

CANBY CITY COUNCIL
REGULAR SESSION
DECEMBER 20, 1995

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

Also present: Assistant to Administrator Sarah Jo Chaplen, City Attorney John Kelley, City Recorder Marilyn Perkett, Derek C. Hills, Ena Riseling, Pam Thompson, Judy Brown, Fred Kahut, Roger Reif, Mark Greenfield, Joe Fiske & Scout Troop, Tom Kendall and Cam Sivesind.

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

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

MINUTES OF PREVIOUS SESSIONS: **Councilman Prince moved to approved the following minutes: Workshop Session November 29, 1995, Workshop Session December 6, 1995, and Regular Session December 6, 1995. Motion seconded by Councilman Harris and approved 5-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: None presented.

PUBLIC HEARING: ANN 95-02, Oregon Development Inc. - Mayor Taylor reviewed the criteria for the public hearing process.

The hearing was opened at 7:35 p.m. Mayor Taylor asked the hearing body to declare any conflict of interest regarding the subject matter.

Nolder - none and will participate.
Harris - none and will participate.
Prince - none and will participate.
Mayor - none and will participate.
Strong - none and will participate
Daniels - none and will participate.

Mayor Taylor next asked the hearing body to declare any exparte contact or site visits of the subject property.

Nolder - has dove by the site daily and no exparte contact. The audience had no

questions for Mr. Nolder.

Harris - drives by the site daily and no exparte contact. The audience had not questions for Mr. Harris.

Prince - has drove by the site and no exparte contact. The audience had no questions for Mr. Prince.

Mayor - drives, walks and runs by the site and no exparte contact. No one had any questions for the Mayor.

Strong - has drove by the subject property and no exparte contact. No one had any questions for Mrs. Strong.

Daniels - has drove by the site and no exparte contact. The audience had no questions of Mr. Daneils.

STAFF REPORT - Jim Wheeler, Assistant Planner, stated that the subject property was 1.5 acres of "priority A" land located on the south side of N.E. Territorial between N. Holly on the west and N. Juniper to the east. Across the street the property is not in the UGB, properties to the north, east and west are not in the city limits but are in the rural residential zoning, property to the south is in the city limits.

Mr. Wheeler confirmed that annexation of the subject property will expedite the extension of N. Ivy Street through to N.E. Territorial Road. The majority of the right-of-way for that extension will come from the subject property with the remaining portion to come from the Canby Methodist Church. The Church has expressed an interest in dedicating property for a right-of-way. The street dedication will occur at the time of development.

Mr. Wheeler stated that the Planning Commission recommended approval of the annexation. The proposal is for an additional five lots, which would create a total of six residents, including the current one located on the property.

Councilman Nolder asked how Ivy would enter onto Territorial. Mr. Wheeler used a map to show the layout of the proposed extension with a slight curve in the street prior to reaching N.E. Territorial.

APPLICANT - Tom Kendall, 25588 Cheryl Drive, West Linn, stated that the he concurred with the City staff report and said he would answer questions.

PROPONENTS - None.

OPPONENTS - None.

REBUTTAL - None.

Mayor Taylor closed the public hearing at 7:45 p.m.

DISCUSSION - Councilman Prince asked if the Church had submitted any documentation on

the proposal and he questioned a comment by Mr. Kelley regarding a service provider. Mr. Wheeler noted that Attorney Kelley was concerned about some information that was not submitted and the staff completed that information. Also, the Church did not submit any

documentation, however, they verbally and informally expressed favor of a proposed dedication.

Councilman Daniels asked if the extension of Ivy would create a problem in the traffic flow. Mr. Wheeler said the extension would encourage a difference in current traffic flow and the proposed streets and current street could handle the additional traffic flow. Also, the proposed extension is in the traffic study.

Councilman Prince added that the annexation will facilitate the availability of grant money for street purposes.

****Councilman Harris moved to approve the request for annexation of the 1.49 acre parcel, and recommended approval to the Portland Metropolitan Area Boundary Commission for ANN 95-02, Oregon Development Inc, with the three understandings as follows:**

1. The zoning classification for the property upon annexation will be R-1. Low Density Residential.
2. All development and recording costs are to be borne by the developer when the property is developed.
3. All City and service provider regulations are to be adhered to at the time of development.

The motion was seconded by Councilman Nolder and approved 5-0.

COMMUNICATIONS: Recorder Perkett informed the Council that the OCTS crew had presented a Christmas card to the Council with personal greetings.

NEW BUSINESS: Accounts Payable - ****Councilman Daniels moved to approve payment of accounts payable in the amount of \$120,645.85. Motion seconded by Councilman Prince and approved by roll call vote, 5-0.**

ORDINANCES & RESOLUTIONS: None presented.

UNFINISHED BUSINESS: Findings, CUP 94-05/DR 94-14/LLA 94-08 - Attorney Kelley reported that Attorney Kleinman had submitted a letter with his comments on the findings since he was not able to attend this meeting. He reminded the Council that there is case law that allows both parties to address the interpretations of the findings.

Attorney Kelley asked if any of the Council had any exparte contacts since that last meeting regarding the subject matter.

Daneils - none.

Strong - none.

Mayor - none.
Prince - none
Harris - none.
Nolder - none.

Attorney Kelley asked if any conflict of interest had arisen since the last meeting regarding the subject.

Daniels - none.
Strong - none.
Mayor - none.
Prince - none.
Harris - none.
Nolder - none.

Attorney Kelley asked the audience if there were any questions for the Council regarding exparte contact, and conflict of interest issues. None were voiced.

Mark Greenfield, an attorney for the applicant, said he would provide a brief response to Jeff Kleinman's letter, as well as proposed a few changes to the findings.

Mr. Greenfield noted that Mr. Kleinman is preserving his issue with his letter, this gives him the option to appeal to LUBA. He said the Kleinman letter "attacks all aspects of the findings."

Mr. Greenfield said he would cite a couple of examples regarding the Kleinman letter:

Paragraph 7 - "The revised findings fail to address the nature and scope of recycling traffic at this site." Mr. Greenfield said the findings make reference to the applicant's traffic engineer testimony. He said the argument is that there will be so much traffic generated that it would be a danger to Trost students. Mr. Greenfield said that the evidence in the record from Mr. Keech, Traffic Engineer for the applicant, stated originally there would be about 250 trips a day. However, when Mr. Keech understood the site would not take private garbage for private solid waste disposal, then he said the traffic would be decreased to less than 125 trips a day. Mr. Keech then submitted maps (page 756, 762, 774 & 778) showing where the trip ends (a trip to and from counts as two)) come from, 35% coming from Township Road. This means 20-25 vehicles a day, including the trucks. Mr. Greenfield said this is comparable to two single family homes, in the way of vehicles trips, and he said if the Council were considering single family homes, he didn't believe there would be an argument as to safety hazard to the children.

Paragraph 8 - "The record lacks substantial evidence supporting the finding made with respect to the Trost School Site Committee." Mr. Greenfield read from a letter

submitted by the Trost School Committee (page 419 of the record) saying the committee felt there was minimal negative impact on the school and felt their concerns were addressed by the developer.

Mr. Greenfield reiterated that there is not support for Mr. Kleinman's allegations. Mr. Greenfield suggested the following changes to the findings:

Paragraph 2 & 5 - needs the change from "transfer" to **"recycling"** as a clarification that the existing use is a recycling center not a transfer center.

Page 6 of findings - first line change the "school is" to the **"school are"** to make it clear it is the entire school grounds not just the building.

Councilman Prince asked if the proposed changes were a part of the record or new evidence. Both Mr. Kelley and Mr. Greenfield stated the suggestions were supported by the record and were not new evidence.

Page 7, section 10, third line, change "for the following reasons" to **"for the following additional reasons"** which allows the City to rely on earlier findings as well in support of its conclusions.

Page 10, bottom line change "Paragraphs 10 and 11" to **"Paragraphs 8, 10 and 11"** to allow the City to rely on the analysis in paragraph 8, including the safety discussion.

Page 11, third line change "landscape berm around the property" change to read **"landscape and fence around the property"** which is actually a condition of having the fence.

Finally, Mr. Greenfield asked that on page 6, an additional paragraph be inserted following the first full paragraph, as follows:

"In support of this conclusion, the City Council finds more particularly that Joan Jones owns 45 acres situated south of Township Road. These acres separate and buffer the school property from the proposed site. The City Council also finds that Condition 14 not only requires the applicant to install a landscaped berm entirely encircling the site, but also requires that the entire site be enclosed by a fence. The berm and fence should keep children off that property. Further, the City Council believes and accepts the testimony of the applicant's traffic expert, Robert Keech, to the effect that the facility should receive only about 50% of the traffic volumes he initially projected because the facility will not be accepting solid waste deliveries from the general public. The City Council finds that this amounts to about 125 trip ends per day. It also accepts Mr. Keech's testimony and finds that only about 35% of these trip ends will enter or exit the site along Township Road. The City Council finds that about 40 to

50 trip ends a day does not constitute a significant volume of traffic or pose a significant safety hazard to children on the school property or traveling to or from the school. Likewise, it finds that this very small number of daily trips does not pose a significant safety hazard to residential or other uses in the area."

Mr. Greenfield asked that the City adopt the findings with the proposed changes.

Councilman Nolder asked if the industry definitions for the terms "transfer" and "recycling." Mr. Greenfield said he uses the term recycling to avoid confusion, since transfer is usually used with "solid waste" which would be a misinterpretation.

Roger Reif, 273 N. Grant, stated that the word transfer was used to mean that when it comes to the center it is reloaded immediately and hauled to a landfill; and recycling is materials that can be used again. He added that transfer means "disposal" and recycling means "reuse."

Councilman Nolder asked if we would be changing the use by changing those terms. Mr. Reif noted that this is in regards to the existing facility and that is a more accurate description of what goes on in that facility.

Councilman Prince noted that there would be storage on site. Mr. Greenfield said the storage was for recycling, not solid waste.

Councilwoman Strong asked if the paragraph was an addition to, or was a paragraph eliminated. Mr. Greenfield said it was "in addition."

Mayor Taylor reviewed the options:

- * accept findings as presented.
- * not accept findings based on Mr. Kleinman's information.
- * accept the findings with all modifications, or some of the proposed suggestions by

Mr. Greenfield.

Councilman Prince expressed concern about the term "design, " as mentioned in section 10 in Mr. Kleinman's letter, specifically: "design in LDPO 16.49.040, 1 b - are not references to architectural design." Mr. Greenfield said he felt the language was twisted. He stated that the City Council finds "in this section" which means only that specific section of the code, not the entire code does not mean or include architecture. He further added that the findings say, that when you look at the design, you are looking at the development pattern and it is not an architectural review. LUBA said that a design in an industrial use does not need to look like a house or a school.

Councilman Prince asked how this addresses the design for the uses around the site, or if design was not a criteria. Mr. Greenfield said design is a criteria, but it should be interpreted in a way that makes sense. The findings look at the development, pattern, layout and the consistency of the entire development. He added that it doesn't make sense for that provision

to be architectural. Mr. Greenfield said you must consider the uses around the project.

Councilman Prince said the compatible is not compatible with the area. Mr. Greenfield asked if he meant design or the use. Councilman Prince said the use is not compatible.

****Councilman Harris moved to incorporate Mr. Greenfield's memorandum of proposed changes into the Findings, Conclusions and Order of CUP 94-05/DR 94-14/LLA 94-08. Motion seconded by Councilman Daniels.**

Discussion - Councilman Prince said his main objection is that there is a list of outright permitted uses for the Industrial Park and this is a conditional use and opponents have showed that other areas that have recycling centers put them inside of an industrial park surrounded

by permitted uses. He added that this project is on the edge of the park near residences and it is not an outright permitted use anywhere in the City.

Councilman Daniels noted that a conditional use is an exception, not one that is outlawed completely, and our code provides for conditional use processes for such facilities, even churches are conditional use.

Councilman Prince noted that even schools are a conditional use, but this structure is not compatible and it would set a precedent in allowing this liberal use. He said with this liberal use a sewage treatment plant could be put next to a residential area. He added that a better buffer needed to be considered for a true separation.

Councilman Nolder concurred with Councilman Daniels and noted that different types of industries which could be noisier and more disruptive to the neighborhood could be placed in the area. He added that the project "fits nicely" in the area. He further added, that he lives close to the City sewer plant and this proposal will be a much better situation than living near the sewer plant which he does smell.

Councilman Prince concluded that the City plan needs to be changed so these type of situations do not occur in the future.

QUESTION - **The motion to incorporate Mr. Greenfield's findings into the proposed findings passed 4-1, with Councilman Prince voting nay.

****Councilman Daniels moved to adopt the Findings, Conclusions & Order CUP 94-05/DR 95-14/LLA 94-08, for Fred Kahut as presented by staff and as modified. Motion seconded by Councilwoman Strong and approved 4-1, with Councilman Prince voting nay.**

Ena Riseling, Township development resident, stated that when they bought there home in Township Development they would not have purchased it there if they had known of this project, they would have bought in Oregon City. She said that 125 trips a day would be

hazardous for the school children. She added "it scare me." since she knows that her own recycling smells after a week, and Canby will smell it (referring to the project).

Mayor Taylor stated that the Council finds that these type of decisions are never easy and they have reviewed hours of testimony and the decision was not made "lightly." He added that the Council came to a decision and "we have to move on with that." The Mayor said The Council feels this "fits and makes sense for what we are doing."

Ms. Riseling said she didn't understand by the term, makes sense. She added that perhaps they should sell their home. She added that people will not want to move to Canby to live next to a recycling center, and she would not have been there if she would have know of the proposal.

Mayor Taylor reiterated a decision has been made and conditions have been set for enforcement, and at this point "we are going forward."

Ms. Riseling asked if anyone on the Council wanted to buy her house.

BHRD Sub-Committee Discussion - Mayor Taylor said the committee is still discussing and working out details and this will not be discussed this evening.

MANAGER'S REPORT : Sarah Jo Chaplen, sitting in for Administrator Jordan, reviewed the following matters:

- *the Clackamas County Charter committee will meet on December 28th at the West Linn Library and a decision will be made at that point about the May election, the process might get delayed until November, if the draft is not ready by February.

- *the Chamber Economic Development Committee is reviewing phase 2 of the Industrial Park to determine what they can do to aid the City with that phase.

- * the current Cemetery contract ends March 1st, and we will be going out for an RFP for a replacement, and there has been some local interest. Ms. Chaplen noted that the Dalley brothers will be retiring.

COUNCILORS' ISSUES: Councilman Prince reported that during the recent BHRD meeting the committee ascertained that the City is not fully funding the SDC's at this time and a workshop on the SDC issue needs to be set, prior to budget committee deliberations.

January 10, 1996, 6:30 p.m., dinner meeting workshop was set regarding SDC's.

Councilman Daneils asked about a crosswalks on Ivy and 13th that has been painted, another crosswalk at the Adult Center, and a crosswalk nearer to town with permanent strips and a pathway between two homes. The later crosswalk has been taken out. and the children,

especially Ackerman students, want to go where the crosswalk was located causing a hazard. Councilman Daniels suggested a barrier be placed at the pathway to discourage students from using that route. Mayor Taylor asked that the Public Works Department review this problem.

OTHER REPORTS OR ANNOUNCEMENTS: Jim Wheeler handed out information regarding an appeal that will be on the January 3rd agenda.

Councilwoman Strong expressed thanks and appreciation to the City and CUB crews that worked during the recent windstorm. The Mayor noted that a "command center" had been set up at the Fire Department during the storm which expedited the performance of the crews.

ACTION REVIEW: 1. Recommend annexation to the Portland Boundary Commission on ANN 95-02, Oregon Development Inc.
2. Accept Findings for CUP 94-05/DR 94-14/LLA 94-08.
3. Prepare staff report for Workshop on SDC's on January 10th.

EXECUTIVE SESSION: **Councilman Prince moved to go into Executive Session under

ORS 192.660 (1)(h), regarding litigation. Motion seconded by Councilman Nolder and approved 5-0.

Mayor Taylor recessed the regular session at 8:45 p.m. to go into Executive Session. The regular meeting was reconvened at 9:07 p.m. and immediately adjourned.

**EXECUTIVE SESSION
DECEMBER 20, 1995**

Mayor Taylor called the session to order in the CUB conference room at 8:53 p.m.

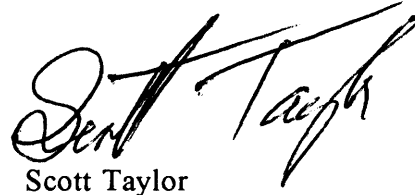
PRESENT: Mayor Taylor, Council members Nolder, Prince, Harris, Strong and Daniels, Attorney Kelley and Sarah Jo Chaplen.

ORS 192.660 (1)(h) - The Council reviewed the Rinkes vs. City of Canby litigation case and the Day vs. City of Canby litigation.

Mayor Taylor adjourned the session at 9:05 p.m.

A handwritten signature in cursive script, reading "Marilyn K. Perkett". The signature is written in black ink on a white background.

Marilyn K. Perkett
City Recorder

A handwritten signature in cursive script, reading "Scott Taylor". The signature is written in black ink on a white background.

Scott Taylor
Mayor