

AGENDA

CANBY PLANNING COMMISSION  
SPECIAL SESSION  
MAY 31, 1990

- 1) ROLL CALL
- 2) MINUTES: 5/14/90
- 3) COMMUNICATIONS
- 4) UNFINISHED BUSINESS
- 5) BUSINESS FROM THE AUDIENCE
- 6) PUBLIC HEARING:

Subdivision--SUB--90-01 (Cedar Creek Development). The applicants have requested to subdivide a 14.27 acre parcel that is zoned R-1.5, Medium Density Residential, with a Planned Unit Development overlay. Approval of a PUD with individual lot sales requires consideration as a subdivision. The property involves Tax Lots 800, 900, 1000, 1001 on Tax Map 4-1E-4C. Also Tax Lot 1000 on Tax Map 4-1E-4B.

- 7) OTHER REPORTS

NOTICE OF CONTINUED HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Planning Commission of the City of Canby, Thursday, May 31, 1990, at the City Council Chambers located at N.W. Second Avenue, Canby, Clackamas County, State of Oregon, beginning after 7:30 p.m. The meeting will be for continued consideration the following item:

Subdivision--SUB-90-01 (Cedar Creek Development). The applicants have requested to subdivide a 14.27 acre parcel that is zoned R-1.5 Medium Density Residential with a Planned Unit Development overlay. Approval of a PUD with individual lot sales requires consideration as a subdivision. The property involves Tax Lots 800, 900, 1000, 1001 on Tax Map 4-1E-4C. Also Tax Lot 1000 on Tax Map 4-1E-4B. An address of a residence on the parcel is 715 S.W. 13th.

In considering whether to permit, alter or deny a Subdivision, the Planning Commission must consider the following criteria:

A. Conformance with the text and applicable maps of the Comprehensive Plan. Applicable Comprehensive Plan policies include the Medium Density Residential Designation; Land Use Element Policy No. 1, and Implementation Measures A, B, C, G, and H; Policy No. 2 and Implementation Measures A, C, and E; Policy No. 6 and Implementation Measure A; Environmental Concerns Policy No. 8-R and Implementation Measure A; Housing Policy No. 2 and Implementation Measures A, B, D and E; Energy Policy No. 2 and Implementation Measures A; and Transportation Policy No. 6 and Implementation Measures A, B, and C.

B. Conformance with other applicable requirements of the Land Development and Planning Ordinance. Applicable Zoning Ordina-

nance provisions include Chapter 16.18 (Intermediate Density Residential Zone); Chapter 16.36 (Planned Unit Development Overlay Zone); Chapters 16.62, 16.64, 16.66, 16.68 and 16.70 (Subdivision Requirements); Chapter 16.82 (Elderly Housing); and Division V (Planned Unit Development Requirements).

C. The overall design and arrangement of lots 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.

Anyone wishing to comment on the proposals may do so by submitting written or verbal testimony at the hearing.

Failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the Planning Commission an opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals.

A copy of the application and record are available for inspection at no cost, and for copying at reasonable cost, in the office of the Canby Public Works Department, 182 N. Holly, Canby, Oregon, 266-4021, during normal working hours (8:00 a.m. to 5:00 p.m.). The Public Works Director is available to respond to questions regarding this application.

A copy of the staff report will be available for inspection at no cost at least seven (7) days prior to the hearing and will be provided at reasonable cost.

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Notice of this hearing is as provided in Section 16.88.130  
of the Land Development and Planning Ordinance (#740) as adopted  
February 1, 1984.

DATED this 15th day of May, 1990.

Marilyn K. Perkett  
City Recorder

By: Wayne S. Klem, Public Works Director  
Canby Planning Commission

DATE OF PUBLICATION:

May 14, 1990

Canby Planning Commission  
Canby City Hall  
182 N. Holly  
Canby, Oregon 97013

Re: Appeal of staff decision dated May 8, 1990

Dear Commissioners:

On April 8 we appealed the Planning Commission decision dated April 24 and May 22, 1989 as identified on Exhibit A hereto to the City Council on the basic premises that:

1. We are entitled to receive a personally delivered or mailed notice of a land use hearing as property owners owning property immediately adjacent the subject property. Under Oregon statute and case law, such notice must be sufficiently adequate to inform the recipient of the true nature of the application and the entire scope of applicable standards and criteria from the Land Development Ordinance and the Comprehensive Plan.
2. The notice we received was inadequate, misleading and deceiving.

On May 8, 1990 we received a letter from Rusty Klem, Director of the Department of Public Works refusing to submit our appeal to the City Council on the basis that it was not timely filed. (See Exhibit B).

The State of Oregon has amended their laws with respect to appeals of land use decisions affective January 1, 1990. ORS 197.830(3) states in part:

"If a local government makes a land use decision without providing a hearing or the local government makes a land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section: (a) Within 21 days of actual notice where notice is required..."

There appears to be nothing in this statute that waives a petitioner's obligation to first exhaust all remedies available by right before petitioning the board for review as required by ORS 197.825(a). Therefore, we have attempted to appeal this matter to the City Council as per CDLO 740, 10.8.40(B) in a timely fashion (within 15 days from receiving actual notice that a decision of which we had no public notice was made) based upon Deck v. City of Canby, LUBA No. 88-073 (December 16, 1988).

Since staff has refused to process the appeal, we appeal their

EXHIBIT "A"

decision to you per CDLO 740, 10.8.40(E) in a timely fashion (within 10 days from receipt of the staff decision). We request reversal of the staff decision; acceptance of our appeal and appeal fee; and opportunity to be heard on the matter of our appeal by the City Council as we are entitled under due process of law and equal protection of the laws.

NOTE: Mr. Klem's letter refers to decision ZC-89-02. We could find nothing in your files indicating the Conditional Use Permit issued to A.L.F., Inc. for living center for frail elderly carried this designation. We believe the ZC-89-02 designation belongs to the zone change decision for Marv Dack and not the decision being appealed herewith. In our April 8, 1990 letter we also asked for a rehearing on the Dack zone change although the normal appeal procedure of a City Council zone change decision would be directly to LUBA. We did this in order to give the City of Canby an opportunity to rehear the matter based on earlier LUBA decisions with respect to lack of effective notice and thus save both the City and us the cost of another LUBA appeal.

However, since the City of Canby has no provisions under its ordinance for rehearings (and thus we had exhausted all available remedies) and since we received no response as to a voluntary rehearing, we filed an appeal of the zone change matter to LUBA and it is being processed.

Your consideration of this matter is greatly appreciated.

Respectfully submitted,



John and Sande Torgeson  
34815 S. Dickey Prairie Rd.  
Molalla, Oregon 97038