

MINUTES
CANBY PLANNING COMMISSION

October 23, 2000

7:00 PM Joint Workshop with City Council

Industrial Area Zoning Amendments

Regular Meeting Followed

City Council Chambers, 155 NW 2nd Avenue

PRESENT: **City Councilors,** Randy Carson, Terry Prince, Roger Harris, Walt Daniels, Barry Lucas, Shirley Strong, Mayor Scott Taylor
Commissioners, Geoff Manley, Jim Brown, Teresa Blackwell, Corey Parks, Jean Tallman, Chairman Keith Stewart
Planning Staff, John Williams, Planning Director, Carla Ahl

ABSENT: Commissioner, Paul Thalsofer

OTHERS PRESENT: Terry Tolls, Ted Kunze, K. Leweling, Lisa Weygandt, Jean Rover, Pat Johnson, Pat & Buzz Weygandt

I. JOINT WORKSHOP Planning Commission/City Council

Mayor Scott Taylor explained the format of the meeting

- City Council called to order
- Planning Staff will give the Staff Report
- There will be a joint question and answer period
- Planning Commission will hold a public hearing and then present the City Council with their recommendation
- If an approval recommendation is received, the City Council will then vote on adopting the Ordinance Change

John Williams, Planning Director, stated that he had conferred with John Kelley, City Attorney in arranging the meeting so the goal of having the ordinance adopted quickly could be met. He explained that was why the meeting was beginning with a joint workshop, so the Planning Commission and the City Council could both take part in the discussion, then the Planning Commission would hold a public hearing and make a recommendation to the City Council, which would make a first reading of the ordinance.

John stated that 80% of the proposed modifications to the Industrial Overlay Zone

came directly from joint meetings between the City Council and the Planning Commission, most of the changes were to the conditional use list, with new approval evaluation criteria, a list of prohibited uses, and a new section that deals with hazardous material.

John stated there were some housekeeping items to assure all sections of the code match up, and some substantive changes to the pre-application review process and to the conditions of approval. John explained that initially hazardous substances and quantities were listed and specified if they would be allowed outright, conditional, or prohibited. He stated that after conversations with other jurisdictions it seemed that was an unwieldy process, hard for Planners, Commissions, and Councils to interpret, and became out of date as new substances are introduced.

John stated that he had discussed hazardous materials with Fire Marshal, Ron Yarbrough who had stated that all substances could be handled safely as long as proper cautions were taken. Mr. Yarbrough had also stated his opinion that more information was needed at the pre-application phase with an industrial project, so that service providers will know what hazardous materials will be used and how they will specifically be handled to mitigate any concerns there might be.

Mr. Brown questioned the wording in the new code that states a pre-application “may be” required instead of “shall be” required, John replied that some projects may be of a minor nature and not need a pre-application conference. It was discussed changing the wording to “shall be required unless deemed unnecessary by the Planning Director”.

John explained there would be an application form for the pre-application, and it would be decided at that time whether conditional use approval would be required.

John stated that the Fire District would like to require preparation of a Hazardous Materials Management Plan if appropriate, so they can come to the Planning Commission hearing with specific comments and concerns directed at projects, instead of having to deal with Hazardous Management after projects are built. John added this gives the Hearing Board the ability to condition anything that comes out of those reviews.

John explained the triggers that would require a Conditional Use Application:

- A business that would employ less than 12 people per acre
- More than 60 acres in the same NAICS code (like businesses) to create a diverse economic base for the Industrial Park
- Utilization of Public Services
- Uses in the H1, H2 and H3 occupancy of the Building Code (to make sure adequate measures are being done to assure safety)

- In the Commercial Zone, limiting any commercial/retail use over 50,000 square feet (to eliminate the “big box” store)
- In the Industrial Zone, any use not related to, or supportive of, the primary industrial use
- In the Light/Heavy Industrial Zone, retail areas occupying a large part of any building footprint

John explained the conditional use standards will insure that what the Commission looks at in the conditional use process will allow them to achieve the goals of the Industrial Master Plan. He stated the following conditions addressing that issue:

- Compatibility with the Industrial Park
- Negative impact with the surrounding uses
- Not posing a threat to public health or safety
- Economic criteria

He stated that the Commission has three options, to decide that all the criteria has been met, that the criteria will be met with conditions, or that the criteria does not apply to the application. There was a discussion regarding the wording

Mr. Stewart asked for clarification on the wording of the code dealing with the list of prohibited uses, and questioned it's intent. John explained that it is meant to mean the list is not exclusive, just because uses are listed as prohibited does not mean that all other uses are allowed.

II.

Mayor Taylor stated this was the opportunity for both the City Council and the Planning Commission to ask any questions or to bring up any concerns they might have.

Mr. Carson asked what the City's definition of an arsenal was. John explained that no definitions were proposed at this time. It was discussed what the intent of the code was and how it would affect storage of hazardous materials for permitted uses. There was a consensus that the list of prohibited uses applied to the primary business. John explained that when a list is created it is difficult to define what is limited when you don't know what is being proposed.

Mr. Prince expressed his concern regarding allowing storage of some of the prohibited uses. It was discussed that storage facilities would be a conditional use because typically they would employ less than 12 people per acre. It also was discussed that storage would just be part of an application, not the primary business which the code is written for.

Mayor Taylor questioned if the conditions of the new code would give the City the ability to say an industry does not fit the expectations of the City, instead of creating a 20 page prohibited list. John explained that his original staff report had stated if the design standards, conditional use list, and pre-application process are thorough enough, a prohibited list would not be needed, it would be regulating the affects, not regulating the uses. There was a consensus that the prohibited list would be kept, removing the word arsenal, and keeping storage.

Mr. Harris questioned if a gun club wanted to have an indoor hand gun shooting range, where they would keep handguns, ammunition, and do some reloading of ammunition, would they be prohibited from doing so by this wording. Mr. Manley stated the code could be interpreted on a case by case basis and decided if it fit the intent of the code or not. Mr Harris asked for clarity that if an applicant wanted a gun club, it would not automatically be approved, they would be compelled by this code to discuss the use.

Mr. Carson stated if the primary business was making explosive or ammunition they wouldn't bother to apply under this wording, but if it was part of a proposed project, not the primary use, then they would inquire whether their use may be considered under this code language.

John responded that there needs to be enough latitude in the code to allow that option, and suggested using the prohibited list as a conditional use list. Mayor Taylor suggested leaving the prohibited list as is, since the City has the option to go back and adjust the code if it is found to have problems.

Mayor Taylor explained that the Planning Commission would hold their Public Hearing at this time, and after the recommendation from the Planning Commission the City Council will be able to ask questions of people who had testified if they need clarity.

III. PUBLIC HEARING

TA 00-01 Amendments to chapter 16.35 of Canby Municipal Code, the Industrial Area Overlay Zone

Chairman Stewart reviewed the hearing process, procedure and format. He referred to the applicable criteria posted on the wall and on page 2 of the staff report. When asked if any Commissioner had a conflict of interest, none was stated. When asked if any Commissioner had ex-parte contact, none was stated. No questions were asked of the Commissioners.

John stated that since he had already given the staff report, he would just add to the

record a letter that was received that day from Dave Eatwell, stating that Canby Business Revitalization supports the staff report.

John explained that the Planning Commission is dealing with the text amendment application and will give a recommendation to the City Council, the City Council will vote to adopt the text amendment or not.

PROPONENTS:

Terry Tolls, PO Box 577 Portland, Or 97202, stated that he agreed with the staff report, his main concern was requiring pre-application conferences for all applications. He felt it would be time consuming and would unnecessarily increase the time it takes to get an application heard, stressing that John needed some discretion in deciding if a pre-application conference would be necessary.

Mr. Tolls stated his concerns regarding a management plan for hazardous material being required "at or before" the pre-application meeting, he felt it could be a "horrendous" task for an applicant, depending on the nature of the facility involved. He felt there should be allowances for some projects needing more time to prepare the plan once they figure out what is involved, and this language may hold up the application process.

Mr. Tolls explained he had been asked to prepare a list of prohibited uses. He stated he is not an advocate of prohibited uses because they tend to become problems. He cited prohibiting animal by-products also prohibited the bio-tech industries, and currently there are industries in the Industrial Zone that deal with the storage of scrap metals, and stressed there will be future problems unless there is some latitude in the code.

Mr. Tolls stated he had a problem with including economic considerations in with planning issues. He would not like to see a political process brought in to the planning process and thought the possibility was there with this language.

Mr. Brown asked Mr. Tolls in what circumstance he believed an industrial user would not need a pre-application meeting with all utility providers. Mr. Tolls responded that without inventing an item, he believed small projects would not need pre-app meetings.

Mr. Stewart closed the public hearing and opened Commissioner deliberations, he explained that with the City Council present at this meeting they would not be required to hold their own public hearing.

Mr. Stewart addressed the recommendation to change the wording regarding pre-

application from “may require” to “shall require” and adding “at Planning Directors decision a pre-application may not be required”.

Mr. Brown suggested some projects might not be able to do an accurate Hazardous Management Plan, until particulars of the project were made at the pre-application conference he suggested changing the wording to a “the need for a Hazardous Management Plan will be decided at the pre-application conference”.

Mrs. Tallman suggested wording for the new conditional use standards to read, “ to approve a conditional use in the Industrial overlay zone the Planning Commission shall find that each of the following additional criteria are either met or can be met by observance of conditions, unless it is not applicable”.

There was a discussion regarding the economic section of the code, how would the Planning Commission decide the “economic vitality” of a project, a proposed industry may be competition to an existing business, but might be beneficial to the City. It was suggested striking the phrase “considering uses already in place” and keeping “overall economic health and vitality of the City”.

There was a discussion on how to word the prohibited list as not to give an opportunity for applicants to argue that since their use is not listed specifically it must be an allowed use. Mr. Parks suggested the wording “this list shall not be used to imply that any other use is permitted”.

Mr. Brown moved to recommend for approval to the City Council TA 00-01, Ordinance 1057 as amended by the Chair. Seconded by Ms. Blackwell. The motion carried 6-0.

IV. CITY COUNCIL

Hearing to amend Chapter 16.35 of the Canby Municipal Code, Ordinance 1057.

It was moved by Mr. Prince, seconded by Mrs. Strong to accept the Planning Commissions recommendation for TA 00-05.

DISCUSSION:

Mr. Harris questioned whether staff’s suggestion of making the prohibited list a conditional use list had been discussed in detail. He asked John if having the conditional list instead of the prohibited list would be easier, more efficient, and cause fewer problems in the future. He was concerned that a legitimate business could be prohibited outright and

would require an amendment to the ordinance just to be considered.

John explained there might be an increase in the amount of interpretive hearings the Planning Commission will have to decide if a use conforms with the intention of the code. John commented a Text Amendment can be done quickly if a desired project came in that was a prohibited use, and there may be small issues around the edges but did not see the ordinance itself causing major concerns.

There was a discussion regarding whether a bio-tech firm would even be able to be considered with this wording, or would it be a use that was prohibited outright due to “animal by-products” being a prohibited use.

Mr. Parks explained that if an applicant was aggressive, and “animal by-products” was a conditional use, they could conceivably argue that a chicken rendering facility should be allowed, the City would then be in the position of arguing against a business that they know they do not want, on the other hand, if a bio-tech firm read the code as proposed, they could argue they would not be rendering or reducing “animal by-products” and ask for an interpretation from the Planning Commission.

Mr. Harris stated that after the discussion he was comfortable with leaving the prohibited list as is.

Mayor Taylor suggested wording for the economic element to read “that a proposed use is beneficial to the over-all diversity and vitality of the city”. He clarified Mr. Parks wording regarding the prohibited list not implying other uses were permitted.

Mr. Parks asked whether the word retail is implied with commercial uses at the end of the prohibited use list, or if it needed to be added for clarity. It was decided to add retail to the wording.

Question was called, motion carried 6-0.

John will have the amended version of the ordinance available prior to the City Councils meeting scheduled for November 1, 2000.

V. ADJOURNMENT OF CITY COUNCIL SPECIAL MEETING

VI. PUBLIC HEARINGS

MLP 00-05 Continuation of an application by Ray Burden to divide a lot into two

parcels for the purpose of developing an industrial manufacturing facility on one lot.

Chairman Stewart reviewed the hearing process, procedure and format. He referred to the applicable criteria posted on the wall and on page 2 of the staff report. When asked if any Commissioner had a conflict of interest, Mr. Brown stated he had visited the site, but drew no conclusions, Mrs. Tallman stated she would be abstaining from the vote since she had been absent from the last meeting. When asked if any Commissioner had ex-parte contact, none was stated. No questions were asked of the Commissioners.

John introduced Ted Kunze, Fire Chief, Canby Fire District. Mr. Stewart asked for clarification on the Fire Districts comments stating that adequate public services were not available and would not become available through development. Mr. Kunze explained the Fire Department comments covered 2 issues, the change of zoning, and the land partition. He stated it would have been helpful for there to have been 2 request for comment sheets since the Planning Commission had heard the applications separately. Mr. Kunze explained the comment was in regards to the zone change application, and did not have an issue with the land partition as proposed by Mr. Burden.

Mr. Stewart asked if the Fire Department was withdrawing their comment regarding the minor land partition. Mr. Kunze stated the land partition did not affect the Fire Departments ability to provide service, but the zone change did affect it.

Mr. Manley stated he could now support the application since the Fire Departments concerns had been clarified.

It was moved by Mr. Parks to approve MLP 00-05 as amended with the correction of a typographical error on page 4. Seconded by Ms. Blackwell. Motion carried 5-0-1, with Mrs. Tallman abstaining.

VII. FINDINGS

ZC 00-02 An application by Ray Burden requesting a zone change from agricultural to Light Industrial, Heavy Industrial, and Heavy Commercial/Manufacturing

It was moved by Mr. Manley to approve Findings, Conclusions, and Final Order for ZC 00-02 as written. Seconded by Ms. Blackwell. Motion carried 4-0-2 with Mrs. Tallman and Mr. Brown abstaining.

SUB 00-06 An application by Andre and Kathy Meyer to subdivide the subject property into four lots to allow individual sale of the existing triplexes.

It was moved by Mr. Parks to approve Findings, Conclusions, and Final Order for SUB 00-06 as written. Seconded by Mr. Manley. Motion carried 4-0-2, with Mrs. Tallman and Mr. Brown abstaining.

VII. NEW BUSINESS

Mr. Brown gave a brief explanation of his understanding of the new business item. An owner of a nonconforming structure was asking for an interpretation by the Planning Commission of the code, dealing with the intentional demolition of the structure and whether the code would allow the rebuilding of the structure in closer conformity with existing setbacks, but still not conforming.

There was discussion between the Planning Commissioners regarding whether the intent of the code was to allow a structure to be rebuilt after intentional destruction, or whether it was meant to address accidental destruction only. Mr. Brown stated that the code allows the Commission to review it, if it is destroyed by any cause.

Mr. Stewart stated that he did not believe it was a good idea to allow the rebuilding of a nonconforming building. Mr. Parks stated the code allows the Commission to weigh the positive and negative features, public convenience, necessity, against adverse conditions. Mr. Manley stated the code allows the Commission to consider the rebuilding of a nonconforming structure, not that they have to approve it.

John stated he did not want to encourage someone to tear down a building in order to make an application. Mr. Brown suggested the owner's best course of action would be to modernize the structure leaving as much in place as possible. John asked the Planning Commissions interpretation regarding how much of the original building needs to remain. Mr. Stewart stressed that historically the City code has been interpreted that any modification to a nonconforming structure necessitated the applicant to bring the building in to conformance with existing setbacks.

Mr. Stewart stated he was concerned regarding how Canby would look if modifications to existing nonconforming structures were allowed. Mr. Brown stated that the code basically allows the Commission to do a site and design review on the expansion. John stated that some jurisdictions allow for minor variances, where Canby's code does not allow for any. Mr. Stewart stated that is because Canby does not allow exceptions for anything, if it is a 2 ½ foot setback then it must measure 30 inches.

Mr. Brown stated there should be enough latitude in the code to allow people to get the best use of their land that they can. Mr. Stewart agreed but felt they should be made to conform to code.

Mrs. Tallman questioned why the owner couldn't rebuild and conform to setbacks. John stated the site is unusually situated and it did not appear that it could be built within the current setbacks.

It was decided to have the application brought before the Commission prior to the demolition of the structure, and to give the neighbors an opportunity to be heard. Mr. Parks suggested the Commissioners drive by the structure prior to the next meeting so they would have an idea of the situation. John stated that a "In Focus" machine has been purchased by the Planning Department and can be used to take pictures of an area to clarify applications, it may also be broadcast on the television.

VIII. DIRECTOR'S REPORT

- The Historic Preservation Ordinance will be ready for review at the next meeting
- There will be a workshop at the next meeting on Periodic Review
- Meeting will start at 6:00pm

Mr. Stewart asked the Commission to consider the current Parks plan level of 5.5 acres per thousand people, was this adequate. Ms Blackwell stated the Parks committee had a good meeting and recommended having a goal of 10 acres per thousand which would allow 7.5 acres per thousand (a 50% increase in the current level).

IV. ADJOURNMENT