

**CANBY CITY COUNCIL
WORKSHOP SESSION
FEBRUARY 19, 1997**

PRESENT: Mayor Taylor, Council members Nolder, Harris, Gerber, Strong, Lucas and Daniels, Michael Jordan, Sarah Jo Chaplen, David Cole, Lyle Read, Richard Ares, Eugene Cole, Steve Millar, Gordan Wanner, Don Peterson, Steve Hanson, John Hoffman, Beth Saul and Cam Sivesind.

Mayor Taylor called the workshop session to order at 6:00 p.m. in the Library Conference Room. A light dinner was served.

The purpose of the session was to meet with personnel from Canby Telephone Association, and their subsidiary firms, to review and discuss new products offered by the association. The computer based products were the primary items presented by Richard Ares and others from CTA.

Mayor Taylor adjourned the session at 7:20 p.m.

**CANBY CITY COUNCIL
REGULAR SESSION
FEBRUARY 19, 1997**

Mayor Scott Taylor presiding. Council members present: Dennis Nolder, Roger Harris, Brad Gerber, Walt Daniels, Shirley Strong and Barry Lucas.

Also present: Administrator Michael Jordan, Finance & Administrative Director Sarah Jo Chaplen, Library & Parks & Recreation Director Beth Saul, Police Chief Jerry Giger, City Attorney John Kelley, Planning Director Jim Wheeler, City Recorder Marilyn Perkett, Perry Eide, Craig Fisher, Donny Hopkins, Christine Clark, Dave & Marles Parkhurst, Mike Duncan, Caroline Bates, Heidi Palmer, Laura Redding, Rod Bates, David Neuvirth, Mr. Gibson, Carol McKenney, Rick Brown, Bob & Shirley Peebles, Lyle Reed, Don Peterson, Steve Millar, Judy Sandsness, Carrie Morford, Rebecca Gershow, Richard Ares, Dennis Pahlisch, Cam Sivesind, Clint Chiavarini and others.

Mayor Taylor called the session to order at 7:30 p.m., followed by the flag salute and a moment of silence.

Roll call of the Council showed a quorum to be present.

MINUTES OF PREVIOUS SESSIONS: **Councilman Nolder moved to approve as

distributed the minutes of regular session of February 5, 1997. Motion seconded by Councilman Harris.

DISCUSSION - Councilman Nolder corrected the minutes: Councilman Nolder was not present at the meeting of February 5, 1997.

**** The minutes were approved as corrected, 6-0.**

****Councilman Harris moved to approve as distributed the minutes of the workshop session of January 29, 1997. Seconded by Councilman Gerber.**

DISCUSSION - Councilman Nolder corrected the minutes: Councilman Nolder was not present at the workshop of January 29, 1997.

****The minutes from January 29th were approved as corrected, 6-0.**

****Councilman Harris moved to adopt the minutes of the workshop session of February 12, 1997. Motion seconded by Councilwoman Strong and approved 6-0.**

CITIZEN INPUT ON NON-AGENDA ITEMS: None presented.

At this time, Mayor Taylor made an adjustment in the agenda to accommodate the audience.

UNFINISHED BUSINESS: Community Planning Workshop Update - Administrator Jordan reported that Rebecca Gershow had traveled from Eugene for this presentation.

Mr. Chiavarini informed the Council that the Community Planning Workshop Group was impressed with the documentation generated by the Blue Heron group and would incorporate the use of them in their scope of work.

Ms. Gershow, from Community Planning Workshop of the University of Oregon, said she would discuss some of the changes based on the Blue Heron information. She said there would be small changes to the interview section, newsletter and community survey sections, using the Blue Heron information as a base to build upon. She noted that more strategic follow up in the interviews would be performed as necessary. Ms. Gershow said the group would follow up on the phone survey asking specific questions regarding the importance to improve or expand certain parks; ask specific questions about the use of current parks; and their ideas for future expansion. Ms. Gershow said the group would eliminate the initial public meeting, however, a second public meeting will be held with recommendations presented.

Ms. Gershow said two new elements have been added: a student survey section and a

section on funding alternatives, which includes techniques from other communities.

MS. Gershow said there will be a \$792 savings with a final budget of \$12,528 for the scope of the project by the Community Planning Workshop.

Councilman Harris noted that at the last meeting he was skeptical about the expense, until Mr. Jordan justified it. He asked Mr. Jordan to review that justification.

Administrator Jordan noted that if the budget committee continues to support parks and recreation services, and with the growth of the community, the 1991 Parks Master Plan and Parks SDC methodology needs to be updated. He stated that current SDC methodology requires the City to pay 60% of the cost of all facilities in the Master Plan, and new growth pays 40%. The City has made acquisition and improvements of facilities that are not in the Master Plan, specifically the Eco Park and open space dedications, which could be accounted for in the 60/40 split, which would reduce the percent the City budget is responsible in matching. Mr. Jordan pointed out that S. Locust Street Park is in the Master Plan, however, the cost to build it was 50% more than anticipated in the plan, and to recover those costs it must be done in the update project.

Mr. Jordan added that the proposed services from the Community Planning Workshop were less expensive than a private firm.

Mayor Taylor noted that the Council approved staff to move forward with this project at the last session.

(Another adjustment in the agenda.)

COMMUNICATIONS: Canby Telephone Association Award - Mayor Taylor stated that he was privileged to present an award to Canby Telephone Association for efforts in "volunteering" to assist the City of Canby in computer networking.

Richard Ares, from CTA, accepted the award and noted that three board members were present and their entity was pleased to work as a partner with the City.

(Another adjustment in the agenda.)

NEW BUSINESS: Special Permit (SP 97-02) Applicant David Neuvirth/Christina Clark - Mayor Taylor explained that this was not a public hearing, however, he would allow public input on the subject matter.

Jim Wheeler explained that an application for a Special Permit was submitted by David Neuvirth and Christina Clark to use an RV, which was a converted bus, as temporary housing. Mr. Wheeler noted that 7 days is the permitted use, and a Special Permit

would allow use not to exceed 6 months.

Mr. Wheeler said staff had no specific recommendation, but questioned if it would create an adverse impact on surrounding property owners. He reported that the Fire Marshal had concerns regarding the bus since it appeared to have been converted without any code restrictions. The Fire Marshall recommended no more than 14 days use at the current location.

Councilman Gerber asked about the location of the unit. Mr. Wheeler explained the exact location in reference to the residence, however, it has since been moved to the other side of the house.

Christina Clark addressed the Council stating that her children and grandchild occupy the RV, coming from Minnesota last October. She reported that they cannot financially afford an RV Park. Also, it is a 1973 converted bus and most RV Parks will not allow such an old unit. Ms. Clark said her children spend 85% of their time in the permanent residence. She added that she felt the need to provide a safe environment for her grandchild and children

Councilman Harris asked if the RV has sewer facilities. Ms. Clark said it has a water hook-up and septic, however, they currently use her house for those needs.

Councilman Daniels asked if they would be moving in 6 months, since they have already been at the location since October, 1996.

David Neuvirth informed the Council that they worked in farming in Minnesota and when the weather permitted they wanted to return to that environment and work.

Councilman Gerber asked how big the home was. Ms. Clark said it was approximately 11,000 square feet with three bedrooms, however, she occupied one bedroom, her son one, and the third was being remodeled and it was in quite a "mess."

Dave Parkhurst, 1005 N. Lupine, said he lived across the street from the subject area. He submitted a petition signed by 12 residents of Lupine and two from NE 10th, along with photographs. Mr. Parkhurst said, speaking also for the neighbors, that the neighborhood is deteriorating because of the unit there. He added that there is offensive language, dogs that run loose, additional traffic and parking problems. Mr. Parkhurst said the bus was parked there for a period of time last year.

Councilman Lucas asked if the neighbors were against the unit being there, or against it being lived in at the location. Mr. Parkhurst said both reasons.

Councilwoman Strong asked if the unit could sit there if it were not occupied. Mr. Wheeler said as long as no one was living in it, the unit could stay at the site for an

indefinite time.

Ms. Clark said this has become a personal issue among some of the neighbors and reported that Mr. Parkhurst almost punched David in the face; and the two dogs were loose only a couple times.

David Neuvirth informed the Council that he really did not want to stay there, and would not be there for a long period of time.

Kay Gaylord informed the Council that since the arrival of the new baby there has been a lot of visitors.

Councilman Daniels asked how much time was really needed. Christina Clark said three months would be adequate.

Councilman Lucas stated that he personally did not want to turn people out on the streets, however, the report from the Fire Marshal regarding fire safety concerned him.

Councilman Nolder asked if there were any rules for a vehicles sitting idle for long period of time. Mr. Wheeler said not as long as it was licensed and operational.

****Councilman Harris moved to deny the request for a Special Permit, SP 97-02, applicant David Neuvirth, to use an RV as temporary housing at 1020 N. Lupine Court. Motion seconded by Councilman Gerber.**

DISCUSSION - Councilman Harris said he based his conclusion on the letter from the Fire Marshal regarding a safety hazard. At this time he read the letter from the Fire Marshal. He added if the Council gave approval, and some type of fire occurred, the Fire Marshal and City would experience the consequences. Councilman Harris also noted that there were a substantial amount of neighbors that are offended by the unit at that location, and they are within their rights.

Mayor Taylor suggested the applicant be allowed a seven day period to vacate the premises.

****Councilman Harris amended the motion to allow seven days prior to vacating the location. Councilman Gerber, second of the motion agreed to the amendment.**

Christina Clark informed the Council that she was aware of a converted bus that used the streets of Canby to park in various locations for 48 hours at a time. Mr. Jordan said this was allowed by code, as long as it was not in one place longer than 48 hours. He added that these situations are not unique.

Ms. Clark pointed out that the bus could sit in the driveway for an indefinite time if they

children lived in the house.

****The motion to deny the request for a Special Permit was approved 6-0.**

Mayor Taylor suggested that the applicant talk to the Planning Department regarding the 7 day allowance prior to vacating the site.

Mayor Taylor called for a short recess at 8:25 p.m. The regular session was reconvened at 8:33 p.m.

COMMUNICATIONS: Community Park Fish Stocking Program - Sarah Jo Chaplen informed the Council that about one year ago Mr. Peebles and Jack Martin addressed the Council regarding restocking the pond at Canby Community Park with warm and cold water fish from the Oregon Fish and Wildlife Department. Ms. Chaplen pointed out that the department wants a three year commitment to begin the fish stocking process. She stated that it was stocked a few years ago and was discontinued due to a request to use the area as a natural habitat for students.

Mayor Taylor said there appears to be concern that an increase of users would probably leave debris in the area and at this time we do not have the parks personnel to solve that type of situation.

Mr. Peebles informed the Council that he, and some recruited volunteers, would keep the area clean for a year.

It was also suggested that other civic groups or Boy Scout groups could be recruited to assist in keeping the area clean.

Mr. Peebles stated that if a decision is postponed on this matter, some other entity could be the recipient of the fish allocated to Canby.

Councilman Daniels asked if the fishing could be limited to minors. Mr. Peebles said it has been done in some areas with specific regulations worked out with the Fish and Wildlife Department.

****Councilman Daniels moved to commit to a three year program of stocking warm and cold water fish in the Canby Community Park Pond by the Oregon Fish and Wildlife Department. Motion seconded by Councilman Nolder.**

DISCUSSION - Councilman Harris asked how the Council intended to monitor the area a year from now. Mr. Peebles stated that he hopes to keep a record of the debris issues, whether it is a result of the fishing or other park visitors. He added that he would make an effort to recruit volunteers to continue with a clean-up program at the park.

****The motion to stock the pond was approved, 6-0.**

Overnight Parking at Swim Center - Administrator Jordan noted that the Canby Swim Center is requesting permission for overnight parking on March 8 and 9, of motor homes and RV's in their lot. The Columbia Swim League Championship Meet is held at the Swim Center that weekend. Mr. Jordan added that overnight parking for a full week was allowed at the Canby Community Park, the request is not unprecedented.

****Councilman Gerber moved to authorize overnight parking of motor homes and RV's at the Canby Swim Center the weekend of March 8 and 9 for a championship meet. Motion seconded by Councilman Harris and approved 6-0.**

APPEAL: INT 96-01, Pahlisch Duncan Homes Applicant - Mayor Taylor reviewed the criteria for the public hearing process.

Mayor Taylor asked the hearing body if anyone had any conflict of interest on the subject matter.

Nolder - none
Gerber - none
Harris - none
Daniels - none
Strong - none
Lucas - none

Mayor Taylor asked the hearing body if anyone had any exparte' conflict regarding the subject matter.

Lucas - none
Strong - none
Daniels - none

Gerber - He stated that he participated in the original request as a Planning Commissioner. The audience was asked if there were any questions of Councilman Gerber, none were voiced.

Harris - none
Nolder - none

STAFF - Mr. Wheeler said the appeal is on an interpretation of set back requirements ,that has been in the code for an unknown period of time. The applicant appealed staff interpretation to the Planning Commission and they upheld staff's interpretation, with two Commissioner's voting in favor of the applicant. The applicant has now appealed the "Yard" setback requirements to the City Council.

Mr. Wheeler reminded the Council that the Council must make their decision on the record and no new evidence can be submitted. He also reminded the Council that they must make their decision based on the Code 16.88.140:

1. That the Commission did not correctly interpret the requirements of this title, the Comprehensive Plan, or other requirements of law;
2. That the Commission did not observe the precepts of good planning as interpreted by the Council; or
3. That the Commission did not adequately consider all the information which was pertinent to the case.

Mr. Wheeler stated that the staff recommendation was to uphold the decision of the Planning Commission on yard set backs. The interpretation is:

All structural elements of a home are required to meet the setback distances established in the zoning ordinance, with the exception of roof eaves, which are permitted to overhang into the setbacks no more than 2 feet. Further, detached structures (i.e., pools, heat pumps/air conditioners), and structures such as decks and porches, which are less than 30 inches high are permitted with the setbacks.

Mr. Wheeler stated that the appellant's interpretation for the setbacks included placement of fireplaces, gas stove inserts and small garden windows. These things would then encroach into the setback areas. Mr. Wheeler said staff has a strong commitment regarding the placement of garden windows. However, if the Council decided to permit the fireplaces or stoves into the two feet setback, then staff feels this is unique enough to permit it, but when placing windows the windows sizes can be many different sizes, to a progressively large window.

Mr. Wheeler pointed out that the appellant states that an RV cover would be in the same setback requirement, they are not, they are considered the same as a carport structure which is not permitted in a setback.

Councilman Gerber pointed out that the proposal is not a text amendment. He said it is the Council's responsibility to determine the current interpretation of the existing ordinance setback requirements. He added that at some other time a text amendment could be considered to permit the fireplaces, inserts or garden windows.

APPELLANT - Mike Duncan, 15100 SW Cole Parkway, Beaverton, represented the applicant Pahlisch Duncan Homes, of which he is a principal. Mr. Duncan said he felt the ordinance was vague and the goal of their development is to create quality homes. Mr. Duncan said the fireplaces or inserts and garden windows create a visual aesthetic value to the homes. He pointed out that heat pumps are allowed in the two foot setback, up to 5 and 6 feet.

Mr. Duncan urged the Council to re-evaluate the staff interpretation and allow the fireplaces. He added that many local builders agree with their interpretation to add a variety and appeal in the development of housing.

Dennis Pahlisch presented two architect drawings which showed the difference of a development allowing the garden windows and fireplaces and a drawing that did not allow it and only a blank wall was apparent.

Mr. Duncan stated that the houses will be the exact same distance apart. He added that the impact is less than 3/4 of 1% of the side setback. He reiterated that when talking to 17 builders in the area, they were all in favor of the interpretation to allow the fireplaces or garden windows.

Mr. Duncan pointed out that Exhibit C shows the comparisons of other communities, and the majority of the eleven communities surveyed allowed 5 foot side setbacks, which allowed the fireplaces up to two feet.

Mr. Duncan noted that METRO is trying to enforce high density on property. He said their lots are 117 feet deep and 60 feet wide, 7000 square feet, with a larger back yard for family orientation.

Councilman Gerber asked if there had been a variance granted for the Solar Ordinance in order to allow more lots in the development. Mr. Wheeler said there was an interpretation regarding the Solar Ordinance. The subdivision was approved with the 80% requirement for the Solar Ordinance not being met. Mr. Duncan said three lots did not meet the solar orientation.

Councilman Gerber asked if the development would have had less lots if they complied with the Solar Ordinance. Mr. Duncan said it would not have reduced the number of lots, but change the road design and made a difference in their costs.

Councilman Gerber asked if the homes in the development would have fireplaces if the Council upholds the decision of the Planning Commission. Mr. Duncan said the pictures only showed that the garden windows and fireplaces was a good aesthetic, and a two foot wider house could be built on the lots, which could mean as much a 400 square feet.

Mr. Pahlisch said on a 60 foot lot, a 43 foot house is allowed. Add a garage, then only 22 feet would be available for the house. Actually, they are trying to make the houses as wide as possible.

Councilman Gerber asked if the lots were larger, could they accomplish the design they wanted. Mr. Duncan said, "Yes," however, this would have substantially increased the project cost, specifically due to the cost of land acquisition.

Mayor Taylor questioned if the setbacks were designed for easements for emergency equipment. Mr. Wheeler pointed out that if anything was in the easement needed for utility or fire emergencies, they would have to be removed.

Councilman Gerber asked how long this specific code had been in affect. Mr. Wheeler said since before he came to the City.

Councilman Gerber asked if the City every had a previous request on the interpretation. Mr. Wheeler said no, however, the City did require a gas fireplace insert to be removed due to the setback restrictions.

Mayor Taylor said he thought this code requirement had been in place since at least 1983.

Mr. Duncan said historically, lots in Canby have been 70 and 80 feet wide, and with lot frontages being reduced, this type of request may not be unusual.

Councilman Daniels asked how big the homes will be in the development. Mr. Pahlisch said from 1685 to 2800 square feet.

Mayor Taylor closed the hearing at 9:29 p.m.

Councilman Nolder said it was the task of the Council to decide if the Planning Commission interpreted the code correctly. He said he felt the code was interpreted correctly, however, it might be time to review the codes.

Councilman Harris asked if there has been any consideration to amending the code. Mr. Wheeler said there are many amendments planned during the course of this year. He did not know if the Planning Commission would discuss this issue.

Councilman Harris pointed out that the area between the homes appears to be fairly narrow. He added that a blank wall is improved by having a garden window or something placed on it. He did add that it would look even more narrow between the homes if this issue were approved.

****Councilman Gerber moved to uphold the Planning Commission's decision to follow staff's decision on INT 96-01. Motion seconded by Councilman Harris.**

DISCUSSION - Mr. Duncan said the homes will built right to the setback line, but it will not move the houses closer together, so it will not change the street view.

Mr. Pahlisch pointed out that eves are allowed two feet into the setback, and felt the fireplaces could be allowed into the setback.

Councilman Gerber again pointed out that the responsibility of the Council is to consider the current code and decision of the Planning Commission. He reviewed the three criteria that the Council must base their decision on regarding the matter.

Mayor Taylor questioned the meaning of interpretation. Mr. Wheeler said an interpretation cannot be codified. He did read various sections of the code, including Code 16.16 regarding low residential zones and 16.16.03.

Mayor Taylor asked about gas fireplace pipes. Mr. Wheeler said, reading from the code, it is "measured from the foundation line of a building."

Councilman Lucas stated that the interpretation of staff and the Planning Commission is correct. He added that the extra two feet on each side would make the homes appear closer together.

Mayor Taylor suggested that the Council will need to review this criteria in the near future. He added that heat pumps or other obstacles between homes currently creates a vision of homes built close together.

Councilman Gerber suggested each Council member keep a notebook of ordinance sections they wish to review for discussion or changes.

Councilwoman Strong agreed that the current ordinance needs to be reviewed.

Councilman Gerber volunteered to work on such a review committee.

QUESTION - **The motion to uphold the Planning Commission decision on the Appeal was approved 6-0.

NEW BUSINESS: Accounts Payable - **Councilman Harris moved to approve payment of accounts payable in the amount of \$287,231.67. Motion seconded by Councilman Daniels.

DISCUSSION - Councilman Harris pointed out that one item for improvements at the sewer plant was \$100,000.

**Accounts payable was approved by roll call vote,

Appointment to General Canby Day Committee - Mayor Taylor reported that there needs to be some appointments to the General Canby Day Committee. The Mayor commended the group of citizens that generates an enormous amount of work for the successful July event.

**Councilman Daniels moved to appoint the following to a four year term on the General Canby Day Committee: Gay Kuykendall, Joel and Teresa Spaulding and John Zieg. Motion seconded by Councilman Harris and approved 6-0.

ORDINANCES & RESOLUTIONS: Resolution No. 634 - Administrator Jordan reminded

the Council that the Council has discussed a process to provide a reduced fee for land use applications for indigent citizens.

****Councilman Harris moved to adopt Resolution No. 634, A RESOLUTION ESTABLISHING A PARTIAL FEE WAIVER FOR INDIGENT APPLICANTS FOR CERTAIN LAND USE APPLICATIONS. Motion seconded by Councilwoman Strong and approved 6-0.**

MANAGER'S REPORT: Administrator Jordan reported on the following events:
Clackamas Cities Meeting - will be held on Thursday, February 27th, sign up with the business office if you plan to attend.

METO Meeting - was attended by Jim Wheeler this week regarding the green corridors and rural reserve issues. The green space buffer was discussed and an intergovernmental agreement is anticipated soon.

Canby Business Revitalization - Mr. Jordan, members from the CBRG and a representative from Union Pacific, who now has ownership of the parking lot which was formerly Southern Pacific, met and the new relationship appears to be improved. Acquisition or lease arrangements will be discussed. Mr. Rice, Union Pacific representative, said that the usual policy is that property 100 feet from the main line is not sold, however, they do work with numerous communities for lease or use of those properties. Mr. Rice implied that Union Pacific is interested in looking for a "public relations vehicle" to convey their endeavor of working with communities where their facilities or main lines are located.

Pedestrian/Bike Pathway - Clint Chivarini, Roy Hester and interested citizens met to discuss and prepare an ordinance to create a Bike/Pedestrian Advisory Committee.

N. Cedar Improvements - Mr. Jordan explained that the City is currently securing easements for sidewalks on both sides of the street for the N. Cedar Improvement Project. He noted that in some instances, an easement would create a situation of the homes being very close to the curb and sidewalk, and may cause parking problems. This could mean that there will ultimately be sidewalks on one side of the that street, instead of both sides.

COUNCILORS' ISSUES: Councilman Harris said he has talked to some business owners in the downtown area who have expressed great concern regarding parking. The parking includes the long term parking area in the railroad parking lot; parking of business employees and customers; use of the Park n Ride at the Christian Church; possible parking permits; and support from the Chamber of Commerce. Mr. Jordan suggested that TriMet also be contacted regarding their schedule and Park n Ride areas.

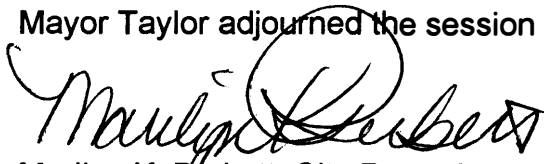
OTHER REPORTS OR ANNOUNCEMENTS: Beth Saul, Library Director, reminded everyone to turn in their ballots for the County-wide library levy.

Attorney Kelley said that he, and the City Recorder met with legal counsel from League of Oregon Cities regarding codification. A legal review has been prepared by LOC and new code books should be ready in a few months.

Attorney Kelley reported that the Bruce Broetje litigation has been resolved with a Temporary Occupancy. The civil law suit has been dismissed.

- ACTION REVIEW:**
1. A Special Permit to allow use of a converted bus a temporary housing was denied, seven days was granted prior to relocation of the unit.
 2. The City will proceed with the three year program to stock the Canby Community Park Pond with fish.
 3. Authorize overnight parking of RV's for the Swim Meet the weekend of March 8 - 9.
 4. Uphold the decision of the Planning Commission on Appeal INT 96-01, Pahlisch Duncan Homes Applicant.
 5. Review ordinance regarding yard setback requirements.
 6. Inform members of appointment to the General Canby Day Committee.
 7. Implement new indigent land use fees, Resolution No. 634.
 8. Contact Chamber of Commerce regarding downtown parking issues.

Mayor Taylor adjourned the session at 10:20 p.m.


Marilyn K. Berkett, City Recorder


Scott Taylor, Mayor