

CANBY CITY COUNCIL
REGULAR MEETING
JANUARY 3, 1996

Council President Terry Prince presiding. Council members present: Walt Daniels, Shirley Strong, Cheryl Stark, Roger Harris and Dennis Nolder. Absent: Mayor Scott Taylor.

Also present: Administrator Michael Jordan, Assistant to Administrator Sarah Jo Chaplen, Beth Saul, Jim Wheeler, Jerry Giger, Gary Spanovich, Scott Nelson, Michael Robinson, John Falkenstein, David Cole, Carol Meeuwsen, Kevin Howard and others.

Council President Prince 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 the minutes of December 20, 1995, as presented. Motion seconded by Councilwoman Strong and approved 6-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: None.

APPEAL: Dr 94-11, Kevin Howard - Council President Prince reviewed the appeal procedure, noting that the decision will be made upon the established record.

President Prince asked the hearing body if they had any conflict of interest in the subject matter and intended to participate in the matter.

Daniels - No conflict and will participate.
Strong - No conflict and will participate.
Stark - No conflict and will participate.
Prince - No conflict and will participate.
Harris - No conflict and will participate.
Nolder - No conflict and will participate.

Council President Prince asked the hearing body to declare any exparte contact.

Daniels - No contact.
Strong - No contact, but has drove by the site. The audience was asked if there were any questions for Councilwoman Strong and none were voiced.
Stark - No contact, and drives by the site almost every day. The audience was asked

if they had questions for Councilwoman Stark and none were voiced.

Prince - No contact, and has drove by the site. The audience was asked if they had any questions of Council President Prince and none were voiced.

Harris - No contact, but has drove by the site and specifically has reviewed other signs along the highway. The audience was asked if they had any questions for Councilman Harris and none were voiced.

Nolder - No contact, and has drove by the site. The audience was asked if they had questions of Councilman Nolder and none were voiced.

STAFF REPORT - Jim Wheeler, Assistant Planner, informed the Council that the present matter was an appeal of a Planning Commission denial for a sign color revision application.

Mr. Wheeler briefly reviewed the issue saying the mini-storage business on the south side of Highway 99 E at the Logging Road Overpass was:

- *originally approved with a blue and white sign;
- *after construction the sign was erected with a predominately yellow color as it currently stands;
- *occupancy was granted and the sign color was decided to be dealt with separately;
- *a formal appeal on the sign color went before the Planning Commission and they upheld the blue and white sign condition;
- *the applicant then made an application for a sign color revision to the Planning Commission and it was denied; and
- *the denial now has been appealed the Council.

Mr. Wheeler noted that the Planning Commission reasons are in the packet and the applicant has stated their reasons for the request to overturn the Commission denial, which he addressed as follows:

3 A.-the sign has been there for more than six months, and the condition of approval is limited to the first six months after occupancy. However, staff and the Commission feels the sign is not in compliance, therefore, the six months time frame should not be considered. Mr. Wheeler pointed out that this could set a precedent with other developers who could do whatever they want and the time limit would lapse and then be unenforceable. Staff requests that this argument be rejected.

3 B - an exparte contact that was not disclosed by two Planning Commission members regarding site visits. Staff felt the appellant was not prejudiced in the undisclosed exparte contact, since those two members voted in favor of the application, not to deny it. However, staff felt the remedy would be to remand the matter back to the Planning Commission and disclose the exparte contact. Mr. Wheeler pointed out that one member is no longer on the Commission. Also, the 120 day review period would need to be waived by the appellant.

3 C - the argument was whether the sign color should be regulated by Site/Design Review. The Commission decided it is appropriate, and it is an issue that the Council can decide.

3 D - this argument is a technical wording issue, and if the Council decides to uphold the Planning Commission decision, then additional wording should be added to Finding # 3, which basically states that the color of the sign is not matching or fitting in with the color of the building, which makes it not compatible.

3 E - the argument is that the sign is not a structure and there was no reason given in the Commission rejection of the appellant's definition of what is compatible. However, Section 16.04.590, gives a definition of a structure, and a sign definitely fits into that definition. Further, the Planning Commission provided their own definition of "compatible" and staff believes it is acceptable. If the City Council accepts the Planning Commission definition, that is the key, and if not another definition needs to be substituted.

3 F - argues the purpose of the Site and Design Review in regards to the yellow sign. The Commission listed the first four reasons in the purpose section, but did not give any specific measures of how the sign does not comply with the purposes. Mr. Wheeler said the Council could remand the decision back to the Commission to request in what manner the sign does not comply with the purposes, or the Council could make the decision that the sign complies with Site and Design Review. He added that the Council should determine whether or not "matching" colors promotes bland and monotonous developments.

3 G - the final argument is that regulating the sign color is a violation of free expression by the Oregon Constitution. The applicant has submitted pictures of signs that are both blue and some that are yellow. The sign color is not an integral part of the message and therefore regulation would not be a violation of free expression.

In review, Mr. Wheeler stated that staff suggests the Council reject the appellant's arguments of 3 A, 3 E and 3 G. He said the Council needs to consider the following:

- * whether to remand the matter back to the Commission due to undisclosed exparte contact;
- * consider remanding back to the Commission for further clarification of why a yellow sign is contrary to the purposes of the Site and Design Review, and if remanded a waiver of the 120 day time frame; and
- * finally, staff needs to consider if it is within the purpose of the Site and Design Review Ordinance to regulate the color of signs, whether to uphold the Commission definition of "compatible" and if "matching" colors promotes bland and monotonous developments in the vicinity or to the development itself.

Mr. Wheeler pointed out that several pictures were submitted showing signs along the highway, mostly yellow, and some signs submitted by the owner using predominately yellow.

APPELLANT - Mike Robinson, 900 SW 5th, Suite 2300, Portland, an attorney representing Kevin Howard, used a picture of the mini-storage showing the current yellow sign, as well as other photographs using similar signs. Mr. Robinson, said he did not agree with the conclusion of the staff report and wanted to point out some corrections.

Mr. Robinson stated that there is no formal enforcement action on the matter, however, when Mr. Howard went before the Planning Commission in April and asked for a formal termination of the color of the sign. He added that an appeal was filed on the Commission decision, however, the applicant ultimately filed another application before the Planning Commission regarding color revision.

In regards to the point that Commissioner's Gustafson and Ewert voted for the matter, he said it was only a tentative vote and the final decision was either 3-2 or 4-2, unfortunately the final vote on adoption of the findings was a 6-0 vote, therefore, the two Commissioner's in question did vote against the matter in the final vote.

Mr. Robinson stated that a "yellow sign adjacent to a blue and gray building is as compatible as anyone could want."

Mr. Robinson said that the Commission determined that compatible meant "matching or fitting in" and in this case the Commission decided that it was not compatible because it was not the same color. He asked if this is the policy the Council wants to be adopted regarding signs, and he cautioned that the City needed to be consistent in these matters. Therefore, if the Council upholds the Commission decision to make signs compatible the criteria would mean the sign color must match the building color.

Mr. Robinson asked if this were a fair policy for this applicant or other applicants. He added that there were a number of ways around this issue, however, his client did not intend to cause a problem, they only want to apply for their permits and get on with the matter.

He reiterated that the Planning Commission said that compatible means "matching" and "fitting in" and this particular application is not compatible with the buildings. Mr. Robinson said that staff says, "that's not necessarily the same," he added that he didn't know what that means. He said that was exactly what the Commission meant, the color was not the same as the building. He added that the Commission reached that decision in compliance with the following code:

Section 14. 49.040(1)(c) - The location, design, size, color and materials of the exterior of all structures and signs are compatible with the proposed development (and in this case it is the mini-warehouse project, including the sign) and appropriate to the design character of other structures in the same vicinity.

Mr. Robinson added that what it means in this case, is the sign Mr. Howard proposed is similar to the design character which includes the same kind of signs and color that are up and down highway 99. He asked why yellow doesn't match or fit in with blue. He said there was no explanation for this, and he added that colors that contrast are common. He said sign colors are often a matter of individual taste and discretion. As an example he noted that McDonald's has "golden arches" but their buildings are not golden. He cited other local businesses that have signs that do not match - Pacific Pride, Payless, Subway, Best Buy. Mr. Robinson said that Mr. Howard used a yellow sign because it is a color that attracts business and 8 of 9 of his other successful projects have yellow signs. He added that is part of the reason why his business was so quickly successful, due to the yellow sign and the location. Mr. Robinson said he counted 22 signs along highway 99 that used yellow and 12 were predominately yellow. He suggested that the Commission should be a little more flexible, that "compatible" is capable of co-existing and not an absolute standard.

Mr. Robinson said the second thing to consider is approval condition number ten:

"the total signage within the first six months after occupancy is limited to a sign that is similar in size and appearance, as the one shown in the picture submitted with the application."

He pointed out that it said "similar" not "the same" and it talks about "appearance" not about color. He referred to the minutes of September 14, 1994, and the only discussion at that time about the sign was about size and characteristics and nothing about its color. Mr. Robinson said the picture was submitted at the end of the process and if he had it to do over, he would not have submitted a picture showing the blue sign. Mr. Howard didn't understand that he would be required to adhere to the submitted picture.

Lastly, Mr. Robinson asked if this policy would be applied consistently. He pointed out that the Site and Design Review does not allow for review of signs unless it is in conjunction with a reviewable project. He pointed out that Millar Tire changed their sign without a review because there was no project associated with the change of the sign. He again referred to approval condition number ten, which stated that it only applies for the first six months after occupancy. Mr. Robinson stated that Mr. Howard could put up a blue sign tomorrow and in six months he could take it down and put up the yellow sign.

Council President Prince asked if the exparte contact was only that which was listed in the staff report. Mr. Robinson confirmed it was, and his point was that the decision adopting the findings was a 6-0 vote.

Kevin Howard, 12033 NE Marx Street, Portland, part owner of the project, along with Cam Warren and Bank of Newport, stated that in his 20 years of development he has never seen so much time and money spent over the objection to the use of the color yellow. He stated that Mr. Hoffman asked for pictures for the color of the building on the morning of the Commission hearing. He said it was never his intent to show a blue sign, and one picture

showed a blue sign, that was a mistake because the color blends into the sky. The total intent was to show the color of the building with the six pictures he submitted.

Mr. Howard said that one Commissioner asked that landscaping requirements be reduced in lieu of removal of the sign. Mr. Howard noted that his million dollar plus investment needed a sign. Mr. Howard said Bob Hoffman approved the sign, with no concern about color. Mr. Howard next stated that he refiled with the Commission on the color of the sign and the Commission voted 6-0, to deny the yellow sign. He added that he has spent more money fighting this issue than he would have by complying and changing the sign later. He added that he is fighting it because it is wrong, it is compatible and the predominance of highway buildings have different sign colors. He further stated that no other signs have had a color restriction.

Mr. Howard noted that the most recognized color combinations are yellow, black, brown with black lettering and that is what the highway department uses, and it is a safety factor, as well as his standard.

Mr. Howard asked the Council to approve the current sign color.

Councilman Daniels asked why the pictures with blue signs were picked out among those submitted. Mr. Howard said the question never came up about color, he submitted the six pictures as requested on the day of the hearing. He added it became an issue after the sign was placed. Mr. Howard cited a comment from Mr. Wheeler from the September 25, 1995 hearing:

"As a matter of compliance with strictly objective and quantifiable standards of the ordinance, (in other words as a matter of complying with the law) the proposed signage colors, the colors currently being used are in compliance."

Jim Wheeler noted, for clarification, the pictures displayed tonight were part of the revision application. Mr. Wheeler passed around the pictures from the original application and in the file when the staff report was written, about a week or so before the hearing.

Council President Prince asked if a waiver of the time period was necessary because of the exparte contact. The applicant indicated it was not.

QUESTIONS FROM THE HEARING BODY: Councilman Nolder noted that there was no direction to signage in the original application regarding the color. Mr. Wheeler replied that there was nothing explicit.

Attorney Kelley asked that a condition be reviewed, regarding "similar" condition and color.

Mr. Wheeler read the following:

"...the total signage, within the first six months after occupancy is limited to a sign that is similar in size and appearance as the ones shown in the pictures submitted with the application."

Council President stated that in his opinion, "appearance" would cover the color.

Councilwoman Stark disagreed, and felt the Council should not pick the color for an applicant.

Councilman Daniels agreed with Councilwoman Stark, adding that signs needs to be reviewed, however, was not in favor of "controlling" the color. He suggested that the sign code needed to be more specific.

Councilman Harris commented that there might be a "danger" if the ordinance is not more specific regarding signs. He added that it would be "unfair" if the Council singled out this application to require a certain color. Councilman Harris noted that in the color spectrum, blue and yellow are complimentary colors, which would make them compatible. He added that nothing else on highway 99 matches.

Councilman Nolder felt the "ball was dropped" in the beginning when it was not specifically spelled out to the applicant regarding the sign, and until there is a sign design guideline that is adopted, the Council cannot arbitrarily condemn any one color. He added that he did not find fault with the sign as it currently stands.

Councilwoman Strong said she saw no reason why blue and yellow were not compatible and felt one person should not be singled out regarding the color issue.

Council President Prince said that the applicant pointed out that the City has not made color a criteria in other issues. Mr. Wheeler stated that in some situations color was addressed by adding that the sign be similar to the building, usually a specific color is not indicated. He added that applicants are encouraged to bring in a sample of the color.

Attorney Kelley clarified the questions by stating that the inquiry is if a business decides to change the color of their sign, they do not have to have a permit or need to comply with Design Review. Mr. Kelley added that Mr. Robinson pointed out that it would be an inequity, citing that Millar's Tire recently changed their sign color without any approval since it was not tied to a development or project. Therefore, if the applicant waits six months, he can change the color of the sign. However, the position of staff is that the six month period has not started since the applicant has not installed a conforming sign, but assuming he put in a blue sign, then in six months he could change it back to yellow.

Council President Prince reiterated that he viewed the same photos the Commission reviewed and he agreed that the intent was that the sign look like the blue signs that were submitted as

photo exhibits. He added that color is not a Design Review function and felt the Council should uphold the ordinance.

Councilwoman Stark asked how we could "uphold" an ordinance, if we don't have criteria setting the color.

Council President Prince commented that we do have "matching" or "fitting in" criteria that should be considered, and indicated that this was a miscommunication between the staff and applicant.

Mr. Wheeler said there is the issue whether the color of a sign is to be considered in Site and Design Review; and the matter of whether a yellow sign is compatible.

Attorney Kelley added that the Council could decide that the color of a sign could be something the Council wants to address, however, as it is applied at this time the color yellow could be considered as a separate matter.

Councilman Nolder stated there was nothing in writing regarding the color of the sign, it was assumed, and until now the issue was not really addressed.

Council President Prince said that when an applicant actually "shows something" during the application process, that is the intent of what is to be used.

Councilman Harris said the Commission needs to consider color, however, "we are beating this to death." He asked how the message should be relayed to the Commission that color needs to be considered.

Attorney Kelley reviewed the three criteria the Council needs to consider in making a decision regarding this matter, and findings then need to be prepared.

Council President Prince asked the Council if they wished to remand the matter back to the Planning Commission. The general consensus was not to do this.

Council President Prince asked the Council to consider, when making their decision and motion, whether the Planning Commission has a right to implement the "matching" part of the Design Review and address some of the applicants arguments.

****Councilman Daniels moved that the Council overturn the decision of the Planning Commission for DR 94-11a, applicant Kevin Howard, because the Planning Commission did not observe the precepts of good planning as interpreted by the Council. Motion seconded by Councilman Harris.**

DISCUSSION - Councilman Harris added that "in no way did he want to beat-up on the

Commission on this matter" since the wording is strongly worded. He added that the Commission is doing a good job, but in this case he felt we needed to change the decision.

Councilman Daniels agreed with Councilor Harris and suggested new policy regarding this matter be introduced for Commission direction.

Mr. Wheeler suggested that number one, the "interpretation of the requirement" in dealing with the color might be more appropriate, and also the hearing needs to be closed.

Council President Prince closed the hearing at this time.

****Question for the motion on the floor to overturn the Planning Commission decision on DR 94-11a was approved 5-1, with Council President Prince voting nay.**

Staff was directed to come back to the Council with appropriate findings.

Mr. Howard commented that things should have been done differently and he suggested that clarification in the ordinance be considered. He also said he appreciated Councilman Nolder's comments of "wanting to do the right thing;" he pointed out that staff and the Commission made several suggestions that were most helpful for his project. Finally, he noted that he wanted to become a part of the community, and currently, the Police Department and Canby Soccer both have free storage at his facility.

COMMUNICATIONS: Letter from Whiskey Hill Jazz Club - Administrator Jordan reviewed the request from the Whiskey Hill Jazz Club requesting use of Wait Park in May for the festival, with street closures and a waiver of the fee.

****Councilwoman Stark moved to approve the request of the Whiskey Hill Jazz Club to Wait Park and waiver of the fee, and the requested street closures of Grant and Fourth Street be closed on May 18th. Also, to coordinate the event with Police Department and Public Works. Motion seconded by Councilman Daniels.**

DISCUSSION - Councilman Daniels added that it is important that the organization clean-up after themselves.

****The motion was approved 6-0.**

NEW BUSINESS: Accounts Payable - ****Councilman Daniels moved to a pay accounts payable in the amount of \$159,929.85. Motion seconded by Councilwoman Strong.**

Councilman Daniels commented that \$54,868 was for Library Bonds.

****The accounts payables were approved by roll call vote, 6-0.**

Slice of Summer Discussion - Administrator Jordan reviewed a letter from Canby Community Schools requesting funding for the Slice of Summer Program, this request is submitted at this time since program commitments are pending.

Scott Nelson informed the Council that the Slice of Summer Committee is \$10,000 short in their budget for the summer program. He pointed out that this is a cooperative effort of the City of Canby, Community Schools and Canby Telephone Association, Mr. Nelson noted that January 31st is the deadline to start booking and making commitments. Mr. Nelson recommended that the City of Canby match the contributions by Canby Telephone Association, stating the program is a good example of public and private partnership. He added that as Recreation Director he coordinates the set-ups and park maintenance.

Council President Prince asked the amount of money Mr. Nelson was suggesting the City match and from what source should it come. Mr. Nelson said \$8,000, same as CTA, and said it could come from the Parks and Recreation Budget.

John Falkenstein, Community School, reminded the Council what a popular program this has been in the community, however, the money has become scarce. Mr. Falkenstein stated that the request for additional funding was not only for the summer of 1996, but also 1997. He noted that Carol Meeuwsen has been the coordinator of the program for the first four years, and the last couple years Canby Telephone took over that responsibility, however, CTA has now asked that Community School to resume responsibility of coordination. Mr. Falkenstein said the Community School does not have the financial backing for the entire program.

Carol Meeuwsen reiterated the fact that she was the coordinator for the Slice of Summer for four years and CTA taking over the responsibilities the last two years. However, they no longer can take that responsibility. She noted that she had prepared a proposed budget for the ensuing year.

Council President Prince asked the amount of money needed from the City. Ms. Meeuwsen said the total amount they need is \$10,000 and historically the City has funded \$4,800, and if nothing else, they would like that amount. Mr. Falkenstein stated that they want to find any way possible to come up with \$10,000, and some fund raising or contributions would also be considered.

Councilman Daniels asked what other communities do for funding, or if they asked for audience donations. Ms. Meeuwsen said most communities usually solicit sponsors and in the past this has been the desire of those involved with the program. She also noted that contracts prior to the performances are necessary.

Councilwoman Strong stated that the City has no excess money. Mr. Nelson said she was right, however, the source for the proposed \$8,000 would be anticipated revenues from the eco-park that would be created this spring. Mr. Nelson pointed out that the Blue Heron Recreation District has discussed financing to the point that capital maintenance items from

last year that were not funded, plus the Parks Master Plan which is proposed to be funded next year, the total budget would be \$760,000, and this will have to be a consideration with the budget committee to review this matter.

Councilman Harris asked if the \$8,000 is available now, or is it anticipated that we come up with that amount later. Mr. Nelson said he did not currently have the funds, but proposed we use the anticipated revenues from the eco-park which is proposed revenues of 3 to 5 % of the net of \$65,000 to \$70,000.

Council President Prince stated that it was his impression those proposed funds should go back into the eco-park.

Administrator Jordan interjected that those revenues were suggested to be dedicated for the maintenance and improvement of that 23 acre parcel.

Council President Prince cautioned that this is also income that has not yet been generated. He added that the Slice of Summer is a valuable program, however, this request does not fit with the proposed grant system for outside agencies.

John Falkenstein stated that this was not an attempt to circumvent the process, it is simply a matter of funding not available to meet their January deadline

Councilman Nolder commented that the citizens of Canby has directed how the money in the City Budget is to be spent, so he said it might be time to consider local talent or the community band. He added that the Slice of Summer is a great event, however, the funding is an overall problem.

Mr. Falkenstein noted that local talent has been discussed. He added that prior to the Slice of Summer program, the summer recreation program was low budget and used local talent and the participation was minimal. He added that there was a positive response to the professional entertainment offered by the Slice of Summer events.

Councilman Harris noted that the Slice of Summer Program was "loved," however, money is the issue. He added that the budget process last year to decide which group would get what amount of funding was excruciating, and there is a limitation of the amount of money the Council can appropriate to each entity. Councilman Harris cautioned Mr. Nelson to be judicial in deciding who to allocate money to from his department, if he has the funds, because other entities may want some of that funding, as well. Ultimately, Mr. Harris was uncertain that the Council could guarantee the \$5,000 each year; and agreed to allow Mr. Nelson to work within his budget if he could come up with the money.

Councilman Daniels stated that we like the concerts, but "can we afford it." He said if it could come out of the Parks budget without jeopardizing other projects, that would be agreeable. The \$5,000 request should go before the budget committee.

Mr. Falkenstein asked that the 1997 request for \$5,000 be considered during the upcoming budget cycle.

Councilwoman Strong stated that the Council could not guarantee any funds at this time, however, Mr. Nelson could allot his funds as he deemed appropriate.

Councilman Daniels suggested Mr. Nelson could allocate what funds were available and the remaining funds could come from other community resources.

Councilwoman Strong cautioned that the budget committee may be critical of Mr. Nelson's budget if he finds additional funding to allocate for this project.

Councilwoman Stark asked Mr. Falkenstein if he could ask the community for the full amount needed. Mr. Falkenstein said he had hoped for \$5,000 from the City and then seek the additional \$5,000 through other resources. Councilwoman Stark noted that the City could not keep saying "yes" to all of the funding requests, even though the programs are worthwhile. She added it was Mr. Nelson's decision on how he allocated his department funds.

Carol Meeuwsen stated that she never felt their Slice of Summer was an outside agency, she said the program was a part of the City. Council President Prince agreed, however, the financial "crunch" has made the funding decision process more difficult.

Administrator Jordan stated that if Mr. Nelson can "squeeze" this out of his budget, it is permissible, taking into consideration the consequences. Also, Mr. Nelson can report back at the next meeting on the matter.

Mr. Nelson pointed out that the money is currently not there, only anticipated funds that may come in from the eco-park.

Council President Prince called for a short five minute recess at this time.

ORDINANCES & RESOLUTIONS: Resolution No. 599 - Administrator Jordan stated that this resolution regarding a recommendation to the Boundary Commission on a recently approved annexation.

****Councilman Harris moved to adopt Resolution No. 599, A RESOLUTION RECOMMENDING TO THE PORTLAND METROPOLITAN AREA LOCAL GOVERNMENT BOUNDARY COMMISSION APPROVAL OF THE ANNEXATION TO THE CITY OF CANBY, CLACKAMAS, COUNTY, OREGON, OF TAX LOTS 1600 OF TAX MAP 3-1E-28CD, LOCATED ON THE SOUTH SIDE OF N.E. TERRITORIAL ROAD BETWEEN N. HOLLY STREET ON THE WEST AND N. JUNIPER STREET ON THE EAST. Motion seconded by Councilman Daniels and approved 6-0.**

Resolution No. 600 - Attorney Kelley explained that HB 3065 set new procedures for dealing with land divisions and therefore this resolution was drafted to reflect the fees involved with this process.

Mr. Kelley stated that under certain circumstances, HB 3065 allows the applicant to apply for an expedited process in land division. He added that in this process a public hearing cannot be held, however notice is given to property owners within 100 feet of the location and within 63 days a decision on the application must be made by the decision making body. The decision making body can be the City Planning Director, the City Council or the Planning Commission. The decision is made with the criteria of written evidence. If the decision is appealed, an independent officer must be hired to act as the appeals referee, and basically a de novo review is then considered. Attorney Kelley reviewed the referee's role in the process, including the Court of Appeals criteria for reversing a decision.

Attorney Kelley noted that HB 3065 requires that fees be established by January 7, 1996, and within a year the fee must be reviewed to determine if the fee needs to be revised.

Gary Spanovich noted that West Linn and Wilsonville will both use hearing officers, both are new positions. He recommended that the Planning Commission be the entity to hear these matters. Mr. Spanovich said in West Linn the developers were not too interested in this process at this time.

Attorney Kelley pointed out that Gladstone hasn't made any policy or fee schedule at this time. Milwaukie stated that they would try to discourage the application and their fee is \$2,365, and they will probably use the Municipal Court Judge as the referee, which is something Canby can consider. The Milwaukie Planning director will make the initial decision. Tualatin will double their fees and do architectural review. In Woodburn the Community Development Director will make the decision and their fees will not change. Oregon City did not return the call. In Molalla, they never heard of HB 3065. In Lake Oswego the Planning Commission will hear the matters and their fee will be increased by \$1,990.

Council President Prince expressed concern about eliminating oral public input, and he suggested the Planning Commission be designated to hear the matters.

Attorney Kelley noted that many jurisdictions encourage development and feel the land use process is an impediment to that procedure, and that is why he feels the Home Builders Association was able to get this process through the legislature.

Attorney Kelley reported that Mayor Taylor was concerned about removing control from the people by using an appointed body as the hearing body, and suggested the Council be selected.

Council President Prince pointed out that the Commission has more experience and knowledge in the land use spectrum.

The general consensus of the Council was to appoint the Planning Commission as the hearing body for the new procedures set forth in HB 3065.

Jim Wheeler said that the fee recommendation would be \$1400 plus \$30 per lot for the expedited application and a \$300 deposit for the appeal of an application, which is actually \$500 higher than that for a non-expedited application.

Council President Prince asked how Lake Oswego arrived at their fee. Attorney Kelley said that Lake Oswego wanted to be aggressive because the fee "should be set at a level calculated to recover the estimated full cost of processing an application, including the cost of appeal to the referee." Mr. Kelley said it was his opinion that if an application were to go through the entire process, our fees would not cover the cost. He added that Lake Oswego subsidizes approximately 30% of their land use fee process, and he felt Canby did the same. But in this matter Lake Oswego increased their fees to recover the costs.

Attorney Kelley reminded the Council once the fee is established it can be changed at a later date, if necessary. He cautioned that the fee is to only "recover" the cost of processing the application.

In the case of an appeal, a \$300 deposit is set. If an application is denied and then appealed and the decision is overturned and the applicant is thereby successful, the \$300 deposit may be refunded. However, if the applicant does not win, costs may be redeemed up to a maximum of \$500.

****Councilwoman Stark moved to adopt Resolution No. 600, A RESOLUTION ESTABLISHING LAND USE FEES. Motion seconded by Councilwoman Strong.**

Councilman Harris expressed concern about voting for this resolution, in a "blind" manner.

Attorney Kelley suggested the fees be reviewed once an expedited application is processed.

****The motion to approve Resolution No. 600 was approved 6-0.**

UNFINISHED BUSINESS: Planning Commission Appointments - Council President Prince said he met with Councilman Nolder and Kurt Schrader and reviewed the applications. The three names suggested for the Planning Commission appointments were John Dillon, Dave Hartwell and Keith Stewart.

****Councilman Daniels moved to approve the Planning Commission positions for three year terms of John Dillon, Keith Stewart and David Hartwell. Motion seconded by Councilman Harris.**

It was discussed that two were full terms and one position was to expire in 1997.

****Councilman Daniels** amended his motion to eliminate the wording "three year terms." Councilman Harris agreed with the amendment. The motion was approved 6-0 as amended.

****Council President Prince** moved to accept John Dillon and Keith Stewart on the Planning Commission for three year terms to expire in December 1998, and David Hartwell to fulfill a term to expire December 1997. Motion seconded by Councilwoman Strong and approved 6-0.

MANAGER'S REPORT: Administrator Jordan reported on the following issues:

- * office remodeling is currently under way in the Community Services office.
- * the owners of the Molalla Forest Road north of Territorial, have contacted the City regarding that property,
- * a traffic study regarding the SW 13th & Ivy traffic signal was presented to the Council with an interim recommendation, and a crosswalk barricade was placed at the walkway that Councilor Daniels suggested recently.
- * the Clackamas County Charter Committee meets tomorrow night at Wilsonville Library, also on the 11th in Estacada and on the 18th in Happy Valley. The May election date is still a goal of this group, or November, if necessary.
- * a communication meeting will be January 8th with the schools, CUB, Canby Fire District and Canby Telephone Association.

COUNCILORS' ISSUES: Councilman Daniels publicly thanked Roy Hester for expediting the closure of the crosswalk near SW 13th on Ivy. He also asked citizens from that area to be sure their children obey the new crosswalk barricade.

Councilman Nolder stated that the DEQ Test Station should be in place and operational in mid February. He noted that the DEQ sticker will also be available, eliminating the necessity of picking it up at the DMV.

Administrator Jordan reported that City Hall has received word that the DEQ Test Station will open on March 2nd.

Councilman Harris noted that several months ago the Council asked staff to check with Clackamas County regarding a law enforcement program in Canby similar to what Wilsonville currently utilizes. Administrator Jordan said he thought this was to be done for the budget process, however, the cost analysis would be ready for the next meeting.

Councilwoman Stark thanked the City for the pretty Christmas lights that were displayed during the holiday season.

OTHER REPORTS OR ANNOUNCEMENTS: None presented.

ACTION REVIEW:

1. Return with Findings for Appeal 94-11a, Kevin Howard applicant.
2. Work with the Whiskey Hill Jazz Club regarding their May 18th event.
3. Mr. Nelson will review his budget regarding funding for Slice of Summer.
4. Forward Resolution to Portland Boundary Commission regarding approval of Annexation for Oregon Development, Inc.
5. Establish expedited land use fees with Resolution No. 600.
6. Send letters to new Planning Commissioners and send a thank you letter to Mr. Larson.

****Councilman Harris moved to go into Executive Session under ORS 192.660 (1)(e) regarding real property. Motion seconded by Councilman Daniels and approved 6-0.**

Council President Prince recessed the regular session at 10:35 to go into Executive Session. The regular session was reconvened at 10:54 p.m. and immediately adjourned.

EXECUTIVE SESSION JANUARY 3, 1995

Present: Council President Prince, Councilors Strong, Nolder, Harris Daniels and Stark, Michael Jordan and Sarah Jo Chaplen.

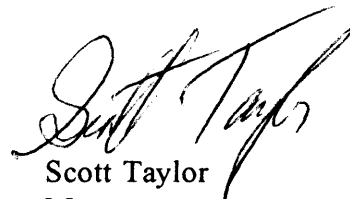
President Prince called the session to order at 10:38 p.m. in the CUB conference room.

ORS 192.660 (1)(e) - The Council discussed real property issues regarding the S.P. Parking Lot.

The meeting was adjourned at 10:52 p.m.



Marilyn K. Perkett
City Recorder



Scott Taylor
Mayor