

**CANBY CITY COUNCIL
REGULAR SESSION
OCTOBER 20, 1993**

WORKSHOP: The Council held a workshop session in the CUB board room starting at 6:00 p.m., until 7:25 p.m. All members were present, including Administrator Jordan and Recorder Perkett.

The Council discussed the agenda for their two day workshop on October 29 and 30.

REGULAR SESSION: Mayor Scott Taylor presiding. Council members present: Maureen Miltenberger, Dennis Nolder, Terry Prince, Cheryl Stark, Walt Daniels and Joe Driggers.

Also present: Administrator Michael Jordan, City Attorney John Kelley, City Recorder Marilyn Perkett, Librarian Beth Saul, Police Chief Jerry Giger, Assistant City Planner Jim Wheeler, Steve Hanson, Curt McLeod, Cam Sivesind, Jim Flynn, Officer Steve Landis, Bob Kacalek and Kevin Howard.

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

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

MINUTES OF PREVIOUS SESSION: **Councilman Daniels moved to approve as distributed the minutes of regular session October 6, 1993. Motion seconded by Councilman Prince.

Councilman Driggers pointed out that on page 16, next to the last sentence, the word "not" should be dropped.

**The motion was approved as amended, 6-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: None presented.

PROCLAMATION: Red Ribbon Week - Mayor Taylor proclaimed the week of October 23-31, 1993, as Red Ribbon Week in consideration of drug awareness.

D.A.R.E. Officer Steve Landis accepted the proclamation and handed out red ribbons to the Council and staff. Officer Landis reported that several businesses, as well as the schools, would be participating in the drug awareness week.

PUBLIC HEARING: ANN 93-02, Bradley - Mayor Taylor opened the hearing at 7:37 p.m., and explained the procedure for the hearing.

Mayor Taylor asked the Council to declare any conflict of interest on the subject matter. The Council declared no conflict. Mayor Taylor informed the hearing body that he lived next door to the subject property and would not be participating in the hearing.

Mayor Taylor asked the hearing body to declare any exparte contact on the hearing matter. None was declared. However, Mayor Taylor commented that he had spoke to his neighbors and the property owner about the subject parcel that is to be annexed.

STAFF: Assistant Planner Jim Wheeler informed the Council that due to a miscommunication, the notices to the surrounding property owners were not mailed in time

to meet the required twenty (20) day notice. Therefore, the hearing matter will be continued until November 3, 1993.

Mayor Taylor asked staff to be sure of the November 3rd date; he thought the posted notice on the property said it was November 8th.

**Councilman Daniels moved to continue the public hearing on Annexation 93-02, until the next Council meeting on November 3, 1993. Motion seconded by Councilman Prince and approved 6-0.

Mayor Taylor closed the public hearing at 7:50 p.m.

COMMUNICATIONS: None presented.

NEW BUSINESS: Accounts Payable - **Councilman Prince moved to pay accounts payable in the amount of \$150,461.86. Motion seconded by Councilman Nolder and approved by roll call vote, 6-0.

Payless Drug Store Liquor License Request - Administrator Jordan reminded the Council that this issue had been discussed at the last meeting, and a motion to deny the request was made and tabled until this session.

Attorney Kelley informed the Council that the Oregon Statutes sets forth criteria whereby a City may hold a public hearing prior to sending the recommendation to the OLCC. Mr. Kelley noted that an ordinance must be in place prior to establishing the hearing procedure. Also, in talking with representatives from OLCC, Mr. Kelley said they put more "weight" on recommendations if they have a public hearing process versus the simple Council recommendation that Canby currently uses. Mr. Kelley said that most jurisdictions merely make a recommendation to the OLCC, however, Tualatin and Portland both have an ordinance that sets forth a public hearing process.

**Councilman Nolder moved to remove from the table, the motion to recommend denial for the Payless package container liquor license. Motion seconded by Councilman Driggers and approved 6-0.

Councilman Driggers expressed his concerns as being the close proximity of the youth center, the need for another outlet when Roth's, which is right next door, sells a great deal of the same products, and whether Payless clerks are properly trained for selling liquor, specifically to underage patrons.

Jim Flynn, 9275 Peytan Lane, Wilsonville, representing Payless, informed the Council that in the 50 stores in Oregon, all sell beer and wine and abide by all rules. Mr. Flynn said he felt their entity was being singled out for another reason. He further explained that the nature of the retail trade for selling beer and wine is to be competitive with other entities. Also, he noted that their intent is not to sell to minors, however, he did not know if there were specific training sessions for clerks.

Mayor Taylor explained that we were not singling out their store, however, this is the first new application with this Council and they have questions and concerns about making a recommendation to the OLCC.

Mr. Driggers asked what percentage of sales were realized from the beer and wine. Mr. Flynn said they have about a 35% sales of pharmacy products chain-wide, and his best guess for alcohol sales would be about 2%.

Councilman Driggers asked what the margin of profit was in alcohol versus pharmacy and cosmetics. Also, he asked if beer and alcoholic was predominately an "ad" item. Mr. Flynn said the margin of profit was much lower for alcohol. Mr. Flynn replied that it is advertised, not predominately, and they do sell non-alcohol beer.

Councilman Driggers said his concept of a drug store was an establishment to buy products to make yourself healthy and attractive. Mr. Flynn said there are a lot of things you can buy in a grocery store which are not healthy for people - it's a matter of choice.

Councilman Driggers asked Chief Giger if he had any opinion on this issue, specifically for enforcement. Chief Giger said the primary enforcement problems occur in establishments that sell alcohol for immediate consumption, which Payless does not. He noted that sometimes there are enforcement problems with grocery stores when adults buy for juveniles.

Councilwoman Stark said she understood that the Council's position is for a recommendation only and felt a lengthy time spent on the issue was not critical. She said if this appeared to be a problem, then the Council should also consider other outlets like grocery stores.

Councilman Driggers replied that there was a value attached to this issue. He said if this was a "rubber-stamped" issue and nobody really cares, then he preferred not to review these issues and just let the City Administrator deal with them.

Councilwoman Miltenberger commented that the OLCC would not ask our opinion unless it was important. Also, tonight we all were wearing Red Ribbons in support of the D.A.R.E. program, she felt the Council might be sending a "mixed message" and suggested we pursue a public hearing process.

Councilman Nolder said since we have no ordinance to deal with the issue, he felt it was not fair to single out one particular establishment, specifically a new City business. He suggested we consider all licenses in town.

Councilman Prince agreed with Mr. Nolder and expressed his interest in reviewing the ordinances of other communities, but felt Payless should not be singled out for denial.

Councilwoman Stark said she felt we should welcome new businesses into the City.

Councilman Daniels was concerned about the proximity of the high school and youth center to the Payless store, however, felt we could not single out this store and address it in the future with an ordinance through a public hearing.

Mayor Taylor said there might be other outlets in town that may be as inappropriate as the Payless facility. He also felt we should set some criteria for the decision process, and was opposed to denying the license to Payless.

Councilman Driggers said he appreciated the discussion tonight and noted that an ordinance would not preclude liquor licensing - it would just create a process for public input. He thought it might be hard to deny licenses to establishments with a "history," and the best time to consider licensing would be during the initial process.

**(The motion on the floor removed from the table.) Councilman Driggers moved to recommend to the OLCC denial of the liquor license application to Payless Drug Store. Seconded by Councilman Daniels. The vote to deny was: Yeah, Daniels, Driggers and Miltenberger; Nay, Stark, Nolder and Prince. Because of the tie vote, Mayor Taylor cast

his ballot in opposition to the motion. The motion failed 4-3.

****Councilman Prince moved to recommend to the OLCC approval of the Payless Store package liquor license. Motion seconded by Councilman Nolder. The vote was: Yeah, Stark, Nolder and Prince; Nay vote was Driggers, Miltenberger and Daniels. Again, due to the tie vote, Mayor Taylor cast his vote of Yeah, the motion was approved 4-3.**

Mayor Taylor requested that we pursue this issue prior to the end of the calendar year.

Appeal of MLP 93-02 - Mayor Taylor reviewed the appeal procedure, pointing out there would be no evidence submitted, only argument on the record.

Mayor Taylor asked the hearing body if they had any conflict of interest. None was declared.

Mayor Taylor asked the hearing body if they had any exparte contact. None was declared.

STAFF - Jim Wheeler, Assistant Planner, reported that the application being appealed is a partition to divide a 7.4 parcel into two parcels, 3 and 4.41 acres.

The northern parcel has frontage on 99 E, the Logging Road is to the northeast, Millar Tire is located to the west, and there is a Warranty Deed for access onto 99E located in the northwestern corner of the parcel.

Parcel Two has an existing home in the center of the northern part of the parcel with access from Second Street.

Mr. Wheeler reviewed the criteria the Council needed to consider to overturn a decision of the Planning Commission, noting that one or more of the following findings must be made: 1. The Commission did not correctly interpret the requirements of this title, the Comprehensive Plan or other requirements of law; 2. The Commission did not observe the precepts of good planning as interpreted by the Council; or 3. The Commission did not adequately consider all of the information which was pertinent to the case.

Mr. Wheeler said that "Condition No. 5" is the portion being appealed: "The access for Parcel One onto Highway 99-E shall be approved by the State Department of Transportation prior to the signing of the partition plat." He said if ODOT does not approve the access the partition does not take place. Mr. Wheeler said the applicant claims the Warranty Deed is valid, thus providing Parcel One with adequate access for development, therefore making Condition No. 5 not necessary. Mr. Wheeler said that ODOT submits that the Warranty Deed only permits the owner to provide for a road approach permit, which is the same for any property owner with or without a deed.

The Assistant Planner pointed out that handouts were provided tonight from ODOT and written statements from the applicants attorney.

The Planning Commission held a hearing on the issue August 23, and continued it to September 13th, to resolve two issues. One was dealing with the access in question, the other issues was resolved. ODOT did not respond to any requests from the staff until September 10th in which they stated their request for an alternative access on Second Street or denial of the partition. That request was reiterated in the recent letter to the City. Mr. Wheeler said the Planning Commission felt the validity of the Warranty Deed was in question and therefore adequate access was in question. He pointed out that Attorney Kelley's September 13th memo to staff stated that Condition No. 5, as written, best protects the City's interest.

Councilman Driggers asked if the deed were a part of the record. Attorney Kelley said it was on the back page of the submittal by the applicant's attorney. Mr. Wheeler said the Commission did see it.

Mayor Taylor asked what if the Council accepts the fact that access is provided and then ODOT says, "No, there is no access." What would be the end result? Mr. Wheeler replied there would be a landlocked parcel with no access, with legal questions as to who is responsible for "taking of the property" because it has no use with no access. He said there is a potential liability for the City to approve a partition that would not have access, thus the reason for drafting Condition No. 5. He pointed out that ODOT has approval authority to access on 99 E.

Mayor Taylor asked if the Council could set an alternate access if 99 E access is not gained. Mr. Wheeler said it was discussed at the Planning Commission hearing and could be an option. He noted that access through Second Street was not provided in the approval or partition plat as presented. Attorney Kelley said the Second Street option was offered to the applicant, that he had discussed it with their attorney, and they chose not to accept that alternative.

Mayor Taylor reviewed the status, 99 E or nothing as being current. He was told that was correct. Mayor Taylor asked if an alternative access could be set by the Council, not naming any specific area access. Mr. Wheeler said that also was correct.

APPLICANT - Kevin Howard, 12033 N.E. Marks, Portland, is the proposed developer. He said they filed the appeal because they believe there is an aggregate fear of ODOT. He said a "land division" does not change the use of the property. (Mr. Howard referred to an October 18, 1993, letter from his attorney which reiterated facts in the record.) Mr. Howard pointed out that ODOT's Administrative Rules give them the right to require an approach road permit from a landowner when the use of the property changes. He said Bill Guttormsen owns the entire parcel in question, and Mr. Howard entered into an agreement with Mr. Guttormsen to build a mini-storage, subject to the partition and subject to access through ODOT. Mr. Howard said Bill Guttormsen has access from Highway 99 E to his residence on a daily basis. He said if the partition is allowed he still will have access and it would not be a landlocked parcel. Mr. Howard said that ODOT directly informed him they do not want any access along that highway.

Mr. Howard said he had managed or developed over 120 such storage units in the United States, and their goal is to build a first-class facility with a nice store front. Also, the National Planning Association study says that of all commercial businesses, this business is the lowest traffic use. The average customer comes in and stays for one year, paying by mail.

Mr. Howard said that Jim Westbrook, from ODOT, visited the site briefly with him while he explained their proposed project. About a week later they received a letter from him denying access for any reason. They then tried to work out an access with Millar Tire, however, ODOT said they would cut out Millar's access if this was successful. Mr. Howard implied that ODOT could deny access to all property owners on Highway 99 E, with or without a Warranty Deed.

Mr. Howard quoted from a September 13th memo from Attorney Kelley to Mr. Hoffman and Mr. Wheeler:

"I still hold to the idea of approval conditioned upon access to 99E being obtained by Howard. I think that best protects the City's interest rather than an outright denial. A conditional approval puts the ball in Howard's court to clear the legal air, so to speak. I'm not sure that ODOT's position is legally sound. I'm not sure it's not, but I don't see any

precedent that ODOT's cited so far as dealing squarely with the issues presented in this case. I think the validity of the deed reservations is undecided in Oregon. Let's give Howard the opportunity to raise it if he chooses."

Mr. Howard implied that ODOT can sit on this petition until it dies. In fact, they told him personally they would try to "kill" any petition process.

He cited the fatal accident that ODOT referred to, saying this was disgusting since it was a single car accident due to icy roads, not due to an access issue.

Mr. Howard reiterated that there would be no change of use in the land. He has a Warranty Deed dated October 9, 1960, and which stated that the restrictions run with the land and forever bind the grantor.

He said that he felt the proper approach was for the City to grant the partition. The time to inquire about access from ODOT would be after he bought the property and applied for a permit to build the mini-storage. He said they would do a right-in and a right-out off the highway to eliminate traffic concerns

Mr. Howard said because of the condition, it negates his arguments and "puts the ball in their (ODOT) court" and they have already indicated they do not want to discuss the issue. He felt this would set a precedent for future property owners trying to get access.

Mr. Howard cited a September 30th communication with Attorney Kelley, whereby Mr. Kelley felt the City's position was the safest to assume and leave the battle with ODOT up to Mr. Howard. He said he respected that attitude, however, making the partition subject to ODOT's approval made him "dead in the water" before he started negotiations.

DISCUSSION: Councilman Driggers asked if the purchase of property was contingent upon the access and, if, when he applied for a use change and didn't get it, then the purchase would not be finalized. Mr. Howard said that was correct. Mr. Driggers noted that since the property hadn't changed hands then it would not be landlocked. Attorney Kelley said if we approve the partition and ODOT denies the access without another easement being reserved, then we have created a landlocked parcel in violation of state law. Mr. Driggers asked if ODOT has a problem with the current use that Guttormsen has of an access off of Highway 99E to his residence. Mr. Kelley said he presumed they did not.

Mr. Howard said that Mr. Guttormsen is making the application and has tried for three years to sell the property. He said if he was denied the access then he would not purchase the property. Mr. Howard also noted that if the access is off of Second then the industrial buildings would be the "gateway" to the City because of the way they must then be cited on the property. Again, he said his project has an upscale store front establishment. Even if he doesn't buy the parcel, Mr. Guttormsen still wants the parcel partitioned for industrial development.

Mayor Taylor asked if we created a landlocked situation, would we face a liability in the matter. Mr. Kelley said if there were no access to the property, the owner would say we have taken all use from the owner because it would have no use to him, in which case we possibly might have to take ownership of the property.

Mr. Howard asked Mr. Kelley his opinion on Attorney Robinson's suggestion of the alternative wording for Condition No. 5, "The access for Parcel One onto Highway 99 E shall be approved by ODOT prior to a change in use of Parcel One." Mr. Kelley said he had discussed this with Jim Wheeler. Mr. Wheeler replied that once a partition is granted,

owners can change, and the next owner may not grant an easement on Second Street. If ODOT will not grant access, the landlocked parcel then exists. Mr. Wheeler said any change of use would mean any use on Parcel One; this is why the City asked for the access prior to the partition, since a change of use will obviously happen. This would then eliminate the possible landlock situation.

Councilman Prince reiterated the criteria for access facilities. Mr. Wheeler said the Commission did not believe there was adequate access for development of the parcel. Again, Mr. Wheeler said if we wait for the actual change of use after a partition without an access, we have a potential for a landlocked parcel.

Administrator Jordan asked if use does not change on Parcel One or Two, does Parcel One have access or will ODOT acknowledge that Parcel One has access if the use does not change. Mr. Wheeler said he didn't know, since ODOT does not actually recognize existing accesses on the highway for existing businesses even though the accesses are not closed. Mr. Jordan asked if ODOT acknowledges the present access under the current use, could the partition take place. Mr. Howard replied that ODOT told him that technically there are two access there, which they do not like, but they would do nothing unless they changed the use. ODOT said if they tried to change the use or partition the parcel they would "block" them.

Mr. Howard asked Attorney Kelley if it would be safe to assume that prior to any change of use that Bill Guttormsen would have to provide access to Parcel One. Mr. Kelley replied that the problem is if the City allows the partition to be approved and it turns out there is no access, we are in a potential liability situation. Mr. Howard asked if the partition could be "conditioned," that if ODOT does not allow Highway 99E access, then Bill Guttormsen will be responsible for providing access to the parcel prior to sale or use. Mr. Kelley restated the question, saying that Mr. Guttormsen could provide an easement off of Parcel Two to Parcel One. Mr. Kelley said that was the condition that was offered to the applicant earlier. Mr. Howard said he would not build on the site unless he could have his facility have a front-end entrance off the highway; he did not want his entrance to be a back-end entrance off of Second Street.

Councilman Driggers asked Mr. Howard why he wanted to work with an agency that has already stated they would not let him do as he wanted when it changed use. Mr. Howard said it forces the "head" management to discuss the issue. He said if the partition were granted, then ODOT would file a petition with LUBA. Mr. Howard said they have names and address of property owners up and down the highway, and they are ready to file a class action suit because of the way ODOT has treated them.

Attorney Kelley asked Mr. Howard why he didn't file an action for a declaratory judgment on the validity of the deed in Circuit Court in Oregon City tomorrow. Mr. Kelley said this would put the issue to the Court, and this type of issue has never been presented to a Court prior to this time. Mr. Kelley said this was an alternative, rather than putting the City in the middle of a fight with LUBA. Mr. Howard replied that the City does not have to defend its position to LUBA. Mr. Howard stated he could not wait one or two years down the road for development due to expenses. He is trying to force ODOT to a discussion now, and if the ultimate answer is "NO", then he said he is out of the picture. Mr. Howard did say he would ask his counsel about filing an action with the Circuit Court, if it were faster. Mr. Kelley said he felt the same amount of time and effort would be spent going through LUBA, as filing in Circuit Court testing the validity of the deed.

Bob Kacalek, Realty World, 489 S.W. First, said he has been in Canby real estate for 20 years, and in the last 7-8 years he has promoted commercial and industrial properties in the community. In his involvement in 8 transfers of highway commercial property they

involved minor conversations with ODOT. He implied that ODOT was a bureaucracy that has no feeling for the community. They have discouraged many participants from developing in the community. Mr. Kacalek said of the 26 properties from Ivy to the Shopping Center, 19 have access availability on Second Street, 7 have access only on Highway 99 E. Mr. Kacalek said in his conversations with ODOT they have stated they want to restrict "any" access on Highway 99 E and force access to the secondary streets. He implied this is restricting growth and trending valuations down which does not help the tax base. He said in this case we have a valid deed, which gives the access to the users. Mr. Kacalek stated, "If that's not valid, folks, then we are really in trouble." Mr. Kacalek encouraged the Council to stand behind this issue to prevent other property owners from facing the same problem.

DISCUSSION - Councilman Prince said he did not believe that the Planning Commission runs scared from ODOT, but acts upon the necessary criteria. He said that Condition No. 5 gives the owner time to obtain access. He said if another easement off of Parcel Two is not obtained, then a landlocked situation occurs.

Mayor Taylor commented that this does not hinder adjacent properties.

Councilman Prince reiterated that if ODOT, as a service provider, will not give access, then we must take that into consideration.

Mayor Taylor asked if the suggested rewording of Condition No. 5 would eliminate the landlocked situation. Mr. Wheeler said it was his understanding even if an alternative access were provided, then ODOT would consider two access point for Parcel One, one on Highway 99E and one on Second Street. They would still not come to the table. Mr. Wheeler said the Commission did offer this and the applicant did not want the alternative access, therefore, the Commission has not really discussed a Second Street access. He said the applicant appealed the condition and is now basically asking for another review of the application. Again, Mr. Wheeler pointed out the three appeal criteria needs.

Councilman Daniels pointed out that the Second Street access is an assumption.

Kevin Howard said if ODOT proves that the deed is not valid, then the property owner must give another access. He said if we gave approval conditioned on ODOT's approval, ODOT will not even discuss it, and then it can be filed in District Court.

Attorney Kelley asked if LUBA would received this as an appeal from ODOT if Condition No. 5 is eliminated. Mr. Howard said his counsel indicated ODOT would probably appeal the decision to LUBA.

Councilman Nolder asked if the Council's process is now to use one of the three criteria to ascertain if the Commission made a wrong decision. Attorney Kelley said at this time, the Council has the option of making or adding a condition, or sending it back to the Planning Commission for further consideration.

Councilman Driggers said he felt the property currently has access and will continue to have access if it is partitioned. He felt the condition was not appropriate because if ODOT says "no," and Mr. Howard doesn't pursue this, then Mr. Guttormsen still has access since the "use" has not changed. He said he would grant the appeal and let Mr. Howard work it out with ODOT.

Mayor Taylor asked Councilman Driggers if he felt the Planning Commission did not correctly interpret the requirements, or interpretations concerning the deed, and therefore feels under current use Condition No. 5 is not required. Mr. Driggers said that was correct.

Councilman Prince reminded the Council that under the criteria of provided services, ODOT said no, and the Commission made every effort with the applicant to try to change the access. He suggested the wording could be changed from access to the parcel, to the words "deeded access." Attorney Kelley said he felt it would not make a difference to add the word "deeded." It is still a condition of approval for ODOT to sign approval of the application. Mr. Kelley stated that the bottom line is would a Circuit Court Judge agree that the deed rights are paramount to the police power claimed by ODOT in controlling accesses to the Highway. He said there have been no definitive decisions in Oregon whereby a warranty deed claiming access supersedes ODOT's police power in denying access.

Attorney Kelley said if the Council wants to have a confrontation with ODOT, then take out Condition No. 5, which means we "possibly" create a landlocked situation. If we remove the condition, the applicant tells ODOT you have to give me access because the parcel is landlocked. Now, with the Condition No. 5, ODOT would say no, an alternative access is available. Mr. Kelley said that is why the applicant did not accept the easement, because it gave an alternative and ODOT would not have to deal with the applicant.

Mayor Taylor said we have these choices: 1. Cite criteria that the Commission made an error and therefore we don't need Condition No. 5; 2. Change the language to add the word "deeded"; 3. Accept the Planning Commission's conditions; or 4. Discuss the easement concept.

****Councilman Driggers moved to grant the appeal of the applicant and eliminate Condition No. 5, making a finding that the Planning Commission did not correctly interpret the requirements of this title, the Comprehensive Plan or other requirements of law pertaining to the deed access provided by ODOT and finding that the applicant currently has access and would continue to have access when partitioned. Seconded by Councilman Daniels.**

Councilman Prince said we should not expose the City to the liability of a landlocked possibility.

Councilman Daniels said he felt that is only an assumption, since he currently has access.

****Vote on the motion to grant the appeal was YEAH, Driggers, Daniels, Stark, Miltenberger and Nolder; voting NAY was Prince.**

Mayor Taylor recessed the regular session at 9:30 p.m. The regular session was reconvened at 9:45 p.m.

Intergovernmental Agreement with Clackamas County for Acquisition of Property - Administrator Jordan reported that the City had been preliminarily awarded a \$90,000 Community Block Grant for a South Side Park. This agreement allows the City to continue with the process.

Attorney Kelley said he had worked with Chuck Robbins, Clackamas County, to draft the agreement to allow the City to purchase property located at 346 S. Knott for a park. Mr. Kelley said according to HUD guidelines, we needed this agreement prior to making an offer on the subject property. Once this document is executed, we will make an offer on November 4, 1993, for the property.

****Councilman Driggers moved to authorize the Mayor to sign, on behalf of the City, an Intergovernmental Agreement between Clackamas County and City of Canby for the acquisition of property to be used as a neighborhood park. Motion seconded by**

Councilman Prince and approved 6-0.

Councilman Daniels pointed out that a letter was in the packet from LCDC regarding the periodic review. Mr. Daniels congratulated Bob Hoffman on his efforts for successfully completing the Comp Plan Periodic Review.

ORDINANCES & RESOLUTIONS: Ordinance No. 901 - Attorney Kelley informed the Council that this ordinance was drafted on the request of City Public Works members who have had an ongoing problem with dogs using our parks as a restroom facility. In fact, Wait Park has a tremendous problem of the same citizens walking their pets in the park for this purpose, thus creating complaints from others, specifically those who have children that often end up in animal litter.

****Councilman Daniels moved that Ordinance No. 901, AN ORDINANCE AMENDING CANBY MUNICIPAL CODE 6.08 REGARDING ANIMAL NUISANCE AND DECLARING AN EMERGENCY be posted and come up for final action on November 3, 1993. Motion seconded by Councilwoman Stark.**

Councilman Driggers asked if a fine was applicable. Attorney Kelley said the fine is from \$100 to \$500 dollars.

Mr. Driggers asked about the enforcement. Mr. Kelley said it is usually complaint driven, by either our staff or a citizen who witnesses the problems. Also, Mr. Kelley said that Mt. Tabor Park in Portland provides a dispenser with plastic bag and scoops for picking up dog feces.

****The motion was approved 6-0. Mayor Taylor asked that the City look into the plastic bag and scoops, such as Mt. Tabor Park uses, and to pursue "signage" in the parks.**

UNFINISHED BUSINESS: Sewer Plant Stage II Improvements - Curt McLeod informed the Council that the sewer plant improvement project is in the six-month stage, and the project is 80+ % complete on site work. He said at this time they are waiting for equipment and instruments to install.

Mr. McLeod said they would be moving into the main control building within the next month for temporary operations. The controls will be installed later. The ponds sludge storage tanks will go into service this month. In December, the secondary clarifiers will come on-line, the aeration basin will be rehabilitated, and they will be completing the raw sewage pump station.

Mr. McLeod said they wanted to discuss some additional work that had been scheduled for Stage II improvements. However, with available funds at this time, he said it would be cost effective to do the proposed five projects with the contractor on-site at this time.

Steve Hanson, Plant Operator, reviewed the five items to be considered:

1. **Modify Aeration Basin Diffusers** - Mr. Hanson said in 1986 the City installed a system on floats and about once a week the hoses are becoming faulty, which means air in the basin is lost and this creates "no treatment." The proposal is to remove that system and retrofit approximately 400 diffusers into the existing aeration basin for an estimated \$18,000-\$20,000.
2. **Demolish Existing Shop Building** - This is a 1956 building that needs to be removed since it will be abandoned. He said it is a functioning building, but needs repair, specifically in the roof and the back area of the building. Proposed cost for demolition is \$12,750.

3. Recoat the Primary Clarifier Mechanism - Mr. Hanson said mechanisms exposed to wastewater are starting to deteriorate and need recoating. He said this is actually preventive maintenance. The cost is \$8,608.
4. General Purpose Pump - In the late 70's a portable pump was purchased to back-up the main pumping station or use in an emergency for a by-pass. Mr. Hanson said the pump is on its last days and a new engine cannot be secured. A trailer mounted pump and piping is \$12,000.
5. Manhole Rehabilitation - A 1971 manhole needs restoration due to the 34th Street Pump Station discharge. Currently, it has a potential for collapse. Rehabilitation price is \$1,500.

Mayor Taylor asked about funding. He was informed we have available funds from the bond money.

Councilman Daniels asked if the costs were fixed or could they be negotiated. Mr. McLeod said some are fixed and some can either be negotiated or bid: number 1, 4 and 5 are estimates; and 2 and 3 are quotes.

Councilman Driggers said he wanted to see the necessary items bid. Also, would we sell the pump? Mr. Hanson said we would continue to use the pump.

Councilman Nolder asked if we could repair the building in Item Two and then use it. Administrator Jordan said he visited the site and commented that he did not want to spend \$12,000 to remove a building that doesn't have to be removed. Mr. McLeod said the building is nearly 40 years old and would be removed in the future to make the site more aesthetic.

Mayor Taylor suggested that the building could be used to store items for the Police Departments. Also, during Phase II, there should be heavy equipment in the area, and we could consider removing it then.

Chief Giger will review the building and estimates will be secured for the roof repair.

****Councilman Daniels moved to approve the sewer improvements: #1, Modify Aeration Basin Diffusers, #3, Recoat the Primary Clarifier Mechanism, #4, General Purpose Pump, and #5, Manhole Rehabilitation; and to proceed with design needs and negotiations with Slayden Construction. Motion seconded by Councilman Prince and approved 6-0.**

OTHER REPORTS OR ANNOUNCEMENTS: Library Department Update - Beth Saul, Librarian, passed out several graphs generated from a software program, that only Ken Hagen and Susan Tweedle can operate at this time. Mrs. Saul said the graphs were self-explanatory, however, she did review a couple of them:

- * Ms. Saul explained that "GR Patrons" were the Grant Patrons from the English as a Second Language program. Currently, they have 117 Hispanic card holders, and prior to that they had 10.
- * The "ILL's" are Inter Library Loans, which are requests from patrons for items loaned between libraries.
- * They went on an active recruitment campaign and now have 25 volunteers, they are aiming for 40, previously they had only 10 volunteers.

- * The monthly circulation in July was 10,332, and she noted that they had never broke the "10,000" mark before, and rarely circulate over 9,000.

Mrs. Saul said the ILL fee has been in place for two years, and prior to that fee, they had 600+ ILL's, and with the fee it is usually in the 200's.

Mayor Taylor commended Mrs. Saul for targeting information for outcome measurers requested by the Budget Committee. He suggested that the goals be built into the graphs in the future.

County Library Information - Administrator Jordan informed the Council that he was the Chair of a group working within the County Library Network group, and he would be attending a meeting on Friday morning that he needed Council direction on regarding a distribution formula for the proposed County Library Levy. The proposed levy will rise from 29 cents per thousand to 35 cents per thousand. The current formula, a base refund/equalization, is not adequate to meet individual library jurisdiction needs. The new formula does a full base refund, so every dollar levied in the City of Canby would return to our library. Then there would be a charge based on each City's percentage of the total circulations done in the County for the Network services, such as computer, networking and courier. Finally, there would be a reimbursement rate for each City library based on their circulations to unincorporated residences. Mr. Jordan said the major issue that will be debated is a "maintenance of effort" clause in the ballot title. This means that City libraries that are reimbursed for serving unincorporated patrons would be required to maintain the actual dollars they give to their library in 1993-94. This would be a requirement for the life of the levy. Mr. Jordan asked the Council for feedback on the maintenance of effort clause.

Mayor Taylor asked if we would be required to continue to put "x" amount of dollars that we currently put into the library if we received the levy money. Mr. Jordan said the levy would create a substantial increase in revenue for all libraries and the County Commissioners are fearful that some Cities would simply not put in their current share of support, opting to use the additional resources for other things such as street maintenance.

Mr. Jordan pointed out that Clackamas County uses only County levy money to support their library, as does Estacada and Molalla primarily use levy money. He noted that in Canby the City General Fund supports the library with approximately \$130,000, and between \$80,000 and \$85,000 comes from the levy.

Councilman Prince felt if citizens voted on the library levy, then the money should be spent only in that area and current funds should not be taken from the library to subsidize other City needs.

Mayor Taylor said he is not in favor of the proposed maintenance efforts, saying it is an inequity for Cities that have never supported their library and strictly use levy revenues to finance their libraries. These Cities are held "harmless" in this scenario versus Canby who has supported our library because levy revenue was not sufficient to support the library. Mayor Taylor felt the City should have the authority to free-up money for other City priorities if our library were to get more levy revenues. In other words, our library might sit on a huge budget due to this process, and other City functions or departments might suffer.

Mr. Jordan said they discussed a compromise where all base refund money goes back to everyone automatically, only the reimbursement share is withheld if there is no maintenance of effort. However, this does hurt the smaller libraries that need the money and service a large number of unincorporated patrons. However, Lake Oswego, West Linn, Wilsonville do not serve many unincorporated patrons and are not hurt at all because

of their base refund.

Mr. Jordan reminded the Council that this is a County levy and the LNIB group is simply an advisory committee. He reiterated that even if LNIB votes not to support the maintenance effort clause, the County Commissioners can still insist upon the clause.

Mayor Taylor suggested that the City oppose the maintenance effort clause with a compromise that the clause be restructured to say we would not cut funds any "greater" than the increase in the levy. In other words, if we receive an additional \$50,000 dollars, we would not cut more than that amount.

Councilman Driggers said he understood the intent to improve library services, however, Cities need budget control. He suggested a compromise for the maintenance efforts of not being able to cut more than 50% of additional funds generated by the increased levy.

Councilman Daniels said he would approve a mandate for some of maintenance level, 50% would be appropriate.

Councilman Driggers said his intent was to mandate 50% of the increase. If we received an additional \$60,000 due to a new levy, the most we could cut from our general fund in library support would be \$30,000.

Councilwoman Stark agreed with both Councilman Driggers and Daniels in the 50% compromise.

Councilman Prince said he felt the entire amount should go to the libraries, since that is what the voters will vote upon. He pointed out that this was a three-year levy, and we could do a great deal with the extra money in those years.

Councilman Nolder said he liked the Mayor's suggestion of reducing the City support in the amount of the increase.

Councilwoman Miltenberger agreed with Councilman Driggers comments.

Mayor Taylor stated that if the County Commissioner's proposal is approved, the City will not be able to do anything to the library budget, other than accept the increase.

Administrator Jordan asked if the 50% compromise of the additional amount was the majority intent of the Council. Mayor Taylor said yes, and if that is unacceptable, the maintenance effort is acceptable.

- ACTION REVIEW:**
1. The Annexation 93-02 Public Hearing will be continued until November 3, 1993.
 2. Recommend approval of the Payless package container liquor license and return to the Council before the end of the calendar year with a proposed ordinance for public hearing criteria.
 3. Overturn the Planning Commission decision on MLP 93-02 and prepare Findings.
 4. Investigate cleanup measures for animal feces in our parks, and post Ordinance No. 901 for second reading.
 5. Implement Sewer Plant Stage II improvements, 1, 3, 4, and 5.
 6. Enter into an Intergovernmental Agreement with Clackamas County for the acquisition of land for a South Side Park.


Administrator Jordan reminded the Council of the FOCUS meeting tomorrow in Tigard, 5:30 p.m.. Councilwoman Miltenberger will attend the session.

Also, Mr. Jordan reminded the Council of the Clackamas County Cities Association meeting next Thursday evening at the Sunnyside Inn.

Mayor Taylor informed the Council that the scheduled Executive Session would be canceled for the evening.

Mayor Taylor adjourned the regular session at 10:55 p.m.


Marilyn K. Perkett
City Recorder


Scott Taylor
Mayor

PROCLAMATION

WHEREAS, the problems associated with drug use and alcohol abuse are prevalent in all our communities, regardless of their size or location, with average age of first use being 12.5 years for alcohol and 12.5 years for illicit drugs; and

WHEREAS, reversing this trend will not occur overnight, making it imperative that patience and continued commitment to visible, unified prevention efforts in reducing demand for drugs be supported by community members; and

WHEREAS, the Canby Area Prevention Team is joining with the schools, businesses, churches, parents and youth in a grassroots effort to stop the abuse of drugs and therefore help our children to reach their full potential; and

WHEREAS, the 1993 Red Ribbon Campaign theme is "NEIGHBOR BY NEIGHBOR, RIBBON BY RIBBON, WE ARE UNITED FOR DRUG FREE YOUTH" the focus of which is to create an environment in which drug use is not tolerated.

NOW, THEREFORE, I, Scott Taylor, Mayor of the City of Canby do hereby proclaim October 23 - October 31, 1993, as

RED RIBBON WEEK

and encourage each of our citizens to wear and display Red Ribbons to symbolize our joint commitment to establishing a drug free community and one in which we may take pride.

BE IT FURTHER proclaimed that this body encourages its citizens to serve as role models for its children by visibly and enthusiastically participating in alcohol and drug prevention education activities within the City of Canby.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Canby to be affixed this 20th day of October in the year of our Lord One Thousand Nine Hundred and Ninety-Three.

Scott Taylor, Mayor