

**CANBY CITY COUNCIL  
WORK SESSION MINUTES  
February 15, 2006**

**Presiding:** Mayor Melody Thompson

**Council Present:** Roger Harris, Walt Daniels, Wayne Oliver, Teresa Blackwell and Randy Carson.

**Staff Present:** Mark Adcock, City Administrator; John Williams, Community Development & Planning Director; and Kim Scheafer, City Recorder Pro Tem.

**Others Present:** Tony Helbling, Planning Commissioner; Dan Ewert, Planning Commissioner; Buzz Weygandt; Lisa Weygandt; Terry Tolls; Bob Zimmer; Lynn Weygandt; Pat Weygandt; Scott Taylor, Canby Utility Board Member; Craig Lewelling; and Ernie Laitinen.

Mayor Thompson called the work session to order at 6:30 p.m. A light dinner was served.

Buzz Weygandt gave a history of his property and how the industrial area had materialized. With the development study and increase in interest, he thought now was the right time.

Lisa Weygandt said they were thinking about applying for annexation of their property for the November ballot. She talked about the benefits of bringing the property into the City limits.

Terry Tolls talked about the growth in the Industrial Park and what businesses were coming in. They needed a good selection of land available, and they did have some land to the north. They did not have a large lot with railroad access that the Weygandt property would provide. It would also complete the loop on S Berg Parkway and extend utilities.

Dan Ewert, Planning Commissioner, said that they needed to do something with transportation and this was a good move because it made the connection.

Tony Helbling, Planning Commissioner, said it would provide jobs, which citizens were saying needed to happen before residential annexations, and the money would go into the General Fund.

Mr. Helbling recommended looking at it in two steps. The annexation and the other was funding of Sequoia Parkway beyond Township. They needed to be ready with a plan.

There was consensus that the Weygandts should pursue applying for annexation.

There was concern about how to draw business in since it would not have urban renewal incentives.

Mayor Thompson adjourned the work session at 7:28 p.m.

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**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
February 15, 2006**

**Presiding:** Mayor Melody Thompson

**Council Present:** Roger Harris, Walt Daniels, Wayne Oliver, Teresa Blackwell and Randy Carson.

**Staff Present:** Mark Adcock, City Administrator; John Kelley, City Attorney; John Williams, Community Development & Planning Director; Chaunee Seifried, Finance & Court Services Director; Margaret Yochem, Transit & General Services Director; Bob Godon, Building Inspector; Darvin Tramel, WWTP Supervisor; and Kim Scheafer, City Recorder Pro Tem.

**Others Present:** Alex Krishchenko, Ken Dobson, Irene Breshears, Geoff Carson, Richard & Florence Ball, Phil Hingson, Vickie Nees, Craig Lewelling, and Kyle Bogardus.

**CALL TO ORDER:** Mayor Thompson called the Regular Meeting to order at 7:35 p.m., followed by the opening ceremonies.

Employee of the Month Presentation for January – Mark Adcock, City Administrator, presented Bob Godon, Building Inspector, with the Employee of the Month Certificate for January.

Iwo Jima Proclamation – Mayor Thompson read a proclamation proclaiming February 25, 2006 as Iwo Jim Remembrance Day and presented it to Geoff Carson. Ms. Irene Breshears spoke about the events that would take place at the Canby Adult Center.

**COMMUNICATIONS:** John Kelley, City Attorney said they received a letter that day from Rick Myers inquiring about basketball hoops blocking right of ways in City streets. Staff would look into a history of the issue and liability issues.

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** None.

**MAYOR'S BUSINESS:** Mayor Thompson said she had attended the METRO Mayor's Forum and did a PowerPoint presentation about livability.

**COUNCILOR COMMENTS & LIAISON REPORTS:** Councilor Carson said that the Canby Utility Board had signed a contract with Veolia Water North America to take over the operation and maintenance of their drinking water treatment facilities. It was a ten year contract.

Mayor Thompson said the Council had a work session with the Planning Commission prior to the City Council Meeting where they discussed the possibility of annexing some industrial property.

**CONSENT AGENDA: \*\*Councilor Blackwell moved to approve Accounts Payable of \$350,071.50; Minutes of the February 1 City Council Regular Meeting and Executive Session; Appointment of Robert Ruby to the Transit Advisory Committee for a term to expire on March 31, 2009; reappointment of Jim Newton to the Canby Utility Board for a term to expire on February 28, 2009; and reappointment of Virginia Molamphy to the Canby Utility Board for a term to expire on February 28, 2009. Motion was seconded by Councilor Carson and passed 5-0.**

**PUBLIC HEARING: APP 05-01 Krishchenko -**

Mayor Thompson read the public hearing format.

**CONFLICT OF INTEREST:**

Councilor Harris - No conflict, plan to participate.  
Councilor Daniels - No conflict, plan to participate.  
Councilor Oliver - No conflict, plan to participate.  
Mayor Thompson - No conflict, plan to participate.  
Councilor Blackwell - No conflict, plan to participate.  
Councilor Carson - No conflict, plan to participate.

**EX PARTE CONTACT:**

Councilor Harris - No contact.  
Councilor Daniels - Driven by the site, drew no conclusions  
Councilor Oliver - No contact.  
Mayor Thompson - No contact.  
Councilor Blackwell - No contact.  
Councilor Carson - No contact.

**STAFF REPORT:** John Williams, Community Development and Planning Director, said this was an appeal of a Planning Commission decision from Alex Krishchenko, resident of 1214 S Cedar Loop. The Planning Commission had denied a request to add a new driveway on SW 13<sup>th</sup> in order to construct a new single family house on the lot. The Planning Commission had previously approved a minor land partition for the appellant, but created a condition that prevented new driveways from being constructed on 13<sup>th</sup> Avenue. There had been discussion on alternative routes. In 2005, Mr. Krishchenko filed a modification application requesting to eliminate the restrictive condition and allow a driveway directly onto SW 13<sup>th</sup>. The Planning Commission denied the modification request and that was the decision being appealed that night. He discussed the four main points of the appeal application. They had received a fax that afternoon from Mr. Krishchenko's attorney with additional arguments. He read comment forms from Rick Reeder, Patty & Gary Welch, and Vickie Nees into the record.

Mayor Thompson opened the public hearing at 8:16 p.m.

**PUBLIC TESTIMONY**

APPELLANT: Mr. Ken Dobson said he was representing Mr. Krishchenko. He said that at the time the application for the partition was approved with conditions, staff did not have any concerns about the partition except the access spacing requirements. The only issue was whether the hardship was self-created. At the time of the partition application, it had been planned to use the City property for that purpose. However, when the City sold the property back to the church, it took away the access to the property. The hardship arose when the City sold the land back to the church. The City could have sold it back to the church with a reservation of an easement or limited right-of-way to allow the parcel access to the road. There was a requirement under Oregon Law in land issues that the City has to set forth findings so the applicant and others in the community can figure out what the Planning Commission was thinking when it denied the application. He would address the traffic concerns in rebuttal. Planning Commission Chairman Brown was a Bishop for the church. Even though it was a non paid position, the church like any organization runs on money. He had a vested interest in the financial well being of the church.

PROPONENTS: None.

OPPONENTS: Ms. Florence Ball said that Mr. Reeder who had submitted a comment form no longer lived on Cedar Loop. The staff report mentions that the Planning Commission found that the proposal met all requirements except the access spacing standards on SW 13<sup>th</sup> Avenue. There was one other requirement that they did not meet. The Planning Commission approved the partition request with the condition that no lot shall directly access SW 13<sup>th</sup> Avenue. Mr. Krishchenko had not provided proof of adequate alternate access. She felt that allowing one new dwelling access onto an arterial street was not in conformance or harmony with the purpose and intent of the Transportation System Plan. It was never intended that a second house be built on the lot. The Cedar Ridge Civic Association's CC & R's prohibited further subdivision of his property. The hardship was created by Mr. Krishchenko when he obtained the additional land and made the lot line adjustment. He had said the purpose for the lot line adjustment was to enlarge his lot, not to subdivide his property.

Mr. Richard Ball said that he was on the Board of Directors of the Cedar Ridge Civic Association. He had told Mr. Krishchenko that it was against the CC & R's to subdivide or rezone a lot in order to build another residence, but he could add on to his home. They were opposed to this because it went against the CC & R's and Mr. Krishchenko knew this when he moved into the association. Mr. Krishchenko had taken a survey around to the residents in the community and misled them. He told the people that the City Council had already approved it. Some of the residents had submitted letters stating they were misled. They also had safety issues, as the curvature of the street was such people could not see. They thought he created the problem because there was never intended for a second house to be built there. He wanted to build another house, and then sell them both and move.

REBUTTAL: Mr. Dobson said a lot of what they heard was not what the City based its decision on, what was being decided was if the request for the modification to the condition of 13<sup>th</sup> Avenue complied with the applicable criteria and code. At the time of the partition, there was no need for a variance. There was no hardship because there was access to the street. Compliance with private covenants and restrictions was not an issue. The Planning Commission dealt with



this in two cases in 2005. They found on those cases that it was not self created because it was the City that set the higher density zoning that gave them the ability to divide lots. The way the City had dealt with it before was inconsistent with the way the Planning Commission ruled in its December 13 letter regarding this particular appeal. When the City approved the partition in 2004, Mr. Krishchenko had the right to use the City property. There were a number of nonconforming accesses to the street. The City could put signs there that warned people coming from the west to the east that there were hidden driveways ahead. The line of sight issue was not much of a concern. The speed limits in areas that are not school zones are 25 mph.

Mr. Alex Krishchenko said he had started the partition in 2004 and worked with staff. They did not give him any restrictions. They did not say anything about the Transportation Plan. The first time they did not say anything about the arterial street. The Traffic Safety Commission did not have any traffic safety concerns.

Mayor Thompson said when they talked about the access from the private parking lot, the fact that the access was removed presumes it was a public access point. To say that the City closed off the access presumes that there was access. It was City owned property, but it was not a road.

Mr. Dobson said it could have been converted to a road. The City took it for the express purpose of a public right-of-way. There was nothing preventing Mr. Krishchenko until the City sold the property to prevent someone from using it for its intended purpose as a public right-of-way. The Planning Staff encouraged Mr. Krishchenko to go that route. That was part of the reason the Planning Commission imposed that condition with the understanding that they couldn't allow him to come out to 13<sup>th</sup> Avenue, but he did have alternative access. The plot map clearly showed that it was a City right-of-way. Mr. Krishchenko approached the church, but the church was resistant and told him they were in the process of purchasing the property.

Mr. Williams said Mr. Krishchenko came into their office the first time with the application it was a straight forward partition application. In the process of their review it occurred to them it would not meet spacing standards. It was then that they realized that the property existed. He believed that staff did say it appeared that it was a City owned piece of property and they wondered if it was possible to connect to it. He did not believe there was any resolution at that point. The original staff report on the partition discusses access spacing standards and lays out the criteria. He thought Mr. Krishchenko was correct in stating that the City precluded him from accessing it as the City was heading down the path of the sale.

Mr. Kelley said although it was depicted in the plat map as part of SW 13<sup>th</sup> Avenue right-of-way, it, in fact, was not. It was a separate triangular piece that was deeded to the City with a separate legal description by the LDS Church after the City had asked the church to dedicate it to the City for possible future right-of-way. When it was discovered that it was not needed for SW 13<sup>th</sup> right-of-way, the City deeded it back to the church. It did belong to the City, but it was never public right-of-way. It existed as a separate, small, specifically defined or described triangular piece of property. He did not think anyone understood that, as it appeared to be right-of-way on the plat map.

Councilor Harris asked if there was any type of formal agreement with the church and the City saying that they could use it as their access.

Mr. Kelley said he could not find anything in the records that talked about them using it as an access point.

Mr. Dobson said in Oregon a property owner had a common law right to access property in the public right-of-way. He felt Mr. Krishchenko did have an absolute right to access the street under his common law right that every Oregonian has to access the public right-of-way.

Mr. Kelley said he did not believe that right included going across another person's property in order to get to it. He believed it was not a dedicated public right-of-way. Because of the diagram, it was mistakenly believed to be public right-of-way.

Mr. Dobson said he did not think there was any intent on the City to restrict Mr. Krishchenko when they initially approved the partition back in 2004, based on comments from the staff until the decision was made to sell the property back to the church.

Mr. Williams said that by the time it got back to the Planning Commission they had all the issues figured out. His recollection of the hearing was that the Planning Commission did not think that Mr. Krishchenko would not be able to get access to the parking lot. He believed two of the Planning Commissioners had voted against it because they thought the condition was useless.

Mr. Krishchenko asked why the church used it without permission for 20 years and they did not have a lease contract.

Mr. Kelley said he did not think that anyone knew that the piece of property they were driving across had been in fact donated to the City in 1984.

Mayor Thompson closed the public hearing at 9:15 p.m. and recessed the Council Meeting for a short break. Mayor Thompson reconvened the Council Meeting at 9:22 p.m.

DISCUSSION: Councilor Harris said the Council made a decision to sell the property back to the church. Prior to that the appellant had contacted the church for access, but he should have asked the Council. He felt that when the City sold the property they had created the problem that he no longer had potential access to the street.

Councilor Carson did not see where the City created the hardship.

Councilor Daniels did not feel that the City created the problem. When the Planning Commission made the decision one of the conditions was to get access through the church.

Councilor Harris said the Planning Commission was in error. Mr. Krishchenko did not need the church's permission for access, he needed the City's permission.

Councilor Oliver said he did not think the City created it. The Planning Commission had given Mr. Krishchenko two options. He may have assumed more than was rightfully correct.

Councilor Blackwell said that the City was probably responsible.

Councilor Carson said Mr. Krishchenko got the extra piece of land which was not part of the original plat and had made his own hardship.

Mayor Thompson said the Council did not agree that City created the hardship and they uphold the Planning Commission's finding that it was self created.

Councilor Blackwell said if someone bought a piece of property in an area where there were CC & R's then he created his own problem by desiring to do something that was against what was happening in an area that he signed an agreement on.

Mayor Thompson said the appellant thought there had been exceptions allowed in the past with access spacing standards and there were reason and cause that they should find exceptions with the spacing standards.

Councilor Harris said they could find exceptions, such as access to 99E. They should have a really good reason not to follow the standard, and he did not see anything overwhelming in favor of that, unless they were agreed on everything else.

Councilor Blackwell said it did not make sense to put another nonconforming use in an area where there were several already. They should stick with the standard.

Mayor Thompson said the Council does not find that they should waive the spacing requirement and upholds the Planning Commission's decision.

Councilor Harris said on the issue of conflict of interest regarding Planning Commission Chairman Brown, the statute was very narrow. It seemed like it related just to financial conflicts. What he in his judgment would see as a conflict of interest, was not the same as what the statute says. His judgment did not count on an issue like that. They rely on what the law is and what their attorney tells them.

**\*\*Councilor Carson moved to deny MOD 05-07 and APP 05-01 and adopt the Finding, Conclusion and Final Order as presented. Motion was seconded by Councilor Daniels and passed 3-2 with Councilors Harris and Blackwell opposed.**

**UNFINISHED BUSINESS:** Discussion Regarding Council Vacancy – Councilor Carson said he felt they should take applications.

Councilor Daniels said he wanted the whole council to do the interviews. The consensus was to advertise and close the position on March 1.

## **RESOLUTIONS & ORDINANCES:**

Resolution 917 – **\*\*Councilor Harris moved to adopt Resolution 917, A RESOLUTION AUTHORIZING AND DIRECTING THE CITY RECORDER TO CERTIFY TO THE CLACKAMAS COUNTY CLERK A MEASURE REFERRING TO THE ELECTORATE A PROPOSED ANNEXATION OF 4.5 ACRES DESCRIBED AS TAX LOT 2500 OF TAX MAP 3-1E-27C LOCATED AT 1732 N PINE STREET; AUTHORIZING THE CITY RECORDER TO SEND AN EXPLANATORY STATEMENT FOR THE VOTER'S PAMPHLET; AND DOING ALL OTHER NECESSARY ACTS TO PLACE THE MATTER BEFORE THE VOTERS OF THE CITY OF CANBY FOR THE MAY 16, 2006 ELECTION. Motion was seconded by Councilor Daniels and passed 5-0.**

Resolution 918 – **\*\*Councilor Harris moved to adopt Resolution 918, A RESOLUTION AUTHORIZING AND DIRECTING THE CITY RECORDER TO CERTIFY TO THE CLACKAMAS COUNTY CLERK A MEASURE REFERRING TO THE ELECTORATE A PROPOSED ANNEXATION OF 1.95 ACRES DESCRIBED AS TAX LOT 1301 OF TAX MAP 4-1E-4CA LOCATED AT 1401 S FIR STREET; AUTHORIZING THE CITY RECORDER TO SEND AN EXPLANATORY STATEMENT FOR THE VOTER'S PAMPHLET; AND DOING ALL OTHER NECESSARY ACTS TO PLACE THE MATTER BEFORE THE VOTERS OF THE CITY OF CANBY FOR THE MAY 16, 2006 ELECTION. Motion was seconded by Councilor Daniels and passed 5-0.**

Ordinance 1200 – **\*\*Councilor Carson moved to adopt Ordinance 1200, AN ORDINANCE ADOPTING A REVISED CODE OF THE CITY OF CANBY ENTITLED THE "CANBY MUNICIPAL CODE" AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Harris and passed 5-0 by roll call vote.**

Ordinance 1201 – **\*\*Councilor Daniels moved to adopt Ordinance 1201, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH RON ROBINSON HOME BUILDER OF CANBY, OREGON FOR THE REMODEL AT THE CANBY TRANSIT OFFICES; AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Blackwell and passed 5-0 by roll call vote.**

Ordinance 1202 – **\*\*Councilor Harris moved to adopt Ordinance 1202, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CURRAN-MCLEOD, INC. CONSULTING ENGINEERS FOR ENGINEERING SERVICES ON THE SE 2<sup>ND</sup> AVENUE STREET AND UTILITY IMPROVEMENTS; AND DECLARING AN EMERGENCY to come up for second reading on March 1, 2006. Motion was seconded by Councilor Carson and passed 5-0.**

Ordinance 1203 – Mr. Williams said the projects had been budgeted for and when the first ordinance was approved the contract had been worded so that it could be extended to more clarifiers if the work went smoothly, on time, and they were satisfied with the work. They could only have one clarifier down at one time.

**\*\*Councilor Carson moved to adopt Ordinance 1203, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE CHANGE ORDER NUMBER 1 WITH HCI INDUSTRIAL AND MARINE COATINGS, INC. FOR COATING REPAIRS TO THE WASTEWATER TREATMENT PLANT SECONDARY CLARIFIER; AND DECLARING AN EMERGENCY to come up for second reading on March 1, 2006. Motion was seconded by Councilor Harris and passed 5-0 on first reading.**

Ordinance 1204 – Mr. Craig Lewelling said that when they did things like the pump station, it was a concern for their property. He wanted to make sure they would be taking care of all the properties and that they could connect.

Councilor Harris said Mr. Lewelling could discuss his issues with the engineering services this ordinance would hire.

Mr. Williams said this was a project in the master plan and the lift station was going to serve both sides of the road. It would not reach Mr. Lewelling's property, but could be extended at a later time.

**\*\*Councilor Daniels moved to adopt Ordinance 1204, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CURRAN-MCLEOD, INC. CONSULTING ENGINEERS FOR ENGINEERING SERVICES ON THE HAZEL DELL WAY PUMPING STATION PROJECT; AND DECLARING AN EMERGENCY to come up for second reading on March 1, 2006. Motion was seconded by Councilor Carson and passed 5-0 on first reading.**

**NEW BUSINESS:** Cooperative Improvement Agreement with ODOT for Territorial/99E – Mr. Adcock said this would provide signal power for the traffic device at the intersection, right of way acquisition, and future street maintenance on Territorial. ODOT asked them to share the cost as they would be constructing it.

**\*\*Councilor Blackwell moved to approve the Cooperative Improvement Agreement with ODOT for Territorial/99E. Motion was seconded by Councilor Daniels and passed 5-0.**

Cooperative Improvement Agreement with ODOT for Berg Parkway –

**\*\*Councilor Carson moved to approve the Cooperative Improvement Agreement with ODOT for Berg Parkway. Motion was seconded by Councilor Daniels and passed 5-0. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS: None.**

**CITIZEN INPUT:** None.

**ACTION REVIEW:**

1. Approved the consent agenda.
2. Denied APP 05-01 and adopted findings of that hearing.

3. Would advertise the vacant Council position until March 1, and work to set up a special meeting to hold interviews with the entire Council.
4. Approved Resolution 917.
5. Approved Resolution 918.
6. Approved Ordinance 1200 on second reading.
7. Approved Ordinance 1201 on second reading.
8. Approved Ordinance 1202 to come up for second reading on March 1, 2006.
9. Approved Ordinance 1203 to come up for second reading on March 1, 2006.
10. Approved Ordinance 1204 to come up for second reading on March 1, 2006.
11. Approved Cooperative Improvement Agreement with ODOT for Territorial/99E.
12. Approved Cooperative Improvement Agreement with ODOT Berg Parkway.

There was no Executive Session.

Mayor Thompson adjourned the Regular Meeting at 10:02 p.m.



Kimberly Scheafer  
City Recorder Pro Tem



Melody Thompson  
Mayor

Assisted with Preparation of Minutes – Susan Wood





Office of the Mayor

# Proclamation

## “Iwo Jima Remembrance Day”

**WHEREAS**, on February 23, 1945, this country’s Armed Forces were engaged in one of the most strategic and bloodiest battles of World War II – the battle for Iwo Jima; and

**WHEREAS**, the Canby Veterans of Foreign Wars have deemed it fitting to erect a flagpole at the Canby Adult Center in remembrance of those who took part in this great battle; and

**WHEREAS**, each year the members of the Veterans of Foreign Wars Post 6057 and their fellow veterans organizations conduct a ceremony to rededicate this memorial and replace the flags on the flagpole; and

**WHEREAS**, the flagpole located at the Canby Adult Center is the only memorial in the City of Canby dedicated to our veterans who made such significant personal sacrifices during World War II in defense of this great nation.

**NOW, THEREFORE**, I, Melody Thompson, by virtue of the authority vested in me as the Mayor of the City of Canby, do hereby proclaim February 25, 2006 as

### Iwo Jima Remembrance Day

and call upon individuals, schools, churches, organizations and business establishments in the City of Canby to proudly remember the sacrifices made by servicemen who fought so gallantly in this bloody and decisive battle. I further call upon all members of this community to join in commemorating this great event with the rededication of the flagpole at the Adult Center on February 25 at 10:00 A.M.

Given unto my hand this 15th day of February 2006 in the City of Canby,  
Oregon.

Melody Thompson  
Mayor