

CANBY CITY COUNCIL

REGULAR MEETING

AUGUST 6, 1997

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

Also present: Administrator Michael Jordan, Finance & Administrative Director Sarah Jo Chaplen, Library & Recreation Director Beth Saul, Planning Director Jim Wheeler, Assistant Planner Jason Kruckeberg, Clint Chiavarini, Mike Neiswender, Eugene & Tina Wilson, Curtis & Lila Gottman, Sheila Springer, Jason Bristol, Delbert Hemphell, Bob Zimmer, Mike & Irene Breshears, Pat Harmon, Nathan Clayton, Jeffery Lamb, Anita Dinsmore, Doris Wightman, Ed McLain, Scott Sasse, Paul & Pat Sherman, Joe Driggers, John Ball, Connie Childers, Derek Bliss, Deb Harrington, Wayne Wooten, Steven Hultberg, Mary Komlofske, George Wilhelm, Dan Ewert, Barry Cain, George Diamond, Terry Prince, Wayne Scott, Linda Geddes, Dana Tyler, Allen Manuel, Daniel Wilcox, Ken Perinchief, Scott Gustafson, Judi Pendleton 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 SESSION: ****Councilman Daniels moved to approve as distributed the minutes of regular session July 16, 1998. Motion seconded by Councilman Harris and approved 6-0.**

CITIZEN INPUT ON NON-AGENDA ITEMS: (NOTE: THE TAPE FROM WHICH THIS AUTHOR DID THE MINUTES DID NOT START UNTIL AFTER LINDA GEDDES SPOKE, THEREFORE COMMENTS MADE EARLIER MAY NOT BE COMPLETE.)

Michael Breshears, 1000 NE 10th, said he was concerned about the mandatory yard debris program and suggested it be voted on by the citizens. He expressed concern that the elected Councilors voted to approve this program.

Connie Childers, NE 10th, expressed concern about the additional fee on senior citizens or those who do not use the yard debris program. She also expressed concern about the winter season when the program will likely be used less frequently.

Dana Tyler, 680 NE 20th, questioned the mandate of the yard debris plan for those who

use a landscape service.

Irene Breshears, NE 10th, expressed a concern for the additional expense to senior citizens or citizens who use a landscape service. She said there appeared to be a discrepancy on how much can be put in the disposal cans that have been provided.

Derek Bliss, N. Ivy, noted that the Council stated this issue did not require a vote of the citizens, however, admitted it would take the "heat off" of the Council if it had been voted upon by the community.

Linda Geddes, NE 34th Place, said she was pleased with the yard debris recycling. Because she has garbage pickup only once a month, they did not receive a yard debris can and had to personally request a yard debris can.

Jason Bristol, Redwood Street, said he was the owner of apartment buildings in the community. He said he was under the impression that Canby adopted the same rules that METRO had for yard debris, and that states that units that are a five plex or larger do not pay. He owns a duplex and triplex and is required to pay \$5 per can, which he said was not fair. Mr. Bristol said that Mr. Kahut suggested he use a 90 + gallon can per building and pay one fee of \$5 per month. He added that he would need to increase rental fees. He said he was told that commercial property was not required to pay the yard debris, even though they have landscaping services. He encouraged the Council to review the criteria for rentals of four or less.

Mayor Taylor said that because of the amount of yard debris going into the current garbage collections it is causing the disposal service to sort this out, and in the near future the City is required to meet a state mandated recycling ratio. The yard debris recycling effort will help the City meet this mandate. He added that the City cannot charge citizens who recycle, which means "all citizens" must pay the same whether they recycle or not. The Mayor informed the audience that citizen input on this issue is almost evenly divided both pro and con.

Locust Street Park - Gene Wilson, manager of the Greenbriar Apartments, addressed the Council regarding the trouble occurring at Locust Street Park. He said there appears to be late night problems with youth and gang members. Mr. Wilson has hired security personnel, as well as his wife becoming certified in security. He suggested park closure at 10:00 pm and opening at 6:00 am. He added that the apartment complex property has been experiencing problems with activities similar to those observed in the park. Mr. Wilson said he personally witnessed drug activity; prostitution happens in the park; and a neighbor has witnessed gun transactions. He urged the Council to consider a closure procedure for Locust Street Park.

Iva Wilson, co-manager of Greenbriar Apartments, presented a letter from one of their

tenants regarding the illegal activity. Mrs. Wilson said young children are afraid to utilize the park. There is also increased vehicular traffic in the area, which is a safety concern. Mrs. Wilson said they are willing to help cleanup some of the graffiti in the park.

John Ball, lives across from Locust Street Park, stated that the park fills the need for an area for children to play. However, the park has been monopolized by older youth, ages 6-18 years, and there has been an increase in trash and noise at the apartment complex. He suggested additional lighting in the back of the park and to consider a closure time.

Steve Vanderloop, security for Mr. Wilson, reported that the bathrooms are extremely messy and appear to be a place to hide from the police. He suggested that the security have a key to lock the restrooms, as well as additional lighting in the park.

Attorney Kelley encouraged Mr. Wilson and others to continue calling the police, this creates documentation of the criminal activity.

Mr. Wilson noted that his security operates seven days a week from 10:00 pm to 6:00 am, and they would be willing to be responsible for a key to keep the restrooms locked. The owner of the apartments, who lives in California, pays approximately \$3800 per month for this security, and he is willing to assist the neighborhood with this service.

Councilman Harris pointed out that the Council has discussed an exclusion ordinance for this area regarding criminal activity, which would exclude violators from the area. He reiterated the need to document the crimes in the geographic area to create a pattern so an exclusion ordinance can be justified.

Councilman Gerber requested that lighting, curfew and closure information be prepared for the next agenda.

Councilman Daniels noted that people in the area helped design the park. He asked if local area people are creating the problems or if they are people from outside of the area. Mr. Wilson said the "petty" mischief is local youth, the "hard core" activity, such as drugs, are youth from out of town.

Staff will return on August 20th with logistics that the Council has requested regarding closure and lighting of the park.

Councilman Nolder asked what criteria was necessary to initiate an exclusion ordinance. Mr. Kelley said if an area in the City has a higher rate of crime over any other area, which is currently researched by the Police Chief, then that high crime area could be targeted for exclusion.

Mayor Taylor thanked everyone, specifically those who volunteered to help eliminate graffiti, and suggested that Officer Howarth will assist in this issue.

Mr. Wilson asked if he could purchase signs that say, "children" or "playground." Mr. Kelley asked him to discuss this with the Police Chief.

RESOLUTION 644: Voter Annexation - Mayor Taylor adjusted the agenda to accommodate the audience. Mayor Taylor stated that the City Attorney was directed to draft a measure for the November ballot to propose a charter amendment to require annexation by a vote of the citizens.

Attorney Kelley read Resolution No. 644, which included the measure that will be on the November ballot.

Mayor Taylor noted that as of January 1, 1999, the City will no longer need to forward annexation applications to METRO, as is currently done, because of legislation. He added that the Planning Commission will still be required to hold public hearings on annexation applications prior to a vote of the citizens.

Mayor Taylor asked that citizens addressing the Council hold their conversation to three minutes.

Mike Shernock, said he was in favor of the voter annexation proposal. He felt this proposal would give the Planning Commission impetus to determine use of property and impact on the community,

Dan Wilcox, representing the Chamber of Commerce, read a letter from Steve Miller, noting the Chamber is opposed to the issue. The Chamber felt the current process with City officials is adequate. The City Council presently has the right to refer an application to the vote of citizens and voter approved annexation might create an unstable growth planning pattern; and it possibly limits the increasing of the area tax base with an appropriate industrial base. Personally, he felt the proposal imposed "micro-management" on the City.

Ed McClain, City Councilman from Corvallis, stated that Corvallis heard all the same concerns about this issue that Canby is now hearing, however, none of the concerns every materialized. He added that 1,000 Friends of Oregon unsuccessfully sued Corvallis over the matter. Mr. McClain said the voter annexation issue has worked well in Corvallis, and citizens are very interested in what is happening in their City.

Barry Cain, from Gramor Development, said he had some concerns about the proposal: the industrial park development could be affected; the long period of time necessary for

voter annexation, which could be nine months, will be a detriment; uncertainty of available housing; and he felt this could have the affect of "no growth." He suggested that the City review the proposed Comprehensive Plan and the priority schedule for annexing, "A", "B" and "C" lands. He added that the City staff is very organized and questioned what went wrong.

Councilman Lucas asked about the time frame for annexation and if it affected growth in the cities that currently have this process.. Mr. Cain stated that usually developers look for a piece of land that can be developed quickly. He said he felt it has affected growth in the communities that have voter annexation.

Councilman Lucas stated that all of the cities that have voter annexation are growing faster than the norm for the state.

Pat Sherman suggested that the housing costs generated in Corvallis is probably due to employment. She suggested if someone is interested in developing their property, the annexation process should happen first and then sell it later.

Alan Manuel, former City Councilor from Milwaukie and local businessman, said the current Comprehensive Plan has served the City well in the past and should in the future. He suggested that the planning process is very complicated and might be difficult for voters to understand. Mr. Manuel suggested that if the proposal is implemented then applicants will no longer need to comply with the Comprehensive Plan. He added that the small developers will be at an extreme disadvantage. He stated that it would take longer than the suggested nine months to complete an annexation, perhaps more than one to two years. Mr. Manuel stated that single development for local developers will be dead. He suggested this will result in less being spent at local businesses. He urged the Council to maintain the current process.

Linda Geddes, 34th Place, disagreed with the fact that there is generous opportunity for public input. She said that future building in Canby will be at the discretion of big developers if the voter annexation does not pass. Mrs. Geddes said she was concerned about farmland annexation if the citizens of Canby do not want this to happen. She added that Corvallis is a very livable community with the voter annexation process in place.

Nathan Clayton said the City needs to maintain the current Planning process and the voters in the community will not say no to a proposal submitted by the Commission. He said this proposal is to keep the ability to govern the community at a local level.

Mayor Taylor interjected that the City Council was unanimously opposed to the proposed legislative bill that would have eliminated voter annexation. In fact, elected and City official testified at the hearing in Salem, and the bill ultimately failed.

Joe Driggers, 972 NE 12th Place, encouraged the Council to refer the charter amendment to the voters. He felt the citizens in Canby should have the opportunity to participate in this process and they usually make wise decisions. Speaking as a school board member, he suggested this process will appropriately link up actions and consequences and allow the citizens to see the affects of growth on other agencies, such as the school system.

Dana Tyler, 680 NE 20th, said she was in favor of the voter annexation and emphasized that the schools are affected by growth, as well as other infrastructure.

Terry Prince, Planning Commissioner, is in favor of the process. Since only written testimony is allowed 14 days prior to a meeting, this allows citizens a voice in annexation. He added that four elections per year can be held which would expedite the process.

Mike Newswender, Knights Bridge Road, said he was not against growth, but against uncontrolled growth and wants to be able to vote on the growth issues. He added that the cost of the impact of growth on the community should be borne by the developers.

Jeff Lamb, with Oregon Communities for a Voice in Annexation, stated that HB3065 was designed to eliminate the City government and planning; keep citizens and LUBA out of the annexation process; and to expedite development on a 61 day time frame. He said Corvallis has grown at a rate of 3 ½ % more than the state average since they have had voter annexation. Mr. Lamb said the market bears whatever the public is willing to pay, in regards to the cost of housing. Mr. Lamb referred to other communities that have voter annexation and said all applications for annexation in those communities were approved at the voting polls. He reminded the Council that there was a great deal of lobbying in the legislature to take away the right of voter annexation. The issue is if citizens have the right to make decisions at the polls.

Derek Bliss, N. Ivy, said he has been educated listening to the debate. He suggested that the Council limit the process to 20 acres or less for an annexation, or industrial annexation. However, residential annexations should be a public decision.

Delbert Hemphill, NW 13th, said he was concerned to hear that direct democracy and citizen involvement is a dangerous thing. He urged Council to support the issue.

Dan Ewert, 596 NW Baker and Planning Commission Chair, spoke in favor of voter approval annexation. He said the commission is a very capable group of citizens, this is a tool they need. Mr. Ewert said the planning decisions are made from specific criteria and he felt the citizens need to have a voice in these matters. He added that it might make the City budgeting and planning process easier if they were aware of the ramifications of what future annexations were approved. Mr. Ewert noted that he was

also speaking for his wife, Pat.

Mayor Taylor called for a short recess at this time.

****Councilman Lucas moved to adopt Resolution No. 644, A RESOLUTION AUTHORIZING AND DIRECTING THE CITY RECORDER TO CERTIFY TO THE CLACKAMAS COUNTY CLERK A PROPOSED AMENDMENT TO THE CANBY CITY CHARTER SUBMITTED TO THE VOTERS BY THE COMMON COUNCIL REQUIRING A VOTE ON ALL FUTURE ANNEXATIONS, INCLUDING DELAYED, UNLESS OTHERWISE MANDATED BY LAW, TO THE CITY OF CANBY; 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 NOVEMBER 4, 1997, GENERAL ELECTION. Motion seconded by Councilman Daniels.**

DISCUSSION - Mayor Taylor clarified that the Council has a choice to approve or deny the resolution, and if this is to be on the November election to save money, then the measure must be to the elections department by September 4th.

Councilman Daniels stated that the Council had reviewed this matter extensively and noted that there are only three points of criteria when considering an annexation and personal opinion is not considered. He added that we can't stop growth, but it can be done systematically and infrastructure should be considered. Citizens should have an opportunity to vote on an annexation.

Councilman Nolder said the current system has served the City very well. However, the best way to gain input is through the election process and the citizens can make the decision at the polls.

Councilwoman Strong agreed with Councilman Nolder, the citizens have the right to decide if they want to vote on an annexation.

Councilman Harris said he had been in favor and then against this issue, and the testimony tonight has influenced his decision. Councilman Harris asked Mr. Kelley if the Council had to adhere to the three criteria when deciding an annexation. Mr. Kelley replied that the three criteria Mr. Harris suggested is used only on an appeal for a matter when the decision is based on the record; and an annexation decision is made on a recommendation from the commission and the three criteria are not used in that decision making process.

Councilman Gerber noted that the Planning Commission has criteria to follow in making an annexation decision and recommendation to the Council. He added that under the

current system, the Council could send an annexation to the vote of the citizens.

Mr. Wheeler agreed with Councilman Gerber's scenario and said the vote of the citizens would then be forwarded to the Metro Boundary Commission, since they still have the final decision, until January, 1999. He added that applicants can still apply directly to the Boundary Commission, even if the City denies an application.

Councilman Gerber asked if the proposed ballot measure process would be different. Mr. Wheeler replied yes, and the vote of the citizens would still be forwarded to the Boundary Commission.

Mayor Taylor reminded the Council that starting January, 1999, the City Council will make the final decision on an annexation, not the Boundary Commission. However, if this proposal passes, the vote of the citizens will be the final decision.

Councilman Lucas asked who paid for elections. Mr. Wheeler said the City paid for elections, however, the money could be recovered through a fee structure.

Councilman Gerber said he was in favor of allowing citizens to vote on annexations. He emphasized that his greatest concern is school capacity. He said he was uncomfortable making this issue a charter amendment, and added he would prefer to see the matter be placed on the ballot by the citizens through the initiative process.

Councilman Nolder said if the Council proposed the issue to the voters, then the Council would have control over the matter and how it is presented.

Attorney Kelley noted that the language used for the proposed resolution and ballot title, was pledged from Philomath which was done by a citizen initiative.

Councilman Gerber reminded the Council that this matter was expedited due to proposed legislature that would have prevented the City from adopting such a proposal.

Mayor Taylor noted that the City did not have the ability to set restrictions on the type of annexation to be placed on a ballot. All annexations, both residential and commercial would be handled in the same manner. The Mayor said he was concerned with the financial impact this will have on one person who wants to annex a small piece of property; and a possible delay in annexing property for commercial use was also a concern.

Councilwoman Strong stated that if this proposal had been in place when Schimadzu required an expedited process for annexation and development, they would probably have located elsewhere.

Mayor Taylor noted that a special election can be set at an increased cost to the City to expedite an annexation.

Mr. Jordan stated that a special election, with only a Canby issue on the ballot, would cost several thousand dollars.

Mayor Taylor asked what process was used to determine what would go to a vote of the citizens, particularly in January, 1999. Mr. Wheeler said the actual wording is that the City is "not required" to send a current application to the vote of the people, but we are also not prohibited from sending it to a vote of the citizens and there is no criteria set, it is the Council discretion.

Mr. Kelley cautioned that applications must be treated equally, whether a large or small annexation.

****Resolution 644 was approved 5-1, with Councilman Gerber voting nay.**

APPEAL: Denial of US West Communication Cell Tower CUP 97-03/DR 97-02 -

Mayor Taylor read the criteria for the appeal process, noting that the decision will be made on the Planning Commission record.

Mayor Taylor asked the governing body to declare any conflict of interest:

Nolder-no conflict and will participate.
Gerber-no conflict and will participate.
Harris-no conflict and will participate.
Taylor-no conflict and will participate.
Daniels-no conflict and will participate.
Lucas-no conflict and will participate.
Strong-no conflict and will participate.

Attorney Kelley asked if anyone in the audience wished to question a member of the Council regarding conflict of interest. No one came forward.

Mayor Taylor asked the governing body to declare any exparte' contact:

Strong-none.
Lucas-none.
Daniels-none.
Taylor-none.
Harris-none.
Gerber-visited the site and drew no conclusions.
Nolder-none.

Mayor Taylor asked if anyone in the audience wished to question a member of the

Council regarding ex parte contact. No one came forward.

STAFF - Jim Wheeler said the application from US West Communications was for a conditional use permit and design review to construct a 125-foot wireless communications tower near the Highway 99 E mini-storage. There is an existing monopole at the site which will be removed to construct a 125-foot lattice tower immediately north of the existing tower. The existing tower and proposed lattice tower were approved without the conditional use and design review requirements since it was not required at the time.

Mr. Wheeler noted that a supplement staff report was drafted in response to the appellants arguments. The Council received the tapes and the entire record on the matter.

Mr. Wheeler said the appellant argues that Policy 7, Environmental Concerns Element, is actually implemented through the site and design review process and does not apply for the conditional use permit. However, Mr. Wheeler pointed out that Policy 7, (c) refers to under ground utilities; and it pre-supposes that above ground utilities have a negative impact on the community. The findings for that policy state that the City has an ordinance requiring above ground utilities to improve and maintain City aesthetics. Mr. Wheeler noted that site and design review also deals with aesthetics. Even though this utility cannot be underground, the Planning Commission felt the aesthetic impact cannot be disregarded.

Mr. Wheeler noted that this would deal with two different types of towers in close proximity and in a "visually sensitive area" close to Highway 99E.

Mr. Wheeler said the applicant only presented verbal arguments, no plans were submitted, and they were not specific as to landscaping or plans of the tower.

The applicant did not request a continuance to submit a proposal and there were not enough specifics regarding any alternatives to make a decision. There was no evidence in the record to suggest that the proposed tower will not have negative impact.

Mr. Wheeler pointed out that the applicant said Policy 7 conflicts with several others, but the commission said there is only one, Policy 1, Public Services and Facilities Element. The applicant said under that policy it denies the public adequate services, however, the commission said it is not denying services, only the specific location.

The applicant argued that the design/review requirements could be met, but there was no proposal or request for a continuance.

Mr. Wheeler stated that the recommendation is to deny the appeal and uphold the Planning Commissions's decision to deny CUP 97-03/DR 97-02. Staff believes the commission did interpret requirements of the code and Comprehensive Plan; they did consider all the evidence that was presented; and if there is an error it is that the findings were not specific or lengthy enough to address all the verbal comments made by the applicant. He added if this is found to be an error, then the matter should be remanded back to the commission for findings. However, due to the 120 day rule, the time frame to remand it back to the commission is not adequate. If the Council decides to overturn the decision of the commission then findings must be made to support that decision. Mr. Wheeler added that if a request for continuance is made by the applicant, then three months will be the time frame necessary for the process.

Councilman Lucas asked if this is the only site the applicant can use. Mr. Wheeler said the applicant explored three sites, one next to the ATT tower on Mr. Boyer's property near the cemetery and one on the City logging road property. They are restrained in regards to sites appropriate to provide necessary network coverage.

Councilman Lucas asked how many of these types of applications can be expected, pointing out the proposed lattice tower will have three different carriers. Mr. Wheeler said there may possibly be more carriers and a request for more towers in the City.

APPELLANT - Steven Hultberg, representing US West, said Wayne Wooten their real estate manager is available to answer location questions.

Mr. Hultberg said the commission did not correctly interpret the code or Comprehensive Plan; and did not consider all information presented at the hearing.

Mr. Hultberg said US West said the text of Policy 7 R, is not specific regarding the roll it plays in the process.

Mr. Hultberg said US West provided four arguments in compliance with Policy 7-R:

- ▶ Policy 7-R is not an independent approval criteria;
- ▶ If Policy 7-R is approval criteria, design review approval satisfies Policy 7-R;
- ▶ US West has satisfied Policy 7-R, one cannot satisfy design review but not satisfy 7-R; and
- ▶ Comprehensive Plan requires balancing.

Mr. Hultberg said there is no evidence in the record that two dissimilar towers create a negative impact. He said US West offered to construct a lattice tower which would make the towers similar. Landscaping was offered on the site, even though a landscaping plan was not submitted because they were informed they had satisfied landscaping criteria.

Mr. Hultberg stated that out of 34 policies, US West satisfied 33 policies. He said competing policies may happen and it would then be impossible to satisfy all policies. The commission did not discuss why 7-R supersedes all other conflicting policies. Factual basis for the conclusion was not provided. He said staff and the commission found that the application is consistent with the Comprehensive Plan. However, the commission did find that 7-R supersedes and is in conflict with the need for providing adequate service. Mr. Hultberg said there is no evidence in the record to show that Policy 7-R over rides any of the other policies.

Mr. Hultberg cited three conflicting policies, Land Use Policy 1, Land Use Policy 2 and Services Element Policy 3, and the commission made no findings regarding these conflicts or why Policy 7-R supersedes them.

Essentially, the Comprehensive Plan requires a certain course of action and the Planning Commission did not take that action, and for that reason alone, the decision is not in compliance with the Comprehensive Plan and should be reversed.

In regards to the design review criteria, the commission found that US West did not score the appropriate 65% threshold. In the criteria it was found that the proposed facility would not be similar to the adjacent tower, but US West has offered to erect a tower exactly like the existing tower. US West was going to use gray for their facility, but offered to use any color the Planning Commission suggested. Between the two criteria the US West offered to change, they obtained enough points to exceed the design review criteria threshold. Mr. Hultberg noted that the staff report stated that US West met the landscaping requirements, and even though the commission adopted the staff report US West was docked points on the matter. In fact, US West offered to plant addition trees and grass. US West far exceed the 65% threshold. Also, the accumulated points suggested by Mr. Hultberg was over 90% of the threshold.

In conclusion, Mr. Hultberg stated that US West satisfied Policy 7-R and exceed expectations for the design review process and he requested the Council reverse the Planning Commission decision and approve the US West application.

Mr. Hultberg said he had heard this matter had been discussed at other Council meetings and asked what was discussed so he could respond.

Wayne Wooten, Real Estate Representative for US West, stated there is a need for the facility in regards to the radio range for the cell site. He said spacing between sites is critical. He reviewed the various proposed sites noting most were not adequate and did not meet the network requirements that the subject area met.

Mayor Taylor asked if there was any further testimony regarding the matter. None was voiced.

DISCUSSION: Councilman Gerber asked how Policy 7-R was met. Mr. Hultberg replied through satisfaction of design review criteria; and the concern that two dissimilar towers would be side by side caused a negative visual impact, and US West offered to build a lattice tower of identical structure as the proposed new tower. Also, additional landscaping was proposed.

Councilman Gerber asked why there had not been enough time to submit corrected plans or an alternative proposal. Mr. Hultberg said they were caught off guard on the landscaping plans, because the report said they had complied with landscaping requirements, nothing more needed to be submitted. US West will be happy to submit additional plans if needed, or if the application was conditioned to require landscaping they would comply. Mr. Gerber noted that a continuance would need to be requested.

Councilman Gerber asked if Policy 7-R could not be satisfied, why were alternatives offered. Mr. Hultberg said the alternatives were offered to reduce suggested visual impacts, not to satisfy Policy 7-R. He added that Policy 7-R does not have standards and it is impossible for an applicant to satisfy such requirements. Mr. Hultberg again reviewed the points they acquired by criteria set in the design review process, noting that the submittal of a plot plan was not necessary.

Councilman Lucas said his opinion of the visual sensitive issue was not the fact that the towers were not similar, but in fact, they were just "towers" and were close to the highway. Mr. Hultberg said the specific findings addressed the dissimilar towers. He added that there was no factual conclusion about the view from the City mentioned, and this conclusion should be withdrawn.

Councilman Gerber noted that after listening to the tapes, his opinion was the concern of the visual impact of the tower for people entering and leaving the City. He added that the plans should have been submitted and become a part of the record. Mr. Hultberg agreed that visual impacts were discussed, however, the "view of the City" from the road was not discussed.

Councilman Harris asked if the process can be started over if this application is denied. Mr. Wheeler said yes.

Councilman Gerber asked if a continuance could be possible and was told yes.

Mr. Hultberg noted that a location off the logging road was discussed, but the Planning Commission said they would deny an application for that site.

Mr. Hultberg requested a continuance on the issue.

Attorney Kelley suggested a waiver of the 120 day time frame.

Mayor Taylor asked Mr. Hultberg if he agreed to the suggested 120 day waiver. Mr. Hultberg said yes.

Mr. Wheeler stated that the options now were: to remand the issue back to the commission for consideration of new evidence; remand it back for clarification of the findings; uphold the commission decision; or overturn the commission decision.

Councilman Gerber stated that the concern about the location of the tower close to the highway will not make any difference in a remand.

Attorney Kelley said he thought that US West wanted the opportunity to show, through mitigation, that the aesthetic qualities can be acceptable. He added that if US West can address the issues, that is probably why they want to have an opportunity to address the issues.

Councilman Gerber argued that the location seemed to be a concern and that cannot be addressed.

Mayor Taylor expressed a concern about the suggestion of Policy 7-R being in conflict with the Comprehensive Plan. He asked if 7-R were a policy that can be made on a discretion of what is liked or not liked. Attorney Kelley said that US West is suggesting that the Planning Commission followed Policy 7-R, however, the commission did not consider the implementation measures. He said the Council needs to make a determination on how they will consider Policy 7-R, whether it is through the design review process or some other manner.

Mr. Hultberg withdrew the request to waive the 120 day time frame and asked that action be taken this evening.

****Councilman Harris moved to uphold the Planning Commission decision to deny CUP 97-03/DR 97-02. Motion seconded by Councilman Gerber.**

DISCUSSION - Councilman Gerber said he felt the Planning Commission did correctly interpret Policy 7-R; the commission did observe the precepts of good planning; and the commission did adequately consider all information; and based on that criteria he felt the Council had only the decision to deny.

Councilman Harris concurred with Mr. Gerber.

Councilwoman Strong commented that after reviewing the packet, she counted the cell towers between I-5 and the Sunset Highway, there were 9 towers next to the highway and she had never noticed them before. She questioned how many people really notice the towers, and all citizens depend on their cell phones. She also questioned

where they could locate their tower.

Councilman Gerber said it is a conflict to consider leasing the City logging road property while considering the subject site.

****The motion to uphold the commission decision was approved 5-1, with Councilwoman Strong voting nay.**

Mayor Taylor called for a short recess at 11:05 p.m. The regular session was reconvened at 11:10 p.m.

COMMUNICATIONS: Mayor Taylor stated that he would not read the two communications since they were in regards to voter approved annexation and action on that matter has been completed for this session.

Kiwanis Kiddie Capper Parade - This will be discussed at a later time.

Associate Planner - Jim Wheeler introduced the new Associate Planner, Jason Krukeberg, who starts work tomorrow.

PUBLIC HEARING: ANN 97-05, 5 Acres East Side of Ivy - Mayor Taylor reviewed the public hearing procedure.

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

Nolder-none and will participate.

Gerber-none and will participate.

Harris-none and will participate.

Daniels-none and will participate.

Lucas-none and will participate.

Strong-none and will participate.

Taylor-none and will participate

Mayor Taylor asked if anyone in the audience wishes to question the hearing body. None were asked.

Mayor Taylor asked the hearing body to declare any ex parte' contact.

Nolder-none.

Gerber-visited the site and drew no conclusions.

Harris-none.

Daniels-none.

Lucas-visited the site and drew no conclusions.

Strong-visited the site and drew no conclusions.



Taylor-none.

Mayor Taylor asked if anyone wanted to question the hearing body. None were presented.

STAFF - Jim Wheeler said the annexation was for five acres on the east side of S. Ivy Street and bordered on the east by Tofte Farms Subdivision Phase I and on the west by S. Ivy Street, and is priority "A" property for annexation.

The Planning Commission recommended denial of the annexation because: it would create an island of approximately 28 acres of five property owners without explicit notification, and when you island property it renders them to a possible forced annexation, even though the City has never forced an annexation; there is no need for additional land for development at this time; there is no concurrent development application with the proposal; and there is no master plan for a local road network.

Mr. Wheeler said staff recommendation is for approval, and the Planning Commission recommends denial of the annexation. He said property owners were sent letters regarding the proposed annexation and the ramifications of being "isialed."

Jim Wheeler noted that this is an open hearing and all information can be considered.

Councilman Gerber asked how much buildable land was currently available. Mr. Wheeler replied 2 years and 2 months.

Councilman Nolder asked what land would be islanded. Mr. Wheeler pointed out the land on a map, noting 28 acres directly north of the subject property, belonging to five property owners.

Councilman Gerber asked why notifications were sent to property owners that normally would not have received the notice. Mr. Wheeler said because it became an issue during the Planning Commission deliberations regarding the property that would be islanded, it was decided to send notifications and such matters would probably necessitate a notification in the future.

APPLICANT - George Wilhelm, representing the applicant Wayne Scott, reviewed the location and said that the application meets the criteria for approval. He said the staff report adequately addressed criteria.

* In regards to the 28 acres that will be islanded without express notification to all of the property owners, the notification was in accordance with City procedures. He said if the applicant was aware that all islanded property owners needed to be notified, that would have happened. He added that the only affect

of the islanded properties is that the City "may" force an annexation, and historically the City "never" has forced annexation. The applicant believes that being an island property should be of no affect to the annexation, and the island property owners were informed of this hearing.

* No need for additional land for development. Mr. Wilhelm, said he did not believe there is a lot in Canby that he can purchase to build on. He said the high price of lots and scarcity of lots is because there is a need for residential land in the City. Mr. Wilhelm read a letter from Alan Manuel, local Realtor, which implied there is a scarcity of R.1 lots in Canby, even though there are developers that have some lots. Mr. Wilhelm said there is a need for residential land in Canby. The applicant is planning to develop the property in accordance with R.1 zoning, however, he has no firm plans at this time.

* In regards to a master plan for local services and roads, the applicant will comply with any master plan that serves the property, even though there is currently no transportation master plan for the subject property. Mr. Wilhelm said the Tofte Subdivision should have provided traffic circulation to the subject property with the extension of SE 16th Avenue. Mr. Wilhelm presented a sketch of a proposed transportation plan for the area.

Mr. Wilhelm pointed out that the property is priority "A" and meets all applicable criteria for annexation and requested a favorable recommendation.

PROPONENTS - Wayne Scott, applicant, asked for favorable consideration, noting all criteria has been met, and notification labels were supplied for the island property owners when they were advised of the situation.

OPPONENTS - Anita Dinsmore, said as a landowner and resident of the area, they are directly affected. She noted that the Welcome to Canby sign says "garden City" and it should read "FORMER garden City. Ms. Dinsmore asked if Canby was to be a farming community, an industrial community or a bedroom community. She pointed out that they have tried to improve and maintain their two acres in a rural atmosphere. She asked if the property were annexed, would their land be able to remain as a parcel of farmland. Mr. Wheeler said it would remain as farmland if the owner does not want to develop it, however, the designation of the property would be dictated by the state planning goals.

Scott Sasse, 1440 S. Ivy, said he would prefer that Tofte Farms be totally completed and purchased before future development is allowed in the area. He noted that he farmed property adjacent to the proposed annexation.

REBUTTAL - None presented.

Mayor Taylor closed the hearing and opened it to questions by the Council.

Councilman Gerber asked if this parcel were to be annexed would the lots be available to individuals or would a specific builder be developing the area.

Mr. Wilhelm said he actually was referring to the need for residential land, and he was not certain how Mr. Scott will develop the property, usually he sells lots to individuals.

Councilman Gerber asked about the access in and out of the area. Mr. Wilhelm said the concern was about a transportation plan for the area, however, 16th needs to be extended to service the area, using the map he indicated another possible road to service the area. (Not specific on the tape, only used a map for reference.)

Councilman Nolder asked if a transportation plan is usually requested when annexing property, and if not, why are they requested now. Mr. Wheeler said we have not in the past, however, it would be more appropriate to ask the commission. Mr. Wheeler said there is concern that development is driving the road pattern, and the fact that the commission may feel a lot of land is being annexed on an as needed basis.

Councilman Nolder noted this was "A" land and he was concerned about requesting certain things from this applicant that are not usually requested or required.

Councilman Gerber asked if there were a recourse when making a parcel an island. Mr. Wheeler noted that the property owners were notified of this hearing and the Boundary Commission historically is concerned about creating islands.

Councilman Gerber asked Ms. Dinsmore what her concern was about the proposed annexation. Ms. Dinsmore said it was both a possible forced annexation and the potential development. She said Canby is very livable, and is growing to fast. She added that their quality of life is affected by the growth. The Dinsmore's preferred to keep their land as farm land.

Councilman Harris asked if a master transportation plan were developed for the area, would the proposed application be involved in such a plan. Mr. Wheeler said if a transportation plan for the area were set in motion, then the City could work with the applicant on the plan, or if the applicant were to develop the area without a transportation plan, the City would work with the applicant in the best way possible.

****Councilman Gerber moved that the City recommend approval of Annexation 97-03 to the Boundary Commission and direct staff to prepare the appropriate resolution. Motion seconded by Councilman Nolder.**

DISCUSSION - Councilman Lucas asked if a transportation plan can be developed

prior to the development of the subject property.

Administrator Jordan said that traditionally municipalities do not provide road planning, primarily due to the cost. He noted that these types of issues occur in many parts of the City where annexation occurs.

Councilman Gerber reminded the Council that the application meets the necessary criteria and development is not to be considered at this time.

****The motion to approve the annexation was favorable, 6-0.**

Mayor Taylor apologized to Pat Allen for the late time, and not acknowledging him earlier.

Pat Allen, regional development officer for the Oregon Economic Development Department, said he was excited about the news that Governor Kitzhaber has approved a \$45,000 grant to the City of Canby for master planning for the second phase of the Logging Road Industrial Park. He said the parcel of land in the industrial park is one of the largest "in-tac" developable industrial land site in the metropolitan region. It is a resource for jobs for Canby. He said the proposal is intended to inject Canby by Design into the proposed master plan.

Mayor Taylor thanked Mr. Allen for assistance in this matter.

Kiwanis Kiddie Caper Parade - Mr. Jordan stated that the Kiwanis are requesting use of the streets for the annual parade.

****Councilman Harris moved to approve the temporary blocking off of the following streets: west side of NW 4th on Grant, north side of NW 3rd at Fir, north side of NW 3rd at Elm, east side of NW 4th at Douglas and east side of NW 5th at Douglas, from 7:00 a.m. till 10:30 a.m. on August 12, 1997 for the annual Kiwanis Kiddie Caper Parade. Motion seconded by Councilman Gerber and approved 6-0.**

NEW BUSINESS: Bicycle Striping of S. Pine/Redwood - Clint Chiavarini said the proposal for re-striping of S. Pine/Redwood from Highway 99 E to SE 13th Avenue. The proposal from the Bike/Ped and Traffic Safety Committee recommended removing parking on both sides of the street from Highway 99 E to Township and allow 14 foot travel lanes; and from Township to SE 13th parking will be left on the east side of the street which will access to residential homes for on-street parking.

Mr. Chiavarini said notification was sent to property owners. He said that employees from the fence company park on the street and they did not receive notification. The

City will notify the fence company that the on-street parking for them may be affected. He added that businesses were required to provide off-street parking for employees and customers, however, the fence company uses their employee parking for storage.

Councilman Gerber asked if there were bike lanes on the west side of Redwood now, and noted that cars park in the area. Mr. Chiavarini said there was striping, but it was not officially marked. He added that because it is not properly designated, enforcement cannot be provided.

****Councilman Daniels moved to approve the proposed striping plans for S. Pine/Redwood street as proposed by the Bicycle and Pedestrian Advisory Committee and the Traffic Safety Committee. Motion seconded by Councilman Harris.**

DISCUSSION - Jason Bristol, resident of S. Redwood, said there is numerous problems with speeding on that street. He lives on the curve and observes traffic problems on the street. Mr. Bristol implied that very few bicycles use the area, but numerous cars utilize the street. He requested a traffic study be made prior to the decision.

Mayor Taylor noted that there is legislation that requires the City to initiate some bike lanes within the City and the proposal was made by two advisory committee's.

Lila Gottman, Chair of the Bike/Ped Committee, said there will be no parking on both sides of the street at the curve.

Mr. Bristol said he lives on the curve and he will not have any parking on the street.

Ms. Gottman said the Traffic Safety Committee suggested putting up signs that will indicate no parking on the curve.

Mr. Bristol suggested only one bike lane. Mr. Chiavarini noted that would be a safety concern, and would limit the bicycle riding to only a short area.

Mr. Bristol also suggested a curb be placed to separate the bike lane and vehicle lane. Mayor Taylor said it would limit access to parking.

Mr. Bristol asked if there is a mandated time line for implementing the bike lanes. He added that when he calls the police department he gets a "lecture" stating they don't have the manpower to be in the area, and when an officer does patrol the street for speeding they are only there a very short time. He felt the speeding problem should be controlled prior to putting in bike lanes.

Mayor Taylor apologized for any lecture received from the police department and stated

that the City has an officer that works only traffic. He noted that no citizen should get a "lecture" when they call the police department.

Mr. Chiavarini said that when putting in the bike lanes, it visually narrows traffic lanes and usually creates a reduction of 3- 4 miles per hour. He noted that the bike lanes are long overdue, and the suggestion was that the bike lanes be put in prior to school starting.

Councilman Lucas suggested reflective bumps be installed to slow down traffic.

Councilwoman Strong expressed concern about parking near ball fields, because of possible congestion if both bike lanes and parking are permitted.

****The motion to approve the proposal for the bike lanes was approved 5-1, with Councilman Gerber voting nay..**

NEW BUSINESS: Accounts Payable - **Councilman Harris moved to approve accounts payable in the amount of \$379,145.77. Motion seconded by Councilman Daniels and approved by roll call vote, 6-0.

ORDINANCES & RESOLUTIONS: Resolution No. 645 - Mayor Taylor commented that this was a renewal of liability insurance and staff recommended a three year renewal with City/County Insurance Services.

Scott Gustafeson reported that rates have continued to go down and it was "the best thing going."

****Councilman Daniels moved to adopt Resolution No. 645, A RESOLUTION AUTHORIZING MEMBERSHIP IN THE CITY/COUNTY INSURANCE SERVICES TRUST FOR LIABILITY COVERAGE. Motion seconded by Councilwoman Strong.**

DISCUSSION - Councilman Nolder abstained from voting because of his association with the insurance firm with Mr. Gustafeson.

****Resolution No. 645 was approved 5-0, with Councilman Nolder abstaining.**

Resolution 643 - Administrator Jordan reminded the Council that this was regarding an annexation heard at the last meeting.

****Councilman Lucas moved to adopt Resolution No. 643, A RESOLUTION INITIATING ANNEXATION OF 6.12 ACRES OF "THE LOGGING ROAD" TERRITORY TO THE CITY OF CANBY. Motion seconded by Councilwoman Strong and approved 5-1, with Councilman Gerber voting nay.**

Ordinance No. 975 - ****Councilman Harris moved that Ordinance No. 975, AN ORDINANCE PROHIBITING OPEN OUTDOOR BURNING OF CERTAIN TYPES OF WASTE; PROVIDING A PENALTY; AND DECLARING AN EMERGENCY be posted and come up for final action on August 20, 1997. Motion seconded by Councilman Lucas and approved 6-0.**

Ordinance No. 976 - Administrator Jordan stated that OEDD funds of \$45,000 have been received for the Industrial Park Master Plan contract, PGE will contribute \$5,000 and the Canby Utility Board will cooperate on the effort, but not contribute cash. The remaining \$27,500 will come from the Logging Road Industrial Park Fund.

****Councilman Harris moved that Ordinance No. 976, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY RECORDER TO EXECUTE A CONTRACT WITH OTAK FOR AN INDUSTRIAL PARK MASTER PLAN FOR PHASES II AND III OF THE LOGGING ROAD INDUSTRIAL PARK; AND DECLARING AN EMERGENCY be posted and come up for final action on August 20, 1997. Motion seconded by Councilman Gerber and approved 6-0.**

Councilman Gerber commended Administrator Jordan for his efforts in establishing the contract with OTAK for the industrial park master plan.

COUNCILORS' ISSUES: Councilman Gerber suggested a session to review the yard debris program to pursue a "middle ground" scenario in regards to fees.

Councilman Harris agreed with Mr. Gerber's suggestion.

A September 17th workshop session was scheduled for the yard debris program discussion. Fred Kahut will be invited.

(NOTE: There were only three full tapes of this meeting. The remainder of these minutes are derived from notes taken by Ms. Chaplen.)

Councilman Harris asked that the exclusion ordinance regarding criminal activity at the S. Locust Street Park be placed on the next agenda.

ACTION REVIEW:

1. Schedule exclusion ordinance for Locust Street Park for the next Council meeting.
2. Prepare documents for voter approved annexation process for the November ballot.
3. Prepare an order for upholding the Planning Commission denial of the cell tower location, CUP 97-03/DR 97-02.
4. Inform CIS of three year extension for insurance.
5. Approved Logging Road ANN 97-02 by Resolution 643.

6. Post ordinances 975 and 976 for second reading at next session.
7. Work with Kiwanis regarding Kiddie Kapper Parade.
8. Schedule workshop on yard debris program.

Mayor Taylor asked that we advertise for a Planning Commission member in the paper and schedule an interview with applicants. Interview committee will be Brad Gerber, Walt Daniels and Dan Ewert.

****Councilman Daniels moved to go into Executive Session under ORS 192.660 (1)(d) regarding labor negotiations; (e) regarding property transactions; and (1)(h) pending litigation. Motion seconded by Councilman Gerber and approved 6-0.**

Mayor Taylor recessed the regular meeting at 12:55 a.m. to go into Executive Session. The regular session was reconvened at 1:18 a.m. and immediately adjourned.

EXECUTIVE SESSION
AUGUST 6, 1997

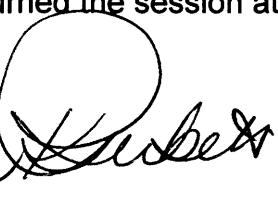
PRESENT: Mayor Taylor, Councilors Nolder, Gerber, Harris, Daniels, Lucas and Daniels, Mr. Jordan and Ms. Chaplen.

Mayor Taylor called the session to order in the CUB conference room at 12:56 a.m.

ORS 192.660 (1)(d) - The Council discussed management salaries.

ORS 192.660 (1)(e) - The Council discussed acquisition of right-of-way on S. Ivy Street.

Mayor Taylor adjourned the session at 1:17 a.m.



Marilyn K. Perkett

Marilyn K. Perkett
City Recorder



Scott Taylor
Mayor