

**CANBY CITY COUNCIL  
REGULAR MEETING  
MARCH 15, 1995**

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

Also present: Administrator Michael Jordan, City Attorney John Kelley, City Planner Bob Hoffman, Assistant to Administrator Sarah Jo Chaplen, City Recorder Marilyn Perket, Roger Reif, Andy Ditommaso, Fred Kahut, Edgar Miller, Glenn & Irene Turner, Lisa Harman, Marvin Boe, Deborah Donovan, Dianne Gates, Jeff Kleinman, Paul & Joyce Carone, Lynn & Cindy Storlie, Jim & Mary Ann Maples, Rob Guttridge, Dan Bell, Andy Kahut, Ernie & Brent Pavlicek, Brad Gerber, Emma Kahut, Mr. & Mrs. Robert Clark, Derek & Pat Hills, Leon & Adelaide Sampsel, Roy & Bette Foster, Nancy Kahut, Norm & Eileen Meyer, Larry Boatright, Pam Walker, Earle & Janis Dickenson, Howard Lowrie, Loyd Alice Lowerie, Dewayne & Karla Tackett, Steve & Carla Sather, Earl Bighouse, Gertrude Thompson, Ronald Tatone, Pamela & Lawrence Berwick, Marguaritte Overholen, Dick Brown,, John & Donna Jean McManamon, Kay Boen, Ed Simpleton, Rick Bair, Paul Bell, Gordon Ross, Jason, Bristol, Erwin & Diann Dier, Travis & Marilyn Big John, Bill & Doris Becker, Mary & Ron Ander, Dana Tyler, James Kriegshauser, Wayne Feters, Pam Thompson, Yvette Gerber, Gordon & Neola Strom, Kris Kelleher, Ray Kahut, Hope McEvoy, Duane & Chris Kloser, Jeanne Bristoe, Leroy Fitzgerald, Herb Kluth, Karen Haynes, Steve Jessup, C. Fair, John & Regina Hieb and others.

Mayor Taylor called the session to order in the Canby Adult Center at 7:30 p.m., followed by the flag salute and a moment of focus.

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

**MINUTES OF PREVIOUS SESSION:** \*\*Councilman Prince moved to approve as distributed the minutes of regular session March 1, 1995. Motion seconded by Councilman Harris and approved 6-0.

**CITIZEN INPUT ON NON-AGENDA ITEMS:** None presented.

**COMMUNICATIONS:** None presented.

**NEW BUSINESS:** Accounts Payable - \*\*Councilman Daniels moved to approved accounts payable in the amount of \$137,780.66. Motion seconded by Councilwoman Stark and approved by roll call vote, 6-0.

**ORDINANCES & RESOLUTIONS:** Ordinance No. 932 - Mayor Taylor stated that Ordinance No. 932, The Graffiti Ordinance, was being considered for final action.

\*\*Councilman Harris moved to adopt Ordinance No. 932, AN ORDINANCE AMENDING TITLE 9 OF THE CANBY MUNICIPAL CODE BY ADDING A NEW CHAPTER RELATING TO DEFAACEMENT OF PROPERTY, IMPOSING PARENTAL CIVIL LIABILITY, CREATING PENALTIES FOR VIOLATION THEREOF; AND DECLARING AN EMERGENCY. Motion seconded by Council Nolder and approved by roll call vote, 6-0.

**APPEAL - CUP 94-05/DR 94-14/LLA 94-08, Kahut Transfer Station** - Mayor Taylor read the appeal procedure for the Kahut Transfer Station. He asked for a show of hands on how many people wanted to present argument on the record. A show of hands represented approximately twelve people.

Mayor Taylor asked the hearing body if anyone had a conflict of interest, and to state the nature and extent of the conflict and whether they would participate in the hearing on the present manner.

NOLDER - No conflict and intends to participate.

HARRIS - No conflict and intended to participate.

PRINCE - No conflict and intends to participate.

STARK - No conflict and intends to participate.

STRONG - No conflict and intends to participate.

DANIELS - No conflict and will participate.

MAYOR - No conflict and intends to participate.

Mayor Taylor asked if any member of the hearing body had any exparte contact with anyone prior to this hearing, and to declare the nature and substance of such contact at this time.

DANIELS - No contact.

STRONG - None.

STARK - None.

MAYOR - He stated that prior to this matter going to appeal, he received a call from someone wanting to talk about the issue and he indicated that he couldn't discuss the matter. Mr. Taylor asked the audience if they wished to question him on the matter. No questions were posed.

PRINCE - Reported that he had read articles in the newspaper, however, he said it would not affect his decision.

Mayor Taylor asked if the audience wished to question Mr. Prince. No questions were proposed.

HARRIS - Stated that he tried to avoid the newspaper articles and discussion on the matter. However, he did have a discussion at Park Avenue Hair Saloon with an acquaintance expressing opposition to the issue, but he said this would not affect his decision.

Mayor Taylor asked if anyone in the audience wanted to question Mr. Harris. None were presented.

NOLDER - Two people approached him regarding the subject, and he informed them he could not discuss the issue.

Mayor Taylor asked if there were questions of Mr. Nolder. None were asked.

**STAFF REPORT - Bob Hoffman**, City Planner, stated that the appeal before the hearing body was a proposal for a recycling and solid waste transfer facility to be located at the northeast corner of the intersection of S. Redwood and S.E. Township. The access roads

would be 99-E, Pine, S. Redwood and a new street to be constructed, S.E. Fourth. The site is approximately 9 1/2 acres. The proposed building will be 120 by 300 feet, Boxes will be in the open yard, and trucks will come in via Fourth Avenue. The entire site will be surrounding by a 40 foot wide berm with landscaping at least six feet high. The proposed land use for the area to south of the site is R -1; the zoning for much of area to the southeast is EFU-20, and if annexed would be rezoned to R-1. Most of the surrounding property is vacant. The site is within the industrial park area and a new industry is currently under construction in the park. Trost Elementary School is located more than 800 feet from the proposed building, and the land in-between has two houses located on it, as well as the school playground. Mr. Hoffman reported that after the application process had begun, the applicant added to the proposal that partially filled containers for recyclables be stored in the yard area. The Commission limited the types of commodities to be allowed in those partially filled containers, and conditioned that they be leak-proof and covered. The Planning Commission recommended approval with 48 conditions, which they believed would make the facility compatible to the surrounding area as required.

Councilman Prince asked how tall the building would be. Mr. Hoffman informed him it would be 33 feet

Mr. Hoffman displayed a visual scale picture of the building. He noted that all unloading of solid waste and processing would take place inside the building.

Councilman Harris asked how far it is to the houses located between the school and the site. Mr. Hoffman said it was about 70 feet, plus the setback of the houses, which would make it about 100 feet.

**APPELLANT - Jeff Kleinman**, Attorney representing the Canby Quality of Life Committee, asked the members to stand. Mr. Kleinman stated that the heart of this case relies on balancing tests. Some tests are set in the Comprehensive Plan, but it is the "other" balancing tests, not technical ones, that the appellant has applied.

Mr. Kleinman said he wanted to put to rest the argument that his clients bought their residential property knowing that it was near an Industrial Park, and should have anticipated those type of uses. He stated that his clients have no problem with permitted light industrial uses. However, the transfer station is a Conditional Use. Mr. Kleinman said in 1993 this "somehow" became a Conditional Use. He pointed out that the matter "snuck up" on them in 1993 with no individual notices. He added that this application might have slipped by if Joan Jones had not received notice, since the other clients received no notice.

Mr. Kleinman noted that the existing site near the high school is not a transfer station and that the City would like to have it moved because of the unsightly mess, and for a proposed Berg Parkway by-pass. He asked, if the smaller site is unsightly, how the applicant could be trusted with the larger proposed site. Mr. Kleinman stated that there is no evidence in the record justifying that the applicant have a huge "regional" recycling operation within the City limits of Canby. He further stated that there is nothing that mandates there should be a transfer station in the City limits, and it should be the last thing wanted in Canby. If it has to be in Canby, then it should be in the center of the Industrial Park, not bordering the school and residential properties.

Mr. Kleinman stated that this area is becoming the "keystone" of the City with nice quality subdivisions and the "lodestone" of the transfer station should not be "around it's neck."

Mr. Kleinman highlighted some of the appellants challenges:

The Comprehensive Plan Land Use Element Goal is to guide the development and uses of land so that they are orderly efficient , anesthetically pleasing and suitably related to one another. He said this has not occurred. Policy No. 1, states that Canby shall guide the course of development to separate conflicting or incompatible uses. Again, he said this has not been done.

Section 16.50.010 of the Zoning Ordinance deals with Conditional Uses and sets forth a balancing test. Mr. Kleinman emphasized subsections A and D. Subsection A provides that the proposal be consist with the Comprehensive Plan, this title and other applicable requirements of the City. Subsection D requires that the proposed use will not alter the surrounding areas in a manner which substantially limits or precludes the use of surrounding properties for the uses listed as permitted in the zone. He said they were concerned about the two zones with allowable uses, the industrial uses inside the Industrial Park and the residential uses around it.

Site and Design Review Standards in Section 16.49.040, (1)(b) provides that the proposed design be compatible with other developments in the general vicinity. He stated that this has not happened in this project.

Mr. Kleinman said the record is replete with evidence of conflict between residential and educational uses near the transfer station site. He summarized some objections to the proposal and specifically cited correspondence from opponent Brad Gerber and Rachel Hubbard, who is associated with Arthur Anderson Consultants. Some issues raised:

- a. the site is too close to a new subdivision and the new school;
- b. interference with well water in adjoining areas;
- c. conflict with upcoming annexation of land zoned for single family development in the Comprehensive Plan;
- d. that values of that property will be diminished;
- e. Joan Jones challenged the measurement from the school to the transfer station, saying it was 320 feet;
- f. all proponents of the site reside in the northerly part of Canby and south Canby is beginning to look like the geographic center of Canby;
- g. north winds will create odor problems for nearby subdivisions just as the odors from the Oregon City recycling center do;
- h. the noise will be 70 decibels and students won't be able to study at that noise level;
- i. and several people testified that they had visited the same type of operation in the METRO area. All of them had an industrial buffer around them; only one bordered a residential area.

Mr. Kleinman said there was a great deal of testimony about children walking and biking on Township Road. He said that the condition limiting truck access to Redwood, was a "phony resolution" of the issue. Recycling traffic will come from everywhere and will not be limited to Redwood. The drivers are not professional drivers. He also pointed out that garbage is dumped along the street across from the Oregon City landfill. He stated that the traffic study the City submitted was done prior to the building of the Trost School, and the Planning Commission ignored Brad Gerber's traffic study that he paid for. Mr. Kleinman stated that the City traffic analysis is all wrong.

Mr. Kleinman reminded the City Council that Steve Jessup, who is in the recycling business, said there will be odor and noise, and that air-borne pathogens from such sites have resulted in litigations. Mr. Jessup said that fumes, dust and smell from the proposed operation will reach the school. It was noted that the bioswale treatment of wastewater that was approved at the METRO South facility does not work. Mr. Jessup further implied that the community gains nothing from this proposed project. But that the immediate area

would suffer greatly. Mr. Kleinman stated that his clients testified to other available sites for the transfer station.

Mr. Kleinman admitted his clients are not paid experts, and that the applicant would, therefore, like opposition input to be disregarded. He stated that the people living in the community would know better how it would affect the community than outsiders who are paid to reach a conclusion. However, there were experts in real estate and in recycling/waste transfer operations who did testify in opposition, he added.

Mr. Kleinman requested that the hearing body try to picture themselves residing near Trost School with children who attend that school and ask themselves if this is compatible. He stated there are huge conflicts and no compatibility between the uses, whatsoever.

Mr. Kleinman referred to his "Joan Jones Finding," which is intended to retard the annexation and development of the area to the south across Township Road. He stated that this was not discussed by the Commission, but was inserted later, and directly conflicts to the Comprehensive Plan concerning procedures for A, B and C annexations.

Mr. Kleinman pointed out that on page 13 of the Notice of Appeal, the Planning Commission was exceedingly careful in the language "it" worked on and "it" wrote the language. He pointed out that they did not say the conditions resolved the concerns, however, they carefully said these conditions "deal" with these concerns.

Mr. Kleinman referred to specific conditions of approval 2 through 5, 7, 11 and 12, stating they are the type of conditions that cannot be "dumped" in and resolved later. He said a public process must be left open for each of those conditions. He cited a LUBA case, Citizens for Responsible Growth vs. Seaside.

Lastly, he stated that condition number 25 totally demolishes the entire process, it provides that this use can continue to grow without further approval or a review process of any kind.

**APPLICANT: Roger Reif**, Canby attorney for the applicant, addressed the appeal.

Mr. Reif cited Section 16.88.140, which provides that the appellant clearly state the nature of the decision being appealed; and the reasons why the appellant is aggrieved. He said the appellant has 27 assignments of error, which he stated were merely to raise social and political controversy and were not supported by reliable evidence. Mr. Reif said the applicant did submit reliable, probative evidence which justifies the Findings of Fact and Conclusions of the Planning Commission. He said that assignments of errors 1 through 12 are based on Comprehensive Plan Policy; and assignments of errors 13 through 20 are based on technical criteria of the application.

Mr. Reif pointed out that the ORS defines a Comprehensive Plan as a "generalized, coordinated land use and policy statements of the given body." All selective statements in the Comprehensive Plan cannot be reconciled, but they can be balanced and accommodated and Mr. Reif said this is what the Planning Commission did. Mr. Reif further stated that the appellant's formalized statements are not supported by evidence nor does it recognize the efforts of the Planning Commission to balance and accommodate the evidence in the Findings.

Errors 1, 2, 6 and 7 cite elements of the Comprehensive Plan and narrowly interpret the meanings. He said that basically there is an allegation that the project is not aesthetically pleasing. He noted that this is industrially zoned property and he disagreed with Mr. Kleinman. In 1989, the Planning Commission stated that this was a Conditional Use in an M-1 Zone, it was not codified until 1993.

Mr. Reif said that 38% of the property is proposed to be landscaped, although only 15% is required; and there is a 40 foot berm heavily landscaped to provide a buffer zone. The site has been designed to provide a minimum impact to the area to the south. As an example, Mr. Reif said the truck and vehicle access is at the north end of the site and designed to connect to Highway 99 E. The facility is separated from existing and future residential and educational uses. Mr. Reif said this is area "G" in the Comprehensive Plan, and is desirable for heavy commercial or industrial use. Mr. Reif added that the transfer of garbage is done within the building, as well as some sorting and immediate disposal to the transfer site. No materials are left out in the open or inside longer than 24 hours. Mr. Reif said the issue of noise, odor and rats are without substance and the record clearly shows the existing facility has no odors or noise. He pointed out that three past school superintendents, and the current superintendent, have testified that they have no objection to the proximity of the proposed project.

Errors 3 and 9, are statements from the Comprehensive Plan regarding the over burdening of public facilities. Mr. Reif said the allegations are without merit, as the record clearly shows that all public utility service providers indicate they can provide a full range of public services.

Mr. Reif noted that the Trost School Committee sent a letter stating they had no objections to the possible impact on the educational facilities.

Mr. Reif said the appellant argued that the City is not capable of enforcing the conditions of approval. Mr. Reif pointed out that the City has a Code Enforcement staff; that the applicant pays franchise fees which can go toward those services; and that condition number 39 requires the applicant to pay for certain testing. Additionally, DEQ has some jurisdiction over this use, he added.

Allegation number four refers to environment concerns with well water. Mr. Reif said there are bioswales, drywells, holding ponds, and testing areas prior to the release to the sanitary sewer, and impervious layers below the cement. Mr. Reif said the bigger risk to the wells are from the private septic tanks in the area.

Mr. Reif addressed the noise allegation. He said the record shows that the noise will come from truck traffic which is common to an industrial zone. The record has nothing in it regarding noise violations.

Error number 8, alleges violation of the Transportation Element of the Comprehensive Plan. Mr. Reif said the appellant submitted a traffic study by an independent engineer and the applicant used this study to help design his project. All transfer truck and waste pick-up trucks go to the site by way of Highway 99-E, S. Pine and S. Redwood Streets.

Error number 10, alleges that the proposal fails to interpret the Economic Element of the Comprehensive Plan. Mr. Reif said the proposal will employ Canby residents and provide a desirable collection facility to serve all Canby businesses and residences.

The Commission found that the project will meet concerns regarding traffic, noise, and ground water contamination. The traffic routing, the landscaping berm and the operating limitation characteristics are appropriate to meet concerns.

Mr. Reif pointed out that if one is to take "literally" the selective quotations from the Comprehensive Plan, we would not have automobiles because of omission, we would not have streets and we would have no industry, simply residences and schools.

Error number 11 says that the Commission failed to interpret the Housing Goal. Mr. Reif

said the record does not support this allegation. He said three local realtors, from three different firms, testified that they were in favor of the proposal.

With regard to allegation number 12, that the Commission failed to interrupt the Energy Conservation Goal, the appellant alleged that a great deal of vehicles bringing in recyclables would burn energy. Mr. Reif said this is simply a re-routing of existing trips occurring to the present site. Also, if they can't be brought here, how much omission and energy will be spent to take it some place else.

**Steve Donovan**, 862 SW Cascade, Beaverton, consultant, addressed the concerns listed as 13 through 27, which is the technical portion.

Number 13, alleges that the project cannot be approved because it is NOT a "recycling transfer operation," RATHER a "recycling processing center." Mr. Donovan stated that this is absurd, the project was never discussed in the record as an error or omission of the Planning Commission regarding this issue. He stated that the applicant always knew this was a conditional use and cited Section 16.32.010 (A), which refers to uses permitted outright in an M-1 Zone, and the criteria results in the project being a Conditional Use.

Number 14, the appellant alleges that the application is inconsistent with Title 16 of the Land Development and Planning Ordinance. Mr. Donovan said the applicant had professional analyses and reviews of this application for over a year to ensure compliance. Also, City staff recommended approval of the project. The Planning Commission correctly interpreted the Findings and made a decision to approve the application.

Number 15, the appellants allege that, due to the location, atop an aquifer, the nearby homes with well water are in danger and the site is unsuitable. Mr. Donovan said that nowhere in the record was there any discussion of location of aquifers or of pollution thereof. He said the site is engineered and designed to handle all surface and stormwater in accordance with the NPDES permit currently in force for the City of Canby. He added that all solid waste and processing activities will be handled inside a building with an impervious layer beneath a concrete slab floor. He again noted that each home that is serviced by a well in the area, has an on-site sewage disposal system, going directly to the wells in question.

Number 16, the appellants alleged that the Commission approved the application without having all required public facilities and services available. The appellants believe the City lacks the staffing to enforce the conditions imposed. Mr. Donovan reiterated that the City has a professional Code Enforcement staff, franchise fees, and that the applicant will pay for testing of the on-site system. He added that the Commission did conclude the City had adequate facilities to serve the proposed use.

Number 17, the appellants alleged that the Commission violated Section 16.50.010, (D) of the Land Development Ordinance "for all the reasons set out in our discussion of the Canby Comprehensive Plan and as set out in greater detail in the record..." Mr. Donovan stated that the appellants are saying "just because." He added that the appellant said there is no relevance to Joan Jones proposed annexation in the area, yet they provided two pages of discussions why that land should be annexed.

Number 18, the appellants alleged violation stating that the design of the proposed facility is not compatible to the educational and residential developments in the vicinity. Mr. Donovan said, that according to the appellants reasoning, the only appropriate design would be that of a single family home or of a school. He reminded the Council that this proposal is for an Industrial Park and the Commission correctly concluded this is an appropriate design for the stated use.

Number 19, the appellants alleged violation of the Land Development Ordinance by failing to consider the effect of action on the availability of cost of needed housing. Again, he stated this is an industrial application in the same type of zone, and that housing cannot go into the Industrial Park. Mr. Donovan said this application provides "balance."

Number 20, the appellants alleged that there were not clear and objective findings to support the granting of reduction in number of off-street parking spaces. Mr. Donovan said this is without merit. Reasons were given why less parking was needed than what the Code requires. He suggested pages 25 and 26 of the Findings be reviewed.

Mr. Donovan said the errors number 21 through 27 are simply compounding the policy issues 1 through 12 and the technical issues 13 through 20.

Mr. Donovan stated that the proposal is the conclusion of five years of careful planning and public process. He stated that since February 1994, the applicant has worked with City staff, neighbors, other public service providers, regulatory authorities and finally the Planning Commission to arrive at a consensus. The implication that this was "not noticed" is absurd since there were many public meetings, as well as meetings the applicant arranged. He said sound professional evidence in engineering, environmental aesthetics, land use planning and traffic engineering were implemented. He added that many businesses and citizens provided testimony. Mr. Donovan alleged that the appellants testimony consisted of no professional evidence, but only conjecture, personal antidotes and public pressure. Mr. Donovan said that the Planning Commission should be commended for following the law in evaluating the application. He stated that the appellants allege that the Commission erred in every aspect of its decision making, and even that the Land and Development Ordinance is flawed. Mr. Donovan said the appellants are justifying their appeal in two words, "Just Because." He asked that the hearing body deny the appeal and uphold the decision of the Planning Commission.

**REBUTTAL:** Jeff Kleinman stated that the applicants response to their errors of appeal were not a response to the matters they raised from probative evidence and from review of the record. He commented that the five year process that Mr. Donovan referred to was a surprise to him because he was not aware until tonight that the Conditional Use designation for this type of project was in place four years ago and not codified until 1993.

He said that this matter was conducted "entirely in the dark" until certain people received notice of this proceeding. He noted that the residents of Valley Farms were not included in the applicant's "outreach" notices.

Mr. Kleinman reiterated that some "violations" were made in respect to the Comprehensive Plan, and that it is necessary to find some type of compliance, not a "balancing test."

Mr. Kleinman stated that the transfer station has nothing to do with the existing site by the high school. He noted that this will be the first transfer station in the City and the recycling operation will be many, many times larger and will not serve just the City, but all areas of this part of the County.

Mr. Kleinman stated that even new garbage smells, and if it is replaced every 24 hours, it will still emit an odor. Again, there is no odor at the existing site because it is not a transfer station, only a recycling site.

Mr. Kleinman noted, for the record, that students from Trost School submitted many comments regarding this project.

In regards to enforcement, Mr. Kleinman asked how current enforcement proceeding with

problems in the City were handled. He cited Findings number 17, which stated that "potentially there would be better control over this facility (i.e., than the old one), due to the grandfathered use of the present site." Mr. Kleinman alleged that this was a "back-handed way" of overlooking the applicants conduct on the existing site, which lead to the question of whether or not the applicant can do better at the new site. Mr. Kleinman stated that enforcement will be difficult to achieve since nobody will be able to see inside because of the berms. They will not know what is going on inside, except by odor, dust, and birds overhead. He alleged that the design totally eliminates the ability to enforce all the conditions. He noted that recycling containers will be stored outside and not inside the building.

Mr. Kleinman pointed out that recyclables have become a very lucrative business. Again, he pointed out that all the traffic restrictions for the trucks do not apply to the recycling drop-off traffic, which can be fairly steady.

Mr. Kleinman said there are industrial designs that can be compatible that would employ many more residents than this project, with more desirable landscaping.

In regards to the issue raised about Mrs. Jones, Mr. Kleinman said this was not done to aid in her annexation, it was done to protect her rights which have been taken away by the City. He stated that this was a "vindictive act" against someone who tried to get in the way of a five year old project.

Mr. Kleinman read sections A and D of the Conditional Use Ordinance. He stated that evidence provides that there will be substantial limitation on housing and industrial uses because of the nature of the Conditional Use at the location. He said that the City will have "basically, "a dump" at the entrance to the Industrial Park, which will not attract nice new industry.

Mr. Kleinman pointed out that the City seal has on it, "the home of the good earth," and he asked that the Council preserve this characteristic of the City.

Lastly, Mr. Kleinman recited from the Burma Shave type signs that his clients posted on their personal property, "Trost School came First, now Garbage Sadly, is this Planning? Yes, but badly."

Mayor Taylor asked for a count of those wishing to address the Council and noted about ten people responded.

Mayor Taylor called for a short recess at 9:00 p.m. The regular session was reconvened at 9:13 p.m.

Mayor Taylor reminded the audience that only argument on the record could be submitted, not new evidence. Also, only people that have "standing," who have testified before, may testify tonight.

**OPPONENTS:** Larry Boatright, 1370 S.E. 12th Loop, rebutted the fact that the Trost Committee approved the proposal. He said he was a member of the Trost PTA, and his wife was an officer of the PTA. He attended a public meeting when Mr. Donovan addressed the Trost PTA, and he said the PTA is overwhelmingly against the proposal. Five PTA members have signs in their front yards which say, "Stop the Garbage Transfer Station in Canby." He said if there is another Trost Committee that gave approval, he suggested the Council consider it lightly.

**Steve Jessup** stated that most of his testimony had been presented earlier. In terms of

odors, he asked what would be done to control them, and has not heard the applicant state that there will be no odor problem at all. Mr. Jessup stated that he attended a school board meeting and the Superintendent testified in favor of the project, and he asked the school board, "If you are in favor of putting a transfer station next to a school, would you build a school next to a transfer station?" In regards to the traffic issue, he stated that on February 27th, in the early AM a garbage truck was going down Township. He implied that this is a perfect time for children to get hit on their way to school. He urged the Council to consider everything, including the residents of Canby, and people in surrounding communities that this proposal will affect.

**Brad Gerber**, 1282 S.E. 11th Loop, commented from the minutes of the January 23, 1994 Planning Commission, in the Findings number 2 and 6. Number 2 stated that a traffic signal on Highway 99 E and S. Pine and improvements to S. Township would address the impact, as opposed to solving the impact. On number six, the Commission agreed that all traffic impact concerns would not be solved with the traffic signal and Township improvements, but would be addressed. He reiterated that all problems are not solved, only addressed.

**PROPOSERS: Rick Bair**, 585 N. Pine, stated that if we don't deal with our waste and recyclables here, who will. He noted that he has cleaned up garbage in the wilderness and knows what happens if there is no place to put garbage.

**Gordon Ross**, reported that the Comprehensive Plan was developed when he was Chairman of the Planning Commission from 1966 through 1980, and put into affect in the early 70's. For many years the proposed site has been designated Light Industrial. Mr. Ross said in the 32 years he has been in the community and involved with the Planning Commission, he has never seen such a project worked over, planned, and re-written as this particular prospectus. He added that it was a very good piece of work. He noted that in 1989 Mr. Kahut proposed this project for the northwest area of Canby and was soundly denied. Mr. Ross said that basically, he felt the comments were emotional and not based on fact. He reminded everyone that we are dealing with the waste materials from the citizens of this community and nearby citizens that shop or go to school here, and added that we are not talking about people out of the area bringing garbage into Canby. He stated that the Planning Commission has addressed most of the concerns, and if this site is not approved then there is no site within the City that would be approvable. Mr. Ross said the alternative would be to grant Mr. Kahut an increase in rates to cover hauling the waste to another site. In regards to the traffic on Township, he noted that this street is an arterial collector and would carry lots of traffic. As more development takes place along Township the street will be developed further.

**Dick Brown**, 829 N. Holly, Canby, a resident for 34 years, stated that he had been involved in many controversies such as the Police Station, siting of water treatment facility, swimming pool, converting Wait Park from a baseball field to a park, etc. In each of these cases the same thing took place - the vested interest and the emotions of the people that were closely involved in these situations became a major issue. He appealed to the hearing body to overlook the politics, political pressure, and emotion and make a decision based on the common good for the community now and in the future. Mr. Brown stated that Mr. Kahut has proven to be a very efficient operator, even in a facility that is inadequate and inefficient. He added that he hoped Mr. Kahut would serve the community for many, many more years from a facility that will be adequate and will serve the whole town and area in the future.

**Edgar Miller**, 750 N.E. 22nd, Canby, noted that the Council had a tremendous job to undertake on this issue. However, he noted, that they have done a good job in the past, as have their predecessors. Mr. Miller stated that in his 18 years in Canby, the planning that

has been carried out has been thorough, efficient, and for the well-being of the total community. He added that the community is growing immensely and that with growth comes problems that the Council must address. Mr. Miller said the people in Canby face continuous change because of growth, and we need to maintain services for all of the community. He added that we are not here to divide Canby, but to keep working together for the entire community. He said he has known Mr. Kahut all the years he has been in Canby and has never found anyone more cooperative to work with. He encouraged the City Council to look favorably on the application.

**Andy Ditommaso**, 775 N.E. 31st, Canby, informed the Council that he had been in the garbage business for 28 years and noted that outside of the buildings there is not much of an odor. He added that he has been in real estate for 19 years and plans to build a home in Township Village. He said the Planning Commission has done a very good job on the matter and urged approval.

**Rob Guttridge**, 815 Washington, Oregon City, has been a manager of recycling facilities for more than ten years, served as Chair of the State Recycling Association for the last two years, has operated facilities in several counties and visited such facilities all over Oregon and S.W. Washington. He stated that there is a difference between a transfer station and a dump, which seem to be an error in the perception of the appellants. Mr. Guttridge said the Planning Commission was right in approving the application, and that it is not something that will generate odors. He added that this was an opportunity to move forward and urged rejection of the appeal.

**Chris Kelleher**, 2583 Ellen, Hubbard, stated that he has been a KB employee for over ten years. The current site is totally inadequate, he explained that due to City growth and a larger site is needed. Mr. Kelleher reminded everyone that a school and residences are near the current site. Also, he noted that he transfers garbage in front of houses everyday on all streets, from the cans to the truck.

**Ron Tatone**, 1127 N.W. 12th, Canby, a resident of Canby for over 50 years, said in his experience over the past 50 years, Canby always meets it's needs.

Mr. Tatone started talking about a bond issue for a sewerage treatment plant, however, he was informed this was not a part of the record.) Mr. Kelley reminded him to keep his testimony to argument based on the record.

Mr. Tatone said his point is that the residents in Canby always meet their needs, and growth has made this facility a need. He recommended approval of the application. He reminded the Council that prior to this issue the school district did approve a school site next to the sanitary sewer plant.

Mr. Kelley reminded everyone to be cautious in their testimony, based on the record, and for the hearing body to disregard any testimony that is not a part of the record.

**QUESTIONS/DELIBERATION:** Councilman Harris asked how deep the wells were in the subject area. Attorney Kelley interjected that this was not a part of the record.

Councilman Harris asked about the discrepancy between the 1989 and 1993 approval issue. Attorney Kelley said the original application was for a site off N. Baker. There was discussion whether a transfer station would be an Outright Use or a Conditional Use within a Light Industrial Zone. The ordinance provides that the Planning Commission can make a determination as to what the use is, Outright or treated as a Conditional Use. Mr. Kelley said the first thing the Planning Commission did when they had their first public hearing, was make the determination that the transfer station would be a Conditional Use in a Light

Industrial Zone. That application was appealed to the City Council and then denied. Mr. Kelley added that the City had not done a codification process of ordinances until later; then it became a part of the code, however, the Commission did make that decision in 1989. Also, the decision was made at a public hearing.

Mr. Kleinman added that the date on the ordinance was 1993.

Councilman Daniels asked if the bioswale was where the trucks are washed. Mr. Donovan said the bioswale will take storm water run-off from all facets and direct it to the bioswale, a bio-filtration mechanism, then directed to an inlet, and then to the drywell field. He said it is the first of two pretreatments of stormwater, in excess of our current standard.

Councilman Nolder asked which Trost School Committee approved the application. Mr. Reif stated that each school has a PTA and a "site council" made up of teachers and citizens. It was the local school committee, the elected three representatives of the area, who made that decision and the letter is in the file. The elected officials are in charge of the site and they make recommendations to the board.

A citizen from the audience asked that the letter be read. (Staff began looking for the letter in the vast file.)

Councilman Prince asked Mr. Hoffman about the rezoning issues that the appellant contested as not being a part of the record. (The Joan Jones property.) He asked if this was discussed during the Planning Commission meeting. Mr. Hoffman said the relationship of the site to the surroundings was generally discussed, the specific wording in the Findings, was not explicitly discussed. The Planning Commission was given a copy of the Findings and approved them.

Councilman Prince asked who put the words in the Finding. Mr. Hoffman said he partly wrote it, and the applicant was asked by the Commission to assist in preparing the final order.

Councilman Prince said the contention is that it was not discussed during the meeting. Mr. Hoffman said that was true. Mr. Prince asked why it was in the Findings, if it wasn't a part of the meeting. Mr. Hoffman said because the Commission approved the Findings that included it, and it was an expansion of the description of the criteria that the proposed site would not impede the development of the surrounding properties as zoned.

Councilman Prince asked if the rezoning was a change in zoning, from EFU to R-1. Mr. Hoffman said he didn't understand the question. Mr. Prince referred to the words, "but rezoning will be necessary to permit residential development....," adding that it was confusing as to what that section means. Mr. Hoffman said the section is describing the property to the southeast of the site as being currently zoned EFU-20, and the criteria is talking about the need to show that the development would not impede the use of the property, as zoned. So it deals specifically with that issue and it deals with the issue that rezoning would be necessary for it to be used as R.1, which would take place at time of annexation. It talks about the steps of annexation and the requirement that it be one of the A,B,C priority stages. Normally priority C land is annexed after A and B. He said the point is that rezoning would be necessary, as well as annexation, before the property would be residentially rezoned and as currently zoned, the Findings state that the site would have no impacts on the use of the property.

Councilman Prince said there was a question about yard debris being allowed at the site. Mr. Hoffman said there was a restriction against that and the applicant said it was not his intention to use the site for that purpose. Mr. Prince asked if it would be allowed to the

east of the site. Mr. Hoffman said the question has never been raised and it hasn't been studied. Mr. Prince asked if that would be a conditional use. Mr. Hoffman said recycling is a conditional use and yard debris is not approved as a part of this application and further action would be necessary to include it.

Councilman Nolder asked how many people currently bring recyclables to the existing site. Mr. Kahut replied that at the most, about a dozen. Mr. Nolder asked how much liquid is carried in the trucks in the normal daily pickup. Mr. Kahut said in the dry season none, other than that, extremely little. Mr. Nolder asked how many collection trucks would go in and out of the site. Mr. Kahut said, including the recycling trucks that go back and forth to Seattle, there would be 12 or less. Mr. Kahut said that the trucks would enter the site once, or maybe twice a day.

Mayor Taylor read the letter from the Trost School Site Committee, dated December 21, 1994, which essentially recognized the need for such a facility. They expressed concern about odor, traffic safety, unsightliness and vector control. They said that the concerns were addressed and asked that enforcement be assured.

Councilman Harris asked how the 70 decibels of sound would be produced. Mr. Hoffman said there was no evidence of that level of sound, other than a statement by one of the opposition as quoting him (Mr. Hoffman) saying he referred to a decibel number. Mr. Hoffman said he did not say that; but he did comment that the Council had an ordinance under consideration that would limit sound to 70 decibels at the property line.

Councilman Harris asked if sound was made by the compacting machine. Roger Reif stated that the transfer process would be inside the building and only normal truck traffic noise would be heard outside the building.

Councilwoman Strong asked what type of rate increase could be expected if the application were denied. She was informed that it was not in the record.

Councilman Prince asked who would be responsible for enforcement of the conditions. Mr. Hoffman said the Code Enforcement Officer or other City staff would monitor heavy trucks and road usage, not the Police Department. He added that there were numerous elements of enforcement: water quality by Steve Hanson, normal code enforcement by Steve Floyd, Bob Godon and himself who would regularly inspect as per the schedule outlined in the Condition. Also, there would testing by a qualified lab on technical matters, and documentation submitted to Mr. Hoffman.

Councilman Prince asked how often this would happen. Mr. Hoffman explained the enforcement schedule in the Condition states about once every three months. Visits would take place more often if there were complaints in accordance with normal code enforcement procedures as spelled out in the conditions.

Councilman Prince asked about a buffer zone separating different uses. He asked if, in the future, Light Industrial Zones could be located next to residential areas. Mr. Hoffman said they were zoned that way all over the City. Mr. Prince asked about a buffer. Mr. Hoffman said there is no buffer zone between residential and Light Industrial; there are provisions in certain circumstances for an opaque fence, and Design Review criteria describes types of buffers the Planning Commission can choose to use. Mr. Hoffman pointed out that in this case, the applicant proposed the berm; neither staff or the Commission requested it. Mr. Prince said he had a concern with the berm and fence being only six feet tall, while the building is proposed to be 33 feet high.

Mayor Taylor asked if this conversation is in the record and was told it was a part of the record.

Councilman Prince reiterated that the building is 33 feet high with a six foot fence, and asked Mr. Hoffman what he was saying there would be no impact to residences across the street. Mr. Hoffman replied that he did that; that they will be able to see the building just as they can see any building that was approved. Mr. Prince asked, as far as staff is concerned, if it will not impact the neighborhood. Again, Mr. Hoffman replied that he said it will not "negatively" affect the neighborhood, although it will have some affect.

Mayor Taylor asked about a "regional transfer station" matter addressed earlier, condition number 49. He asked what the "regional" reference implied. Mr. Kleinman stated that his point was reflecting what one witness had said about a region transfer site, however, his testimony was that it was a new waste transfer site and a greatly expanded and perhaps regional recycling center.

**\*\*Councilwoman Stark moved that the Canby City Council approve the Findings of the Planning Commission on the Kahut Recycling Transfer Center for Canby, located in the new Industrial Park on S. Pine, S.Redwood and S.Fourth. Motion seconded by Councilwoman Strong.**

**DISCUSSION:** Councilman Prince stated that he had some problems with the subject.

1. Enforcement was his first concern. He said that staff has not been capable of enforcing anything this large, and already have too much to do. He referred to a local manufacture doing part of his business illegally outside, which staff was not aware of. He stated, "I don't see how we could possibly do this."
2. A building 33 feet tall will tower over landscaping and have an adverse affect on the R-1 zoned properties in the area.
3. This is a Conditional Use and is not necessarily allowed in all parts of the park; a more appropriate site would be near the middle of the park.
4. He expressed concerns about testimony allowed that were not part of the record, specifically pages 22 and 23, regarding rezoning.
5. He noted that if this is planning that represents Canby by Design, then it should be "scrapped." He stated we are definitely on the wrong track and hoped staff could resolve these problems. He pointed out similar problems with the type of building at the Johnson Controls site.

Councilwoman Stark complimented the staff and the Planning Commission on the task they faced during this process. She noted that the hearing body read numerous documents and listened to several tapes on the matter. She said she had faith in the staff for monitoring the project, as well as DEQ, OSHA and various State and County regulations needed in this type of business.

Councilman Daniels reminded everyone that this is an Industrial Park and buildings can be 33 feet high or higher, he added that the City has monitored other industries for various reasons.

Councilman Harris asked how tall a building could be in an Industrial Park, and he commented that whoever wanted to build in an area near an Industrial Park, should expect high buildings. He said he felt the height of the building should not be an overriding consideration on the matter. Mr. Hoffman replied that buildings could be 45 feet high.

Councilman Nolder said he felt that odor could not really be measured and the type of structures proposed are common in an Industrial Park. He felt there was no detrimental safety factor with the proposed traffic pattern. He added that the Planning Commission did a good job and made the correct decision.

Councilwoman Strong complimented the staff and Planning Commission, and said she spent many hours reviewing the material and said it was very thorough.

Councilman Daniels said he spent four hours reading the documents and made many notes. He added that the Planning Commission did an excellent job. Also, the people asked for many conditions and that is why 49 conditions were set, and it is commendable that the applicant is receptive to the 49 conditions.

**QUESTION:** \*\*The motion to uphold the Planning Commission recommendation for approval of the Kahut Transfer Station and approve the Findings was approved by the City Council 5-1, with Councilman Prince voting against the motion.

Mayor Taylor called for a short recess at 10:20 p.m. The regular session was reconvened at 10:25 p.m.

**UNFINISHED BUSINESS:** None presented.

**OTHER REPORTS OR ANNOUNCEMENTS:** Administrator Jordan reminded the Council that action will be necessary on the Sign Code at the next meeting.

Meetings - Mr. Jordan reminded the Council of a Budget Committee Meeting on March 29th. On April 4th, there will be an Education Summit with the School and there will be a large mailing on this meeting.


Councilman Daniels reported that he and Councilman Prince attended a METRO meeting in Oregon City last night and will keep the Council informed of upcoming issues.

**ACTION REVIEW:** 1. Implementing the decision of the Council on the Kahut Transfer Station.

Mayor Taylor adjourned the meeting at 10:29 p.m.



Marilyn K. Perkett  
City Recorder



Scott Taylor  
Mayor