

**CANBY CITY COUNCIL
REGULAR MEETING
AUGUST 16, 1995**

WORKSHOP: The Council met in workshop session at 6:00 p.m. in the CUB conference room to discuss future improvements at the Sewage Treatment Plant. Steve Hanson and Curt McLeod made a presentation.

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

Also present: Administrator Michael Jordan, Assistant to the Administrator Sarah Jo Chaplen, City Recorder Marilyn Perkett, City Attorney John Kelley, Police Chief Jerry Giger, Librarian Beth Saul, Assistant Planner Jim Wheeler, Cam Sivesind, Mr. & Mrs. Crase, Dawn Winsor, Donald Jacobson, Nancy Jacobson, Mr. & Mrs. Vern Wigant, Sylvia Wiegand, Mr. & Mrs. Kith Faker, Bobbies Reed, Colleen Armstrong, Mr. & Mrs. Maynard Hardy, Margaret Clark, Walter Devine, Dorothy Kellim, Mr. & Mrs. Bob Hall, Mr. & Mrs. Herschel Vickers, Ellen Barger, Mr. & Mrs. Mark Crorey, Rod Beck Jack Stark and Roger Reif.

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

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 August 2, 1995. Motion seconded by Councilwoman Stark and approved 5-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: None presented.

APPEALS: DR 95-09, Mark Crorey - Mayor Taylor reviewed the procedure for the appeal process. He also noted the criteria needed for a decision as set forth in Municipal Code 16.88.140.

Mayor Taylor asked the hearing body if anyone had a conflict of interest regarding the appeal subject.

Nolder - no conflict and will participate.
Prince - no conflict and will participate.
Stark - no conflict and will participate.
Strong - no conflict and will participate.
Daniels - no conflict and will participate.
Mayor - no conflict contact and will participate.

Mayor Taylor asked the hearing body if anyone had any exparte' contact regarding the appeal subject.

Daniels - none.

Strong - none.

Stark - declared that she had discussed the fire wall for the structure with her husband, the Fire Chief. Mark Crorey asked Councilor Stark why she discussed this matter. Councilor Stark stated that the fire wall was referred to in the tape and she asked questions about that subject.

Mark Crorey stated that he was informed that the decision on the appeal would be made on the written record only. Attorney Kelley stated that the decision is to be made on the record, both written and oral. Mr. Crorey requested that he be permitted to review the audio tapes of the Planning Commission meeting regarding the subject.

Mayor Taylor continued the appeal on DR 94-09, until September 6th, adding that no further notice will be given regarding this issue.

Appeal Dr 95-11, Canby Fire Department - Mayor Taylor stated that the same procedure rules would apply to this appeal. Mayor Taylor asked the audience to indicate how many people would be testifying in this matter, three (3) indicated a desire to address the Council.

Mayor Taylor asked the governing Body if anyone had any conflict of interest on the subject matter.

Daneils - no conflict.

Strong -no conflict.

Stark - no conflict and plans to participate

Mayor - no conflict.

Prince - no conflict.

Nolder - no conflict.

Mayor Taylor asked if anyone had any exparte' contact.

Nolder - none.

Prince - none.

Mayor - stated that at Millar's Tire Shop an employee asked him if something was going on with the Fire Department. Attorney Kelley asked if anyone wished to discuss the issue with the Mayor. No one came forward.

Stark - stated that she has discussed the proposed facility with her husband, the Fire Chief, ever since the property was purchased. Roger Reif, Attorney for the Mobil Home Manor Court, stated that his clients are aware of Councilwoman Stark's interest in the Fire Department and requested that she be removed from the hearing body.

Strong - none.

Daniels - none.

STAFF REPORT - Jim Wheeler reported that the Fire Department purchased a two acre parcel on S. Pine between SE 2nd and 3rd Avenues for a 14,215 square foot Fire Station. Mr. Wheeler noted that vehicles would exit on Pine Street and return using the rear entrance to the station. The appeal is based on concern about noise of the returning emergency vehicles to the facility, and was generated by the residents of the Canby Manor Mobile Home Park. He stated that some of the homes are approximately 20 feet from the Fire Department property line. He added that there is some vegetation on the mobile home park side of the property which overlaps onto the subject property. The Planning Commission approved the applications with several conditions. One of the conditions was a bond to be in effect for one year to secure a six-foot sound barrier wall that includes baffling, and after six months the Planning Commission will review the situation to decide whether or not the sound barrier is required.

APPELLANT - Roger Reif, Attorney for the Canby Manor Mobile Home Manor, stated that 21 tenants from the mobile home park were in attendance tonight, and he introduced a document with the names of those present. Mr. Reif noted that he thought the subject property was Light Industrial when, in fact, it is zoned R-1. However, since this is a public use, the Fire Station is an outright permitted use in that zone. He added that his client is "delighted" that the Fire Department will be in the neighborhood and welcomes them as a necessity for the community. He stated that he listened to the tape but could not adequately hear all of it, and would rely on written evidence. Mr. Reif objected to the letter dated August 8, 1995, from the Fire Department architect Hans Ettlin, because of reference to a book in the letter which was not part of the original record. Also, the offers of compromise were never communicated to him and he objected to those offers, as well.

Mr. Reif, reminded the Council that the burden of proof is upon the applicant. He cited the Planning Commission Finding # 2,

" The Planning Commission finds that the need for additional noise control or buffering between the fire station and the manufactured homes park to the west is uncertain."

The applicant has the burden of proving this is necessary or not necessary.

He further added ,

"Additionally, the amount of noise reduction that could occur may not be justified by the additional cost for the noise reduction."

Mr. Reif pointed out that the Commission usually does not care what it costs. they only plan. Cost should, therefore, not be a factor.

He stated from the Findings,

"The Planning Commission finds that a trial period of six months to determine the need for noise reduction is the most prudent course."

Mr. Reif felt the Commission did not meet criteria #2,..... and "observe the precepts of good planning....." He implied that this could set a precedent to other developers about waiting six months to let them know "if it is needed." He suggested that the six month waiting period was not satisfactory to his clients because, in six months, his clients would be burdened to prove it is needed.

Mr. Reif referred to Section 16.040, which states that proposed design of development is compatible with other developments in the vicinity. He pointed out that Canby Disposal has been required to have a buffer barrier, and he felt his clients need some protection from the noise.

Mr. Reif reiterated that the costs to put in the buffer wall should not be a consideration and it would set a precedent.

In summary, Mr. Reif requested that the Planning Commission decision be reversed and the wall be constructed now, and that his clients do not believe the Commission followed the precepts of good planning by incorrectly interpreting the requirements of law; and they did not adequately respond to all the people who testified.

APPLICANT - Hans Ettlin, architect for the Fire Department, stated that his firm has designed 12 different fire stations: 4 are in residential areas, and the one in Lake Oswego, also in a residential area for the last 6 years, with no complaints having been filed.

Mr. Ettlin said he was the one who suggested the six month waiting period to see if the proposed wall is really necessary, Mr. Ettlin said he is not convinced the wall will solve their problem, since sound is still a very illusive thing to contain. He noted that the Fire Department has volunteered to modify their operations such as the night returns coming into the front aprons, rather than around behind by the mobile homes; and sirens will not be initiated until they reach Hwy 99 E. He reiterated that a six month waiting period would be best, and the \$23,000 cost for the wall could be money better spent for fire apparatus. He urged the Council to wait to see if there really is a problem.

Councilman Prince asked Mr. Ettlin to point out on the map where the proposed wall would go and where the vegetation is.. Mr. Ettlin said it would be approximately 315 feet long behind the building development site, and that the existing vegetation is on the mobile home site and would not be removed. Currently a chain-link fence with slats is proposed, which would have some effect on reducing the noise.

Councilman Nolder asked Mr. Ettlin if the other 12 stations they designed had barrier walls

and he was told they did not. Four of the stations are in residential areas and no complaints have been received regarding noise.

Jack Stark, Fire Marshall, stated that the Fire Department did not want to disrupt the neighborhood. The department had budgeted money for five years to purchase the property and build the station and they did not have to go the voters for more money. He reiterated that late hour calls will use the front entrance and emergency horns will not be sounded, unless fire personnel are endangered, until they are on the highway. Mr. Stark said his department is there to serve the public. He added that the department has been in their present location for 40 years with no complaints. Mr. Stark urged the Council to uphold the Planning Commission's decision in the matter.

Roger Reif reiterated to the Council that his clients welcome the Fire Department. However, he said the public should be treated the same as private developers, equally. He noted that the vegetation does trespass onto the Fire Department property, which could possibly be damaged if it were tampered with.

Mayor Taylor asked if anyone else in the audience wanted to address the Council on the matter. No one came forward.

DELIBERATIONS - Councilman Daniels said he sympathized with the neighbors, however, he did not know if this would be the "answer" to the noise issue. He said he hears noise two blocks away from an industry, and noted that noise bounces around and is very difficult to contain. He questioned the height of the proposed barrier, whether it should be 6 or 10 feet high.

Councilwoman Strong expressed concern for the people living in the mobile home park. She noted that there are often sound barriers along the highways. Also, she questioned the rationale of waiting six months to find out if a barrier is needed.

Councilman Prince was troubled by the "uncertain" argument. He felt either more information should have been requested or the decision should have been definitive. He added that private and public developments should be treated the same, pointing out there are some developments in the City that were required to install sound barriers.

Councilman Nolder stated that he has always been a strong supporter of the Fire Department, however, he expressed concerns for the disruption in the life style of the people in the area. He felt the issue should be dealt with now, not wait six months down the line.

Mayor Taylor said his concern is that until the "noise" is actually generated from the site, it is difficult to assess the level of noise. He added that he was not convinced that a six foot high fence would solve the noise issue, since noise does bounce around. He also noted that this could set a precedent for new companies coming into our area, asking for all types of barriers to be constructed. He questioned the Planning Commission Findings about the length of time,

as he felt the sound determination could be made sooner than six months. He added that the determination of the size of the wall was questionable.

Councilman Daniels argued that the Fire Department has had no complaints at their present site, which has no barriers. He expressed concern that the six foot fence might not solve the noise problem.

Councilman Prince asked if we had an ordinance on sound for residential areas. He was informed that we do have a noise ordinance. Mr. Kelley pointed out that the noise ordinance criteria is based on amount of time, and a truck backing out and leaving is not enough time to "trigger" the noise ordinance.

Jim Wheeler cautioned that the noise ordinance was not discussed at the Planning Commission level. Attorney Kelley agreed with Mr. Wheeler.

Mayor Taylor commented that the nearby Industrial Park will be generating various noises.

****Councilman Daniels moved to uphold the decision of the Planning Commission and adopt the Findings of Fact for the DR 95-11, Fire Department application. Motion seconded by Councilman Nolder. The motion failed to pass by a vote of 3 to 1, with Councilman Daniels voting for approval.**

****Councilman Prince moved to overturn the Planning Commission decision regarding DR 95-11; that the Commission did not observe the precepts of good planning as interpreted by the Council and the Commission did not adequately consider all of the information which was pertinent to the case, in that they failed to order a sound barrier wall. Motion seconded by Councilwoman Strong. The motion was approved 3-1, with Councilman Daniels voting nay.**

The Assistant City Planner was instructed to prepare findings for the next meeting.

Mayor Taylor asked what the next step would be. Attorney Kelley stated that the next step would be that the Fire Department takes it to the Land Use Board of Appeals, if they so choose.

Councilman Daniels pointed out that the motion was NOT definitive regarding the sound barrier.

Roger Reif stated that his clients would be satisfied with a six foot wall.

****Councilman Nolder moved to require a six foot sound barrier wall as requested by the neighbors. Motion seconded by Councilman Prince,**

DISCUSSION - Councilman Daniels reiterated his concern that the six foot barrier would not solve the problems.

Mr. Reed, 835 SW First, # 58, stated that a six foot wall will "not do it," as it will not be high enough.

Mayor Taylor asked if the development could move forward while the subject matter was being discussed. Mr. Wheeler said it couldn't.

Mr. Ettlin stated that if the wall were higher than six feet, in accordance with the zoning ordinance, a variance would be required.

Councilman Nolder asked if this were remanded by to the Commission for further study would it hold up construction, and he was told it would.

***Councilman Prince moved to "AMEND" the original motion to construct a six foot masonry wall on the developed portion of the proposed construction site. Motion to amend was approved by the maker of the motion, Councilman Nolder. Motion passed 3-1, with Councilman Daniels voting nay.

COMMUNICATIONS: Sarah Jo Chaplen made the following announcement:

Open House regarding proposed County gas tax, August 22, 1995, Canby Adult Center, 7:00 p.m.

Open House at the September 1, 12:30 to 6:00 pm at the Canby Wastewater Treatment Plant.

Meeting regarding SB 626, regarding toll roads, at Home Builders Association, August 30, 8:15 to 10:00 am.

NEW BUSINESS: Accounts Payable - **Councilman Daniels moved to pay accounts payable in the amount of \$118,648.58. Motion seconded by Councilwoman Stark and approved by roll call vote, 5-0.

ORDINANCES & RESOLUTIONS: None presented.

UNFINISHED BUSINESS: None presented.

OTHER REPORTS OR ANNOUNCEMENTS: Councilwoman Stark reminded everyone to attend the World War II event on September 2, 1995.

Mayor Taylor noted that the Clackamas County Fair started Tuesday and will run through Sunday.

ACTION REVIEW:

1. Appeal 95-09, continued until September 6th.
2. Appeal 95-11, Commission action overturned and findings will be presented at the next meeting.

****Councilman Prince moved to go into Executive Session under ORS 192.660 (1)(d) regarding labor negotiations and (1)(i) to review the performance of the chief executive officer. Motion seconded by Councilman Daniels and approved 5-0.**

Mayor Taylor recessed the regular session at 9:00 pm to go into Executive Session. The regular meeting was reconvened at 10:27 p.m.

Councilman Prince asked if the City Safety Manual had been completed yet. Ms. Chaplen said she had been working on it and it will be done as soon as possible.

Mayor Taylor explained that City staff had met with CTA and their board on Monday, August 14th, to discuss the "telecommunity" concept. A workshop session with CTA was scheduled for September 20th to continue communication on the telecommunity issue.

Councilman Daniels informed the Council that the Budget PAC group would be at Cutsforth's on Saturday, August 19, and Roth's on Saturday, August 26th to hand out flyers regarding the levy election and to register voters.

Mayor Taylor adjourned the session at 10:36 p.m.

EXECUTIVE SESSION
AUGUST 19, 1995


Present: Mayor Taylor , Councilors Prince, Nolder, Stark, Strong and Daniels, Cam Sivesind, Administrator Jordan, Sarah Jo Chaplen, Attorney Kelley, Don Schafer and Jerry Giger.

ORS 192.660 (1)(d) - The Council discussed Police Department labor negotiated.

ORS 192.660 (1)(i) - The Council discussed the performance of the City Administrator and Police Chief and various City policies.

Mayor Taylor adjourned the session at 10:22 p.m.


Marilyn K. Perkett
City Recorder


Scott Taylor
Mayor

PROCLAMATION

WHEREAS, Our Founding fathers, in order to secure the blessings of liberty for themselves and their posterity, did ordain and establish a Constitution for the United States of American; and

WHEREAS, It is of the greatest importance that all citizens fully understand the provisions and principles contained in the Constitution in order to effectively support, preserve and defend it against all enemies; and

WHEREAS, The two hundred eighth anniversary of the Signing of the Constitution provides a historic opportunity for all Americans to remember the achievements of the Framers of the Constitution and the rights, privileges, and responsibilities they afforded us in this unique document; and

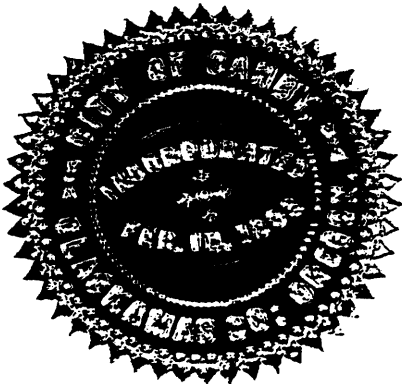
WHEREAS, The freedoms guaranteed to American citizens, should be celebrated by appropriate ceremonies and activities during Constitution Week, September 17 through 23, as designated by proclamation of the President of the United States of American in accordance with Public Law 915.

NOW, THEREFORE, I, Scott Taylor, by virtue of the authority vested in me as Mayor of the City of Canby do hereby proclaim the week of September 17 through 23 as

CONSTITUTION WEEK

in the City of Canby, Oregon, and urge all citizens to reflect during the week on the many benefits of our Federal Constitution and the privileges and responsibilities of American Citizenship.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Canby to be affixed this 6th day of September in the year of our Lord One Thousand Nine Hundred and Ninety Five.



Scott Taylor, Mayor