

A G E N D A

CANBY PLANNING COMMISSION

REGULAR MEETING City Council Chambers

Monday, September 13, 1993

7:30 p.m.

I. ROLL CALL

II. MINUTES

August 26, 1993

III. CITIZEN INPUT ON NON-AGENDA ITEMS

IV. COMMUNICATIONS

V. FINDINGS

MLP 93-02 - Howard/Guttormsen (Storage Facility)

VI. NEW BUSINESS

VII. COMMISSION DISCUSSION OF PLANNING ISSUES

VIII. PUBLIC HEARINGS

MLP 93-02, an application by Kevin Howard (applicant) and Wilhelm Guttormsen (owner) for approval to partition a 7.41 acre site into two parcels containing 3 acres (Parcel 1) and 4.41 acres (Parcel 2), respectively. The applicant intends to develop Parcel 1 into a 300-unit self-storage facility, which will include an office, restrooms, and an apartment. The facility will be paved, lighted, well-landscaped, and include electronic security. The parcel is located on the south side of Highway 99-E, near the Logging Road Bridge (Tax Lot 300 of Tax Map 3-1E-34C). *Continued from August 23, 1993.*

IX. DIRECTOR'S REPORT

X. ADJOURNMENT

MEMORANDUM

TO: Planning Commission

FROM: James S. Wheeler, Assistant Planner

DATE: September 3, 1993

RE: Supplemental Staff Report MLP 93-02

The Planning Commission directed staff to discuss revision of the requested utility easement dimensions and locations with the Canby Utility Board. In a phone conversation with Bob Rapp, it was agreed that the northeastern and eastern parcel lines of Parcel 1 would not need utility easements. The interior lot line (the boundary between Parcels 1 and 2) still requires a utility easement to the eastern property line of the subject parcel. The eastern and southern property lines of Parcel 2 can be six feet on the plat, with an additional six feet recorded on a separate instrument. This second six feet would be eliminated at the time that an easement is granted from the neighboring properties.

The Planning Commission also directed staff to discuss the access issue with the City Attorney, John Kelly. Staff apprised Mr. Kelly of the access issue, including the warranty deed presented by the applicant. Mr. Kelly contacted the State Department of Transportation (ODOT) and was told that ODOT's position is that the deed only reserves the right to apply for a permit and not a right to access the highway. At this time, the City Attorney recommends that Condition 5 (conditioning the approval of the partition pending ODOT's granting of access onto the highway prior to the signing of the partition final plat) remain as written in the staff report (MLP 93-02).

An argument has been made that the warranty deed for access to the current lot suffices in providing legal access for Parcel 1 and therefore, the partition should be approved without requiring ODOT's approval for the access (condition 5). The third criteria and standard for minor land partition evaluation (16.60.030.C.) states:

"The overall design and arrangement of parcels shall be functional and shall adequately provide building sites, utility easements, and access facilities deemed necessary for the development of the subject property without unduly hindering the use or development of adjacent properties;"

ODOT has stated that it believes that the access reservation on the deed for the lot only reserves the right to apply for a permit. Any change in the use of a parcel requires ODOT's review and approval. Therefore, in order for parcel 1 to be developed, ODOT's approval is necessary. And therefore, adequate access facilities are not provided for the development of parcel 1 without the approval from ODOT for access.

The attached recommended conditions of approval reflect the change in the utility easement requirements only.

VI. RECOMMENDATION

Based upon the findings and conclusions of the August 13, 1993 staff report and the September 3, 1993 supplemental report, staff recommends approval of MLP 93-02, subject to the following conditions:

For the Final Plat:

1. A final partition plat modified to illustrate the conditions of approval, shall be submitted to the City Planner for review and approval. The final partition plat shall reference this land use application -- City of Canby, Planning Department, File No. MLP 93-02.
2. The final partition plat shall be a surveyed plat map meeting all of the specifications required by the Clackamas County Surveyor. Said partition map shall be recorded with the Clackamas County Surveyor and Clackamas County Clerk, and a copy of the recorded map shall be provided to the Canby Planning Department.
3. All monumentation and recording fees shall be borne by the applicant.
4. Permanent utility construction and maintenance easements including, but not limited to, electric and water cables, pipeline conduits and poles shall be provided as follows:

6 feet in width along the southern parcel line of parcel 1 and the northern, eastern and southern parcel lines of parcel 2; and,

another 6 feet in width added to the eastern and southern parcel lines of parcel 2, to be recorded on a separate instrument of record and to be released when another 6 feet of utility easement is provided on the adjacent property; and,

12 feet in width along the western parcel lines of parcels 1 and 2.

Prior to the signing of the Final Plat:

5. The access for parcel one onto Highway 99-E shall be approved by the State Department of Transportation prior to the signing of the partition plat.

Prior to the issuance of a building permit for parcel 1 or 2:

6. A new deed and legal description for the new parcels shall be prepared and recorded with the Clackamas County Clerk. A copy of the new deeds shall be provided to the Canby Planning Department.
7. All utilities, including water and fire hydrants, must meet the standards and criteria of the providing utility authority.

Prior to the issuance of a certificate of occupancy for parcel 1:

8. A sidewalk shall be constructed for the full frontage along Highway 99-E. The sidewalk shall be constructed prior to the occupancy of any development on parcel one.
9. A 10" water main shall be constructed from the existing 6" steel water main approximately 195 feet west of the western property line along Highway 99-E.
10. An 8" water main shall be constructed from the 10" water main in Highway 99-E south to the southern property line of parcel 2.
11. The approval of this minor land partition does not constitute an approval of the development of the land for a mini-storage facility. Any development of the subject parcel must be accompanied by a Site and Design Review approval.



September 10, 1993

Mr. Robert G. Hoffman
Planning Director, City of Canby
182 N. Holly, P.O. Box 930
Canby, OR 97013

DEPARTMENT OF
TRANSPORTATION

HIGHWAY DIVISION
Region 1

Subject: MLP 93-02, Howard/Guttormsen Partition Application

FILE CODE:

The Oregon Department of Transportation (ODOT) has reviewed this application and is concerned about access issues that would be a direct result of partition approval. Should the proposed partition be approved, without an easement being provided to Second Street, access to the Highway would be requested as the only reasonable means of access. The Oregon Department of Transportation is concerned about the safety of traffic movements into and out of the property from the highway, and the impact to through movements at this location. Safety issues are complicated by the proximity of railroad crossings to the proposed highway access. In January 1993 there was a highway fatality resulting from a vehicle accessing the highway in the vicinity of the subject property.

On May 6, 1993, Jim Westbrook of ODOT, District 3, sent a letter to Kevin Howard stating that access is available to this property via Second Street, and highway access would not be granted. ODOT is aware that there is a deeded access reservation to the highway for the subject parcel. Possession of a right of access, no matter how obtained, is only a condition precedent to the ability to obtain a road approach permit, ORS 374.310 (1). The rights of access are subservient to the public's rights to free use of the streets for the purpose of travel, Oregon Investment Co. v. Schrunk, 242 Or 63, 408 P2d 89 (1965). Where there is reasonable alternative access, the decision not to grant direct highway access may be made, ORS 374.310 (3). We request that it be recognized that the subject property currently has safe and reasonable access to Second Street.

ODOT is currently working with the City of Canby to reconstruct and signalize State Highway 99E and Pine Street. The subject property and the adjoining property would have safe ingress and egress through this signalized intersection via Second Street. It is ODOT's determination, based on the information available at this time, that a road approach should not be installed on Highway 99E as proposed. ODOT requests access be required onto Second Street prior to partitioning, rather than directly to the highway. Therefore, should the partition request be granted, ODOT recommends a condition of approval that non-highway access be required through easement or other binding mechanism. Thank you for your consideration of the Oregon Department of Transportation's concerns and requests regarding Canby partition application No. MLP 93-02.



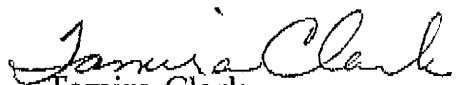
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To <i>Bob Hoffman</i>	From <i>Maria Clark</i>
Co. <i>Canby</i>	Co. <i>ODOT</i>
Dept. <i>City</i>	Phone # <i>555-7001</i>

9002 SE McLoughlin
Milwaukie, OR 97222
(503) 653-3090

Guttormsen Partition Application
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Please include these comments in the public hearing for this partition. This letter should be included in the hearing record as ODOT testimony. ODOT should be considered a party to the hearing and be entitled to any notices of future hearings, or extensions of hearings. Please inform me in writing of the City's decision and provide a copy of any findings, related to the partition.


Tamira Clark
Land Use Coordinator, Region 1

c.c. John Grassman, District 3
John DeTar, Region 2

MEMORANDUM

TO: Bob Hoffman, Jim Wheeler
FROM: John Kelly
DATE: September 13, 1993
RE: MLP 93-02--Howard Partition

Mike Robinson (Howard's attorney) has reviewed the ODOT letter. He disagrees that the case cited (Oregon Investment) supports ODOT's position that the right of access is only a condition precedent to the ability to obtain a road approach permit. Robinson still believes that the deed reserves a right of access to his client. Anyway, he will not be appearing tonight, but Howard will be there to hear the Planning Commission's decision.

I still hold to the idea of approval conditioned upon access to 99E being obtained by Howard. I think that best protects the City's interest rather than an outright denial. A conditional approval puts the ball in Howard's court to clear the legal air, so to speak. I'm not sure that ODOT's position is legally sound. I'm not sure it's not, but I don't see any precedent that ODOT's cited so far as dealing squarely with the issues presented in this case. I think the validity of the deed reservations is undecided in Oregon. Let's give Howard the opportunity to raise it if he chooses.

I won't be able to be at the meeting tonight as I have a commitment to retrieve my sheep from the Western Washington Fair.

