will be able to oversee construction of the development and they intend to develop these two lots last.

Darren stated with the proposed conditions of approval, staff recommends the Planning Commission approve SUB 04-02.

Mr. Manley asked what "Tract A" was and why there is a 15,000 square foot lot. Darren stated that the lot size average is 8,000 square feet. He stated the applicant believes a flag lot is somewhat constricted and creating 2 flag lots in that area would compromise the quality of the development. He explained Tract "A" is a bio-swale and part of a storm water system and could be removed when surrounding properties are developed.

Mr. Tessman stated his concern regarding the intersection of Territorial and Hwy 99E. He believes that every application has an accumulating effect on the intersection he questioned where in the process the letter from the Planning Commission to ODOT was. John explained that if the Planning Commission and the City Council wanted to institute a policy regarding the intersection it could be done, the letter to ODOT is on hold until it is decided if it will be a general letter asking for the intersection to be improved or if it will target a specific plan of action.

Mr. Ewert questioned the connection between Walnut and 19th Ave. Darren explained that the applicant has been working with surrounding property owners in regards to anticipating their potential development. John stated there has been a lot of discussion at the staff level on how the street layout would work and this seemed the best solution.

Mr. Ewert questioned the Traffic Engineers comment regarding closing Vine St. to limit accesses on Territorial. Darren stated that if Canby grows significantly the Traffic Engineer envisions bypasses to the north and south around Canby, so in anticipation of that type of growth she would like to see the number of accesses on Territorial limited.

Mr. Ewert asked what could happen with Spitz Rd. Darren explained that is a low-density area and if it was annexed as higher density it may need to be realigned or eliminated and a new road built that would align on the south side.

Mr. Ewert stated there is a drainage problem in this area and questioned how Tract A would be used. Darren explained that a bioswale would be created and then piped into Willow Creek once the area is built out the swale area could probably be abandoned and the property combined with a parcel to the south to create a build able lot. Darren explained the water on this site naturally drains to Willow Creek.

Mr. Ewert questioned why planter strips were not being required. Darren explained the applicant had looked at the surrounding developments and planned the same type so there would be some continuity. In this case Vine Meadows is curb tight and that is what the applicant has proposed for this application.

Mr. Ewert questioned the comments received from service providers for lots # 5 & # 6. Darren explained that these types of comments are usually addressed at the Pre-Construction meeting; applicants have to meet all requirements of service providers.

Mr. Ewert questioned whether there were drywells in that location. The applicant will address that issue. Mr. Ewert asked if future development would be able to be served with this plan since there is a 2-foot variation in elevation. Darren explained the surrounding property would have 2 options available for connecting to the sewer.

Mr. Ewert questioned the Traffic Engineer's comment regarding building out Walnut St. enough to handle the traffic. Darren stated it would be built out to the standard road width.

Mr. Brown asked for clarification on the 70' right-of-way with a 15' strip along Territorial Rd. Darren explained there would be a 10' planter strip with a storm water swale. Mr. Able questioned who would own the swale and how it would be maintained. Darren explained that the homeowners association would maintain it. John believes there is an excess of right-of-way in that location that will not be needed for streets.

Mr. Brown questioned why a turnaround was not required for emergency vehicles. John explained that there is a standard condition, which requires applicants meet all of the requirements of the service providers.

Mr. Brown asked if the Planning Commission has allowed a lot line to go through an existing house. Darren stated he did not know of any and explained that staff had proposed a condition that would allow the applicant to record this plat with the count showing proposed lots 10 and 11 as one lot with the applicant having the ability to come back with a minor modification to establish the lot line after the existing house has been removed.

APPLICANT:

PAT SISUL, Sisul Engineering addressed the Commission. He explained the initial plan was for a 12-lot subdivision that included 4 flag lots. During the pre-application meeting the Utility providers asked for a layout for future development in order to assist them with their design. During that process it became clear that the 12-lot layout would provide just 1 street connection. They were told to move Walnut St. far away from the railroad tracks to avoid any potential problems with cars trying to leave Walnut and cars waiting for the train. This would create a 1,000' cul-de-sac, which would not work for the applicant or the City.

Mr. Sisul stated the alternate plan created a better subdivision by providing better access, better utility service (water and sewer stubs directly to the parcel), good looping for the water system which creates better fire flow. A survey was done and sanitary sewer can go under Hwy 99E to service the other side of the highway.

Mr. Sisul explained there is a drywell on site at this time, which has very little flow to it. The applicant will install a water treatment facility containing bio-swales and check dams to get as much infiltration into the native soils as much as possible, then overflow into the drywell, if the drywell can't keep up with the water it will then flow into Tract "A". When 19th St. is extended to meet Walnut there will be a small lot owned by Mr. & Mrs. Cutsforth that will be unbuildable, it could be combined with Tract "A" to create a buildable lot if it is determined that Tract "A" is not necessary.

Mr. Sisul explained that Territorial Rd goes from a 60' right-of-way to a 70' right-of-way at Spitz Rd. in front of this development. The sidewalk will be curb tight and the bio-swale would be in the public right-of-way but will not be maintained by the City of Canby at this time. It will be a privately maintained treatment facility in the public right-of-way. Mr. Sisul explained that the wall would be behind the right-of-way, made of brick similar to Willow Creek and Vine Meadows.

Mr. Sisul stated his understanding from the Fire Marshal was that fire trucks would not need to pull up to the homes since they have a 150' fire hose length. He explained that the plan that the Fire Marshal had looked at had the 4 flag lots and he believes the Fire Marshal would prefer a 36' street to a 20' wide driveway. Mr. Able believes the Fire Marshal should approve this plan.

Mr. Sisul believes that with the rate of build out and the location of Walnut St. that if there is a long back up on Territorial, residents would be able to decide whether to turn left and go down Redwood St.

Mr. Sisul addressed condition #4 regarding the existing home, staff is suggesting that the Planning Commission approve the subdivision with the stipulation that the 2 lots that the existing house is located will be recorded as one lot, later after the house has been removed the applicant will come back with a modification to this application to create the 2 proposed lots. The applicant is willing to enter into an agreement that would obligate them to remove the house within two years of approval.

Mr. Sisul stated the applicants believe this subdivision is too small to maintain a homeowners association. There are only two issues associated with the requirement, the water quality feature and the brick wall. The applicant will retain ownership of Tract "A" and will be responsible for it for maintaining it for as long as it is necessary. Mr. Sisul asked that condition #9 be revised to allow the applicant to submit draft copies of a homeowners association, CC&Rs and/or ownership and maintenance agreements approved by the City Attorney that will address these issues.

Jamie Netter, stated the their house faces Territorial Rd and they do not see a huge problem with backup at that intersection until a train goes by, when that happens she chooses to take Redwood St. They fully intend to remove the house and build themselves another house there but did not want to move their family twice in 2 years. She added that they have had construction sites robbed and vandalized and believe living on the construction site would increase security.

Mr. Brown questioned why Tract A was necessary. Mr. Sisul stated that if the drywell does not function they would need that much land to hold the storm water. Mr. Brown asked why the applicant is not putting lots 9, 10 & 11 perpendicular to Walnut. Mr. Sisul stated that the 60' wide lots would not be wide enough for the type of homes that are built in the neighborhood with 3 car garages.

Mr. Molamphy stated he was concerned about the lot line running through the house. He wants the condition to be iron clad that the house will be removed. Mr. Sisul stated the applicant is willing to write up an agreement with the City guaranteeing the home will be demolished. Mrs. Netter explained the existing home was built in the 40's and it would benefit them to remove the house since it would increase the value of the neighborhood.

Mr. Helbling questioned if the Planning Commission had the authority to require a contract to remove the house. John believed it has. Mr. Brown stated they had placed developmental agreements on annexations before.

Mr. Able stated that the applicant would have to have this approved by Clackamas County since the City can't make decisions for them. He stated the maintenance of the brick wall would have to be done with a homeowners association; he did not believe they should create a new methodology to deal with this issue. John explained that typically the City has not required homeowners associations; applicants have proposed them as a way of dealing with maintenance issues in common areas of developments.

Mr. Able questioned what the applicant was trying to avoid by not wanting a homeowners association. Mr. Sisul explained the applicant would prefer not to create a homeowners association and to have the condition read that a draft copy of a homeowners association/CC&Rs and/or ownership and maintenance agreement to be prepared for review by the Planning Director and/or the City Attorney. Mr. Able stated he was reluctant to create a president without seeing the language. He stated his concern that when a lot sells it would be difficult to transfer a maintenance agreement to the new owner.

Mr. Ewert explained there had been problems in the past with similar situations and he wants a firm way of handling the issue.

Mr. Brown questioned if CC&Rs in lieu of a homeowners association has been successful for maintenance issues. Mr. Sisul stated that in other cities it is common to have private maintenance agreements for 6 or so homes on a shared driveway and storm drain to be covered by a maintenance agreement. He stated that the applicant would rather have the application approved with a homeowners association than denied for lack of it.

John questioned if the Planning Commission wanted to table this application for further information.

Mr. Brown stated they would discuss it later.

PROPONENTS:

Frank Cutsforth, neighbor explained that the applicants have done a good job of keeping him informed on their process. He agrees that the Territorial intersection is a problem that needs to be fixed, and agrees that there is not as much of a back up at that intersection as people think.

Mr. Cutsforth stated that the applicant has asked about an easement for water and he is considering that issue. He was concerned about the storm drain dumping into the creek. Mr. Cutsforth stated he believes they have done a good thinking ahead for the whole area and believes this development will be consistent with Willow Creek and Vine Meadows.

OPPONENTS:

Leonard Walker, Chairman of the North Canby Neighborhood Association stated the association had not been notified of this application and asked for a postponement until they could have the meeting with the developer. Mr. Sisul explained that they had been told this property was not in a neighborhood association so the mailed notices to homeowners and residents within 500' of the property.

Mr. Brown closed the public hearing and opened Commissioner deliberations

The Commission agreed to waive condition #27 regarding solar requirements.

It was decided by the Commission to continue SUB 04-02 to give the applicant an opportunity to address the following issues;

- How CC&Rs would work compared to a Homeowners Association regarding maintenance of bio-swales and the brick wall
- A legal mechanism for allowing the modification of the application after the house is demolished to create lots #10 and #11.
- To obtain the Fire Marshal's opinion on this design.
- To give the Neighborhood an opportunity to give input on this application.
- How the Spitz Rd will be handled with future development.

Mr. Brown continued SUB 04-02 until 4-26-04, 7:00pm.

SUB 04-03 An application by Primelan Properties requesting to subdivide one 4 acre parcel into nineteen building lots for the construction of single family homes at 185 NE Territorial Rd. Located on the southwest corner of N. Juniper and NE Territorial Rd. Existing structures would be removed from the property.

Mr. Brown read the public hearing format. When asked if any Commissioner had a conflict of interest none was expressed. When asked if any Commissioner had ex-parte contact, Mr. Brown visited the site but drew no conclusions, no questions were asked of the Commissioners.

Darren Nichols, Associate Planner gave the staff report. He stated this 4-acre property contains one single family home and some out buildings, which are to be removed prior to construction.

Darren explained that the areas to the south and east are zoned R1 (low density residential), the adjacent property to the west is outside the City limits but designated as R-1 on the Comprehensive Map and property to the north is outside the urban growth boundary and is designated as exclusive farm use by Clackamas County.

Darren stated that this subdivision is also off Territorial Rd but is further west than the previous application and the residents will have more options regarding which roads they travel on. The Traffic Engineer stated that given the number of alternative routes, this development would not significantly impact the intersection at Hwy 99E.

Darren stated that the Public Works Director had concerns that one large tree may be a hazard so he had written a condition that the applicant have an arborist assess the condition to find out if it needs to be removed prior to construction.

Darren explained that the City Engineer recommended this development could be constructed as a cul-de-sac. Darren stated that staff had discussed this issue and concluded that it made a better connection to have one access on Juniper and one on Territorial.

Darren presented a letter from Mr. Vick who stated his concern that Canby is losing its small town atmosphere due to the recent developments.

Darren stated that with conditions staff recommends approval of SUB 04-03.

Mr. Manley questioned what the street spacing was on Territorial since it is an arterial road. Darren stated it was 140'. John explained that the code has a maximum length allowed for cul-de-sacs and this application was well beyond that limit.

Mr. Tessman stated that he was concerned about the City Engineers comment regarding the Territorial St. access. John believed that the Engineer was referring to the pavement surface since it is a soft shoulder.

Mr. Tessman questioned how the Public Works Supervisors comments were being addressed. Darren stated that except for the tree all of the comments would be addressed at the pre-construction meeting. The facilities are available, how the applicant does that must meet all service providers requirements prior to staffs approval of the plan.

Applicant:

Neal Fernando, Representative for LDC Design Group stated it is a pretty straightforward design. They had first looked at a cul-de-sac configuration but it was recommended by staff to have the road go through to Territorial. They are proposing that all lots gain access from Juniper Ct instead of Territorial or Juniper St. They will need to remove some existing arborvitae bushes but they will replace with street trees per standard city code.

Mr. Fernando stated that sanitary sewer is accessible from Territorial and Juniper both; they will loop the water through. Storm water will be dealt with by a series of catch basins and into drywells.

Mr. Fernando stated that if the Commission required it they would create a homeowners association. He asked the Commission approve the application.

John explained that a staple shaped road had been discussed at the pre-application meeting where there would be 2 accesses onto Juniper St. It was decided that this design had better traffic movement.

PROPONENTS:

John Kimbel, stated he is in favor of this application, he believes the applicant has done a good job with the design. He is concerned that if the arborvitae is removed the neighbors will be looking at the back side of the houses and asked if it could be required that a uniform fence be installed.

Mr. Kimbel questioned that since the applicant would be putting in street improvements off of Juniper would it be possible to finish the roadway all the way across. John stated that it was a good idea to have the City do that project on Juniper St. at the time this development is being done and he will look into the feasibility of doing it.

Dan Leischner addressed the Commission stating he represented the Northeast Canby Neighborhood Association. The association would like as many of the old trees to be saved as appropriate, especially the large conifers in the northeast section. The trees along the western border serve as a visual barrier between the new homes and the existing homes to the west.

Mr. Leischner would like continuity along Juniper, whether it is a common fence or some kind of landscaping that would be consistent. The developer has offered to assist in some kind of community service project and the neighborhood association suggested having them better some of the existing parks in the area.

Mr. Jeff Barrow stated he was not opposed to this application but he did have concerns regarding public safety. He would like the Commission to consider the timing of this development in relation to the installation of the signal at Territorial and Hwy99E.

Mr. Barrow would also like to see a consistent fence along Juniper St., and to be sure that the road be repaired properly after construction. He asked the Commission to consider all the trees in the area and the arborvitae that will be removed; he explained that there is many birds living in them and it should be considered if there are any protected species there.

Darwin Rasmusson, applicant, addressed the Commission. He agreed there should be a fence but he would like to put the requirement in the CC&Rs and let the homeowners association establish what type of fencing that goes there.

Mr. Rasmusson asked for clarity on whether the existing house would need to be removed prior to the signing of the final plat since the owner would like to continue to live on the property for a while. It was decided that the owner would be able to be moved prior to the signing of the plat.

Pam Barrow stated she was concerned that the traffic study had determined this development would not affect the intersection at Hwy 99E and Territorial Rd. People who live there will use Territorial and Hwy 99E and it would increase the traffic level there. Darren explained that the traffic study meant that it would not change the function of the intersection, (it is a F level intersection now and it will remain at an F level). She stated she would like to see no more new housing developments on Territorial until the signal is installed at Hwy 99E.

OPPONENTS:

None

REBUTAL:

Mr. Fernando explained that with the timing of the homes there might be 6-7 homes occupied during 2005 and that the signal for Hwy 99E is scheduled for 2006. Mr. Fernando stated they would be glad to coordinate street construction with the City. He was unfamiliar with what species of birds live in the arborvitae, but would be glad to work with the City on the issue.

Mr. Brown closed the public hearing and open Commission deliberation.

Mr. Brown stated he would prefer a staple shaped road through the development instead of one that connected Territorial to Locust, which would create one long continuous barrier down Locust Street. A staple shaped road would create a varied visual line, some backyard fences some side yard fences and help integrate this development into the existing neighborhood. The request of neighbors to have a uniform fence is appropriate, but there needs to be less of it. Mr. Brown agreed that as many trees as possible should be saved.

Mr. Able agreed that he did not like the idea of having backyards facing Locust St., which would put a long 6' fence across the street from front yards.

Mr. Manley did not like another access street onto Territorial and preferred the staple shaped street. He stated there is arborvitae along Locust now, which has the look of a backyard, which the neighbors are used to.

Mr. Molamphy concurs that the staple configuration would make a better development.

It was proposed by Mr. Manley to continue this application for 2 weeks to give the applicant the opportunity to come back with a revised plan.

Mr. Brown opened the public hearing and explained to the applicant that the Planning Commission would prefer to see Juniper Place turn back onto Locust St. He questioned if the applicant would be willing to look at the configuration. Mr. Fernando stated they would be willing to look at the suggestions the Planning Commission had made.

Mr. Brown continued SUB 04-03 until April 26, 2004, 7:00pm.

CUP 04-01 An application by Heidi Yorkshire to locate a cheese manufacturing facility with incidental retail on property zoned C-M , Heavy Commercial Manufacturing. The proposed use would feature 9,000 square feet of manufacturing plus no more than 1,000 square feet of retail. The property is located on the north side of SE 3rd Ave between S. Pine and S. Redwood.

Mr. Brown read the public hearing format. When asked if any Commissioner had a conflict of interest, Mr. Able stated he has worked with the architect and has discussed this application with them, but has drawn no conclusions and will continue to hear the application, Mr. Helbling stated he was the Vice-President of CBR but has no knowledge of this application and intends to hear the application. When asked if any Commissioner had ex-parte contact, Mr. Able repeated his comments. No questions were asked of the Commissioners.

John explained that a conditional use permit is required because this use is an allowed outright use in the M1 zone (which is next door) and a conditional use in the C-M zone. John suggested it may be time to look at the C-M zoning and try to figure out what the goal is for the Industrial Park.

John explained that Pro-Active Sports is located to the north of this property and they were granted a conditional use permit in 1997 for manufacturing and retail sale of golf equipment.

John explained that the applicant does not believe this use would conflict with surrounding uses since it does not generate noise, odor or high traffic. John stated there is retail uses nearby along with the Fire Department complex and believes this use would be compatible.

John explained that the street is improved so there are no public service issues. John stated he has added conditions that the use is limited to what is proposed, and that this approval does not give permission to start breaking ground. John stated staff has recommended approval of the application.

Mr. Ewert questioned if the property to the west is the fence company. John stated it was and the property to the east is a business park.

APPLICANT:

Heidi Yorkshire addressed the Commission. She explained she has been a journalist for 20 years, writing about food and wine. When she became interested in cheese making she started looking for property in Yamhill County where there is a lot of wineries. She has decided that Canby is the place it should be located. She needs a small piece of industrial property for building a factory and Canby has everything she needs, the dairy farms and a good business climate.

PROPONENTS:

Tony Reber, Industrial Realtor stated he had assisted JVNW with the sale of some of their property. He explained that the quality of the facility will be either concrete tilt or masonry that will be in character with the surrounding area.

OPPONENTS:

None

REBUTAL:

None

Mr. Brown closed the public hearing and opened Commissioner deliberations. He stated his belief that this is a good fit for Canby. It ties in to the agricultural heritage that Canby has and is an appropriate use.

It was moved by Mr. Ewert to approve CUP 04-01 as written. Seconded by Mr. Molamphy. Motion carried 7-0.

V. FINDINGS

DR 04-01 HOPE Village The applicant is requesting approval to construct ten additional Garden Homes at the HOPE Village retirement community. Located on the west side of S. Ivy St. and the south side of SW 13th in the north west corner of the lot. The proposal would extend the Garden Home development and would match existing Garden Homes.

It was moved by Mr. Manley to approve the Findings for DR 04-01 as written. Seconded by Mr. Ewert. Motion carried 5-0-2 with Mr. Able and Mr. Helbling abstaining.

ZC 4-01 Nick and Jamie Netter, The applicant is seeking approval to change the zoning and to partition one 27,550 square foot parcel, located on the south side of SE Township and two blocks east of S. Ivy St. into ten residential building lots of 1,300 – 2,500 square feet each, for the construction of ten attached townhomes.

It was moved by Mr. Ewert to approve the Finding for ZC 04-01. Seconded by Mr. Tessman. Motion carried 4-1-2. With Mr. Manley voting nay, Mr. Able and Mr. Helbling abstaining.

SUB 03-05 Apollo Homes The applicant is seeking approval to subdivide one 15-acre parcel into 136 lots for the construction of single-family residences, duplexes and townhomes

Mr. Brown questioned why the Commission had not conditioned triple pane windows with this application as it had with the Garden Crossing subdivision. John explained that the applicant with Garden Crossing had proposed triple pane windows as part of his application. This applicant had not proposed them. He added that this development is quite a bit further from an intersection than Garden Crossing.

Darren explained that there had been modifications to Condition #16 regarding the design standards applying to the entire subdivision, Condition #18 regarding the fencing to be transparent and to Condition #19 which requires the Fire Marshal's approval of the plat.

Darren stated he had heard from the applicant's attorney who asked if there was a chance the condition regarding the design standards could be changed, they are concerned about the sell ability of the development. Darren explained that it would need to go back to the City Council. The Commission agreed that the development should be built out as presented by the applicant, even if they sell the property to other developers.

It was moved by Mr. Able to approve the revised Findings for SUB 04-05 as written. Seconded by Mr. Molamphy. Motion carried 5-2 with Mr. Helbling and Mr. Manley voting nay.

VI. DIRECTOR'S REPORT

John explained that an annexation priority workshop had been scheduled for the next Planning Commission meeting since there was no public hearing scheduled. Since there are now 2 continued public hearings he suggested having a longer workshop scheduled and starting the public hearings at 7:30pm.