

**CANBY CITY COUNCIL
REGULAR SESSION
SEPTEMBER 4, 1996**

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

Others - Assistant to Administrator Sarah Jo Chaplen, Planning Director Jim Wheeler, Police Chief Jerry Giger, Assistant Planner Larry Vasquez, Library Director Beth Saul, Ken Hagen and Steve Hanson, Michael Robinson, Doug Sprague, Paul Montecucco, Doug and Susan Burnett, Valerie Martin, Steve Montecucco, Nathan Clayton, Trish Conrad, Linda Geddes, Aaron and Jane Blake, Al Geddes, Wayne Askew. Michael McNichols, John Middleton, David and Louise Dodge, Ellis Meuser, John Falkenstein, Jeff Kleinman, Gaye Kuykendall, Randi Gunter, John Gunter, Art & Tookie Hall, Ben Sigler, Dana Tyler, Revaleen Smith, Bob Prieve and Elroy Knutson.

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 Prince moved to approve the minutes of the regular session August 21, 1996 as distributed. Motion seconded by Councilwoman Strong and approved 6-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: Trish Conrad, co-chairman of the "Shining for Safety Day" Committee addressed the Council regarding safety on 99 E north of Canby.

Valerie Martin, Ackerman Counselor, informed the Council that she works with kids that have experienced some type of "hurt" because of 99E safety concerns, and the fact that she drives that stretch of highway to work. OSSOM (Oregon Student Safety on the Move), a group that works to promote drug awareness and traffic safety, was formed last Spring after five Ackerman students were injured on Highway 99 E.

Doug Burnett informed the Council that a petition was started and over 650 students signed it, representing over 1,300 parents. The group also sent letters to ODOT and the Governor regarding their concerns. He added that Jerry Grisham is working with the students.

Ben Sigler said that two of his friends were in an accident in the subject area and that is why he became involved in the petition process. He added that he hoped "something could be done" because of the interest of the students.

Mrs. Burnett said her family moved to Canby seven years ago and after three people were killed at the end of their driveway on 99E in a ten month period, she petitioned ODOT to put a center lane down the highway, and was successful. Mrs. Burnett said if we work together, she felt additional safety improvements could be made on the dangerous stretch of 99 E.

Ms. Conrad said their group is planning an awareness celebration on October 19th, including presentations by local families, government officials, Representative Larry Sowa, Commissioner Lindquist and Governor Kitzhaber. Ms. Conrad requested that the City donate the labor to hang a banner on the Logging Road overpass and to show support with a resolution for that day. She added that after the rally a parade of cars will travel up 99E with their lights on.

Councilwoman Stark thanked the group for starting this process, and said it was very necessary.

****Councilwoman Stark moved that the Council approve a Resolution making October 19th, Shining for Safety Day. Motion seconded by Councilman Prince, who amended the motion to provide City labor to install the requested banner on the overpass. Councilwoman Stark agreed with the amendment and the motion was approved 6-0.**

COMMUNICATIONS: Community School Update - Niki Braden, summer recreation staff member, briefly reviewed the recently completed summer program that the City funds. She said 100 children took part in the summer recreation program which is for Kindergarten through sixth grade. Miss. Braden presented a thank you card to the City from the participating students.

John Falkenstein added that the City aids in the funding of field trips, special events in the parks, and an open park drop-in program.

Mr. Falkenstein went on to briefly review the various programs in terms of participation, noting over 3,100 participants. A new program this year is the "parent cooperative pre-school" which actively involves the parents. He said over 3,000 hours of volunteer time was contributed to the parent cooperative pre-school program.

Councilman Daniels asked if all parks were utilized in the summer program. Mr. Falkenstein said Knight School was used for the program Miss Braden referred to. However, Wait Park, the library and swim pool are also used. Maple Street Park is used for the drop-in program for children and Locust Park was used for the first time this year.

Mayor Taylor thanked Mr. Falkenstein for his presentation and urged that the visioning Education and Recreation measures be incorporated into the Community School program process in the future.

(At this time, Mayor Taylor adjusted the agenda to go into the Appeal process.)

APPEAL: SUB 96-02, Country Club Estate No. 4. - Mayor Taylor read the process that would be followed for the appeal process. Mayor Taylor set the time frame as 30 minutes for the applicant, opponents 45 minutes and applicant rebuttal of 15 minutes. Four people indicated that they would address the Council as opponents. Mayor Taylor stated that Mr. Sullivan would make a two minute "mutual" presentation; one that is factual.

Mayor Taylor asked each Councilor if they had any conflict of interest regarding the subject before the Council.

Daniels - No conflict and will participate.

Strong - No conflict and will participate.

Stark - No conflict and will participate.

Mayor Taylor said he lived on Maple Street and had no conflict and would participate.

Prince - No conflict and will participate.

Harris - No conflict and will participate.

Nolder - He indicated that Mr. Sprague does business with him, however, it has no relationship to the matter. The audience had no questions for Councilor Nolder and he indicated that he would participate.

Mayor Taylor asked the hearing body if they had any exparte' contact.

Daniels - None.

Strong - None.

Stark - None.

Mayor - None.

Prince - None.

Harris - None.

Nolder - None.

STAFF REPORT- Jim Wheeler stated that the matter before the Council was an appeal of the Planning Commission's denial of SUB 96-02, an application for a 23 lot subdivision at the north end of Maple Street. The applicant appeal was based on the following:

A. The Planning Commission incorrectly interpreted the requirements of law by failing to treat this application as a limited land use decision pursuant to ORS

197.015(11) and 197.195(1) and improperly applied elements of the Canby Comprehensive Plan to the subdivision application.

B. The Planning Commission improperly applied Canby Zoning Ordinance 16.56.010(A) and (B) to the subdivision application.

C. The Planning Commission improperly applied Canby Zoning Ordinance 16.46.010 to the subdivision application.

D. The record before the Planning Commission does not support a finding demonstrating that N. Maple is unable to accommodate the vehicular traffic generated by this subdivision.

Mr. Wheeler said the proposal is for a 23 lot subdivision at the north end of N. Maple Street, ranging in size from 7300 square feet to approximately 13,000 square feet. The applicant is proposing that N. Maple be extended toward the Logging Road and a cul-de-sac be at NE 37th Place. A five foot walkway on the left side of N. Maple from the subdivision south to NE 31st Place.

Mr. Wheeler reminded the Council that this application originally came before the Planning Commission two years ago, it was denied by the Planning Commission, and appealed to the Council. The Council remanded the application back to the Commission, specifically for adequacy of school capacity, and the Planning Commission approved the subdivision. It was appealed to the Council by the Friends of Maple Street and at that time the Council overturned the Planning Commission decision in a preliminary decision and the applicant withdrew the application prior to the final order being approved.

The recommendation from staff was to uphold the Planning Commission decision to deny the application based on the following reasons:

Staff did not implement the limited land use process, and the applicant did not request that process.

The applicant did not provide sufficient evidence that the Commission improperly applied Canby Zoning Ordinance 16.56.010(A) and (B). The Planning Commission, to the best of their ability applied the Land Division Regulations of Chapter 16.56.

Section 16.46.010 applies to private roads and N. Maple is a public road. The Commission did not base their decision on this as criteria, this was used only as a reference and not used in the decision process.

N. Maple is unable to accommodate the vehicular traffic generated by this

subdivision.

Mr. Wheeler pointed out two errors in the staff report on page 3. The criteria for the Council to consider to overturn a decision of the Commission is listed incorrect in the staff report - the 2nd criteria is an exact duplicate of number one, however, number two should read: **"The commission did not correctly interpret the requirements of this title, Comprehensive Plan or other requirements of law."**

Mr. Wheeler reviewed some options available to the Council.. He noted that if a remand was decided upon, the Commission would not have the time to meet the 120 day rule, therefore, that option would create a problem and staff recommended that option not be used.

Ed Sullivan, attorney from Portland and representing Montecucco Farms, stated that his letter of August 8, 1996, notes that they are neither an opponent or proponent. He said his client was interested in certain conditions if the application were to be approved and the applicant has endorsed the conditions. He added that additional issues regarding drainage is addressed in a May 20, 1996 letter, the applicant also accepts those drainage conditions as well. Mr. Sullivan reiterated that if the Council approved the subdivision by overturning the Planning Commission denial, he asked that their conditions be included as proposed, and accepted by the applicant.

APPLICANT - Mike Robinson, attorney from Portland representing the applicant, first said yes to Mr. Sullivan's conditions. In regards to the comment by Mr. Wheeler about remanding the matter back to the Commission, his client would waive the 120 day period if this is remanded back to the Commission.

Mr. Robinson said he would address the four prime issues why the applicant feels their proposed subdivision meets necessary criteria:

1. If there is a problem created by the subdivision for bicyclists and pedestrians on N. Maple.
2. Whether there is adequate vehicular capacity on N. Maple.
3. What kind of improvements on N. Maple is the applicant responsible for making. He added that it is not possible for a developer to provide all that a normal developer would do if they were starting with a "blank sheet."
4. Whether the City Comprehensive Plan policies comply to a subdivision application.

Mr. Robinson said he also noted that he would address some procedural matters. He noted that the hearing body has listened to the tapes of the Planning Commission meetings from May 13 and 20, 1996; the 1994 subdivision application files are not before the Council even though some issues were referenced from those files.

Mr. Robinson pointed out three facts to be clear on: what N. Maple has in terms of right-of-way and width; how much traffic there is currently and what will be generated; and a reminder that this site is in the Urban Growth Boundary (UGB).

Mr. Robinson referred to a drawing showing N. Maple from Territorial to NE 23rd which shows full paving feet and right-of-way for about 45 feet with some curb and sidewalks; from NE 23 onto NE 31st there is the same right-of-way, but the paving declines, there is about 24 feet and again some sidewalk; and from NE 31st to NE 34th (to the end) there is 18 to 20 feet of paving and 24 to 25 feet of right-of-way and no curbs or sidewalks. Pointing to the map, he said the proposed development will install a sidewalk from the subject site down to NE 31st. He further added that the west side of N. Maple will be designed to allow an entry for farm machinery.

Mr. Robinson said the three subdivisions to the south, containing approximately 66 homes, are all in the UGB, plus 150 feet of frontage west of Maple is in the UGB. He added that the Comprehensive Plan states that eventually N. Maple will need to be improved.

Mr. Robinson pointed out that a traffic report is in the record from Frank Chabonneau, a qualified traffic expert, and a letter from Kittelson & Associates. He added that there is no expert evidence in the record from the opponents. The two day study shows that at Maple and County Club Place there are about 950 vehicle trips per day; during the 5-6 PM peak there are about 95 trips south of that, and 70 trips north of that area; and their traffic study shows that the proposed subdivision will add about 250 trips, based on 25 lots when actually there will be 23 lots. He stated that N. Maple can handle the traffic created by the proposed subdivision, this is based on the traffic study. He further added that the only evidence regarding pedestrians is from the applicants traffic study, and it is so low there simply is no problem. Mr. Robinson said the subdivision ordinance gives the authority to approve a "half street," it gives the authority to exempt normal surface width requirements for a road, and it gives the authority to exempt sidewalk requirements when necessary. He pointed out that the applicants only responsibility within the approval criteria is for the improvements within the track to be met and for the public street adjoining their development. However, the applicant is willing to do more, they are willing to put in a sidewalk from their development down to NE 31st.

Mr. Robinson said if there is a problem "now," it has nothing to do with the proposed subdivision. In fact, the subdivision fixes some of the problems by putting in the sidewalk for some of the problems identified by neighbors, specifically the pedestrians issues. The applicant will also provide a waiver of remonstrance for an LID to make improvements on N. Maple Street. He stated that if there are problems in the area, then the area residents should proceed with an LID to fix those problems, the burden should not be put on the applicant.

Mr. Robinson addressed Code 16.62.020(C):

Standards for subdivisions: "The overall design and arrangement of lots shall be functional and shall adequately provide building sites, utility easements, and access facilities deemed necessary for the development of the subject property without unduly hindering the use or development of adjacent properties."

He said the Planning Commission found that the proposed development will hinder bicycles, pedestrians and vehicles to, from and within the neighborhood. He pointed out that there is no actual evidence provided regarding pedestrians, specifically numbers, only the general statements from neighbors. He added that the applicant has provided a traffic safety that identified pedestrian movement and only six pedestrians were present during the peak hours of the study. The traffic study also found there were no types of accidents on N. Maple between 1991 and 1995. The posted speed is 25 MPH, and the traffic study found that 85% of all the trips were at 33 MPH or less, therefore speed should not be a problem. Mr. Robinson stated that there was testimony that found the right-of-way so narrow that if a car is parked on the side of the road, traffic must stop to pass each other and, if pedestrians are around, this is hazardous. Again, he pointed out that the applicant is willing to put in a sidewalk to solve this problem. He did add that other sections of N. Maple have "no parking" signs and suggested the same could be imposed on the upper section of N. Maple which allows more than enough room for vehicles to pass each other. He further added that at the end of the street where people are not speeding and it is lightly traveled, even if there is a car parked and pedestrians are in the area, you can maneuver easily. Mr. Robinson pointed out that the adopted Transportation Plan does not recommend any pedestrian improvements in the subject area because of the low traffic.

Mr. Robinson said the concern regarding bicyclists has no recorded evidence as a bike lane or bike route, the TSP requires only a posted bike route.

He said their traffic study shows a service level of "A" for vehicular traffic at all of the intersections on N. Maple. He added that there is a reserve capacity for future development 20 years from now at N. Maple and Territorial Road. This development does not overload the capacity.

The next criteria Code 16.62.020(D):

Standards and criteria - "It must be demonstrated that all required public facilities and services are available, or will become available through the development, to adequately meet the needs of the proposed land division."

Mr. Robinson said the code does not require that services be available now, but will become available through development. He pointed out that even with the three subdivisions to the south, a full street was not a criteria on N. Maple.

Mr. Robinson said there was testimony about the surface condition of the street. The

TSP did not identify N. Maple as failing on the street surface. In fact, the ratings for N. Maple Street were exactly the same as the ratings for the street conditions surrounding City Hall. He added that surface conditions of a street are not a criteria for approval of the subdivision. He further added that the Public Works Director said the street is "failing and we need improvements," however, he did not check the box that said "adequate public services are not available and will not become available." He said conditions can be imposed.

Mr. Robinson addressed Code 16.56.010(A) & (B)- saying they are only purpose statements which indicates what the Land Use Ordinance is trying to achieve and are not requirements.

Mr. Robinson noted that legislature established limited land use decisions five years ago to make sure subdivision and UGB are treated in a particular way. He added that most cities in Oregon do not follow limited land use policy. He said limited land use was not raised as an issue and is not a part of the City Code.

Mr. Robinson stated that Mr. Kleinman's memorandum to the Planning Commission cited several items from the Transportation Planning Rules. He said none of them were applicable to the application.

Mr. Robinson said it is clear that N. Maple is not the width most people would like to see there. However, this does not make this application, or any other application, responsible for making a solution to that situation. The applicant can only be a part of the solution with an LID waiver of remonstrance and additional sidewalks. He added that there is no requirement in the City TSP for sidewalks, but it does state that collector streets have a 24 foot wide paving mat to sidewalk.

Mr. Robinson said there is nothing in the Code to require the applicant to do off-site improvements he cited Code 16.64.010(F):

Existing Streets. "Whenever existing streets, adjacent to or within a tract, are of inadequate width, dedication of additional right-of-way shall be provided at the time of subdivision."

He said the applicant is doing everything they need to do within the tract, and the Code defines adjacent as touching. Therefore, they are not required to dedicate right-of-way south of the area, however, the Code requires no improvements for that area.

Mr. Robinson stated that this is the second time this subdivision has been before the Council. He added that in the two years since the first hearing, there have been no improvements to N. Maple and he felt that the only way to make improvements on this street is to approve developments with reasonable conditions to start to move the process for improvements.

Mr. Robinson cited Code sections that deal with street widths and improvements,

16.64.010(G), allows half streets where essential to the reasonable development, and that is essentially what they have now. If necessary, the applicant can overlay the pavement in a certain area (he used a map to point out area).

16.64.070(B) 4, says that the Planning Commission can exempt a requirement for sidewalks. Therefore, the Council has the authority to exempt sidewalks beyond NE 31 St., because the need is something everyone should bear through an LID.

16.86.020(E), says the Council may alter street surface width and specific design details.

In summary, Mr. Robinson requested that the Council overturn the Planning Commission decision and approve the subdivision. He added that all conditions of approval would be acceptable with an amendment Condition of Approval 21, to specify a five foot asphalt sidewalk with a curb and an opening to allow farm machinery to get through, if necessary. Also, the applicant agrees with the conditions that Montecucco requested.

Councilman Prince asked when the traffic study was conducted. Mr. Robinson replied September 27, 1995 and November 1, 1995.

Councilwoman Strong asked what side of the street the sidewalks would be on. Mr. Robinson said they are proposed for the west side.

Councilman Prince asked how far the sidewalk would go. Mr. Wheeler said from NE 31st to NE 33rd, approximately three blocks.

OPPONENTS: Jeff Kleinman, Portland attorney representing Friends of NE Maple, asked the people he represented to stand up for recognition. He said he supports all of the findings from the Planning Commission, staff reports and interpretations from the City Attorney.

Mr. Kleinman addressed some of the issues presented by Mr. Robinson.

A sidewalk was not proposed to the Planning Commission, but an area separated by the dots (tiny speed bumps) in the pavement. Since the sidewalk is not in the record the decision cannot be made with that criteria.

Additionally, the suggestion made near the end of the presentation of paving a portion of the right-of-way was not before the Commission and not in the record.

Mr. Kleinman said the tests that are used as criteria to overturn a Planning Commission

decision were demonstrated.

Mr. Kleinman said the position of the applicant and ZTec is that they should not be the "victims" of the half street situation. He pointed out that the prior developer of the residences that are Mr. Kleinman's clients, is the predecessor company of ZTec, and it is essentially the same company which makes them responsible for the half street they are complaining about at this time.

Mr. Kleinman said the argument that if conditions are bad on N. Maple it is not the fault of the developer is not valid. Mr. Kleinman said that is not in the plan and code provisions. The provisions that relate to the fact is if the actual conditions in place are adequate to accommodate the subdivision. Therefore, the argument that it will not make it worse, is not justifiable. He stated that they would make it worse with an increase of about 1/3 more residences.

Mr. Kleinman argued that the questions of traffic counts and studies, lack of pedestrian counts, and level of services have nothing to do with the actual safety issues on N. Maple. He said the problem is that any cars, any bikes and pedestrians are in trouble at this time. The level of service at intersections is not an issue, he reiterated that it is the only statistical measure used in Oregon to measure if intersections can receive additional traffic growth.

Mr. Kleinman reminded the hearing body that issues that are raised for the first time are not properly part of an appeal of a Planning Commission decision.

Mr. Kleinman referred to findings in arguing the following issues:

Council stated that there were no expertise on behalf of the opponents. -

Mr. Kleinman referred to page 3 of the Planning Commission Findings, saying that a statement was made by a Sergeant of the Clackamas County Sheriff's Department who is an expert on traffic and safety conditions. Sergeant Dixon Andrews testified that there is a high amount of use of pedestrians, joggers and bicyclists. Also that the applicant's study failed to measure vehicle speed and that the proposed walkway as a solution to solve pedestrian and bicycle safety issues is absurd. Mr. Kleinman said Sergeant Dixon who lives in the area was an expert in these safety issues.

Another expert referred to in the last paragraph on page 3, who has been an engineer on construction issues, testified that it was not feasible to put a five foot pathway defined by the buttons.

Mr. Kleinman suggested that the City Public Works Supervisor should be given credence as an expert, in stating that he had serious concerns about N. Maple not being wide enough for safe traffic flow; N. Maple road surface has failed; and

with added traffic it will not withstand additional daily trips.

Another expert paid for by the applicant is the traffic engineer, Kittelson and Associates, who has a letter in the record dated May 20, 1996, that states "much of N. Maple has pavement in 'poor/very poor condition' and that the pavement maintenance on N. Maple has a very low priority in the 20 year plan that Kittelson developed.

Mr. Kleinman pointed out that the Commission found, based on evidence, there is not enough room for safe passage by vehicles and pedestrian or bicyclists. He stated that a sidewalk or narrow pathway for bicycles would make it worse for pedestrians, specifically if a parked car were at the side of the street. He reiterated that this created a safety hazard rather than a solution to the problems.

Mr. Kleinman said there really is no issue regarding off-site improvements because the Commission found the criteria was not met. He added that "if" it were necessary for a number of off site improvements and the applicant doesn't want to do this, the application fails. However, you must meet the criteria and the applicant did not.

Mr. Kleinman said under the Zoning Ordinance and Comprehensive Plan provisions, even if the Plan provisions were ignored and the Zoning criteria sustained, the application would fail and the denial by the Commission would be supported.

16.56.010, are not approval criteria but guidance in interpreting the approval criteria and it is the purpose of the entire Land Division Ordinance, "7. To ensure adequate provisions from transportation, including roads, bicycle ways and pedestrian ways which take into consideration anticipated usage, safety factors, and impact on the neighboring area."

16.62.020(C), the Planning Commission properly found that the development as proposed would unduly hinder the use or development of adjacent properties because of the safety problems that would be created.

16.62.020(D)."It must be demonstrated that all required public facilities and services are available, or will become available through the development to adequately meet the needs of the proposed land division." He said the applicant did not meet the requirements of this provision

Mr. Kleinman noted that the question before the hearing body is if the Planning Commission errored under the criteria and not waive requirements of this development. He added that there is nothing in the record regarding the half street development of N. Maple by the Montecucco Farm. He did say there is an area in the UGB on the Montecucco Farm for the expansion of Maple, and said it is not the same thing as saying that Montecucco's will annex to the City and develop N. Maple. He further

argued that this could happen next year or 100 years from now.

Mr. Kleinman said his clients believed the Planning Commission considered all the evidence and urged that their decision be upheld.

John Gunter, 930 NE 34th, said he was the person with the expertise in the paving and road construction business. He said the condition of N. Maple Street is "sad," with no immediate prospects of improvements. He urged that a bad situation not be made worse. He further noted that there would be considerable problems in adding a five foot pathway on the west of Maple, specifically because of the right-of-way and natural slope of the ground. Also, he mentioned that subdivision was flawed because a Country Club Estates plat map shows that a cul-de-sac at the end of Maple needs to be abandoned. He went on to point out that if a street were to continue off of the cul-de-sac in one area (pointed out on the map), a visual hazard will occur.

Mr. Gunter said the north end of Maple is 18 to 20 feet and if a car is parked on the side, it creates a one way road. He pointed out that nobody guaranteed the applicant that this could be done; this is a risk of the development business.

Mr. Gunter said he had 30 years in the construction business, was a graduate from OBI in surveying and is basically a "highway brat," as he grew up doing this type of work.

Al Geddes, 740 NE 34th Place, reiterated that traffic safety is the basic problem. He added that fire and safety concerns would be multiplied by the subdivision. He argued that the people that live in the area best represent the traffic concerns verses a study. Mr. Geddes urged that the Planning Commission decision be upheld.

Michael McNichols, 730 NE 30th Place, stated he was not a member of the Friends of N. Maple but supported their efforts because of his two young children.

Mr. McNichols referred to the traffic study, noting that the two dates that it was actually done were never brought forward until tonight. He said he was not able to confirm the weather conditions on the days of the traffic study and claimed the study was suspect. He added that the study for the initial application was based on 25 lots and 250 trips per day and the 1996 study still has 250 trips per day with only 23 lots. He pointed out that the study was not definitive on how many cars per household or the ages of same.

In terms of safety, the only access for safety vehicles and the turning radius would not be adequate. He added that there was a letter submitted that the Logging Road could be used, it is only permissive use and may be withdrawn at any time. Mr. McNichols said this is a danger to current residents as well as residents of the proposed subdivision, if it were approved, because of only one access to the proposed development.

Mr. McNichols said the existing problems were not caused by the proposed development, however, they will be aggravated by the addition. He urged the Council to consider safety conditions for this and any other City development.

Mr. McNichols questioned who would maintain the proposed wetlands area, it could become an eyesore and safety hazard.

Mr. McNichols reminded the Council that they could have a part in the safety of residents of N. Maple in their decision regarding this issue.

REBUTTAL: Mr. Robinson referred to the safety issue, saying there was no approval criteria for safety and the only place that safety appears is 16.56.010(B)1, in the purpose statement that is not approval criteria it provides guidance only. Therefore, the applicant does not have to meet any safety criteria for approval of the subdivision.

Mr. Robinson referred to the statement Mr. Kleinman made in saying "sidewalks" were not in the record, and in fact it is. He referenced the application with the traffic study and the figure with the diagram with sidewalks. He added that it is referenced on other pages.

Mr. Robinson said he thought Mr. Kleinman was suggesting that if all conditions are not prescribed by the Planning Commission, the Council is not free to impose additional conditions since they may not involve the same words the Commission heard. He said that is not right. This is on the record hearing, no new evidence is allowed, but it does not preclude that additional conditions can not be imposed.

Mr. Robinson said it was alluded to that the approval criteria was not addressed, and he argued that it was addressed. He said what the applicant wanted to focus on was what the Commission felt was not met, and explain why the Commission did not correctly interpret the requirements of this title. He reiterated that the task of the applicant is to explain why and how the Commission made a mistake, even though it was unintentional.

In regards to the testimony on who was or was not an expert, the intent of the applicant was to show they were the only ones who provided evidence of a traffic study prepared by Frank Charbonneau, a professional engineer. He added that the traffic study listed the dates of the traffic study. Mr. Robinson stated that their traffic engineer stated in the study that Maple is capable of handling the traffic from the proposed subdivision. In fact, he added that the applicant is the only one to provide a professional traffic engineer to provide a traffic study; not a sheriff or a person who builds roads.

Mr. Robinson said there was testimony about the surface of N. Maple, and no criteria was cited because it is not a criteria for approval.

Mr. Robinson said Mr. Gunter entered testimony about putting the sidewalk on the west side of Maple, and the traffic study shows it can also be done on the east side.

Mr. Robinson noted that Mr. Kleinman referred to off-site improvements, and the code does not require off-site improvements even though the proposed sidewalk is off-site.

The Caffal Brothers' letter offering their land is not an easement, and that would be a condition of approval that an easement be required.

Mr. Robinson said the wetland was not an issue with the Planning Commission and it has been dealt with.

Mr. Robinson reiterated that the applicant should not be required to solve all the issues on N. Maple, but try to make it better. He said what they are required to do is meet the criteria, there are adequate services for the site. Again, he said the Commission simply made a mistake and the Council can find the evidence in the record to approve the application with the appropriate conditions of approval.

Mayor Taylor called for a five minute recess at this time.

Mayor Taylor questioned where the traffic count was conducted, if it was at NE 23rd and Country Club Place. John Middleton, ZTec, said there appeared to be confusion on the traffic study. In September, the speed and total traffic count was made,. Actually, he and Frank were out there for " a couple three days or something" and there was only the one 24-hour quoted. The November count was peak hour counts. They were done at the location the Mayor noted.

Mayor Taylor asked if the pedestrian count was done in the same area. Mr. Middleton said the pedestrians were all the way up and down Maple and it is addressed in the report. Mr. Middleton noted that during peak hours there are fewer pedestrians, but in the evening when there are less cars there are more pedestrians.

Councilman Prince referred to the limited land use decision, saying if you don't raise it, you waive it. He said he does have safety concerns about that area and he has personal experience as a pedestrian in that area. He added that November is not the month he usually walks much. Councilman Prince said he took acception to the issue that the applicant feels off-site conditions are not applicable, and the road and safety conditions need to be a concern. Mr. Prince said the burden of proof is on the applicant to show the proposal will not burden other residents nearby and that was not shown, and in fact it will be a burden on the neighboring area.

Councilman Harris reiterated the fact that the subject site was, within his memory, ten feet below the water during a flood and he felt houses should not be built in that area. He added that he walks and jogs regularly on Maple at a variety of times and always

confronts other pedestrians unless the weather is bad. He noted that there have been no accidents with pedestrians, however, he did feel his experience evidences a safety issue in that area.

Councilman Nolder said he "mirrored" Councilman Harris' comments, however, he sympathized with the developers, saying, "they are in a trap that is not of there own doing." He added that he has lived on Maple Court since 1974 and his family has extensively used N. Maple as a pedestrian or on a bike. He pointed out that in one area N. Maple is starting to erode, and is in poor condition. Unfortunately, the City does not have the funds for maintenance of that street at this time and he said he hesitated to approve additional pressure on that street. He added that he would much rather err on the side of safety in this decision process. Councilman Nolder said, until that street is brought up to a safety standard he upholds the decision of the Planning Commission.

Councilman Daniels agreed with the concerns about safety standards of the area. He added that construction in the area would create an additional burden on that street.

Councilwoman Stark said, due to the street condition and additional traffic there is a concern. She agreed that it is not the fault of the developer about the half street development of N. Maple, but until there are improvements on that street it would be difficult to approve additional homes in the area.

Councilwoman Strong agreed with Councilor Stark. She added that the applicant made a good presentation. However, she said the City should be concerned about safety, not only in this area but all over town. Councilwoman Strong said she agreed with the Planning Commission decision.

****Councilman Prince moved to uphold the Planning Commission decision of Subdivision 96-02 and instructed staff to prepare Findings and a Final Order. Motion seconded by Councilman Harris and approved 6-0.**

A brief recess was held while the audience cleared the Chamber.

COMMUNICATIONS: Computer Update - Beth Saul thanked the Council for the 30 day time frame to bring the computer issues up to a reliable working system. She added that the Library is working fine, GroupWise (E-Mail) and CD Rom is working fine.

Steve Hanson reported that the computer system is "up - solid - backed up - running real smooth." He said there are three users who do not have E-Mail installed.

Mr. Hanson thanked the staff of Canby Telephone who provided high technical equipment testing and time. They located some errors that were corrected to help put the system in working condition.

Mayor Taylor asked about the problems the front office has been experiencing with computers. Mr. Hanson said that Mr. Jordan had "signed off" (meaning the computers are working fine) except for Marilyn who is on vacation. He added that a new computer was bought for her because of the fire and will go on line tomorrow. He said to his knowledge there has been no recent data loss, some files were corrupted but the backup system will provide copies.

Councilman Prince noted that the finance office was down multiple times the last three weeks. Mr. Prince said he had spoken to personnel at Springbrook and they expressed concern about being blamed for some of the computer problems. Mr. Hanson said they were never blamed. Councilman Prince said CTA was blamed for a problem at the last Council meeting on this issue and it was not the case. He added that currently there is a lot of money being spent on computer issues and equipment and he said staff confidence level is in question.

Mr. Hanson said there is no lost data at this point in time. He reiterated that CTA did some testing that found some problems. He further added that a bad component was traced out and replaced. Today, the tests were "solid as a rock," and anytime you can achieve 99.7% on anything is pretty tremendous.

Mayor Taylor asked about the survey of the users. Mr. Hanson said every department has signed off, with the exception of the Pool whose machine has not been hooked up.

Mayor Taylor asked for clarification on the "sign off." Mr. Hanson replied that it was a punch list which has authorization for the department head to date it and sign it saying the specific department is experiencing no major computer problems. There is an area for comments. Again, he said all departments have signed off, and there are some comments. He added that Mr. Jordan signed off on the Administration Department today.

Mr. Hanson stated that during the last month both the courts and finance department have had their systems upgraded from a ten year old system to a current version. He added that money that has been spent has been very minor. About \$300 was spent to add memory upgrade to some machines in the front office, necessary for some of the high end programs added, such as the new E-Mail.

Councilman Prince said Marilyn had not signed off and some of the other departments signed off a month ago, this doesn't reflect what is happening now. Mr. Hanson said he would get current department sign off documents.

Ken Hagen commented that his wife works for the State of Oregon and works on a computer all day, she said her computer locks up all the time and Word Perfect gives her problems all the time. He said these are problems that are inherent to the network. He said he had explained this to staff and their reply was that they wanted it to work.

He further added that they cannot make the system work 100% accurate all of the time. He said the City has gone through a period of growth and it takes about a year to work out all of the problems.

Councilman Prince said if the system goes down it is a problem for staff. Mr. Hagen said the system has never gone down, the network has never gone down, only occasional individually computers lock-up. He added that on Virginia's machine a bad part caused her computer and other workstations to experience problems, it causes a ripple affect.

Councilman Prince asked if everything was fine at this time. Mr. Hagen said he could not guarantee 100%. He said there will always be inherent problems with various software systems getting along with other software systems. However, on a day to day basis 98% of the time everything will be fine.

Mr. Hanson said a stability level has been achieved. The basic structure, the back up system, are much better than they were a year ago. He added that there will always be areas that can be improved, essentially it may never be finished.

Councilman Prince said he still did not understand, since data has actually been lost and that is why accounts payables were not sent out with the last packets. He asked if this is the way it would be, or would it get better. Mr. Hanson said he has a statement signed by Virginia, she lost no files, she said she would like to see it faster. Mr. Hagen said they think they have a solution to speed up the computers that was tried on the court system today. Mr. Hanson said it was developed by Canby Telephone system, and they have been very gracious to supply the City with free technical service.

Mayor Taylor said he recently met with Larry Cole and discussed CTA's ability to provide some of the City-wide computer services and some of these issues, and that is when CTA offered, at no cost, some of their expertise to assist the City with our problems since this is the design of systems for the future. He added that Mr. Cole offered to address the Council regarding the overall systems and they are anxious to have the City system working correctly since it is one that coincides with their plans for the future.

Mayor Taylor said he realized there is a priority concern to have financial programs working in a timely manner above being able to send E-Mail or communicate with others, and he asked if those priority concerns are working property. Mr. Hanson replied, "Yes." Mayor Taylor asked if some of the problems are system development or on-going maintenance, and if the City wants to move on in the computer-age through these growth steps.

Ken Hagen said through the help of Canby Telephone many of the problems that were being experienced a month ago are gone. He said the biggest thing they learned is

that there is no quick fix, sometimes it takes several days when a change has been made on the network.

Councilman Prince asked if the sewer plant manager is back. Mr. Hanson said yes.

Councilman Nolder commended Beth Saul, Steve Hanson and Ken Hagen, who have tried to help us solve these problems. He said in the future he would like to see a contract for this type of service with penalties if the service is not provided.

Councilman Nolder stated that the computer issues is not the job of these individuals and he appreciated their help; their job is their regular normal duties.

Mr. Hanson said that half of Ken's time is formally dedicated to working on the system.

Mayor Taylor noted that during the budget system the funding was cut that would have provided outside services for this and that is why we use Ken and the free help that we can get from staff.

Mr. Hanson said he is confident in what they are doing and has no problems about the extra time.

Councilman Nolder reiterated that in the future he still would like to set aside the money for services outside of other staff.

Mr. Hanson said the City is at the point that with a few more "switches" to be turned on and some outside comment to be made then this City can talk to the world.

Councilwoman Stark said she is getting mixed messages since the Budget Committee cut money for these services. She thanked the staff members who have been working on the system.

Councilwoman Strong asked if there is any type of financial breakdown of what has been spent to get to the point we are with the computers. Ms. Chaplen said a document could be generated if we know what point the Council wants to start measuring from in terms of expenditures.

Mayor Taylor also pointed out that after the fire there were some replacements.

Councilwoman Strong asked if we had spent the budgeted money from this year's budget. Ms. Chaplen said yes, this year only the salary and connection fee funds were budgeted. Other expenditures were either insurance funds or money from individual departments that want increased memory or a back-up drive.

Councilman Prince asked if we could hire a consultant for \$12,000 that could be a way of handling the computer system. Ms. Chaplen reminded the Council that the Library

pays half of Ken's salary and the computer system pays half, which is about \$17,000, including benefits. Mr. Prince asked what the computer line item of \$28,000 is for.

Councilman Daniels cautioned that hiring a consultant will not eliminate all of the problems and will only cost more. He added it will depend on how much time is necessary, since they do not work cheap.

Mr. Hanson said spending money on a consultant at this time would be a waste, since they are so close to having everything in line.

Mayor Taylor asked if they feel they can maintain the system and issues now. Mr. Hanson said that was exactly what he was saying.

Councilman Prince noted some consultants do a monthly charge, with back-up and fixing equipment if necessary and that is the type of consultant he had in mind.

Ms. Chaplen stated there are two types of computer consulting.

One arrangement is to set up for a certain number of monthly hours for a consultant to check if the system is running, if the back-up is effective, and if there are problems they will handle it at no fee if they are under contract.

If there is no contract there will be fees included and the working relationship will not be a priority with the firm with no contract.

In terms of the computer budget, Ms. Chaplen explained that \$30,000 was set aside; Ken Hagen was scheduled for 20 hours a week at \$17,362 (this is half of his salary); CTA connection was \$2,500; and each department set about \$11,000 aside for depreciation of current equipment. She said she would have the figures for the next meeting of the computer budget balance.

Mayor Taylor said the Council needs to make a decision on how to handle the computer issues. He said the system that is working and some additional needs have been requested; we have a network that talks throughout the City; and the question is if the City should now hire a consultant "to take us somewhere else." Mr. Taylor said his work system spans the whole state and his staff has four people for maintenance only. He added that in discussing this matter with people who deal with these computer systems, including Larry Cole, they indicate that the City cannot buy an upgrade for the kind of money the City is willing to spend. Therefore, we have a system working very well, so what are we trying to fix.

Councilwoman Strong said she needs to know where we are at, what has been spent, and what we are going to spend in the future.

Councilman Daniels said he had confidence that the computer work was within budget.

Councilwoman Stark said she has heard no complaints and has no questions.

Councilman Prince said we must be sure we are in budget, and can staff do the job they are trying to do. He added that the City should keep comparing if we can do things as cheaply in-house as contracting it out.

Councilman Harris said he had no further issues, since two people he trusted report they are on top of the matter.

Councilman Nolder said if the users are content and it functions as expected, then he had no concerns.

Mayor Taylor summarized that the Council needs to know where we are on the budget; need a current survey (punch list) of the users; and see the comments made by users.

Letter from Chamber of Commerce - Chief Giger reported that the request from the Chamber is for the annual Chili Cook Off with street closures near the First Street Parking Lot.

****Councilman Daniels** moved to grant the request from the Chamber of Commerce to block off First Street between Grant and Elm for the annual Chili Cook Off, and to coordinate their efforts with the Police and Public Works Departments, and possibly the Utility Board because of the need for power. Motion seconded by Councilwoman Strong and approved 6-0.

NEW BUSINESS: Accounts Payable - ****Councilman Daniels** moved to approve accounts payable in the amount of \$128,674.23. Motion seconded by Councilman Harris and approved 6-0 by roll call vote.

Intergovernmental Agreement - Canceled.

ORDINANCES & RESOLUTIONS: Ordinance No. 951 - ****Councilman Harris** moved to adopt Ordinance No. 951, AN ORDINANCE AMENDING ORDINANCE NO. 793 REGARDING AN EXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE FOR A PERIOD OF FIVE (5) YEARS TO ESTABLISH, OPERATE AND MAINTAIN A BUSINESS OF GATHERING, COLLECTING, TRANSFERRING AND DISPOSING OF ALL SOLID WASTE, WASTE AND RECYCLABLE MATERIAL; AND DECLARING AN EMERGENCY. Motion seconded by Councilman Nolder.

DISCUSSION - Councilman Prince asked if the garbage rate was included. Mr. Kelley said it was not at this time. Mr. Kelley said this merely sets up all of the Conditions of Approval for Canby Disposal and if they violate conditions of the permit then their franchisee agreement can be revoked.

****Ordinance No. 951 was approved 6-0, by roll call vote.**

Ordinance No. 954 - ****Councilman Harris** moved to adopt Ordinance No. 954, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY RECORDER TO EXECUTE A CONTRACT WITH D & D CONCRETE & UTILITIES, INC. FOR CURB REALIGNMENT AT NE 10TH AVENUE AND LOCUST STREET; AND DECLARING AN EMERGENCY. Motion seconded by Councilwoman Strong and approved by roll call vote, 6-0.

UNFINISHED BUSINESS: AFSCME Contract Ratification- ****Councilman Daniels** moved to adopt the AFSCME contract as Council discussed for a three year period effective July 1, 1996 to June 30, 1999. Motion seconded by Councilman Nolder and approved 6-0.

MANAGER'S REPORT: LOC Ballot Measures - Ms. Chaplen informed the Council that hand-outs from the LOC were information documents on the proposed November ballot measures.

Mayor Taylor noted that LOC usually tries to make the information "neutral." Beth Saul suggested that copies of the information for citizens be available at the Library, or even the LOC might be able to provide a disk for computer information public access.

COUNCILORS' ISSUES Councilman Prince reported that the Logging Road Gate has been moved and the "man door" gate has been locked not allowing access to joggers and walkers. He inquired if the chain could be removed for the pedestrians. He further noted that a "No Trespassing" sign has been erected. Chief Giger will look into the issue.

Councilwoman Stark reported that the new fire station is open and operating and she urged people to stop by and see it. The Open House will be October 12th.

OTHER REPORTS OR ANNOUNCEMENTS: Mayor Taylor reminded the Council that another date needs to be selected for the next Organizational Review session. September 11, 16, 23 and 24 were possible dates. September 23rd was the preferred date.

- :ACTION REVIEW:**
1. Shining for Safety Day will have an Ordinance drafted and City staff will hang their banner.
 2. A punch list and financial information will be drafted on the computer issues.
 3. Inform the Chamber that the Chili Cook Off street closures were approved.
 4. SUB 96-02, Findings & Final Order will be drafted by staff.
 5. Ordinance No. 951, implements the Garbage Franchise

- Agreement.
6. Ordinance No. 954, implements a contract with D & D Concrete for NE 10th improvements.
 7. The AFSCME contract will be signed.
 8. LOC information will be made available at the Library.
 9. Chief Giger will investigate a gate issue on the Logging Road.
 - 10,. Schedule the Organizational Review.

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

Mayor Taylor recessed the regular session at 10:45 p.m. to go into Executive Session. The regular session was reconvened at 11:15 p.m. and immediately adjourned.

**EXECUTIVE SESSION
SEPTEMBER 4, 1996**

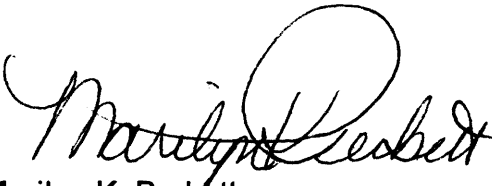
PRESENT: Mayor Taylor, Councilors Nolder, Harris, Prince, Stark, Strong and Daniels, Ms. Chaplen, John Kelley and Cam Sivesind.

Mayor Taylor called the session to order at 10:51 p.m. in the CUB conference room.

ORS 192.660 (1)(h) - The Rinkes case was discussed.

A possible litigation case involving an ex-employee.

Mayor Taylor adjourned the session at 11:13 p.m.


Marilyn K. Perkett
City Recorder


Scott Taylor
Mayor