

**CANBY CITY COUNCIL
REGULAR MEETING
AUGUST 4, 1993**

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

Also present: Administrator Michael Jordan, City Attorney John Kelley, Police Chief Jerry Giger, Aquatics Director Scott Nelson, City Recorder Marilyn Perkett, John Smith, Mark & Patricia Gilbert, Mark Triebwasser, Holly Fagg, Betsy Ross, Irene Higoshi-Breshears, Myra Weston, Matt Knoblauch, Steve Hanson, Curt McLeod, Cam Sivesind and Jan Paulson.

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

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, July 21, 1993. Motion seconded by Councilman Prince and approved 5-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: Centennial - Irene Higoshi-Breshears, member of the Centennial Committee, read a brief letter from Canby, Minnesota, residents that attended our General Canby Day on July 4th. Ms. Higoshi-Breshears presented the City with a large "birthday book" filled with pictures from the Minnesota delegates.

Mayor Taylor thanked her and stated that the book would soon be in our Public Library on display.

Betsy Ross and John Smith, Centennial Committee members, presented the City with a Centennial Plate, #100, in honor of Canby's 100th birthday.

Citizens for a Cleaner Canby - Patty Gilbert, 296 S. Knott, passed out an agenda and letter from the committee she founded, CCC (Citizens for a Cleaner Canby). Ms. Gilbert said she has lived in Canby for many years and intends to raise her family in this community, however, she expressed a great deal of concern regarding lack of laws or codes for various problems in the community. Ms. Gilbert said the Police Department has been very supportive of her calls and complaints, but she felt the City needed to implement stricter codes that could be enforced for things such as noise, public alcohol consumption, sanitation and general cleanliness. Ms. Gilbert has been going door-to-door in her neighborhood to solicit interest, on a proactive basis, for her proposed organization.

Mayor Taylor asked that Ms. Gilbert organize her group and let the City know of a convenient time to schedule a meeting with the Mayor and Administrator to discuss their concerns.

ACLU - Councilman Driggers informed the Council that he had recently withdrawn his name from the ACLU action that was trying to overturn the City Charter Amendment. Mr. Driggers said part of his reason was to help facilitate the City being able to dismiss the case without any cost to the City.

Swim Center - Scott Nelson honored Mark Triebwasser, who had served on the Swim Center Advisory Board for eight years. Mr. Nelson said some of the accomplishments during Mark's term were: pool logo, renovation, special event swims, expanded hours and

rate changes. Mr. Nelson noted that the results were evident with the doubled attendance at the pool.

Holly Fagg, current PAB member, presented Mr. Triebwasser with a \$50 gift certificate to the Anchorage Restaurant on behalf of the board members.

Scott Nelson presented Mark with a "family pass" to the swim center, good until the next century, the year 2000.

Mayor Taylor noted that when he first became a Councilor he was a liaison to the pool, and Mark was a dedicated volunteer at that time. The Mayor thanked Mark for his many volunteered years to the City, as well as numerous other volunteers the City has in various areas.

COMMUNICATIONS: Letter from Myra Weston-Street Names - Mrs. Weston addressed the Council regarding a street in the Cypress Venture development on southwest Canby that has been named Radcliffe Court. Mrs. Weston said the name is in error; it should read "Rackleff". However, she pointed out that City Ordinance No. 564 sets forth criteria for naming the streets alphabetically from west to east with "tree" names, and this particular street is out of place alphabetically. She recognized the fact that the street is private not public, however, she felt it would simplify location of addresses if the City were to continue with all streets according to the adopted ordinance. Some of the names Mrs. Weston suggested were Balsam, Bayberry or Beech.

Administrator Jordan said this had been brought to the attention of the Planning Department, and they are looking into correcting this concern.

The general consensus of the Council was to proceed with renaming the street in the suggested manner and to be sure future street naming meets the ordinance criteria.

NEW BUSINESS: Accounts Payable - **Councilman Prince moved to pay accounts payable in the amount of \$357,558.97. Motion seconded by Councilman Daniels.

Councilman Prince asked why the Robertson Utilities bill had been deleted.

Administrator Jordan said there had been a change order dispute.

Curt McLeod interjected that the construction company had received instructions from CUB to check with them about line locates prior to the realignment work that was in progress. Mr. McLeod said the contractor probed and did not call CUB and eventually broke a line creating a 250,000 gallon water spill to the sewer system which had to be treated. CUB feels they are not responsible for the damage since they were not contacted to locate lines, and Mr. McLeod concurs with that analogy. The contractor will now meet with CUB to settle the dispute, therefore, we held the payment until the matter is settled.

**The accounts payable was approved 5-0, by roll call vote.

Traffic Safety Committee Recommendations - The Council reviewed a memo from Matt Knoblauch, Chairman of the Traffic Safety Committee, regarding several recommendations. The following suggestions were made by the committee:

- * four-way stops at N.W. 4th and N. Holly and four way stops at N.W. 4th and Grant.
- * alley between N. Holly and N. Ivy and N.W. 2nd and 3rd become one-way east bound.
- * no parking on S. Ivy on west side between S.W. 2nd and 8th.

Councilman Driggers asked if N.W. 4th and Grant was once a four-way stop. Chief Giger said it was in 1972, and he did not know why it was changed.

Matt Knoblauch informed the Council that increased use of Wait Park, along with so many children in the area was the rationale for the proposed four way stops.

Mayor Taylor suggested that the Canby Herald publish a story on the proposed changes and request citizen input. Also, letters will be mailed to residents and businesses in the areas of the proposed changes requesting their input. The issue was scheduled for consideration, after input, on the September 1st agenda.

ORDINANCES & RESOLUTIONS: Ordinance No. 896 - Administrator Jordan explained that this document was drafted as a requirement for the purchase of sewer plant Hydronix equipment. The ordinance also set forth the sole source criteria for this purchase.

****Councilman Daniels moved that Ordinance No. 896, AN ORDINANCE AUTHORIZING THE PURCHASE OF A HYDRONIX SEWER LIFT STATION BY THE SEWER DEPARTMENT; EXEMPTING THE PURCHASE FROM THE PUBLIC BIDDING PROCESS; AND DECLARING AN EMERGENCY, be posted and come up for final action on August 18, 1993. Motion seconded by Councilwoman Stark and approved 5-0.**

UNFINISHED BUSINESS: Township Road Pedway Project - Administrator Jordan explained that Clackamas County has implemented a program that will provide more pedways near schools. The County is willing to enter into an Intergovernmental Agreement with the City for a Pedway Project in the area of the new Trost School. The project would provide approximately 800 feet of curb, sidewalk and a panel of pavement to existing pavement on the south side of Township from the east end of Township Village to S. Redwood Street. Clackamas County will provide engineering services and pay \$25,000 for the project. The City's portion should not exceed \$40,000. Preliminary estimates for the entire project were \$65,859. Mr. Jordan said the City crew will do the storm drainage system, with a proposed cost savings of \$7,500.

Councilman Prince said he had recently been in that area and felt this project would be a definite need with the new school.

Councilman Driggers asked if funds were available in the budget. Administrator Jordan replied that the Street Fund had a \$40,000 cash carryover from last year that would be used.

****Councilman Daniels moved to authorize the Mayor to enter into an Intergovernmental Agreement with Clackamas County for the Township Road Pedway Project. Motion seconded by Councilman Prince.**

Mayor Taylor asked if staff could check into a mechanism for getting reimbursement for the improvements from future developers. Mr. Jordan felt that we could implement an advanced financing agreement.

A concern was expressed about holding up the project, however, Attorney Kelley said we could implement the advanced financing agreement after the project is completed. The Council agreed, by general consensus, to pursue an advanced financing agreement.

****Motion was approved 5-0.**

Polymer Feed Tanks Modification - Curt McLeod reminded the Council that this issue was

deferred at the last meeting when a change order request had been presented for the sewer plant project. Mr. McLeod said that during the prebid approval STRANCO was allowed to bid an "or-equal" as an equipment manufacturer. STRANCO implied that this allowed them to delete the equipment in question, two tanks and a mixer. However, Curran-McLeod gave no verbal or written communications to that effect. Mr. McLeod reviewed the five letters of transmittal regarding the issue and pointed out that even if the additional costs for the equipment were to be added to the bid, \$4,974, they would still have been the low bidder. Curran-McLeod recommends a change order to allow the tanks and mixer to be purchased.

Steve Hanson informed the Council that he had visited a plant in Forest Grove and the Unified Sewerage District, both use the equipment in question, and they feel it enhances the operation.

Attorney Kelley suggested that the supplier be requested to document that the addition of the tanks and mixer will not affect the warranty.

****Councilman Prince moved to authorize the Mayor to sign a change order for the Polymer Feed Tank Modification for \$4,974 and request a letter from STRANCO indicating this will not void the warranty. Motion seconded by Councilwoman Miltenberger and approved 5-0.**

OTHER REPORTS OR ANNOUNCEMENTS: Mayor Taylor reminded the Council that he had tickets for the annual Mayor's Ball, "Fall into the Night", which will be in October and benefits many social agencies in the County.

Mayor Taylor also informed the audience of a World Series of Baseball for 15 year old boys to be held in Canby August 13-22, at the high school fields.

- ACTION REVIEW:**
1. Staff will be working with the Citizens for a Cleaner Canby to set up further discussions.
 2. Request citizen input through the news media on the Traffic Safety Committee's suggested changes, sending letters to affected citizens, and setting it on the September 1st agenda.
 3. Post Ordinance 896 prior to final action on August 18.
 4. Enter into an Intergovernmental Agreement with Clackamas County on the Township Pedway Project and pursue an advanced financing agreement for the project.
 5. Authorize the Polymer Feed Tank Modification change order.

Councilman Driggers commented on the recall that had been filed against his Council position. He expressed concerned about his actions for defending the Constitution and hoped most citizens did not agree with this issue. Mr. Driggers said he felt his position as a City Councilman should not affect his rights. He noted that the OCA sponsored recalls are an attempt at political intimidation to try to quell peoples' comments and "voices". He said he will be actively involved in opposing the recall and continue to do what he feels is his obligation and duties on City issues.

Maureen Miltenberger said she has similar feelings as to what Mr. Driggers expressed. Ms. Miltenberger said she felt she was expressing her feelings as a citizen and a member of the

United States. She also noted that she had withdrawn her name from the ACLU lawsuit and is no longer a plaintiff.

****Councilman Prince moved to go into Executive Session under ORS 192.660 (1)(d), labor negotiations; (1)(e), to negotiate real property; (1)(h), pending litigation; and (1)(i), employee performance evaluations. Motion seconded by Councilman Driggers and approved 5-0.**

Mayor Taylor recessed the regular session at 8:47 p.m. to go into Executive Session in the Police Department.

The regular session was reconvened at 10:17 p.m.

****Councilman Daniels moved to reject the Stipulated Judgment on behalf of the City (regarding the recent City Charter Amendment); and request the City Attorney to so advise the Attorney for the plaintiffs. Seconded by Councilman Driggers.**

Councilman Daniels said he felt strongly about the vote of the citizens, and we should uphold their decision.

Councilwoman Stark said the citizens and the Council are both in an awkward position because we also need to uphold what the State of Oregon requires.

Councilman Driggers said he understands the concerns regarding the vote of the citizens. However, he felt the best choice for the City would be to accept the Stipulated Judgment and save the City thousands of dollars in court costs.

Mayor Taylor clarified the subject since the issue had just been discussed in Executive Session. He noted a suit filed in Circuit Court against the City indicated that the Charter Amendment recently voted on by the citizens should be null and void. This is because of the recent passage of HB 3500, also known as Oregon Laws 1993, Chapter 556, which indicates that Cities cannot pass laws that grant special rights to select groups based on their sexual preference, nor can Cities pass any laws that would single out groups based on sexual orientation. HB 3500 is intended to make the issue a "neutral" one. The lawsuit in question now has offered an agreement asking the City "not to enforce the Charter Amendment," and thus dismissing the lawsuit. If the Stipulated Order dismissing the lawsuit is signed, the City would not be required to pay any attorney fees.

Attorney Kelley read the Stipulated Judgment (a copy will be attached to the minutes of this meeting:

"Based on the stipulation of the parties, endorsed hereon, it is hereby ADJUDGED that Section 8 of Article XI of the Charter of the City of Canby, approved by the Canby electorate on June 28, 1993, is hereby declared to be null and void, in violation of Oregon Laws 1993, Chapter 556, and defendants are permanently enjoined from enforcing that section."

Mayor Taylor reiterated that the motion on the floor was to reject that Stipulated Agreement and instruct the City Attorney to defend the lawsuit.

Councilman Driggers said he felt it had been made clear that the legislature does not want communities to be diversified by such actions as the Charter Amendment created, and therefore the City is obligated to abide by the new Oregon Law in this issue.

Councilman Daniels argued that this issue had been in the legislature for some time and felt that the endeavors of Wendy Roberts, who has been advocating homosexual rights all

along, was able to make this a last minute "sweep" through the legislature. He said now that this a state law, we have to adhere to the law.

Councilman Prince said he felt we must adhere to the laws of the state.

Councilwoman Miltenberger agreed, however, she said it is unfortunate that it appears that the Council would be going against the wishes of the citizens that voted on the issue and now we must follow state law.

****The motion on the floor was voted down, Councilman Daniels voting in favor; and Council members Stark, Driggers and Miltenberger voting against.**

****Councilman Driggers moved we accept the Stipulated Judgment in the matter of Schrock v. City of Canby and instruct the City Attorney to sign it on behalf of the City. Motion seconded by Councilwoman Miltenberger.**

Councilwoman Stark reiterated the hardship this has placed on the City and State, however, by eliminating this lawsuit she felt this would help direct the City to get back "on track" and end these type of issues.

Mayor Taylor commented that when each of them ran for office, this was not the type of issue that was expected to take so much time and energy by the governing body. He also noted that a great deal of money has been spent on this issue, which in all reality, was truly not an "issue" in Canby. Mayor Taylor said he was confident that **if** the legislature had **not** passed HB 3500, the City Council would have been bound to follow the Charter Amendment as voted in by the citizens. However, until such time it was ruled any different, the Council had voted to support HB 3500 at an earlier session, and this places the City in a "no win" situation. Mayor Taylor said his plea is that the City can now move on to other issues, instead of "battling" this sexual orientation matter. Mayor Taylor thanked the Council for taking a stand; he felt it took tremendous courage to deal with the issue, rather than hiding from it.

Councilman Driggers asked to share the following quote from Sophocles: "For kindness begets kindness evermore, that he from whose mind fades the memory of benefits, noble is he no more."

****The motion was approved 4-1, with Councilman Daniels voting nay and the remaining Council voting yea.**

****Councilman Driggers moved to approve the AFSCME labor agreement with the presented changed. Seconded by Councilman Daniels and approved 5-0.**

Mayor Taylor adjourned the regular session at approximately 10:40 p.m.

EXECUTIVE SESSION
AUGUST 4, 1993

Present: Mayor Taylor, Councilors Miltenberger, Prince, Stark, Nolder and Driggers, Attorney Kelley, Administrator Jordan, Cam Sivesind and Janet Paulson.

Mayor Taylor called the session to order at 9:00 p.m. in the Police Department Conference Room.

ORS 192.660 (1)h) - Two pending litigation cases were discussed: Rinkes v. City of Canby and Schrock v. City of Canby.

ORS 192.660 (1)(d) - The AFSCME contract was discussed by the Council.

Mayor Taylor adjourned the Executive Session at 10:15 p.m.

A handwritten signature in cursive script, reading "Marilyn K. Perkett". The signature is fluid and stylized, with a large loop at the end of the last name.

Marilyn K. Perkett
City Recorder

A handwritten signature in cursive script, reading "Scott Taylor". The signature is fluid and stylized, with a large loop at the end of the last name.

Scott Taylor
Mayor