

CANBY CITY COUNCIL
REGULAR SESSION
OCTOBER 15, 1997

WORKSHOP SESSION

PRESENT - Councilors Daniels, Gerber, Strong, Harris and Lucas, Michael Jordan, Sarah Jo Chaplen, Jerry Giger, Jim Scharmota, John Kelley, Ken Pagano, Greg Kroeplin and Cam Sivesind.

The session was called to order at 6:00 p.m. by Council President Daniels in the CUB Conference Room. A light dinner was served.

The purpose of the session was to discuss a daytime curfew ordinance.

****Councilman Gerber moved to go into Executive Session under ORS 192.660 (1)(d) regarding labor negotiations; and (1)(e) to negotiate real property. Motion seconded by Councilman Harris and approved 5-0.**

The regular workshop session was reconvened at 7:16 p.m. and immediately adjourned.

EXECUTIVE SESSION

Council President Daniels called the session to order at 6:45 p.m. in the CUB conference room.

Those present: Councilors Daniels, Strong, Gerber, Harris and Lucas, Mr. Jordan, Ms. Chaplen and Cam Sivesind.

ORS 192.660 (1)(e) - The Council discussed an offer to purchase property.

ORS 192.660 (1)(d) - The Council discussed the hiring of a new City Treasurer.

Council President Daniels adjourned the session at 7:15 p.m.

REGULAR SESSION

Council President Walter Daniels presiding. Council members present: Brad Gerber, Barry Lucas, Shirley Strong and Roger Harris.

Also present: Administrator Michael Jordan, Finance & Administrative Director Sarah Jo Chaplen, Police Chief Jerry Giger, City Attorney John Kelley, City Recorder Marilyn Perkett, Sgt. Ken Pagano, Sgt. Greg Kroeplin, David Kelly, Ryan & Tyler Echols, Greg & Jesse Higgins, Curtis & Lila Gottman, Connie & Aaron Lloyd, Fred & Bettie Postlewait, Jeremy & Torrie Breeder, B. & D. Zach, Josh & Theresa Howell, Jeff Hughes, Lucas Fair, Erik Hiiva, Jan, Chris, Bob Swelland, Randy Harris, Brian Kluetsch, Mike Cox, Josh Vicers, Chad Beaudoin, Michaela Carroll, Autumn Harvey, Sarah Kroeplin, Michael Hoyse, Brent Nunn, Jared Justice, Tom Tye, Hilary Lynn, Carolyn Carroll and others.

Council President Daniels called the session to order at 7:30 p.m. followed by a moment of meditation.

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

MINUTES OF PREVIOUS SESSIONS: **Councilman Harris moved to approve as distributed the minutes of regular sessions August 6, 1997 and October 1, 1997. Motion seconded by Councilwoman Strong and approved 5-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: Lila Gottman reported that the new bike lanes on S. Redwood looked "great."

Mrs. Gottman noted that Mark O'Shea had recently resigned from the Bike/Ped Committee and a local resident Mel Thaer has submitted an application for that position.

The general consensus of the Council was to advertise through the newspaper to make sure all interested citizens are considered for committee appointments.

Michaela Carroll addressed the Council requesting consideration for a "skate park" in Canby. Ms. Carroll noted that many parents were present tonight and supported the proposal for a skate park for the kids to use. She said the group of proposed users are willing to assist with fundraisers, and the design of a facility. Ms. Carroll said, "If Molalla can do it, we can do it."

Councilman Lucas pointed out that McMinnville has a skate park, Salem has two, and Tualatin is in the process of building one.

Councilman Gerber suggested that the Council take a tour of some of the facilities at other communities.

Connie Lloyd, a parent of a skater, stated that many parents supported the endeavors of the kids for a skate park. She noted that time is of the essence, because of their

youth, and many are willing to help design a park or assist in any way necessary to facilitate a project.

Council President Daniels suggested that a proposed design be submitted to Councilman Lucas or Beth Saul at the Library.

Barry Cain, Gramor representative, read a letter to the Council requesting reconsideration of the recent Arneson annexation denial. He cited the following miscommunications for their request:

- the reason for the decision of denial was because of no clear funding mechanism for a traffic signal at Redwood and Highway 99 E, Gramor commits to install and pay all the costs for the traffic signal.

- make the traffic signal at Territorial and Highway 99E a combined project with the Redwood signal, at a lower cost and make the Territorial traffic signal an SDC project.

- in regards to an economic impact, property tax contributions from the development will exceed \$169,500, with \$113,040 annually going directly to the City of Canby; 670 new full time jobs will be created; and the existing downtown core area will benefit by the ability from more citizens working in town and having more shopping, service and restaurant choices located within the City limits.

- a 2-3 acre garden that has been developed by the Arneson's with their hybridized azaleas will be dedicated to the City of Canby.

- the Boundary Commission agrees with Gramor, if the Council approves the annexation request, the right to vote by the public will not be eliminated.

Attorney Kelley read ORS 195.505, which states that if the applicant goes directly to the Boundary Commission and gains approval, the City of Canby will have 45 days to file a written objection, and then an election can be held. He added that the Gramor Attorney argues that the Council can approve the application, then object to the Boundary decision and then call for a vote of the citizens.

Mr. Cain noted that the Gramor application will be before the Boundary Commission on November 13th. He added that if the City recommends denial, the application will lose at the Boundary Commission so it will not be able to go to the voters.

Attorney Kelley said he was not comfortable with approving the annexation, then referring to the ORS, sending a resolution of objection in order to submit the proposal to the voters.

Councilman Gerber asked if the City could use SDC funds for the Territorial signal. Mr. Jordan said both Redwood and Territorial signals are not in the Transportation Master Plan methodology for SDC funds. Those projects would need to be included in that methodology and included in the first five year project proposal.

Councilman Gerber stated that Gramor has presented a good proposal, offering to aid with the Territorial traffic signal and install the Redwood traffic signal.

****Councilman Gerber moved to reopen the annexation hearing and place the matter on the next agenda.**

Attorney Kelley said a Councilperson that made the motion for denial must make the motion to reopen the hearing.

Councilman Lucas stated that he was uncomfortable with hearing the law three different ways in various meetings, and suggested that an appropriate interpretation of the law be forwarded to the Council.

****Councilman Lucas moved to reconsider the Gramor annexation on the next agenda. Motion seconded by Councilman Harris and approved 5-0.**

Mr. Cain was directed to prepare all necessary documents and forward them to the City for Council distribution as soon as possible.

Councilman Harris commented that Gramor has made a very generous offer to the City and deserves a chance to discuss the issue. However, he said philosophically he was not in favor of the project.

Administrator Jordan explained that the Council will need to vote again on the motion which will be on the table to deny the annexation. Then the Council will have the option of opening the hearing.

Jim Wheeler said a resolution will not be prepared until after the hearing, however, he can attend the Boundary Commission hearing to verbally inform them of the City Council decision.

The Gramor annexation will be advertised again, the hearing reopened and the regular Council meeting will start at 7:00 p.m.

David Kelley, business manager for Four Square Church, stated that the church is in favor of a traffic signal at Territorial and 99E.

Councilman Lucas asked if SDC money can be used for a project not in the City. Mr.

Jordan replied yes; however, that project is not currently in the methodology.

COMMUNICATIONS: Letter from Thriftway - Mr. Jordan read a thank you letter from Cutsforth's Thriftway thanking the Canby Police Department for participating in the recent Child ID promotion project.

PUBLIC HEARING: ANN 97-07, Riverside Homes - Council President Daniels reviewed the public hearing process, then opened the hearing at 8:00 p.m.

President Daniels asked the hearing body to declare any conflict of interest on the hearing subject,

- Strong - none and will participate.
- Lucas - none and will participate.
- Daniels - none and will participate.
- Harris - none and will participate.
- Gerber - none and will participate.

President Daniels asked the hearing body to declare any exparte contact regarding the hearing subject.

- Strong - none.
- Lucas - none.
- Daniels - none.
- Harris - none.
- Gerber - none.

Jason Kruckeberg, Associate Planner, stated that the application is a parcel of 7.28 acres on the west side of N. Redwood, east of the Logging road, between 99E and Territorial, and includes three tax lots. The Comprehensive Plan places the property at a R-1, low density residential zoning and it is priority "A" property for annexation purposes. Mr. Kruckeberg reported that all service providers were contacted regarding the application and no negative responses were received.

The Planning Commission unanimously recommended approval of the proposed annexation. Two suggestions were added to the Commission findings: the City Council communicate with ODOT regarding a reduction of the speed limit on the portion of 99E approaching N. Redwood from the north, because of the sight distance concern created by shrubbery along the road. Chief Giger has sent a letter to the Speed Control Board and has received no response. The second concern, was a mistake in the tax lot number on the Traffic Study, and the author Mr. David Kelley, reaffirmed the correct tax lot numbers by a recent letter.

The Planning Commission has approved a 33 lot subdivision for this annexation. Also, the Zacker property to the south was added late to the subdivision, bringing the total

lots in the subdivision to 41.

Staff recommends approval by adoption of resolution 655.

Councilman Gerber asked if the resolution could have conditions. Mr. Wheeler said the resolution could have understandings, and in fact has three.

Councilman Gerber asked if the Planning Commission agrees with staff on the interpretation of the available buildable land as 2-3 years. Mr. Wheeler said there has been no statement from the Commission on this matter. He added that the Planning Commission unanimously approved another annexation on Monday evening.

Councilman Harris asked about the concern of flooding and water run off in the area. Mr. Kruckeberg explained that negotiations have been made with a landowner to the north to run a storm line, and no development will be done until the storm drainage is complete. The drainage will run to the wetlands area on Territorial.

APPLICANT - Tom Tye, engineer representing the applicant, said he agreed with the comments from staff. Mr. Tye noted that the site distance issue has been taken care of by ODOT.

PROPONENTS - None.

OPPONENTS - None.

REBUTTAL - None.

Council President Daniels closed the hearing at 8:16 p.m

****Councilman Gerber moved to recommend approval to the Boundary Commission for ANN 97-07 with the following understandings:**

- the zoning classification for the property upon annexation will be R-1, Low Density Residential, in accordance with the Land Use map of the Comprehensive Plan;
- all City and service provider regulations are to be adhered to at the time of development;
- that City Council contact ODOT to request a reduction in the speed limit on that portion of Highway 99E, in the vicinity of its intersection with N. Redwood, to approximately 45 mph.

Motion seconded by Councilman Harris.

DISCUSSION - Councilman Harris asked if the motion was the same as resolution no. 655. Mr. Jordan pointed out that the resolution had one more understanding.

****Councilman Gerber AMENDED the motion to include: All development and recording costs are to be borne by the developer when the property is developed. Councilman Harris, who seconded the motion, agreed to the amendment. Motion was approved 5-0.**

Administrator Jordan pointed out that Resolution No. 655 needs action, and an amendment can be added regarding the speeding issue.

****Councilman Gerber moved to adopt Resolution No. 655, A RESOLUTION TO THE PORTLAND METROPOLITAN AREA LOCAL GOVERNMENT BOUNDARY COMMISSION RECOMMENDING APPROVAL OF THE ANNEXATION TO THE CITY OF CANBY, CLACKAMAS, COUNTY, OREGON, OF TAX LOTS 900, 901 AND 1000 OF TAX MAP 3-1E-34BB, LOCATED ON THE WEST SIDE OF N. REDWOOD STREET, EAST OF THE LOGGING ROAD, BETWEEN HWY. 99E AND NE TERRITORIAL ROAD with the addition of the understanding regarding the reduction in speed. Motion seconded by Councilman Lucas and approved 5-0.**

NEW BUSINESS: Accounts Payable - **Councilman Harris moved to approve payment of accounts payables in the amount of \$217,578.74. Motion seconded by Councilman Gerber.

DISCUSSION - Councilman Harris pointed out that approximately \$91,000 was a payment to Moore Excavation for the Logging Road Industrial Park Project.

****Accounts payables were approved by roll call vote, 5-0.**

Voting Delegate for LOC Convention - **Councilman Gerber moved to appoint Mayor Taylor as the voting delegate for the annual League of Oregon Cities Convention, with Administrator Jordan as the alternate. Motion seconded by Councilman Harris and approved 5-0.

Street Tree Plantings - Jim Wheeler explained that street tree plantings have been required in some subdivisions for a couple of years. The ordinance is clear on the ability of the City to plant the trees, and the responsibility of the homeowner to maintain the trees. Recently, there has been a strong objection by a homeowner to have a tree planted on his lot and the ordinance sets no procedure on this issue. Mr. Wheeler pointed out that the City usually plants trees twice a year.

Mr. Wheeler recommended that a homeowner submit their objection to a street tree planting on their property to the City Council, with Council having authority to make a decision on the matter.

Councilman Harris asked if homeowners know about the street tree when they

purchase their home. Mr. Wheeler explained that the City has notified the real estate agents, and often the information is not passed on to the purchaser. Also, the City makes the notation on a site plan, and often a builder will take that off of the plans. Mr. Wheeler said the City has tried to make it a CCR, but that did not happen and not all subdivisions have CCR's.

Councilman Gerber suggested that the Council take action on the procedure and at the end of the meeting the homeowner with the street tree concern can address the Council.

****Councilman Gerber moved that an exemption to the requirement of a street tree on a single property be reviewed for decision by the City Council. Motion seconded by Councilman Lucas.**

DISCUSSION - Councilman Harris used the scenario that if he had a sidewalk he did not want built on his property, what would be the outcome. Mr. Jordan said the last time the City did sidewalks on Birch Street, there really were no objections and the type of issue usually is negotiated at staff level.

Mr. Wheeler pointed out that other concerns were resolved at staff level and he did not believe this would happen often. Hopefully, a method to distribute information to prospective home owners will be developed.

****The motion regarding procedure for street tree complaints was approved 5-0.**

ORDINANCES & RESOLUTIONS: Ordinance No. 977 - **Councilman Harris moved to adopt on final reading, Ordinance No. 977, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF CANBY, COUNTY OF CLACKAMAS, OREGON, FROM AN AGRICULTURAL ZONE DISTRICT TO A LOW DENSITY RESIDENTIAL ZONE DISTRICT FOR THE PORTION OF TAX LOT 5800 OF TAX MAP 4-1E-3CB DESCRIBED ON EXHIBIT A. Motion seconded by Councilwoman Strong and approved by roll call vote, 5-0.

Ordinance No. 979 - **Councilman Harris moved to adopt on final reading, Ordinance No. 979, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF CANBY, COUNTY OF CLACKAMAS, OREGON FROM A LOW DENSITY RESIDENTIAL ZONE TO A HIGH DENSITY RESIDENTIAL ZONE DISTRICT FOR TAX LOT 4900 OF TAX MAP 3-1-E-33BC. Motion seconded by Councilwoman Strong and approved by roll call vote, 4-0, with Councilman Gerber abstaining.

Ordinance No. 980 - Steve Hanson, Sewer Plant Supervisor, explained that an RFP was issued for consulting engineering services for the aeration basin improvements, effluent filtration and biosolids de-watering improvements at the sewer plant. Staff

recommended a contract with Curran-McLeod for the engineering services in the amount of \$254,880. Mr. Hanson said the work is scheduled to be started in June, 1998 and will take approximately a year to complete.

****Councilman Gerber moved that Ordinance No. 980, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY RECORDER TO EXECUTE A CONTRACT WITH CURRAN-MC LEOD, INC. CONSULTING ENGINEERS FOR ENGINEERING SERVICES ON AERATION BASIN IMPROVEMENTS, EFFLUENT FILTRATION AND BIOSOLIDS DE-WATERING AT THE WASTEWATER TREATMENT PLANT; AND DECLARING AN EMERGENCY be posted and come up for final action on November 5, 1997. Motion seconded by Councilwoman Strong and approved 5-0.**

UNFINISHED BUSINESS: Change Order 01, SE 4th Street Improvements - Curt McLeod explained that the request was for an additional \$1,083.90 for work required to assure future access to the water service by moving the service line four feet west from the Shimadzu driveway; and to connect a clean edge of existing AC surfacing at the end of SE 4th Avenue.

Mr. McLeod stated that water service lines at the intersection near Shimadzu were four or five feet further than what the plans indicated and the driveway plans were three or four feet different than what was indicated in the plans, the future two inch service line was moved three to four feet for a cost of 256.83. The other item was removal of asphalt and adding of base rock to make the adjustment to the grade of the street for a total of \$878.24.

Councilman Gerber expressed concern about paying \$1,083 for housecleaning necessities to a contractor who has a \$838,000 contract with the City.

Mr. McLeod stated that there are substantial problems with this contractor, who actually has, three or four times, completed the work prior to submitting a change order and bill. He added that if this issue is approved, it will give him better leverage for the other issues with this contractor. Mr. Kelley is currently reviewing the entire file regarding this contractor.

****Councilman Lucas moved to approve Change Order 01, for \$1,083.90. Motion seconded by Councilman Harris.**

DISCUSSION - Councilman Gerber made the analogy that this was similar to buying a ring from a jeweler for 3/4 of a million dollars and then being charged to size it. He would never buy from that jeweler again.

Councilman Lucas agreed with Mr. Gerber's scenario.

****Motion for pay the Change Order was approved 5-0.**

99E Access Management - Mr. Jordan reminded the Council that the Access Management component of the Transportation Plan has not been settled. He noted that he and some local businessmen met this summer with the ODOT Director and agreed to try and develop a new process between the two entities regarding the access management plan.

Mr. Wheeler said staff wanted to be sure they were heading in the right direction with ODOT in accordance with the Council's wishes. He added that Katy Tobie and Thomas Picco with ODOT Region One, and Karla Keller ODOT District 2-B were present this evening.

Katy Tobie, Community Affairs Manager with Region One, noted that the ODOT Director has agreed to work with Canby to reach some common ground regarding the access management plan. She said the plan is to hold some significant public meetings, and identify common goals and create something productive from the meeting. She said a couple more meetings will need to be held. The key component of the program is forming a community advisory committee to identify goals and guidelines and then move forward. Ms. Tobie said there are state laws that will not change. She said the concerns of the community are the implementations of 99E access, and identifying a good benchmark for criteria.

Karla Keller added that ODOT does not know what the outcome will be or the risk.

Ms. Tobie agreed, but said ODOT is entering into the project in good faith. She said she realized ODOT has a less than stellar reputation in the community.

Councilman Gerber commended ODOT representatives for endeavoring to reach a common ground with the City.

The unanimous consensus of the Council was to proceed with the new process with ODOT.

Street Tree Individual Issue - Mr. Wheeler said that in the subject subdivision sidewalks are against the curb and the street trees are planted six feet behind the sidewalk, because of the utility easement. He said ornamental trees are planted on each lot, usually a different tree for each block.

Councilman Gerber asked what would happen if someone does not maintain the tree. Mr. Wheeler stated that he did not know, this has not occurred. However, there is a provision in the tree ordinance for penalty and fines.

Randy Harris, 468 SE 9th, stated that he was never informed of the street tree issue. One morning he found a big hole in the middle of his yard. He added that his yard is small and, with four children, he needs the space. Mr. Harris said perhaps he would not have purchased the home at this location if he had known of the tree issue.

Councilman Gerber asked if there is anyplace in the yard where some type of tree could be placed. Mr. Harris said perhaps one could be placed near the property line near the transformer.

Mr. Harris noted that in once instance a homeowner had already planted a tree, the City came and planted one exactly like it within six feet.

Councilman Gerber admitted that the City has not done a good job on this matter. Mr. Wheeler said staff is learning from the mistake that resulted in this situation.

Administrator Jordan reminded the Council that this is a Planning Commission order to create a certain type of street scape. He suggested findings that would make this unique situation.

Mr. Wheeler stated that the primary reason for drafting the ordinance and street tree plan was for aesthetics.

Councilman Gerber suggested that staff and Mr. Harris try to work out a compromise and return to Council with a diagram with another location for the tree. However, if a compromise cannot be reached then staff should prepare findings for a recommendation for exemption for this matter.

Mr. Harris said that adequate findings should be the fact that no notification was made regarding the planting. He said he did not want the tree, and would like his yard to be different from other yards.

Councilwoman Strong expressed concern about imposing on citizens, specifically with no notification process.

Administrator Jordan suggested that the Council and Planning Commission need to review the street tree planting program as a public policy goal.

MANAGER'S REPORT: Meetings & Events - The Clackamas County Cities monthly meeting will be held in Tualatin on October 23rd. The topic will be 2040 Metro Regional Plan.

October 24th, an Open House at Schimadzu's new facility will be held from 4 to 7 p.m.

The November 5th regular session will start at 7:00 p.m.

November 12th, 7:00 p.m., a special session has been set to discuss the Parks Master Plan.

A workshop session has been set for 6:00 p.m. prior to the November 19th regular session, regarding cemetery expansion.

N. Redwood Storm Water Project - will not be completed prior to the wet season. Routing across the Logging Road to Redwood is still in the negotiation process.

LID - Mr. Jordan reported that a request has been received to form a Local Improvement District in the NW Third and Baker area, including the City and Rinkes property, for basically sewer and water infrastructure. He noted that the Code provides a process for public hearings, engineering and assessment process for an LID.

Sewer Bond Refinancing - Mr. Jordan said the sewer bond refunding has been accomplished at 5.19%, a full percentage point lower than current rate and the savings will be approximately \$133,000. The state requires a 3% total savings, the City saved a total of 3.79%, and the bonds will be issued until the year 2017. Mr. Jordan said most of the savings will be in the first two years of the issue because of the current construction projects at the sewer plant.

Letter from Dan Ewert - Mr. Jordan handed out a letter from Planning Commission Chair, Dan Ewert, requesting a determination from the Council on the term of "adequate level of service" in regards to development. Currently, service providers are asked to respond to a "request for comments" on all new developments, and usually a box is checked that indicates, "adequate service." Mr. Jordan stated that to define adequate service would be extremely subjective.

COUNCILORS' ISSUES: Councilman Gerber asked if the Council is interested in a consent agenda for such items as minutes, accounts payable, voting delegate, etc. The Council agreed to the suggestion and staff will attempt to initiate a consent agenda. It was noted that any item can be removed from a consent agenda for discussion.

OTHER REPORTS OR ANNOUNCEMENTS: Jim Wheeler informed the Council that the City had received a Transportation Growth Management Grant in the amount of \$3400 to assist in that planning project.

ACTION REVIEW: 1. The Gramor Annexation will be reconsidered at the November 5 meeting.

2. Forwarding Resolution 655 to the Boundary Commission regarding ANN 97-07, Riverside Homes.
3. Appointing Mayor as LOC voting delegate.
4. Return to Council with street tree recommendation for Randy Harris.
5. Implementing Zone Changes as per Ordinances 977 and 979.
5. Posting Ordinance 980 for second reading on November 5, regarding engineering for sewer plant improvements.
6. Paying Change Order 01, for SE 4th Avenue.
7. Implementing Access Management process with ODOT
8. Initiate a consent agenda.

Council President Daniels adjourned the session at 9:45 p.m.



Marilyn K. Perkett
City Recorder



Walter Daniels
Council President