

**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
September 21, 2005**

**Presiding:** Council President Teresa Blackwell. Mayor Melody Thompson was absent.

**Council Present:** Roger Harris, Walt Daniels, Wayne Oliver, and Randy Carson. Councilor Georgia Newton was absent.

**Staff Present:** Mark Adcock, City Administrator; John Kelley, City Attorney; John Williams, Community Development & Planning Director; Beth Saul, Library & Parks Director; Margaret Yochem, Transit & General Services Director; Ken Pagano, Police Chief; Joyce Peters, Office Specialist; Kevin Cook, Associate Planner; Joe Witt, Fleet Services Senior Mechanic; and Melissa York, Office Specialist.

**Others Present:** Irene Breshears, Bob Zimmer, Curtis & Lila Gottman, Ken & Joan Perinchief, Marlin & Cindy Harker, Bev Simpson, James E. Simpson, Jan Lemke, Loren Bell, Jason Wilson, Mary Ann Rudd, Paul Calhoun, Brenda Greenleaf, Betty Ott, Steve St. Amand, Frank Funk, Julie Hernandez, Jim Newton, and Dirk Borges.

**CALL TO ORDER:** Councilor Blackwell called the regular meeting to order at 7:42 p.m., followed by the opening ceremonies. A URD Agency Special Meeting was held prior to the City Council Meeting.

Employee of the Month Presentation – Mark Adcock, City Administrator, presented Margaret Yochem with an Employee of the Month certificate for August.

**COMMUNICATIONS:** None.

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** Irene Breshears from the Canby-Aurora VFW 6057 Post/Auxiliary gave the Council an invitation to a fundraiser dinner on Saturday, September 24, to celebrate the 60<sup>th</sup> anniversary of the end of World War II.

Ms. Breshears gave Council a handout of an article from the *Canby Herald* of World War II Vets' visits to Ackerman school's annual "Living History Day" event.

**MAYOR'S BUSINESS:** None.

**COUNCILOR COMMENTS & LIAISON REPORTS:** Councilor Harris said he would present the liaison reports at the next City Council meeting.

Councilor Daniels said that the New Life Four Square Church of Canby was supporting Hurricane Katrina relief. They were assessing the needs in a three pronged response.

Councilor Oliver thanked Beth Saul for her efforts in making the streets of Canby look beautiful with flowers and hanging baskets.

Councilor Blackwell agreed with Councilor Oliver with Beth Saul's efforts and thanked her.

Councilor Carson said the Bike and Pedestrian Committee had met and they were still working on bike racks, bike paths, and other means of getting around by biking or walking. The Canby Adult Center had a meeting and announced their new officers. Ken Perinchief was the new person in charge of the Friends of the Adult Center. He had heard positive feedback about the Cycle Oregon event held at Wait Park on September 14, 2005. The cyclists enjoyed Wait Park and the Eccles' school children presentations.

Councilor Daniels thanked Darvin Tramel of the Wastewater Treatment Plant and his staff for their good work. He thanked members of the Accountability Board for volunteering their time. They had handled 18 cases from July 2004 through June 2005. They had a success rate of 83%.

**CONSENT AGENDA: \*\*Councilor Carson moved to approve Accounts Payable of \$365,154.48, Minutes of the August 29 City Council Workshop, and Minutes of the September 7 City Council Regular Meeting and Executive Session. Motion was seconded by Councilor Harris and passed 5-0.**

**PUBLIC HEARING: MLP 05-07/ZC 05-01 Dream House Construction –**

Council President Teresa Blackwell 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.  
Councilor Blackwell – No conflict, plan to participate.  
Councilor Carson – No conflict, plan to participate.

EX PARTE CONTACT:

Councilor Harris – Visited the site, but drew no conclusions.  
Councilor Daniels – Visited the site, but drew no conclusions.  
Councilor Oliver – Visited the site, but drew no conclusions.  
Councilor Blackwell – Visited the site, but drew no conclusions.  
Councilor Carson – Visited the site, but drew no conclusions.

STAFF REPORT: Kevin Cook, Associate Planner, said they would only be discussing the zone change at this point, as the partition was contingent on the zone change and would be considered by the Planning Commission on September 26 pending the outcome of the City Council Meeting. This was an application to change the zoning designation from R1 to reflect the Comprehensive Plan designation to R1.5. The surrounding lots were zoned R1, but also had a Comprehensive Plan designation of R1.5. The applicant wanted to create a three block partition, parcel one would contain the existing single family dwelling, and the remaining two parcels

would contain duplexes. The Planning Commission recommended denial based on public testimony that the medium density designation was no longer appropriate in that area. Mr. Cook summarized two letters that had been received after the Council had received their packets.

Councilor Carson asked how long it had been zoned R1.5. Mr. Cook said over 20 years.

Councilor Harris asked how many units they were proposing. Mr. Cook said four units.

Councilor Blackwell opened the public hearing at 8:14 p.m.

## **PUBLIC TESTIMONY**

**APPLICANT:** Loren Bell, Attorney for Dream House Construction, gave the City Council a handout that outlined his presentation and a rendition of the townhouses that would be constructed. They would be townhomes that shared a common wall and would be sold individually. The Planning Commission had put a lot of weight on the comments from the public. The first concern was they were opposed to piece meal zone changing. The code specifically allows a zone change by lot. Another comment had been that it was not compatible. There were homes in the area that were two-story homes. There was a home directly on the lot to the west that had already been portioned into two additional flag lots, where two dwellings had been put on it. That partition increased the density and changed the original character of the neighborhood. A comment had been made that non owner occupants led to criminal activity and that gang activity would be increased. There was no evidence of that concern. It was not a criteria. It was likely that property values would increase due to the ability to have additional homes on the large lots. The dwellings would not limit any more sunlight than current dwellings and fir trees that were there. There was no evidence of the intent of the City at the time the Comprehensive Plan was adopted that the area should be rezoned to large blocks. The character of the property at the time the Comprehensive Plan was adopted was the same as it was now. They had found it appropriate to designate it as R1.5. This application would help minimize urban sprawl. Other areas in the city had been rezoned at the recommendation of the Planning Commission according to the comprehensive plan.

**PROPONENTS:** None.

**OPPONENTS:** Joan Perinchief read from the Comprehensive Plan and the Planning Commission's findings. The medium density designation was counter to what the residents' desired. The best use of the area was for single family homes and the zoning of R1 should not be changed. Their property adjoined the applicant's property, and there was a point of contention over three feet along the property line.

Ken Perinchief said they had divided their property and were aware of the Comprehensive Plan designation of R1.5, but did not insist that multi family homes be built on the property. They built two single family homes. Ten years ago he attended a buildable lands meeting where they discussed growth in Canby. They learned that growth would occur in two ways, annexation and in-fill. Since then, growth by annexation had been determined by voter approval and in-fill was subject to diminishing supply. They could not meet the requirement for buildable inventory by

approving individual rezoning requests. Neither would they change the density imbalance by small individual lots. There were very few two level homes in the neighborhood. To allow this petition would set a precedent that was not compatible with the surrounding properties.

Cindy Harker said the duplexes would be in their front yard. They built their home because they liked the single family area and the desirability.

Marlin Harker said they rented a flag lot when they first moved to the community, and were looking for a lot in that neighborhood to build on. He wondered why they didn't just zone the area at R1.5 in to begin with and let it start piecemealing.

Councilor Carson explained that they did, but they couldn't make people change what was already there.

James Simpson said the Comprehensive Plan was old and outdated. The neighborhood was single family, single storied homes. All the homes had large lots, but the proposed duplexes would be two-story and have no yards. The traffic on Maple Lane would increase as it was a dead end street and Tenth Street was its only access. There was already a traffic problem as it was near the fairgrounds. They needed to readdress the zoning and put it back to R1.

Beth Simpson said when they moved to the area, they were looking for a place with older homes, big yards and established trees. They found their home and it was one of the oldest homes in the City. She did not see how the townhomes would be accommodating to children and to the sense of community they had. She thought this would open up a situation that was not in keeping with that part of Canby.

Brenda Greenleaf said one of her biggest concerns was the parking issue. They were nice looking units, but where would they park. Maple Lane was in need of repair. If the contractor wanted to put in new buildings, maybe he should think about what infrastructure was needed. She was concerned about the rezoning and if other lots did the same, it would increase the population density considerably. She had experienced a lot of crime and gang activity in the neighborhood over the last three or four months. Rezoning was what they were against. If they wanted to put two houses in, that would be different.

Paul Calhoun said the livability would go down in the community, and that would add more traffic to the street. He was concerned about safety near the Fairground's gate.

REBUTTAL: Mr. Bell addressed the concerns that were voiced. This was not an incompatible use to the Comprehensive Plan, as the character of the neighborhood was established at the time of the adoption of the Comprehensive Plan. They had the choice of density per the Comprehensive Plan. No one had changed the zoning. There was a negative connotation of a duplex. They would not be low income houses and they would have yards, flowers, and garages. Maple Street Park was just down the road. This was in compliance and just because it was the first didn't mean that it should be disallowed. It would not add to the crime and the city engineer, traffic engineer and police department had no comment on the traffic issue. The neighbors did not want change, but that was why they had a Comprehensive Plan to follow.



Councilor Blackwell closed the public hearing at 9:04 p.m.

Councilor Blackwell recessed the regular session for a break at 9:05 p.m. and reconvened at 9:15 p.m.

DISCUSSION: Councilor Oliver said in the findings, the dwelling could be two-story even if it was single family.

Councilor Carson asked if they were working on changing the allowing of building less density than what the plan called for. Mr. Williams said it had been changed.

Councilor Carson asked if there were any other parcels to the east that wanted to be rezoned. Mr. Williams said not at this time.

Attorney Kelley asked Mr. Williams to address the area of special concern and how it affected the area. Mr. Williams explained that Maple Lane was not a part of it.

Councilor Blackwell asked if this area was considered in the last Comprehensive Plan update. Mr. Williams said he did not recall a discussion of this area.

Councilor Blackwell asked Council to consider a continuance.

Councilor Daniels said the Police Department had no concern, but that did not mean they were in favor or against it. It meant they could service it.

The Council consensus was to have more discussion.

Councilor Carson said this had been part of the code for 20 years, and it was left out of the area of special concern. This would also set a precedent that they would not allow any rezoning because the neighbors did not want it, especially on the south side of 99E where it was zoned R2 in the Comprehensive Plan, but R1 had been built there.

Councilor Harris said the owners of the property had the right to divide their property. They have the option if the Council didn't do the zone change to build two-story, single family homes. The arguments regarding traffic are the same arguments in every discussion of development. It was a question of whether there was likely to be an opportunity for two or four families. The Planning Commission findings were compelling arguments, but Mr. Bell's presentation was also compelling. It was in conformance to the Comprehensive Plan, and the property owner had the right to choose what to do with their property. He was inclined in favor of the individual ownership rights of the property.

Councilor Daniels said his concern was the traffic and parking.

Councilor Oliver said his dad was a developer and back then the idea was that everyone should have big lots and a place to turn their car around, but today that was not the case. He had never

had a problem with renters. Today's trend was smaller lots and streets. He did not see many negatives in this plan.

Councilor Carson said they might need to enforce the no parking on one side of the street.

Councilor Blackwell thought this was an area of special concern, and when a group of citizens had an issue with it, that was a concern. It was speculation on what was intended 20 years ago.

Councilor Harris asked Councilor Daniels about the parking. Councilor Daniels said there wasn't enough parking in front of the townhomes and they would park on the street.

Councilor Harris asked Mr. Bell about the parking. Mr. Bell said they would park in the garage and parking pad. The easement would not allow parking, and there was no plan for parking on the street.

Councilor Blackwell had a problem with adding four more units in that space.

**\*\*Councilor Carson moved to approve ZC 05-01. Motion was seconded by Councilor Oliver and defeated 3-2 with Councilors Carson and Oliver voting in favor.**

Councilor Harris said the look of the units with the parking pads seemed incompatible with the neighborhood.

**\*\*Councilor Harris moved to deny ZC 05-01 and to adopt the findings adopted by the Planning Commission. Motion was seconded by Councilor Daniels and passed 3-2 with Councilors Carson and Oliver opposed.**

## **RESOLUTIONS & ORDINANCES:**

Resolution 910 – Administrator Adcock said the Council had given the Cutsforths permission to connect to the City's sewer system in exchange for the right-of-way dedication.

**\*\*Councilor Harris moved to approve Resolution 910, A RESOLUTION ACCEPTING DEDICATION OF LAND FROM FRANK & KATHLEEN CUTSFORTH FOR RIGHT-OF-WAY PURPOSES. Motion was seconded by Councilor Daniels and passed 5-0.**

Ordinance 1186 - **\*\*Councilor Harris moved to approve Ordinance 1186, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CANBY FORD OF CANBY, OREGON FOR THE LEASE/PURCHASE OF TWO (2) 2006 FORD CROWN VICTORIA POLICE INTERCEPTORS WITH POLICE EQUIPMENT PACKAGES FOR THE CANBY POLICE DEPARTMENT; AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Daniels and passed 5-0 by roll call vote.**

Ordinance 1187 - **\*\*Councilor Harris moved to approve Ordinance 1187, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A**

**CONTRACT WITH CANBY FORD OF CANBY, OREGON FOR THE LEASE/PURCHASE OF A 2006 FORD EXTENDED CAB ½ TON PICKUP TRUCK FOR THE CANBY WASTEWATER TREATMENT DEPARTMENT; AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Carson and passed 5-0 by roll call vote.**

**Ordinance 1188 - \*\*Councilor Harris moved to approve Ordinance 1188, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH GRESHAM FORD OF GRESHAM, OREGON FOR THE PURCHASE OF A 2006 FORD F250 REGULAR CAB ¾ TON PICKUP TRUCK FOR THE CANBY STREET DEPARTMENT; AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Daniels and passed 5-0 by roll call vote.**

**Ordinance 1189 – Ms. Yochem said they had budgeted to replace the library roof. It was brought to her attention in June that the swim center roof was leaking. When they went through bidding on the library roof she had also asked them to look at the swim center roof. Four of the contractors said the pool roof was in urgent need and that the library roof did not need to be replaced at that time. The building was owned by the City and they were responsible for maintenance.**

Councilor Carson left the Council Meeting.

**\*\*Councilor Daniels moved to approve Ordinance 1189, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH BLAND CONSTRUCTION CO., INC. OF CANBY, OREGON FOR THE ROOF REPLACEMENT AT THE CANBY SWIM CENTER; AND DECLARING AN EMERGENCY to come up for second reading on October 5, 2005. Motion was seconded by Councilor Harris and passed 4-0 on first reading.**

Councilor Carson returned to the Council Meeting.

**Ordinance 1190 - \*\*Councilor Harris moved to approve Ordinance 1190, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE CHANGE ORDER NUMBER 8 WITH PARKER NORTHWEST PAVING COMPANY FOR CONSTRUCTION OF SEQUOIA PARKWAY ROADWAY IMPROVEMENTS STAGE III; AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Daniels and passed 5-0 by roll call vote.**

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

**NEW BUSINESS: None.**

**CITIZEN INPUT: None.**

**ACTION REVIEW:**

1. Approved the consent agenda.
2. Denied Zone Change 05-01 for Dream House Construction.
3. Approved Resolution 910 for dedication of right-of-way from the Cutsforths.
4. Approved Ordinance 1186 on second reading.
5. Approved Ordinance 1187 on second reading.
6. Approved Ordinance 1188 on second reading.
7. Approved Ordinance 1189 to come up for second reading on October 5, 2005.
8. Approved Ordinance 1190 on second reading.

**\*\*Councilor Carson moved to go into Executive Session pursuant to ORS 192.660(2)(e) real property and ORS 192.660(2)(f) exempt public records. Motion was seconded by Councilor Daniels and passed 5-0.**

Councilor Blackwell read the executive session format and recessed the regular session at 10:06 p.m.

Councilor Blackwell reconvened the regular session and immediately adjourned at 11:06 p.m.

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**CANBY CITY COUNCIL  
EXECUTIVE SESSION  
September 21, 2005**

**Presiding:** Council President Teresa Blackwell. Mayor Thompson present via conference call.

**Council Present:** Roger Harris, Walt Daniels, Wayne Oliver, and Randy Carson. Councilor Georgia Newton was absent.

**Staff Present:** Mark Adcock, City Administrator; John Williams, Community Development Director; and John Kelley, City Attorney.

**Others Present:** Dirk Borges, General Manager of CUB, and Jim Newton, CUB Board Member.

Councilor Blackwell called the Executive Session to order at 10:10 p.m.

ORS 192.660(2)(f) – The Council reviewed a legal memo from Attorney Jack Hammond at Canby Utility Board.

ORS 192.660(2)(e) – The Council discussed the possible purchase of property on S. Walnut Street.

Councilor Blackwell adjourned the Executive Session at 11:05 p.m.



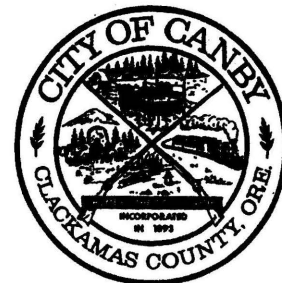
Kimberly Scheafer  
City Recorder Pro Tem



Teresa Blackwell  
Council President

Assisted with Preparation of Minutes – Melissa York & Susan Wood





**BEFORE THE CITY COUNCIL  
OF THE  
CITY OF CANBY**

**A REQUEST TO CHANGE THE ZONING ) FINDINGS, CONCLUSION & FINAL ORDER  
FROM LOW DENSITY RESIDENTIAL ) ZC 05-01  
TO MEDIUM DENSITY RESIDENTIAL ) (Dream House Construction)**

**NATURE OF APPLICATION**

The applicant is seeking to change the zoning designation for a .45 acre tax lot at 919 N Maple Lane. Current zoning on the subject parcel is R-1 Low Density Residential. The applicant proposes to amend zoning to reflect the Comprehensive Plan designation of R-1.5 Medium Density Residential. Surrounding lots are also currently zoned R-1 and have a Comprehensive Plan designation of R-1.5. The applicant seeks to create a 3-lot partition. Parcel #1 would retain the existing single family dwelling along N Maple Lane and parcels 2 & 3 would each feature a new duplex building (4 new units total). The proposal to partition the parcel is contingent on the outcome of this request for a zone change; the partition request is being reviewed under a separate application (File # MLP 05-07).

**HEARINGS**

The Planning Commission held a public hearing and considered this application at its meeting of August 22, 2005. The City Council held a public hearing and considered this application at its meeting of September 21, 2005.

**CRITERIA AND STANDARDS**

Section 16.54.040(B) states: *In judging whether or not the zoning map should be amended or changed, the City Council shall consider:*

- A. The Comprehensive Plan of the City, giving special attention to Policy 6 of the land use element and implementation measures therefore, and the plans and policies of the County, state and local districts in order to preserve functions and local aspects of land conservation and development;*
- B. Whether all required public facilities and services exist or will be provided concurrent with development to adequately meet the needs of any use or development which would be permitted by the new zoning designation.*

**FINDINGS AND REASONS**

At the public hearing of September 21, 2005 the City Council considered the record and the Planning Commission's findings and recommendation for denial. Additionally, the Council heard testimony from

the applicant and several concerned neighbors.

After holding the public hearing and considering the Record for the application, the City Council deliberated and reached a decision on September 21, 2005 for denial of the applicant's request for zone change. The City Council adopted the Planning Commission's written findings of September 12, 2005:

**FINDING 1:**

The Canby City Council finds that the applicant's request does not fulfill the requirements under Section 16.54.040(A) of the Canby Municipal Code because the application is not in compliance with all elements of the Comprehensive Plan of the City, in particular Policy No. 1 of the Land Use Element which states: "*Canby shall guide the course of growth and development so as to separate conflicting or incompatible uses while grouping compatible uses.*" The Council finds that, as referenced to in the citizen testimony at the public hearing of August 22, 2005, the potential intensity, scale, and traffic impacts, of development at the Medium Density Residential level conflicts with the existing pattern of older, established homes built in accordance with the existing R-1 Low Density Residential zoning district. The Council further finds that it was likely the intent of the City at that time the Comprehensive Plan was adopted that the area would eventually be rezoned to medium density in large blocks as opposed to the piecemeal zoning of individual lots. This is further supported by the fact that Policy 6(B)(5) of the Land Use Element in the Comprehensive Plan designates the areas immediately east and west of the subject lot as being in an area of special concern. The area of special concern designation specifies that the Planned Unit Development overlay will apply at the time of any rezoning to medium density; in essence, this would require master-planning of several lots in a coordinated manner as the area converts to medium density zoning. The Council finds that the master-planning/multi-lot rezoning concept should logically apply to lots along Maple Lane as well due to similar concerns regarding access, infrastructure and the mitigation of incompatible uses.

**FINDING 2:**

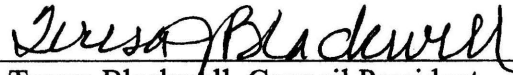
The Canby City Council finds that the applicant's request does not meet the requirements under Section 16.54.040(A) because it does not preserve the "*...functions and local aspects of land conservation and development*" due to the potential change in density, in a piecemeal fashion, resulting from a zone change to Medium Density Residential would be in conflict with the existing low density, established neighborhood of older single-story homes in the surrounding neighborhood. The Council also finds that at the time the adoption of the Comprehensive Plan over 20 years ago, it was likely logical to plan for medium density in this area; however, increased density in this area today would be in conflict with the established, low-density development found in the area today.

**DECISION**

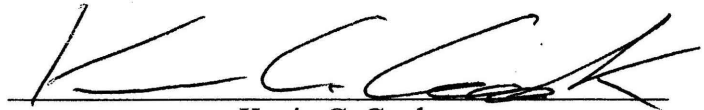
**THE CITY COUNCIL of the City of Canby hereby denies ZC 05-01.**

**I CERTIFY THAT THIS ORDER** for denial of **ZC 05-01** was presented to and **APPROVED** by the City Council of the City of Canby.

DATED this 5<sup>th</sup> day of October, 2005.



Teresa Blackwell, Council President  
Canby City Council



Kevin C. Cook  
Associate Planner

**ATTEST:**

**ORAL DECISION – September 21, 2005**

AYES: Oliver, Harris, Daniels

NOES: Blackwell, Carson

ABSTAIN:

ABSENT: Thompson, Newton