

CANBY CITY COUNCIL
REGULAR MEETING
AUGUST 5, 1992

Mayor Shawn P. Carroll presiding. Council members present: Scott Taylor, Maureen Miltenberger, Walt Daniels, Robert Smith and Terry Prince. Absent: Keith Stiglbauer.

Also present: Administrator Michael Jordan, City Attorney John Kelley, City Recorder Marilyn Perkett, City Planner Robert Hoffman, Assistant Planner Jim Wheeler, Public Works Director Rusty Klem, Librarian Beth Saul, Steve Jones, Charles Van Housen, Pat Ewert, Ginny Jones, Andy Ditommaso, Tom Kotzian, George & Dorothy Knight Mickel, Curt McLeod, Mr. & Mrs. Franklyn Wood, Linda Mihata, Jack Hammond and Mimi Chitty.

Mayor Carroll called the session to order at 7:30 p.m. in the Canby Adult Center dining room. The flag salute and meditation were observed.

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 15, 1992. Seconded by Councilman Smith and approved 5-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: None presented.

SEWER PLANT PROJECT UPDATE: Curt McLeod - Mr. McLeod reported on the tentative schedule for the sewer project: submitting plans to DEQ in October; advertise for construction in February; open the bids in March; and in April break ground. The construction will last about two years and should be complete by June of 1994.

COMMUNICATIONS: None presented.

NEW BUSINESS: Accounts Payable - **Councilman Prince moved to approved payment of accounts payable in the amount of \$198,399.62. Motion seconded by Councilman Smith and approved by roll call vote, 5-0.

New Liquor License - Recorder Perkett reported that Hank Jarboe has applied for a beer and wine liquor license for the restaurant he plans to open in the former Giuseppe's Pizza Parlor on Highway 99E. Both the Police and Fire Departments have approved the application.

Mr. Jarboe informed the Council that he plans to open the first week in September and will be serving gourmet burgers and sandwiches, steaks, pasta and salads.

**Councilman Taylor moved to recommend approval of the application to the OLCC for a beer and wine license for Hank Jarboe's restaurant. Motion seconded by Councilwoman Miltenberger and approved 5-0.

CPA 92-01/ZC 92-01, Chitty (CONTINUED FROM JULY 15, 1992) - Attorney Kelley explained that this procedure had started at the last meeting on July 15, 1992, when the Council heard argument based upon the record, for the request of a zone change and amendment to the Comprehensive Plan, applicant was Mimi Chitty. The Council, at that time, heard argument from several people and the matter was continued for the purpose of allowing the Council to review the record, as well as allow additional argument to be submitted. No other argument was submitted. The Planning Commission had

recommended denying the request. The Council is to make a decision tonight to either accept, deny, or approve with conditions, the recommendation of the Planning Commission.

Mr. Kelley reminded the Council of a letter submitted on July 15, 1992, from Tom Kotzian, Johnson Controls, noting Attorney Jack Hammond had objected to some of the material in that letter. Since that time, Mr. Kelly, Mr. Hoffman and Mr. Wheeler had reviewed that letter and offered the following advise: Page 2, paragraph "A", should read:

"Johnson Controls did offer to buy the subject parcel before this application was filed on February 26, 1992. We did not say that the easement, which runs the length of the parcel, would prevent our using the property."

Also, paragraph "D", in it's entirety should be excluded.

Mr. Kelley said those correction will be made in the original letter submitted by Mr. Kotzian, for the record.

Also, Mr. Hammond would like his letter of July 27, 1992, entered into the record. Mr. Kelley read the letter, which outlined Mr. Hammond's objects to the Kotzian letter of July 15, 1992. Also, the last paragraph refers to a Supreme Court case, Mr. Kelley asked that this paragraph be excised from the record since it was not an issue before the Planning Commission and not part of the record.

Councilman Taylor questioned the acceptance of these documents. Mr. Kelley said Mr. Kotzian's letter was entered at the July 15, 1992 meeting. Jack Hammond's letter was dated July 27, 1992, and referring to his objections to protect his record on the issue.

Mayor Carroll asked the Council if anyone had any conflict of interest on the issue. None was declared.

Mayor Carroll asked if any Council member had any exparte contact. Councilman Prince said he talked to a couple ladies after the last meeting that asked where to submit a letter and he referred them to Mr. Hoffman. Mayor Carroll asked if anyone in the audience wanted to question Mr. Prince, none was expressed.

Tom Kotzian, Johnson Controls, noted that at the last meeting both the applicants and opponents agreed there would be no further written or oral testimony and he objected to Jack Hammond's letter of July 27, 1992. He reminded the Council that this was the same concern at the last meeting when he did not get to address Mr. Hammond's letter. Attorney Kelley said his objection would be noted for the record.

Mayor Carroll asked if any of the Council had any further questions on the issue.

****Councilman Taylor moved to deny the request, as recommended by the Planning Commission, of Mimi Chitty for a Comp Plan Amendment and Zone Change; and the Findings of Fact of the Planning Commission be adopted by the Council. Motion seconded by Councilwoman Miltenberger and passed 5-0.**

Pat Ewert, 596 N.W. Baker asked for a clarification regarding the difference between "argument" and "information". She noted that the dictionary gives the definition for information as, "knowledge and communication."

Attorney Kelley said that at the Planning Commission level all facts, evidence exhibits, documents, oral and written testimony are made and then become the record. The Council then hears the issue based upon the record, no new facts or evidence can be entered into this record. Argument on the record means that you can present what you think the facts support, either orally or in writing.

Mrs. Ewert was concerned regarding the difference between written and oral argument. Attorney Kelley said the judicial system allows it to be presented either way, orally or written.

Mrs. Ewert suggested that at the Planning Commission level, they should announce that the citizens can submit written or oral argument.

Dedication for Elm Street Expansion - Mr. Hoffman explained that the Council had three documents to consider for acceptance in providing the access on S. Elm to access the Village on the Lochs. The road was requested as a condition by the Planning Commission. Also, there is a slope easement agreement and a document to provide for drainage for the stream that goes underneath. Part of the subject area is currently being annexed and part is in the County. The County portion will not be accepted as a County road to maintain and operate, therefore, the City will accept the street for maintenance.

Councilman Taylor asked who would pave the road. Mr. Hoffman said the applicant, it is condition of approval and the roadwork is underway.

Councilman Smith asked where the stream underneath would be drained to. Mr. Hoffman said it will go into the wetlands, into the Community Park and into the Molalla River. Also, the state and county have approved this plan.

**Councilman Taylor moved accept the dedications for the proposed Elm Street right-of-way extensions, and authorize the Mayor to sign the legal documents for recording purposes. Motion seconded by Councilman Daniels and approved 5-0.

APPEAL: CUP 92-04, David Nelson - Mayor Carroll reviewed the procedure for the appeal process.

The Mayor asked the Council to declare any conflict of interest on the matter. None was declared.

Mayor Carroll asked the Council to declare any exparte contact regarding the issue. None was declared.

STAFF REPORT: Planner Hoffman explained that on June 22, 1992, the Planning Commission denied David Nelson's request for a Conditional Use Permit, 92-04, to allow a five unit manufactured home subdivision at the end of S. Elm, known as the Lingel property, to have double and triple wide manufacture homes.

Mr. Nelson is appealing this decision, citing three major grievances: the findings are discriminatory in respect to manufactured housing; the Final Order is contrary to state law, ORS 197.480, 5 a & b; and the Final Order is contrary to City Ordinance 16.55.50.

Mr. Hoffman said in order to overturn the Commission's order, one or more of the following criteria must be met: the Commission did not correctly interpret the requirements of local law, Comprehensive Plan, or other requirements of law; the Commission did not observe the precepts of good planning as interpreted by the Council; or the Commission did not adequately consider all of the information which was pertinent to the case.

At this time, Councilman Taylor asked to declare exparte contact, in as much that he has read various articles about the issue in the media. Mayor Carroll asked if anyone had any questions of Mr. Taylor regarding this exparte contact, none were expressed.

Mayor Carroll asked the rest of the Council members if any of them had read any articles

pertinent to this issue and they all declared that they had not, therefore no exparte contact.

Mr. Hoffman continued with the summary of the reasons the Planning Commission gave for denying this application: Commissioner Schrader stated that these were exceptional and extraordinary circumstances because one "stick" built house would be totally surrounded by manufactured housing and it would decrease the value of the stick built home. The Commission stated that it alters the character of the surrounding areas that substantially limits or precludes the uses of the surrounding properties for uses listed as permitted in the zone, since the Ellickson home would be surrounded on three sides by manufactured homes and the proposed 22 conditions and agreement between the Ellickson's and Nelson would not be sufficient to prevent this. Mr. Hoffman said technically this referred to "D" of the Municipal Code 15.50.010, and was the reason for denying the application.

Mr. Hoffman pointed out that the Commission was reminded of Municipal Code 16.44.050 and could require conditions of approval, but could not actually deny the application because of the conditional use criteria. The Commission felt those two criteria were in conflict.

Mr. Hoffman said that because of local law and the ORS, the action of the Commission should not be sustained.

Councilman Daniels asked if this would go back to the Commission for further conditions if the Council grants the appeal. Mr. Hoffman said it was an alternative, or the Council could simply adopt the 22 conditions of the staff report on pages 48 through 51.

Councilman Prince asked if this was still outside the City, and was told it has been approved for annexation and should be effective within days.

Councilwoman Miltenberger asked if the manufactured homes were for "adults only". Mr. Hoffman said it was without restrictions. Attorney Kelley said the only time one can "discriminate", regarding age, is for Senior Citizen housing only, this is federal law.

Councilman Prince noted, for the audience, that a manufactured home can be put anywhere in the City now due to our ordinance, which has been mandated by the state. Mr. Hoffman reminded that some construction standards were necessary.

Councilman Daniels questioned if there was any protection that this would be manufactured housing and not single wide trailers. Mr. Hoffman said one of the conditions is for double wide, 1300 square feet and triple wide units of 1600 square feet; and no metal exterior sides or roof. All units will have a skirting or perimeter foundation.

Councilman Smith asked if this were a "trailer park". Mr. Hoffman noted that Mr. Nelson has limited himself to the double and triple wide "manufactured" homes by accepting the conditions of approval. Mr. Smith asked what kind of pad the units would be set on. Mr. Hoffman said normal minimum requirements are gravel on top of plastic.

Councilman Prince asked why Code 16.50.010, "D" was even there if it could not be used. Mr. Kelley replied that "D" was intended for "all" Conditional Use Permit criteria. However, Code 16.44.050, specifically says that the Commission "shall not interpret the requirements of Chapter 16.50 as allowing the denial of a mobile home park development because of the nature of surrounding residential development." Mr. Kelley clarified this by saying you can't use the fact that it is a manufactured home as the reason for saying it alters the characteristic of the surrounding neighborhood.

Councilman Prince felt that the Commission saw this issue as "unique" since one stick built

home was surrounded by manufactured homes, and asked how to address this matter.

Mr. Kelley said he didn't feel this could be addressed, specifically if this was the only reason for denying it. The law says you can't deny on those basis. Mr. Kelley noted that the manufactured home industry lobbied for years to get this type of legislation passed so they would not be discriminated against.

Councilman Daniels asked if Mr. Nelson was willing to comply with the proposed conditions. Attorney Reif said he was willing to accept the conditions.

APPLICANT: Roger Reif, Attorney representing David Nelson, said this was not a planning issue, but the sole issue is a "legal" issue. He reminded the Council that when they received the approval for the original Village on the Lochs, there were 44 conditions, resulting in working on the access and this matter grew out of that access condition. Mr. Reif reminded the Council that they actually could just put manufactured homes on the lots according to law, without this conditional use process. They also went to some additional extremes, they put sound proof walls around the area; and they negotiated a contract with Ellickson to agree this concept. The Ellickson's have not opposed this application.

Mr. Reif referred to law and said there was actually no choice, and to uphold the Commission's recommendation would be an error and lead to further legal action. Mr. Reif noted that this was a 4-3 vote at the Commission level.

Mr. Reif said they are requesting reversal of the Planning Commission's decision and reimbursement of the appeal fee. He said Mr. Nelson is willing to comply with all 22 conditions.

PROPOSERS: Mayor Carroll asked if there were any other's to speak in favor of the appeal. None was voiced.

OPPOSERS: Mayor Carroll asked if any opponents wished to address the Council. None was voiced.

REBUTTAL: None.

Mayor Carroll closed the hearing at 8:44 p.m.

Mayor Carroll asked what the fee was for the appeal. Mr. Hoffman said it was under the old schedule and was \$300.00.

****Councilman Taylor moved to overturn the decision of the Planning Commission and approve the application, based upon the 22 conditions in the staff report with corrections as noted. Also, to return the \$300 fee. Motion seconded by Councilman Daniels.**

Attorney Kelley cautioned that the Council should set criteria for the basis of overturning the Commission decision.

****Councilman Taylor amended the motion saying, the Commission did not correctly interpret the requirement of local law, the Comprehensive Plan, ORS, or other requirements of law; and to bring back a written Final Order. Councilman Daniels, the second of the motion, agreed to the amendment. Motion passed, 5-0.**

Councilman Taylor stated that the Council truly appreciates all the hard work the Planning Commission does, noting they meet two to four times a months at least four hours a night. He wanted to be sure to explained that this decision in "no way" should be misunderstood as a lack of faith in our Commission.

ORDINANCES & RESOLUTION: None presented.

UNFINISHED BUSINESS: None presented.

OTHER REPORTS OR ANNOUNCEMENTS: Mayor Carroll informed the Council that 12 students and four adults from our Sister City, Kurisawa, would be arriving on Thursday.

Administrator Jordan reminded the Council to review the packet of information they received regarding the proposal from Metro to consolidated the three counties, Clackamas, Washington and Multnomah. Also, he reported that he had attended a Governors' Task Force meeting this afternoon and that committee will soon be making recommendations on proposed consolidation of services , such as road maintenance, law enforcement, mental health, etc.

Rusty Klem reported that the S.W. 13th Street widening, curbs and sidewalk improvements have begun. This is a joint project between the City and school district.

ACTION REVIEW:

1. The City will recommend approval to OLCC for the liquor license for Hank Jarboe.
2. The City will accept for recording the various documents for the S. Elm Street right-of-way extensions.
3. Passing along the decisions on the Chitty request for Zone Change and Comp Plan Amendment.
4. Returning to Council with the Finding and Final Order on the Nelson appeal.

Mayor Carroll recessed the regular session at 8:55 p.m., to go into a workshop session on the Logging Road Industrial Park proposal. The regular session was reconvened at 9:10 p.m.

****Councilman Daniels moved to authorize the staff and Mr. Jordan to proceed with negotiations in regards to acquisitions for the proposed Logging Road Industrial Park area, and they be authorized to spend up to \$500 for sewer inverts; and bring back information to the Council. Motion seconded by Councilman Smith.**

Councilman Taylor asked if Mr. Jordan would be the coordinator in the negotiations and was told he would be the coordinator.

Councilwoman Miltenberger asked if the expenditure was for one sewer invert and was told there is one now, perhaps there would be more later on and they would come back to the Council for approval.

****Motion on the floor was approved, 5-0.**

Mr. Klem commented that this industrial park project is moving quite fast and invited Council to stop in and discuss the issue at any time.

Mayor Carroll adjourned the session at 9:13 p.m.



Marilyn K. Perkett
City Recorder



Shawn P. Carroll
Mayor