

**CANBY CITY COUNCIL
REGULAR SESSION
NOVEMBER 3, 1993**

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, City Planner Bob Hoffman, Police Chief Jerry Giger, Aquatics Director Scott Nelson, Librarian Beth Saul, Michael Caudle, Andrew Bates, Chris Etzel, Walt & Nancy Caudle, Lyle Read, Steve Floyd, Martha Stiven and Janet Paulsen.

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 20, 1993. Motion seconded by Councilman Nolder and approved 5-0.

(Councilman Prince arrived at 7:34 p.m.)

CITIZEN INPUT ON NON-AGENDA ITEMS: Administrator Jordan introduced Steven Floyd who was recently hired as a full time Code Enforcement Officer. Mayor Taylor welcomed Mr. Floyd to the City staff.

Councilman Driggers acknowledged the recall petition that had been filed against him Tuesday. Mr. Driggers said he was concerned that the petitioners were soliciting signatures with statements that were not "truthful." Mr. Driggers said implications were made against his character. Mr. Driggers stated that he was not "homosexual," and he is intending to fight the recall process.

PROCLAMATION: Mayor Taylor read and proclaimed the week of November 14-20, 1993, as American Free Enterprise Week. Mayor Taylor presented the proclamation to Andrew Bates and Mike Caudle from the high school.

SEWER PROJECT UPDATE: Curt McLeod informed the Council that the sewer plant expansion project will be 80% complete this month. He said the total project should be completed by next April. The remaining construction will be nearly completed in the next two months. At this time the paving is done, and most of the buildings are completed.

Councilman Daniels asked if inclement weather could cause a delay. Mr. McLeod said most of the outside work is done, and he saw no problems due to potential adverse weather.

COMMUNICATIONS: Eagle Scout Project - Mayor Taylor moved to this section of the agenda to allow Chris Etzel to address the Council regarding a proposed Eagle Scout Project.

Chris Etzel said he was with Boy Scout Troop # 258 and was preparing to achieve his Eagle Scout rank. He informed the Council that he was very active in local theater, and he proposed building a stage at the amphi-theater in Canby Community Park. Mr. Etzel felt a stage would promote more use of the area. He passed out photographs of the proposed

project. Chris said that the Canby Arts Association and Civic Theater Group had both pledged \$100 towards his project. Preliminary estimates for the project are \$500.

Councilman Nolder commented that the proposed project was most worthwhile.

Councilman Prince pointed out that other Boy Scouts had completed various projects in "River Park" and felt Mr. Etzel's project was most appropriate.

****Councilman Prince moved to approve the proposed Eagle Scout Project of Chris Etzel for a stage at the amphi-theater in Canby Community Park, adding that he should coordinate his project with Scott Nelson. Motion seconded by Councilwoman Miltenberger and approved 6-0.**

****Councilwoman Stark moved to authorize a donation of \$300 to Chris Etzel to complete his Eagle Scout Project of a stage at River Park. Motion seconded by Councilman Prince.**

Councilman Driggers asked if permits were required. Mr. Jordan suggested that Chris coordinate his project with the Public Works Office and permit fees would be waived, if necessary.

Mayor Taylor suggested that Mr. Etzel continue to solicit donations for his project, and if he did not attain his needed funds, then the City could provide funding up to \$300.

****Councilman Daniels moved to amend the motion on the floor to say, "the City will provide funding up to \$300, if solicited funds are not achieved." Councilman Driggers seconded.**

****The maker of the original motion and second agreed to the amendment. The original motion on the floor was approved, as amended, 6-0.**

Councilman Nolder said he wanted to commend the two young men here for the Proclamation. He reported that Andrew Bates and Michael Caudle had made a presentation at the Chamber Lunch on Tuesday regarding a program they have at Ackerman School called the "Cookie Corner." He said their presentation was excellent, and he felt the program they were implementing at Ackerman was very good as a business training tool.

PUBLIC HEARING: ANN 93-02 - Bradley - Mayor Taylor opened the hearing at 7:50 p.m., stating that this hearing was continued from October 20, 1993, to this date.

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

Mayor Taylor asked the hearing body to declare any exparte contact since the last meeting. Again, none was declared.

Mr. Taylor reminded the Council that the proposed site is next door to him.

STAFF - City Planner Bob Hoffman explained that the proposed site is located on the west side of N. Maple across from the Willamette Valley County Club. Only half of the 1.5 acre parcel will be annexed, about .7 of an acre. Only the eastern 150 feet of the tax lot will be annexed because the Urban Growth Boundary only extends to the first 150 feet down Maple Street. This will result in two tax lots being created.

Mr. Hoffman said the parcel can be serviced by public facilities. Also, he noted that

resolutions for recommendation of annexations do not have conditions attached, however, there are a number of understandings set forth for future development. Mr. Hoffman said the applicant intends to tear down the existing house and build a new one on this parcel.

Councilman Prince asked if the Planning Commission was concerned about the "two tax lot" situation. Mr. Hoffman replied that Clackamas County did not comment on the notice that was mailed to them. However, he said some Commissioner were not comfortable with the creation of two tax lots without a land partition review. Mr. Hoffman implied that this is a common practice.

Councilman Daniels asked if an easement was provided for the back tax lot. Mr. Hoffman said an easement was provided for that parcel.

Mayor Taylor asked if additional conditions could be applied during the development process for widening of the road. Mr. Hoffman said they will need to dedicate the needed right-of-way for the street, however, we don't have a "good mechanism" in place for recovering costs for roads on a single-family lot development, only for development beyond one single-family lot.

Mr. Hoffman said he felt that this parcel would ultimately be partitioned, at which time they will pay the cost of street development.

Mayor Taylor urged City staff to review a process whereby a single family lot residential development will also share the burden of costs in street development, the same way a developer does in a subdivision. Mr. Hoffman said they would pursue this issue in the permit process.

Mayor Taylor asked about the sewer flow in the area. Mr. Hoffman said it would go to the north, which is downhill and would create no problems.

APPLICANT - Paul Shultz, attorney for the property owners, Mr. & Mrs. Lester Bradley, informed the Council he would answer questions, however, he indicated that Mr. Hoffman had adequately addressed the issue.

Mayor Taylor asked if there were any other proponents or opponents on the annexation. None were voiced. Mayor Taylor closed the hearing at 8:06 p.m.

****Councilman Prince moved to adopt Resolution No. 552, A RESOLUTION RECOMMENDING APPROVAL TO THE PORTLAND METROPOLITAN AREA LOCAL GOVERNMENT BOUNDARY COMMISSION OF THE ANNEXATION TO THE CITY OF CANBY, CLACKAMAS COUNTY, OREGON (APPLICATION OF THE BRADLEYS), OF TAX LOT 400 OF TAX MAP 3-1E-28A, LOCATED ON THE WEST SIDE OF N. MAPLE STREET, NORTH OF N.E. 22ND AVENUE. Motion seconded by Councilman Daniels and approved 6-0.**

Paul Shultz informed the Council that he routinely dealt with numerous planners on land use issues, and he said the Canby staff were extremely cooperative and highly professional.

NEW BUSINESS: Accounts Payable - **Councilman Daniels moved to approve accounts payable in the amount of \$397,675.00. Motion seconded by Councilman Driggers and approved by roll call vote, 6-0.

Establish Library Endowment Fund - Beth Saul, Library Director, informed the Council that the Library Board has investigated various endowment funds as an enhancement method. The City will still provide funding for basic services. Mrs. Saul said the packet contained wording from a Lake Oswego ordinance to create an endowment fund.

Mayor Taylor noted that City staff would provide the professional financial management of the fund.

Councilman Driggers asked how this differed from the Friends of the Library. Mrs. Saul said that group would actually solicit donations for this fund, however, the City would provide the money management. Also, she noted that the Friends of the Library usually raise funds between \$800 to \$1,500 annually for special projects. Actually, larger donations are the goal for the endowment fund.

Mayor Taylor asked if City Treasurer Virginia Biddle had been advised of this proposal. Administrator Jordan said there should be no problem with the City managing the money, and it will be invested along with the rest of the City funds. Mr. Jordan said the principle of the endowment fund could be invested for longer terms since liquidity was not an issue.

The Council gave a unanimous consensus for approval to bring an ordinance back to the Council for review.

ORDINANCES & RESOLUTIONS: Ordinance No. 901 - Administrator Jordan briefly reviewed this ordinance on second reading, which specifically makes it an offense to permit offensive littering of animals.

****Councilman Daniels moved to adopt on final reading, Ordinance No. 901, AN ORDINANCE AMENDING CANBY MUNICIPAL CODE 6.98 REGARDING ANIMAL NUISANCE AND DECLARING AN EMERGENCY. Motion seconded by Councilwoman Stark and approved 6-0, by roll call vote.**

UNFINISHED BUSINESS: CPA 93-01, Northwoods Investments Findings - Administrator Jordan informed the Council that the written Findings were drafted for Council consideration after a lengthy process to change the Comprehensive Plan.

****Councilman Daniels moved to adopt the Findings, Conclusions and Order CPA 93-01, for Northwoods Investments as prepared by staff. Seconded by Councilman Nolder.**

Discussion - Councilman Driggers asked when the zoning changes should be discussed. Mr. Hoffman said this was only the Comp Plan change; a hearing will be set later for the zone change.

Administrator Jordan commented that the zone change hearing would be on the "record only" and no new testimony or evidence would be submitted. Only arguments will be allowed.

Councilman Prince said that he had prepared a statement regarding this issue:

"It is my opinion that need has not been met in this application. Staff has not shown--has shown bias in accepting the report from the applicant in whole, without doing its own assessment of facts. In fact, a Planning Commissioner had to provide additional information, which is on the record, to show that need has not been shown. The only response from staff was to try and discredit the report by *hope* massaging their own growth figures and using opinion to state that the whole project will not come about in the way the Planning Commissioners voted it would be developed. The only public benefit present here has been a well on this site that staff has used all along to justify annexation. Finally, I think staff is trying to set a dangerous precedent that states that citizen input and farmland are not important considerations in Land Use in this City. They would have us believe that over 400 units of new housing that are ready to be developed are not enough and that we

have to go outside the Urban Growth Boundary to pick-up another 100 houses. Where will we find the services for these people? Especially since our elementary schools are at maximum, at the moment. I find this kind of planning is irresponsible and I find its biased towards development at any cost, versus planning that takes in to account the community's ability to absorb growth. That's my statement."

Councilwoman Stark stated that she disagreed with Terry on part of what he said. Mrs. Stark said she took into consideration what she read in the information provided and it was helpful. She said, "It was not shown to me that it was a feasible piece of farmland." She did not feel the City staff is "for houses and not for farmland." Mrs. Stark said that in part of what Mr. Prince stated, she had to totally disagree with him.

Councilman Daniels pointed out that it was "in question" whether the subject parcel would remain a viable agriculture parcel due to the price of the property. Also, the present contractor did not renew the lease.

Councilman Prince said, "It may be my opinion, that is the way things are--." He stated that going outside the Urban Growth Boundary and using farmland is setting a dangerous precedent. Mr. Prince said it is not in "our ability" to decide which property is supposed to be economically feasible for development or not. He further stated, "It is outside the Urban Growth Boundary and shouldn't be annexed until we show proof of need, and I don't think proof of need has been show."

Councilwoman Stark asked if that parcel was originally to have been brought into the City several years ago.

Councilman Prince said it was not discussed. He said this was designated to be out of the Urban Growth Boundary, and it was irrelevant who made the decision. He said the Planning Commission reviewed the same material the Council did, and they found the "need" was not present.

Mayor Taylor interjected that we were not going to re-hash this issue - the task tonight is to decide if the Findings, as indicated by staff, are correct.

Councilman Driggers stated that his concern was that some people did not "articulate" how their decision met the conditions of need. He implied that some speculation was that the decision was "common sense," which he said he didn't deny. However, he was not sure that the criteria for need was met.

Councilman Daniels pointed out that we were not to re-hash the subject, but to accept or deny the Findings. He noted that certain Findings could be challenged.

Mayor Taylor reviewed the motion for the Council.

****Motion was approved by a 4-2 vote to adopt the Finding, with Councilman Prince and Driggers voting nay.**

Administrator Jordan said he needed to make a comment, given the statement made by Councilman Prince. He stated:

"Mr. Hoffman drafts planning and staff reports with the help of Mr. Wheeler, primarily. And in my opinion, he always does a very professional job, examines the criteria that are in the ordinance, and does the very best he can to make a recommendation to the Planning Commission based on those criteria, and not any personal bias. I will further say that Mr. Hoffman alone does not review staff

reports that go to the Planning Commission. I have an opportunity to review those reports, Mr. Kelley has an opportunity to review those reports, and I will take full responsibility of the reports."

Mayor Taylor said that the vote of the Council indicated the Findings were properly reflected.

Bob Hoffman informed the audience that copies of the Findings will be sent to all people with standing, which is a long list. They will have an opportunity to appeal this action up to 21 days from the date of the mailing. The notice to appeal must be filed with LUBA.

Mayor Taylor noted that another draft of the Historic Ordinance had been passed out. Mr. Taylor said he felt the workshop was useful and that Mr. Hoffman had prepared what he had been instructed to draft. Also, drafts were sent out to numerous individuals that had concerns about the proposed ordinance. To date, no comments have been received. Mayor Taylor suggested that this be placed on the agenda soon as possible, perhaps in December.

Administrator Jordan said that the committee working on the "sign ordinance" has been scheduled for the next meeting. Also, a public hearing will need to be set for this ordinance.

OTHER REPORTS OR ANNOUNCEMENTS: Administrator Jordan reminded the Council that this weekend would be the annual League of Oregon Cities Convention. Besides himself, the Mayor, Chief Giger and Bob Hoffman would be attending.

Scott Nelson displayed a nice plaque that had been presented by the Oregon Recreation and Parks Association to the following members of his staff: Chris Simmons, Kerasun Graybill, Sara Robbins, Peter Holt and Nathan Temple. The award is given to only one recipient each year.

Mr. Nelson informed the Council that the 1993 Oregon Life Saving Award resulted from an incident this summer when a patron lost consciousness due to medication problems. The lifeguards all responded to the incident with immediate actions and were able to make the victim comfortable after pulling her from the water.

ACTION REVIEW:

1. Coordinate the Eagle Scout Project with Chris Etzel.
2. Forward Resolution # 552 to the Boundary Commission recommending the Annexation.
3. Research method to recover cost for single development street improvements.
4. Implement Ordinance # 901, regarding Animal Nuisance.
5. Send notices to people with standing on the CPA 93-01, Northwoods Investments.
6. Set an agenda date for the Historic Ordinance.
7. Prepare a Library Endowment Ordinance.

****Councilman Prince moved to go into Executive Session under ORS 192.660 (1)(e), to negotiate real property. Motion seconded by Councilman Daniels and approved 6-0.**

Mayor Taylor recessed the regular session at 8:45 p.m. to go into Executive Session. The regular session was reconvened at 9:20 p.m. and immediately adjourned.

EXECUTIVE SESSION
NOVEMBER 3, 1993


Present: Mayor Taylor, Councilors Driggers, Daniels, Stark, Prince, Nolder and Miltenberger. Also, Administrator Jordan and Attorney Kelley.

Mayor Taylor called the session to order at 8:55 p.m. in the Utility Board conference room.

ORS 192.660 (1)(e) - The Council discussed the possible acquisition of real property.



Marilyn K. Perkett
City Recorder



Scott Taylor
Mayor