

# MINUTES

## CANBY PLANNING COMMISSION

7:00 PM April 26, 2004  
City Council Chambers, 155 NW 2<sup>nd</sup>

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**6:00PM      WORKSHOP                      ANNEXATION PRIORITIES**

**7:30PM      REGULAR MEETING**

### I.      ROLL CALL

**PRESENT:**      Chairman Jim Brown, Commissioners Geoff Manley, Dan Ewert, Robert Able, and Randy Tessman

**STAFF:**              John Williams, Community Development & Planning Director, Carla Ahl, Planning Staff

**OTHERS PRESENT:** Leonard Walker, Jamie Netter, Nick Netter, John Kimball, Pam Barrow, Pat Sisul, Neil Fernando

### II.     CITIZEN INPUT

None

### 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. **Continued from 4-12-04**

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 had visited the site but had drawn no conclusions. No questions were asked of the Commissioners.

John Williams, Community Development & Planning Director present the staff report. He explained that the Planning Commission had continued this public hearing to give the applicant the opportunity to address concerns the Planning Commission had.

There were concerns regarding allowing the existing house to remain on site for 2 years while the development is build out. The Commission wanted some acceptable legal agreement for allowing a modification to divide the lot the house sets on after the house is removed.

John stated the applicant had provided a draft Development Agreement that would require the home be removed in two years and the applicant would apply for a modification to divide the lot. John recommended a condition requiring a signed Development Agreement prior to issuance of building permits on those lots.

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John explained that there were two areas of storm water disposal on this site, Tract "A" on the interior of the subdivision and bio-swales along Territorial Rd. Condition #9 required the creation of a homeowners association but the applicant preferred not to create a homeowners association. John explained that the goal was to be sure the areas were maintained, not to create a homeowners association. The applicant has submitted a storm water management agreement that specifies Tract "A" will be developed, owned, and maintained by the applicant. It requires them to keep the standards in place until the City agrees to some other location or system for the storm water. John recommended a condition that the agreement will be signed before the final plat is created.

John explained the rules for storm water are changing; the City does not have a plan in place yet to address the new requirements from DEQ. It is being worked on but is not in place yet nor is there a funding strategy in place to implement it. So there will be more Planning Commission workshops on storm water issues (street design standards, bio-swale construction design standards, drywell standards and surface water management fee that the citizens of Canby will have to pay).

Now we are in a situation where developers have to provide storm water disposal but we don't have standards they have to meet. In the mean time they are required to provide storm water disposal sites that DEQ is okay with and to maintain them. If the City decides on another type of storm water system they can stop using Tract "A" for storm water, until then they have to maintain it.

John explained that the storm water facilities on Territorial Rd are located on public right-of-way between the wall and the road. The applicant is proposing that the owners of the lots immediately adjacent to the lots have the sole responsibility for the maintenance of the frontage. John explained that as long as someone is responsible the City is satisfied.

The applicant has proposed CC&Rs that will notify owners of their responsibility to take care of the area, and a recorded agreement with the owners requiring the maintenance of the right-of-way outside the wall to function as a storm water disposal site. A condition has been added requiring maintenance of the landscaping, walls and storm water disposal facilities located outside their lot lines inside the right-of-way until the City decides it is no longer needed.

John stated the third issue was the Fire Marshal approval of this version of the subdivision; the Fire Marshal has seen this version and has signed off on it.

John stated the applicant had submitted a different street design that addressed some of the issues the Commission had brought up at the last meeting. Staff prefers the original plan.

Mr. Able wanted to add verbiage to the conditions that insurance be provided and maintained with a certificate sent to the City showing renewal.

#### **APPLICANT:**

**Pat Sisul**, Sisul Engineering stated the applicant has submitted draft documents that address the concerns the Commission had regarding this application. They anticipate the City Attorney would review the documents, make comments then the documents would be adjusted and resubmitted with all blanks filled in.

Mr. Sisul explained that the applicant met with several members of the Northeast Canby Neighborhood Association and no new issues were raised.

Mr. Sisul stated the new submitted plans were in response to issues the Commission had regarding the size of the flag lot and retaining the existing home on two tax lots until time to develop. It locates the house on one lot and reduces the size of the flag lot by 3,000 square feet. But Mr. Sisul believes that the neighborhood connectivity is compromised and instead

of one lot over 10,000 square feet there would be two.

Mr. Able questioned if the CC& Rs included maintenance of the brick wall. Mr. Sisul stated it included the maintenance.

**PROPONENTS:**

**Leonard Walker**, Northeast Canby Neighborhood Association stated they had met with the applicants and have presented a letter to the Commission. Mr. Brown asked which design he preferred. Mr. Walker stated he had not seen the new plan. He was given a copy to look at and stated he preferred the original.

**OPPONENTS:**

None

**REBUTAL:**

None

Mr. Brown closed the public hearing and opened Commissioner deliberations.

Mr. Able doubted that when the wall crumbles in 20-30 years the owners of the 3 lots would repair it, even if it were in the CC&Rs. He did not believe it could be denied on that basis but he personally did not like it.

Mr. Tessman stated he was not an advocate of homeowner associations on smaller developments. He believes the applicant has addressed the issues and has no problem with the way the conditions are written.

Mr. Ewert stated the issue of the intersection of Hwy 99E and Territorial has been a concern of the Commission for many years. He suggested the Commission consider that if a development adds traffic to the intersection it be conditioned that they would not be able to obtain occupancy until after the intersection is functional.

Mr. Able expressed his concern that there should be citizen input on this issue prior to stopping development of the area. He did not believe this application should be denied on the issue and if it was denied he did not believe it would be defensible if the applicant appealed the decision. He suggested a date be established that this would be imposed on new applications.

The Commission believed the development agreement documents that were provided for the removal of the existing building, the maintenance of "Tract A" (with the added condition that the insurance be continuous and the applicant provide proof of insurance yearly), that lots #1, #9 and #11 will maintain the storm water facility on Territorial and the brick wall to City standards were adequate. There were concerns raised that having the maintenance of the wall split between just 3 lots would be a great expense and that the storm water facility would be maintained differently between the lots.

Mr. Brown stated he liked Mr. Ewert suggestion that new developments increasing traffic at the intersection of Territorial and Hwy 99E would not receive certificates of occupancy until the signal at the intersection was functional. But believed there should be some notice to the applicants and proposed staff discuss the issue with the City Attorney.

It was moved by Mr. Able to approve SUB 04-02 with revised conditions for #7 & #9 including continuous mandatory insurance regarding Tract "A". Seconded by Mr. Tessman. Mr. Ewert stated that he did not believe that safe infrastructure was available to support more traffic at Territorial and Hwy 99E and for that reason urged a no vote on the application. Mr. Able stated the intentions are intuitive but when a traffic engineer states the impact is negligible in their report that is what the Court would look at. Mr. Brown did not believe the

Planning Commission should base their decisions on whether or not they would lose an appeal; they must make the decision they believe is appropriate. Motion carried 3-2 with Mr. Manley and Mr. Ewert voting no.

John stated it would be legal to make a decision the public facilities and services are not available, but it would be a policy decision by the Planning Department or the City Council regarding what applications to apply it to and when.

John presented the Commissioners with a letter he had drafted to send to Oregon Department of Transportation (ODOT), and State Representatives regarding the Commission's concerns with the intersection at Hwy 99E and Territorial Rd. It was agreed that each member of the Commission would sign it. The Commission encouraged the City Council, developers with property on the north side of town and all concerned citizens to also send letters.

Mr. Walker addressed the Commission and stated the Northeast Neighborhood Association had addressed that issue at every meeting, they are considering having a letter writing campaign to push the issue.

**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. **Continued from 4-12-04**

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 had visited the site but had drawn no conclusions. No questions were asked of the Commissioners.

John presented the revisions to the application. He explained the applicant had put together an alternative plan after the discussion at the last Planning Commission meeting. He asked the applicant to explain the changes.

#### **APPLICANT:**

**Neal Fernando, LDC Design Group** addressed the Commission. He explained they have taken the advice from the Planning Commissions last meeting and believes they have come up with a design that is a better; it created an additional lot and is the most economical option.

Mr. Fernando explained that there would be 4 lots with side yards that front Juniper St. which breaks up the visual impact of a solid 6' fence. They have considered several options for the fence such as a white 3 rail with new arborvitae hedge or a 5' cedar fence with 1' of lattice at the top.

He addressed the intersection at Territorial and Hwy 99E and suggested before the Planning Commission denied the application that they consider a condition that make Juniper Ct be right in right out only, forcing the traffic from the subdivision south until the intersection is functional.

Mr. Ewert questioned if there would be a fence along the west side of the property. Mr. Fernando stated it would be in the CC&Rs that if the homeowners want a fence they would get a fence. He explained that they held a neighborhood meeting and one of the issues discussed was keeping as many of the old trees as possible.

Mr. Able questioned what the fence requirements were along Juniper. John explained there are regulations regarding fence height in the code. There was a discussion regarding whether the neighbors had concerns with the backyards facing Juniper St. John stated the

concern that was mentioned was that the fencing should be uniformed. Mr. Brown explained the original plan had more backyards to Juniper, this plan has 2 backyards and the rest were sideyards, which will break up the fence line.

**Darwin Rasmussen**, Development Team asked that the Commission not condition a certain type of fence or the planting of arborvitae, they would like to allow the homeowners association the opportunity to make that decision.

Mr. Brown questioned if they would loose the large arborvitae along Juniper. Mr. Fernando explained that the arborvitae is located in the area the sidewalk will be. Mr. Ewert explained that the arborvitae was heavily damaged by the severe ice storm last winter. Mr. Manley was glad they were offering to replant arborvitae.

#### **PROPOSERS:**

None

#### **OPPOSERS:**

**Pam Barrow**, questioned the distance from Territorial to the new road and wondered if it would be safe. She stated that people turn the corner at an unsafe speed now. John believed the spacing was functional, but the City doesn't have a standard addressing street spacing.

#### **REBUTTAL:**

**Darwin Rasmussen** suggested moving the driveway access points as far to the west as possible, and did not believe a right in and right out at that location would be appropriate. Mr. Brown asked for clarity on whether the applicant was still willing to consider the right in right out possibility. John did not believe it would serve a purpose because if people wanted to go to Territorial they would just make a u-turn.

Mr. Brown closed the public hearing.

Mr. Brown believed that all the frontages on Juniper St. should be consistent in the type of fencing. John stated a condition could be written that requires continuity of fence and to meet all fencing standards.

Mr. Ewert stated this development even though it is further down Territorial Rd, would still impact the intersection with Hwy 99E. Mr. Tessman agreed that when added together with the subdivision heard earlier there would be an accumulated effect at the intersection. Mr. Brown stated the residents from this development would have more options for vehicle traffic and the number actually going to Hwy 99E would be very small.

It was moved by Mr. Able to approve SUB 04-03 as amended with the condition regarding continuity of fencing. Seconded by Mr. Manley. Mr. Brown questioned if the Commission wanted to condition the homes on lots 17 and 18 to face the inward street. John explained that was how the applicant had intended the homes to face. Mr. Ewert suggested adding a condition that there would be no driveway accesses off Juniper Street into the backyards so the fence would be continuous. Mr. Able amended his motion to include the driveway condition. Motion carried 4-1 with Mr. Ewert voting no.

### **V. DIRECTOR'S REPORT**

John asked the Planning Commission how they wanted him to proceed with the issue of the intersection at Hwy 99E and Territorial Rd. It was decided they wanted it to apply to any application that put traffic on Territorial and Hwy 99E and to have it apply May 1<sup>st</sup>.

John explained that Darren Nichols, Associate Planner was in Washington DC at the APA Conference. He stated that the packets would be delivered the next week instead of on Friday.

Have been working with the Willamette Valley Country Club regarding the zone change and might have something ready for the next meeting.

Mr. Ewert questioned if there had been any more information regarding the proposed bridge at Berg Parkway. John explained the County Board of Commissioners would be having a workshop in May to look at design options. Mr. Ewert asked for the meeting information so he could attend if possible.

## **VI. FINDINGS**

**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 3<sup>rd</sup> Ave between S. Pine and S. Redwood.

It was moved by Mr. Ewert to approve CUP 04-01 as written. Seconded by Mr. Tessman. Motion carried 5-0.

## **V. MINUTES**

### **March 22, 2004**

It was moved by Mr. Manley to approve as written. Seconded by Mr. Ewert. Motion carried 5-0

Mr. Ewert questioned where the Planning Commissions suggestion was regarding the placement of signs recommending that traffic on Territorial use alternate routes. John explained it had been forwarded to the Traffic Safety Committee and he would look into the issue.

Mr. Able questioned if the State would possibly lower the speed limit on Hwy 99E until the intersection was functional. John suggested sending the idea to the Traffic Safety Committee.

## **VI. ADJOURNMENT**