

**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
November 7, 2012**

**Presiding:** Mayor Randy Carson

**Council Present:** Rich Ares, Traci Hensley, Brian Hodson, Walt Daniels, Greg Parker, and Tim Dale.

**Staff Present:** Amanda Zeiber, Asst. City Administrator/HR Director; Joseph Lindsay, City Attorney; Kim Scheafer, City Recorder; Angie Lehnert, Associate Planner; Bryan Brown, Planning Director; Julie Wehling, Transit Director; and Jamie Stickel, Main Street Manager.

**Others Present:** Ray Hughey, Wayne Oliver, Ryan Oliver, Bev Doolittle, Bob Cornelius, Ken Rider, Mike Connors, Lee Layton, Charles Burden, Jake Tate, and Steve Abel.

**CALL TO ORDER:** Mayor Carson called the Regular Meeting to order at 7:30 p.m. in the Council Chambers followed by opening ceremonies.

**COMMUNICATIONS:** None.

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** Bev Doolittle, Executive Director of the Canby Area Chamber of Commerce, discussed the importance of small businesses to the economy. She announced the third annual Small Business Saturday on November 24.

**MAYOR'S BUSINESS:** Mayor Carson attended the Police Department Open House and Ribbon Cutting, C4 meeting, Dragonberry Groundbreaking, and First Friday.

**COUNCILOR COMMENTS & LIAISON REPORTS:** Councilor Dale attended the Community and Development Visioning meetings, Sequoia Parkway extension meeting, and Dragonberry Groundbreaking. Regarding Canby Utility, the Knights Bridge substation was still in the permitting process and an increase in water hook-up fees was approved.

Councilor Parker was appreciative of the Main Street volunteers for the Halloween parade.

Councilor Daniels said a historical calendar would be given with every renewal of Historical Society membership. The Volunteer Appreciation and Annual Meeting would be held on November 20. The next Transit Advisory Committee meeting would be November 15. He discussed the new shopping shuttles. There would also be a Visioning meeting on November 15.

Councilor Hodson announced there would be three openings at the end of the year on the Planning Commission. The Light the Night event would be held at the Fairgrounds December 13-17. He also attended the Dragonberry Groundbreaking. The High School's play *Our Town* would be opening on November 9.

Councilor Hensley attended the Community Visioning meetings, Sequoia Parkway extension meeting, Police Department Ribbon Cutting and Open House, Halloween parade, and Main Street Promotions Committee meeting.

Councilor Ares had just returned from a five week trip. He had been in one of the poorest and most dangerous countries in Africa and appreciated living in Canby.

**CONSENT AGENDA: \*\*Councilor Daniels moved to adopt the minutes of the October 17, 2012 City Council Regular Meeting; an Off-Premises Liquor License Application for Willamette Valley Country Club; and a Change of Ownership Liquor License Application for Pacific Northwest Petroleum, Inc. Motion was seconded by Councilor Ares.**

Councilor Ares said he would abstain from the vote as he was a member of the Willamette Valley Country Club.

Councilor Parker would also abstain as he was not in attendance at the October 17 meeting.

**Motion passed 4-0 with Councilors Ares and Parker abstaining.**

**PUBLIC HEARING:** TA12-01/ZC 12-02 Fred Meyers Stores, Inc. – Joe Lindsay, City Attorney, said each Councilor received a 280 page packet of evidence which had also been presented to the Planning Commission. The task before them was a decision on the Planning Commission's recommendation for denial of the text amendment to the business overlay, not the site and design review. He explained how the hearing was both quasi-judicial and legislative.

Mayor Carson read the public hearing format.

#### CONFLICT OF INTEREST:

Councilor Ares – No conflict, plan to participate. At one point he owned a quarter of the subject block at the west end, however it had been a number of years since he owned it.

Councilor Hensley – No conflict, plan to participate.

Councilor Hodson – No conflict, plan to participate. He and the applicant, Ryan Oliver, were on the Chamber of Commerce Board and Mr. Oliver was Councilor Hodson's insurance agent. He and the property owner had not discussed the application. The Chamber Board did receive a presentation on this application, but he recused himself from the meeting and did not hear the presentation.

Mayor Carson – No conflict, plan to participate.

Councilor Daniels – No conflict, plan to participate.

Councilor Parker – No conflict, plan to participate.

Councilor Dale – No conflict, plan to participate.

#### EX PARTE CONTACT:

Councilor Ares – No contact.

Councilor Hensley – Driven by the site, drew no conclusions.

Councilor Hodson – Driven by the site, drew no conclusions.

Mayor Carson – He had received an email from Mr. Lang stating he felt the Planning Commission did not make the right decision. He also received permission from the property owner to put up a political sign on the site.

Councilor Daniels – No contact.

Councilor Parker – No contact. With the permission of the landowner, he put up a political sign on

the property several months ago.

Councilor Dale – Driven by the site, drew no conclusions.

Mayor Carson opened the Public Hearing at 7:52 p.m.

STAFF REPORT: Angie Lehnert, Associate Planner, said if the Council approved the Text Amendment then the Design Review would be decided by the Planning Commission. She gave an overview of the application which was located at 99E and Locust. It was zoned Highway C-2 Commercial. A traffic study was required but not a Transportation Planning Rule (TPR) analysis. The City Traffic Engineer concurred the traffic study was sufficient. Staff did not think the application conflicted with the Zoning Code, Comprehensive Plan, and Statewide goals. There was no comment from Oregon Department of Land Conservation and Development. Notices had been sent to property owners 200 feet from the site, utility agencies, City Engineer, City Traffic Engineer, and ODOT. One comment form was received in favor of the application. The City Engineer and ODOT had recommendations regarding the design, but that would not apply to this decision. The site was in the Downtown Overlay Zone. The C-2 Commercial zone allowed a fuel station, but the overlay Core Commercial would not allow a fuel station. Core Commercial was geared for pedestrian oriented developments, and this proposal conflicted with that. The applicant was requesting changing the boundary so the property could be in the Outer Highway Commercial zone. She gave arguments for and against the proposal. The Planning Commission recommended denial by a 3-1 vote and she summarized the reasons. This was an existing high pedestrian area with zoned R-2 to the south and east. The Council needed to consider where downtown should begin. The Core Commercial required pedestrian oriented designs, and Outer Commercial allowed more auto oriented designs.

Councilor Ares questioned how the boundary was established and if it was arbitrary.

Bryan Brown, Planning Director, said in going through documents and reports, staff could not find why the boundaries were placed where they were. He assumed they placed the Core Commercial boundary near Locust because it was the first point where businesses were seen on both sides of the street. There had also historically always been an entrance sign to the community there that marked the arrival of the downtown area.

Councilor Hodson asked for more clarification on the history of the overlay.

Mr. Brown said this was shifting of a sub boundary in the overlay, and the overlay itself was not affected. It would affect where two different design standards within the sub areas applied.

Councilor Hodson asked if this would affect the Gateway Corridor Plan.

Mr. Brown replied it was not relevant to this consideration because it was not an adopted document. The pedestrian crossing had been adopted in the TSP, but it stated there needed to be an additional crossing somewhere between Ivy and Locust.

Councilor Daniels asked if the intent of the overlay was to protect the zone with certain criteria.

Mr. Brown stated the intent of the regulations was to get the quality of development in this location. It regulated the design more than the use.

APPLICANT: Lee Layton, Westlake Consultants, reviewed material that had been given to the Planning Commission and was in the Council's packet (pages 41-59). He gave a description of the site. In regard to the boundary, he thought it was not that the boundary was arbitrary, but that it was based on the scale of the analysis that the group did at that time. This plan needed fine-tuning in the implementation. The boundaries aligning on both sides of the highway was not relevant as there was no street crossing there. Having businesses on both sides of the street was not significant because they were not interconnected. He referred to a publication by ODOT and DLCDC called the *Main Street Handbook*, Chapter 3, Recipe for Success, where it discussed gateway concepts. This site was 900 feet away from the downtown core. He then discussed the ratio of the width of the street to the height of the building. The streetscape was creating a space in the downtown core, but the highway areas was a different ratio and there was no sense of safety and enclosure and it was hard to achieve a pedestrian climate. He questioned how likely it was to create a pedestrian environment at this location. The speed limits also transitioned to lower speeds in the downtown core for safety, attention, and to define it was a different place than the highway. The speed along the highway did not show people they were in the core yet. The site was on the outskirts of the gateway to the City and this environment was better served being in the Outer Highway Commercial district. He showed pictures of the site that showed what was around the intersection and that it was not a place for pedestrians. He thought the focus should be concentrated on the downtown core, and that the restrictions had to tighten and focus on a smaller area to create a sense of place. The highway corridor was not the place to extend the downtown core area.

Steve Abel, Stoel Rives Attorney at Law, spoke about the four reasons that the Planning Commission recommended denial. Regarding the notion that the process that created the overlay also created a precedent that was locked in, he read part of the Comprehensive Plan where it stated the intention was the plan would be improved as more and better data became available. Regarding the question of transportation, a transportation study was all that was required and it had been submitted and found to be adequate. The TPR only triggered when there was going to be a significant effect on existing or planned transportation facility. The use was already allowed on the site and they were only talking about design, there was no impact by this change. The Comprehensive Plan already incorporated the trips for the C-2 zoning. Regarding the reference to the Gateway Corridor Plan, it was not adopted and the Comprehensive Plan said what the uses could be and the Gateway Plan was about how the highway would interact, not how the highway demanded what the uses would be for the properties adjacent to the highway. Regarding the need for the change, he thought there was a public need to get the plan right so the property could develop in that location as it had been vacant for a long time and would create economic vitality. He thought this was an appropriate request to allow for the overlay to be amended and that it met the criteria.

PROPOSERS: Bev Doolittle said the Chamber worked with the City on the committee that put the new design standards together. The committee's directive was to focus on what the sites looked like, the building design, and those related requirements. The line had been drawn there because a building was going to be built on that location and would have been the first building that met the new design standards. No one could foresee the economic downturn and that the building was not going to happen and how it would alter the businesses that could go in there in its place. Once the design standards were completed, the Chamber worked with the Planning Commission to revise the Sign Code to compliment the design standards.

Ryan Oliver, resident of Canby, explained his building was designed for the site and was the

reason the boundary was extended to include the site as it would have met the design standards. The economy changed and the land was still vacant. He gave a handout to the Council that contained letters from people that also were on the Downtown Design Standards Committee that explained the intent of the standards. The intent was to make the buildings nice in the zones. He was unclear who the Save Downtown Canby group was. He thought it was really opposition from other local gas stations. City staff recommended approval of this application.

OPPONENTS: Mike Connors, Hathaway, Koback Connors LLC, represented Save Downtown Canby, a group of local business owners who were concerned about this proposal. The Planning Commission held two hearings on this issue and had reviewed the material that was before Council and went through a thoughtful deliberation. He encouraged the Council to review the transcript of those meetings. There were some Planning Commissioners who were part of the creation of the downtown overlay. He thought this plan was inconsistent and would significantly undermine the downtown overlay and that it would have significant traffic impacts that had not been assessed and no mitigation had been proposed. He gave a history of the downtown overlay that was meant to revitalize downtown and was a two year process to develop. He did not think the boundary was arbitrary and should include the property because of its proximity to downtown, it lined up with ODOT's Station Area Plan, its proximity to the welcome sign, and a high pedestrian area. A pedestrian crossing was recommended in the Gateway Plan for this location. A Commercial Core Overlay was a pedestrian oriented zone and Outer Highway was an auto oriented zone and was the only way a gas station could meet the regulations. He did not think the entire plan should be rethought at the recommendation of the consultants hired by Fred Meyer. He thought Council should be careful about setting aside a deliberative, precise process. If it was set aside, it would be setting a precedent for future changes to the plan. He thought any changes should be done through a process similar to the process that was used to create it instead of a single application supporting a single use and reviewing the record in a single night. He thought the site was designated not just because of Mr. Oliver's building, but for many reasons. He then discussed the TPR Rule that required anytime there was an amendment to the Comprehensive Plan or land use regulations, they had to provide a TPR analysis. The focus was on the most intensive use allowed and looked 20 years out. This had not been done. There were current problems in the transportation network and 20 years in the future there would be multiple failing intersections and no funding to fix them. He thought the developers should contribute to the solutions. It was stated the analysis was not required because this particular change would not cause any more traffic because it was a use allowed in the underlying zone. Changing a zone from pedestrian oriented uses to auto oriented uses would create more traffic. A service station would have significant traffic impacts. He asked the Council to adopt the Planning Commission's recommendation for denial. Mr. Connors had not been given a copy of the letters that Mr. Oliver handed out and they could be considered new evidence. He wanted it on the record that Fred Meyer had provided a written extension of the 120 day rule.

Mr. Brown confirmed they had.

Mr. Lindsay provided Mr. Connors with a copy of the letters that Mr. Oliver handed out.

Mayor Carson recessed the meeting at 9:23 p.m. and reconvened at 9:30 p.m.

Mr. Connors asked the Council to strike the letters from the record as it was new evidence. If Council accepted them, he wanted Council to recognize they were support letters, not any indication of what the task force did or was intended to do or any evidence in the record.



Council consensus was to strike the handouts from the record.

REBUTTAL: Mr. Abel explained Mr. Layton was a professional with the expertise of explaining the need for fine-tuning that made good planning sense for the City. Mr. Connors was not a planning expert. The property was remote from the central core and had sat virgin for quite some time. There were reasons why the site would not develop with the current overlay. The Comprehensive Plan said it was an appropriate process for the amendment. There was a design review that would occur if this amendment was approved. He disagreed with what the law required regarding the TPR analysis. He read from State law about when a TPR analysis was required. The trips were already accounted for under the C-2 zone and the C-2 zone had a wide variety of uses and traffic impact. The C-2 zone allowed this use. Group McKenzie, Transportation Engineers, agreed the TPR analysis was not necessary and the transportation study provided was adequate. The City's Transportation Engineers also agreed. He thought the criteria for the application had been met.

Councilor Parker asked if the applicant would be opposed to Council postponing the decision.

Mr. Abel said the extension deadline was November 22. He requested the record be closed if the hearing was continued.

Mayor Carson closed the Public Hearing at 9:38 p.m.

DISCUSSION: Councilor Ares said when the plan was adopted the City's long range planner wasn't heavily involved in it. This was not a detailed plan like a Zoning Map, but a broad brushed concept plan where the lines were not necessarily drawn with an eye toward detail. He understood this zone as being a pedestrian oriented use, and he knew the pedestrians came down Juniper and 2<sup>nd</sup> Avenue to walk, not 99E. It was not a pedestrian neighborhood, but a commerce truck route. The Gateway Plan was not finalized. He did not want to encourage pedestrian use on 99E, but on the sidestreets. Even reducing speed limits would not encourage pedestrian use. Except for Hulberts, all the other businesses in the area were auto oriented. He thought this was a reasonable request.

Councilor Hensley concurred with Councilor Ares' comments. The gateway sign did not really indicate they were coming into downtown. It wasn't downtown, it was highway. She did not think they wanted to encourage pedestrian traffic in that area. They were moving a line that there was some debate about how it was created. She questioned moving the line mid-block. It was not the role of government to pick and choose commerce. She did not support putting pedestrian areas on 99E.

Councilor Hodson said there was a question about where they wanted to start the identity of the City. There was not a lot of pedestrian activity around this site. The decision was in regard to the boundary of a design standard overlay, not whether or not a gas station could be placed there. If they were going for a certain look for coming into Canby, did this design standard meet that and could Fred Meyer design a gas station that met that design standard. If they moved the boundary line, they would change what that design standard was going to be. He was not in favor of changing the design standard. If they wanted to change the tone of 99E, the overlay needed to be left where it was. He thought it would create a precedent for every other application within this design area. He agreed many people walked 2<sup>nd</sup> Avenue as opposed to 99E.

Councilor Daniels said there was a reason the overlay was put in place and it would cause more traffic with all of the other businesses nearby. If the application was turned down in Design Review, the boundary would still be changed and would not be protected. The intent was for improvement on 99E and he would rather leave it the way it was.

Councilor Parker asked what the criteria was by which they should make the decision.

Mr. Brown explained the criteria. He suggested the Council consider if changing the design standards applicable to this property and removing the sub area boundary as was being proposed, would those new design standards harm the intent of the downtown overlay district.

Councilor Dale asked what the City's position was about the TPR analysis. Did they need one or not.

Mr. Brown replied the City hired a Traffic Engineer whose professional opinion was there was no significant impact being proposed with a sub area boundary change that would demand a TPR analysis be done. The Transportation Plan had already taken into account a reasonable worst case scenario when the transportation analysis was done for the potential 20 year impact of the various intersections. This would be one of the design issues the Planning Commission would address if this was approved.

Councilor Dale asked if the overlay was changed, did it impact how the Planning Commission had to deal with the design.

Mr. Brown did not think it would not bind the Planning Commission in any way. Changing the boundary did not set a direction other than to go forward with the design that met the code that was applicable to the new sub area boundary. A change to the boundary would not relegate the property to less quality, but would relegate it to application of different design standards to achieve a different look.

Ms. Lehnert said the purpose of the Core Commercial was pedestrian, and Outer Highway Commercial was auto. There was still the requirement to have higher quality material, landscaping, and lighting standards. This proposal was auto oriented, not pedestrian oriented. The Council had to consider the objectives of the downtown overlay and Comprehensive Plan for this portion of the highway. Would it be detrimental to change this one lot or not.

Councilor Dale would rather change the policy and have a clean process than doing exceptions. However, it was a 150 foot move on a perimeter and he could be persuaded to change it as long as they did not give up their ability to keep the look and feel that they wanted. A pedestrian friendly fueling station was not compatible with Fred Meyer's business plan as it did not give the revenue stream they needed.

**Ordinance 1365 – \*\*Councilor Ares moved to approve Ordinance 1365, AN ORDINANCE AMENDING TITLE 16, CHAPTER 16.41 OF THE CANBY MUNICIPAL CODE CONCERNING THE SUBAREA BOUNDARY OF THE CANBY DOWNTOWN OVERLAY ZONE to come up for second reading on November 21, 2012. Motion was seconded by Councilor Parker.**

Councilor Parker was frustrated there was not a clearer reason for why this was put in place. He thought this would create a better looking fueling station on 99E.

Councilor Daniels said the area had always been an entry to the City and there was a reason for the overlay zone.

Councilor Ares said a pedestrian oriented zone on 99E did not work due to the closeness of the highway to the sidewalks. He encouraged Fred Meyer to not just meet the intent, but go the extra mile in the spirit of the design standards and make a good design.

**Motion passed on first reading 5-1 with Councilor Daniels opposed.**

Mr. Brown clarified the 120 day rule for the Site and Design Review had been extended to January 31, 2013.

**RESOLUTIONS & ORDINANCES: Ordinance 1364 – \*\*Councilor Dale moved to adopt Ordinance 1364, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH HUBBARD CHEVROLET OF HUBBARD, OREGON; WILSONVILLE CHRYSLER JEEP DODGE OF WILSONVILLE, OREGON; WIRE WORKS OF SALEM, OREGON; AND FORD MOTOR CREDIT CORPORATION FOR THE LEASE / PURCHASE OF ONE (1) 2013 CHEVROLET TAHOE AND ONE (1) 2013 DODGE CHARGER WITH POLICE EQUIPMENT PACKAGES FOR THE CANBY POLICE DEPARTMENT; AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Hensley and passed 6-0 by roll call vote.**

Ordinance 1366 – Jamie Stickel, Main Street Manager, said the Main Street Promotions Committee had brought up fundraising through special events with the key money maker the selling of alcohol. The Code did not allow alcohol at a special event. This would be a case by case basis and for each event there would be the requirement to get a special license through OLCC, to have appropriate security, and appropriate insurance.

Councilor Parker had come back from the National Main Street Conference with this idea. His vision and promise was to move the Main Street program off of City funding to be its own 501c3. The ordinance was general so that the permitting process could be changed if needed without having to come back to the Council. Staff and the Police Chief would be working on the process. The Police Chief had no issue with it.

Mayor Carson confirmed this would allow drinking in the City parks. Mr. Lindsay said it would not require changing the Code as it had to be a qualifying event.

Councilor Parker suggested staff bring back to the Council a report on the permit requirements and how the process was working.

**\*\*Councilor Hensley moved to approve Ordinance 1366, AN ORDINANCE AMENDING CANBY MUNICIPAL CODE SECTION 09.24.060 REGARDING DRINKING IN PUBLIC PLACES to come up for second reading on November 21, 2012. Motion was seconded by Councilor Parker and passed 6-0 on first reading.**



**NEW BUSINESS:** Update on Business Energy Tax Credit (BETC) Pass Through Partners – Julie Wehling, Transit Director, gave an update on the status of the outstanding BETC credits. Canby Area Transit started applying for these funds in 2003 through 2010. In the beginning the Department of Energy found the pass through partners. In January 2011, the Department of Energy said the program would sunset and they would not find pass through partners. This created a 33% reduction in CAT services. CAT contracted with a corporation that proposed to find partners, and they were found within 90 days. The total revenue that would be received was \$658,150. This would pay the shortfall that they had experienced in 2011 and provide operating revenue to carry them through dry spells when they were waiting for reimbursement grants. The Sewer Fund had made a \$500,000 loan to CAT with an agreement for CAT to pay it back in 5 years. She thought it would be best to wait before paying the money back in full due to changes in the federal transportation funding streams. The decisions would be made in the spring for how the funding was going to be changed. There were other unknowns regarding the contract rate with MV Transportation, State funds that were expected to be down slightly, and impact of the new fare on ridership. However, payroll tax revenue was up and they had collected more fares than expected.

There was discussion regarding re-establishing local fixed route service.

The Council praised Ms. Wehling for her positive attitude during adversity and for her innovation.

Completion of Metro 2035 Regional Forecast – Implications for Canby – Mr. Brown said Metro had reached outside their boundary to do their regional forecast recognizing the importance of the land capacity of surrounding cities and their effect on predictions where population, housing, and employment might distribute itself. Metro projected potential for a higher growth rate than the past 50 years for Canby. With the current Urban Growth Boundary, the City was projected to be built out by 2030 or 2035.

**CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS:** None.

**CITIZEN INPUT:** None.


**ACTION REVIEW:**

1. Approved the Consent Agenda.
2. Adopted Ordinance 1364.
3. Approved Ordinance 1365 to come up for second reading on November 21, 2012.
4. Approved Ordinance 1366 to come up for second reading on November 21, 2012.

There was no Executive Session.

Mayor Carson adjourned the Regular Meeting at 10:55 p.m.

  
Kimberly Scheafer, MMC  
City Recorder

  
Randy Carson  
Mayor

Assisted with Preparation of Minutes - Susan Wood