

**CANBY CITY COUNCIL
REGULAR MEETING
OCTOBER 21, 1992**

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

Also present: Administrator Michael Jordan, Lieutenant James Scharmota, Officer Steve Landis, City Planner Robert Hoffman, Public Works Director Rusty Klem, Swim Center Director Scott Nelson, City Recorder Marilyn Pergett, Ron Ziebart, Jeff Walters, Chris Dejantis, Ron Norquist, Dorothy McCormick, Barry Lucas, Debbie Scharmota, Cheryl Stark, Linda Peck, Larry Leavitt, Betsy Ross, Becky Davis, Dave Dalley, John Falkenstein, Donna Ylvisaker, Walt Pischel, Tom Holmes, Cam Sivesind and Jan Paulson.

Mayor Carroll called the 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 Smith moved to approve as distributed the minutes of regular session, October 7, 1992. Motion seconded by Councilman Prince and approved 5-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: Ron Norquist, 562 S.E. 18th Lane, Gresham, addressed the Council regarding the recent issue of picketing in residential areas. Mr. Norquist declared that he is a "pro-life" person and has picketed at the Lovejoy Clinic in Portland where Dr. Kabacy works. He urged the Council to consider the following: should the Council set a philosophy to consider implementing an ordinance to abridge "free speech"; the practicality of the issue, since the picketers might then move to our business areas; and to consider that when only one person spoke on Mr. Kabacy's behalf, this would enable the man to continue his practice at the Lovejoy Clinic. Mr. Norquist urged the Council not to implement an ordinance that would prohibit picketing.

PROCLAMATION: Red Ribbon Week - Mayor Carroll proclaimed the week of October 24 through November 1, 1992 as Red Ribbon Week. Officer Steve Landis, Canby D.A.R.E. Officer, informed the Council he had distributed 8,000 red ribbons and gave the Council each one. Officer Landis also noted that several local businesses will display banners.

Mayor Carroll thanked the local Drug Prevention Team for their work in this effort.

COMMUNICATIONS: Letter from S. Clackamas Recreation District - Administrator Jordan noted that the S. Clackamas Recreation District has existed for about three decades and has lately become very active. At this time, the group is requesting authorization to allow Scott Nelson additional time to participate in a research and development project for the district. Mr. Jordan said that Scott would be working with Dan Zinzer, County Park and Recreation Director. Mr. Nelson will dedicate about 12 hours per week to this project and felt since this was the slow time of year for the Swim Center, his staff could adequately take care of the tasks at the pool.

The Council gave an unanimous general consensus of approval for the request to allow Scott Nelson to work additional hours with the S. Clackamas Recreation District.

Councilman Taylor asked that if any priority need arises at the pool, the City Administrator would assure that the needs would be addressed. Mr. Jordan concurred.

Attorney Kelley requested the City to send a letter to the Clackamas County Commissioners requesting Dan Zinzer assist the S. Clackamas County District in their planning and also that the City had committed additional time by staff, Scott Nelson.

City Attorney John Kelley, and chair of the district board, introduced several members that were present. Also, some of the Canby Parks Master Plan members were present who have worked in association with this organization.

Mayor Carroll thanked the members for their many volunteered efforts with this district.

Letter from League of Oregon Cities - Administrator Jordan reminded the Council that every year the City needs to appoint a voting delegate for the annual League Convention. Mr. Jordan offered to represent Canby.

****Councilman Taylor** moved to authorized Administrator Jordan as the City of Canby voting delegate at the annual League of Oregon Cities Convention. Motion seconded by Councilwoman Miltenberger and approved 5-0.

NEW BUSINESS: Accounts Payable - ****Councilman Prince** moved to approve payment of accounts payable in the amount of \$66,377.10. Motion seconded by Councilwoman Miltenberger and approved by roll call vote, 5-0.

Councilman Prince asked that City Treasure, Virginia Biddle, be thanked for the extra work she put forth in the accounts payable this month.

Zone Change 92-02, Ziebart - Mayor Carroll polled the audience on how many people wanted to speak on this matter. The applicant and three others expressed an intent to address the matter before the Council.

Mayor Carroll first reviewed the procedure for the Zone Change request. The Mayor asked if any of the Council had any conflict of interest on the issue, none was declared. Mayor Carroll asked if any of the Council had any exparte contact on the issue, none was declared.

STAFF REPORT - Bob Hoffman, City Planner, noted that he had the entire record present and the Council had received the entire record, as well as audio tapes on the issue.

Mr. Hoffman said the Planning Commission held a public hearing September 28th on the application from Ziebart Homes for a zone change from R-1, single family residential to R-2, multi-family residential on two parcels of 1.69 acres on the south side of Territorial Road, east of N. Maple. Mr. Hoffman said the applicant intends to build a 24 unit up-sale apartment complex on the site. The final order was issued on October 12th, with a Planning Commission recommendation for denial.

This is a quasi-judicial matter and the criteria for consideration whether the zoning should be changed is the following:

1. Consider the Comprehensive Plan, giving special attention to Policy 6 of the land use element and implement measures thereof, and the plans and policies of the county, state and local districts in order to preserve functions and local aspects of land conservation and development; and
2. Whether all required public facilities and services exist or will be provided concurrent with development to adequately meet the needs of the proposed used.

Mr. Hoffman pointed out areas on the map where the Comp Plan recommends R-2 zoning,

including this parcel, and a parcel to the west which is not annexed.

The parcel has a house on it that the applicant intends to remove and that would be the main entry to the parcel off of Territorial. Immediately to the east is an apartment complex constructed in 1970; across Maple Street is a new apartment development; and most of the surrounding property has single family homes.

Mr. Hoffman reviewed the Final Order adopted by the Commission which states their reasons why ZC 92-02 does not comply with all applicable criteria:

1. Conditions placed on rezoning can only be those which can be accomplished prior to the effective date of the zoning. Therefore, the rezoning could not limit access to Territorial or place other conditions to encourage compatibility.
2. While the Comp Plan proposes this area "N" for consideration for multiple family zoning it does not require approval of all rezoning requests to R-2 in the area. Specific lot-by-lot rezoning is anticipated.
3. The Comp Plan Policy #1 states "Canby shall guide the course of growth and development so as to separate conflicting or incompatible uses, while grouping compatible uses. The implementation measures described under this policy (utilize PUD, utilize conditions of approval, encourage flexibility in review, site plan review, monitor Clackamas County actions, PUD overly, development deed restrictions) are found by the Commission to be insufficient to correct the potential incompatibilities between single family homes and apartments in this location."
4. While certain factors would seem to indicate Canby has an inadequate supply of multiple housing units and a demand for these units exists, the subject location has already provided an adequate mix of units, and other areas are more appropriate. Almost 200 manufactured home sites have recently been approved in Canby, which will represent a substantial resource for meeting some of the needs of these people.

Mr. Hoffman said that the Commission felt the single family residential units which are adjacent are in conflict with the multi-residential uses proposed. Also, testimony of residents of the area was a major factor in that decision. Mr. Hoffman pointed out that if Canby expects to designate multi-residential development according to the Comp Plan policies, it will be necessary to approve locations next to single family residential areas.

APPLICANT - Ron Ziebart, representing Ziebart Homes, said his object was to persuade the Council to approve the request for R-2 on the subject parcel. Mr. Ziebart reviewed some of the "findings and reasons", making comments:

1. "add substantially to traffic" - he said it does not meet the two criteria and should be addressed during Site and Design review when traffic studies will be presented.
2. "maximum development permitted- substantial increase" - he felt that due to the large areas it couldn't be determined that this was a substantial increase.
3. "because of the number of children there would not be play space" - he maintained this should be addressed during Site and Design Review.
4. "the accidents on Maple and Territorial" - he said Territorial is designed as a major arterial, however no traffic studies were introduced and this should not have been applicable testimony.

7. "predominance of development of adjacent and nearby parcels is single family homes" - there is a mix in that area and the Comp Plan does promote a mix and balance and not to segregate the two zones; and there are apartments in the area.

10. "almost 15% of Canby population is over 65 years of age and rental housing is almost 35% of all Canby housing, an increase of 26% in 1980" - he maintained the proportions of multi-family units to single family units is not close to the 26% that has been increased for demand. Canby has one of the lowest vacancy rates in the state, there is nothing for renters to rent.

11. "Territorial needs widening to County standards" - he suggested this be addressed as a conditional of approval at Site and Design Review and not applicable for the rezoning.

Mr. Ziebart next addressed the "conclusions":

1. He felt again this Territorial access condition should be addressed during Site and Design Review and not applicable to the criteria.

He went on to say that many items introduced during the hearing had no bearing on the criteria, and in fact, was only an emotional condition on the Commission.

3. The conflict in compatible uses, he said the ordinance compares conflict between commercial, industrial and residential and not between multi and single family residence.

4. He felt the 200 mobile home spaces recently approved will not meet the need for rental unit as required.

Mr. Ziebart next reviewed his letter of October 15th with his rebuttal to Commission conclusions:

- * he said the Commission put too much emphasis on factors that should not have been discussed in reference to the zone change and did not give enough weight to Comp Plan goals and objectives.
- * traffic concerns - he said at this time they have not submitted a design so the traffic concerns were only assumptions and, in fact, could not be determined, again this should be addressed in Site and Design Review.
- * increased number of children in neighborhood - he said they had not disclosed areas for play area or open space as required; also there is no way to statistically say how many children will be brought into the area; and again he would address this at Site and Design Review.
- * incompatible land uses - he pointed out that they were abutting multi-family, as well as another multi-family nearby and he felt this was compatible. Also, there are no more sites for multi-family units where single family units will abut the multi-family, therefore we are way under meeting our criteria of the Comp Plan.
- * too much high density in the neighborhood - he noted this was designated "N" as an area of concern and felt there was not too much high density in that area. The multi development in the last three years was ten or eleven actually constructed, compared to over 300 single family homes built which is far below what the Comp Plan calls for. Since 35% of population live in rental units he felt this showed a need.

Mr. Ziebart reiterated that even though residents of the area had concerns, they should have been brought up at the correct time. If we start segregating, this is totally against the mix use and will become a problem. Mr. Ziebart quotes from the Comp Plan: "In reviewing development proposals, recognize that the best interests of the overall community must, at times, outweigh the concerns of specific neighborhood groups. While maintaining the quality of life in Canby remains of critical importance, the implementation of the Comprehensive Plan will necessitate some action which will be opposed by individuals or groups as having an adverse impact on certain neighborhoods areas".

Mr. Ziebart said this is what we have, a certain group objecting. He also pointed out that the property cannot physically be used for anything other than high density and will remain vacant until it is rezoned because of lot size.

Mr. Ziebart summarized by saying the decision of the Commission was "grossly outweighed" by a personal view of materials presented out of context and should not be allowed as testimony at the hearing.

OPPONENTS: **Larry Leavitt**, 820 N.E. Territorial - Mr. Leavitt said he felt this neighborhood has contributed more than "its fair share" of R-2 zoning; there are areas in Canby that have no R-2 zoning; whether it's the right time or not, the traffic problem on Territorial Road is still a strong concern and not designed for traffic it currently carries; and he lives directly across from the proposed access and the headlights from cars would show directly in his bedroom. He asked the Council to deny the request.

Donna Ylvisaker, 710 N.E. 17th - She said the Commission knows the necessary criteria and felt this particular area was not suitable for the zone change. Ms. Ylvisaker felt this issue is about "people and the community" and that is what we should consider.

Walt Pischel, 800 N.E. Territorial - He felt the Commission considered the compatibility problem and there are R-1 homes around the entire area. He pointed out the amount of apartments in the area and requested that the Council uphold the Commission's decision.

Linda Peck, 1688 N. Maple - She said she has 7 apartment complexes in her front yard and this would put apartments in her backyard. During her almost 18 year occupancy here, there is already a traffic problem and she felt it would enhance the problem and felt Maple Street gets even more traffic than Holly. She also pointed out that the Comp Plan is not "etched in stone", it is only a "plan" and there are enough high density residences in that area.

REBUTTAL: Ron Ziebart said the basic opposition should clearly be addressed at the Site and Design Review; he agreed there could be a traffic problem and he did not have answers until a study could be done; the 1982 Comprehensive Plan shows this area as R-2 for the last ten years if denials keep happening on this parcel and others in the area this would impact a major part of the Comp Plan; according to the Comp Plan there is not enough high density in this area; we don't know where our access will be as to the impact on traffic; as far as the emotional aspect, yes it is about people but by ignoring the Comp Plan we are ignoring handicapped people, low income families and ignoring the renters; and finally he felt most of the concerns could be addressed at Site and Design Review.

Councilman Prince asked if the proposed apartments were two-story. Mr. Ziebart said he didn't know, at this time.

DISCUSSION: Councilman Taylor asked if the Comp Plan has a required number of housing for one type or another, i.e., what if we were a City of no apartments. Mr. Hoffman said the Comp Plan specifies there is a need for a certain number of housing units for rental and in some cases apartments; and it allocates land based on that need.

Mr. Taylor said that the Comp Plan has designated areas of R-2 that currently have single family homes there; were they prior to zoning? Mr. Hoffman said in many cases they were and even since 1984 they have built single homes in those areas and all the vacant land has not yet been zoned R-2.

Administrator Jordan pointed out that the ordinance does not require a certain density, it only requires that we don't EXCEED a certain density. Theoretically we could build single family homes across the entire City, even if it were zoned R-2. The Comp Plan is designed for 20,000 population and the mix is what gets us to the desired density. Mr. Jordan noted that Township Village could have built duplexes, four-plexes and triplexes in that area, however, there are none, only single family units have been built and that is the trend in the community.

Councilman Taylor asked if we have a percentage that says we should have a certain amount of high density. Mr. Hoffman said LCDC accepted our Comp Plan based on the City providing a certain amount of multiple housing, in fact, we had to increase the amount we first indicated to meet the needs for this area.

Councilman Taylor asked if the only way we get a medium density of 1.5, is by request of the builder. Mr. Hoffman said yes.

Councilman Taylor asked if we were to redesignate the proposed R-2 areas, would this be an entire new process including changing the ordinance and going to LCDC. Mr. Hoffman said it would and the process would take from six months to two years.

Councilwoman Miltenberger asked about the traffic consideration, specifically if an area is zoned for R-2, why is the traffic only a consideration after the rezoning for higher density. Mr. Hoffman pointed out that criteria #2, says "either the facilities currently exist or would be provided current with development to adequately meet the needs", and that paragraph includes traffic facilities. He further stated it was hard to get a traffic estimate without a firm proposal of what will be on the site, you can only assume a maximum amount of traffic.

Councilman Taylor asked if this parcel were not zoned R-2, could it be developed as R-1. Mr. Ziebart said their expertise is single family developments, however, this parcel cannot work because of the lot dimensions.

Councilman Prince asked how big the lots were in Township Village and was told they vary between 7,000 and 8,000 square feet. Mr. Prince said he thought some in town were smaller and was told there are some. Administrator Jordan noted that if it were an R-2 zone the minimum would be 5,000 square feet; and if it were an R-1 zone, the minimum for a single family home would be 7,000 square feet.

Councilman Prince asked if the area "N" designation would require approval of rezoning to R-2. Mr. Hoffman said the interpretation is that the language doesn't explicitly require that it be rezoned.

Councilman Taylor noted that one statement in testimony said 10 to 11 multi units were actually constructed in the last three years. He pointed out the new apartment complex on Maple and Territorial built two years ago and there are more in that area. Mr. Hoffman said in the last year there were 10 or 11 multi units built, however, about 100 units were built in the last three years.

Councilman Prince pointed out that it is not a forgone conclusion that these have to be rezoned R-2, he pointed out that everything west of the apartments on Maple and Territorial was to have been R-2 and ended up single family development.

Councilman Stiglbauer asked if there is any other R-2 land available. Mr. Hoffman said there are two sites, one on S. Pine and another one off the Logging Road. Mr. Jordan said there is a one acre site on S. Locust. Mr. Hoffman noted that there are not many sites that are buildable today.

****Councilman Prince moved that the City Council uphold the decision of the Planning Commission to deny the R-2 zone application of Ziebart Homes for the subject property, noting conclusions Policy #2 and #3 were met; and the site is incompatible; and we need the flexibility to locate R-2 zones when necessary. Motion seconded by Stiglbauer.**

Councilman Taylor said he would oppose the motion because he felt the Comp Plan called for a certain mix, and if we keep adjusting that plan the City will not meet the goals for proper planning.

Councilman Prince said he did not believe this denial would cause a "domino" affect, and felt it was not compatible.

Councilman Taylor asked if because this was a special concern "N" area, did this allow any greater flexibility on conditions that could be imposed on a development. Mr. Hoffman said the special area does set certain considerations under Conditional Use or Design/Review applications.

Councilman Smith agreed with Councilman Taylor and felt the compatibility would be addressed at the Design Review.

Mayor Carroll requested an individual verbal vote on the motion.

Stiglbauer - Yes, because subject property is surrounded by R-1, it would become an "island" and not compatible.

Miltenberger - Yes, due to the same reasons Mr. Stiglbauer stated and also services, primarily traffic concerns.

Taylor - No, for reasons already stated, and his beliefs on compatible were more for commercial vs. residential and not residential vs. residential.

Prince - Yes, it's important to keep neighborhood viable and this site is not compatible and traffic concerns were justified.

Smith - No, and we aren't locked into two story apartments.

**** the motion passed 3 yea and 2 nay, the Planning Commission decision will be upheld.**

ORDINANCES & RESOLUTIONS: Mayor Carroll informed the Council that Resolution No. 521, regarding sewer bonds was removed from the agenda.

Ordinance No. 881 - Administrator Jordan said the correction on this ordinance were made as requested by the Council at the last meeting.

****Councilman Prince moved to adopt Ordinance No. 881, AN ORDINANCE AMENDING CERTAIN SECTIONS OF THE CANBY MUNICIPAL CODE 10.08, RELATING TO ABANDONED VEHICLES. Motion seconded by Councilman Smith.**

Councilman Taylor said he felt the word "rusted" should have be entirely removed and the "completely enclosed within a building" language was to restrictive.

****Motion was approved 3-2, with Councilman Taylor and Councilwoman Miltenberger voting nay.**

Resolution 522 - Mr. Hoffman informed the Council that Clackamas County requested changes in the previous resolution and this resolution reflects those changes. However, the County added a section that if the City uses the delayed annexation process, the County will not give us any money for taking over the roads that they are currently responsible for. Mr. Hoffman said the County still holds firm to that position. Also, the County said if a SDC for traffic is enacted, they do not want to pay the City for their responsibility of the roads. Mr. Hoffman pointed out paragraph "D" on page 4 of the resolution, which basically says if a SDC is charged on traffic in conjunction with delayed annexation, this would be basis to renegotiate this agreement. Mr. Hoffman said we do not have a deadline on this procedure.

Councilman Taylor asked if we notify the County 20 days in advance if we do anything within the UGB. Mr. Hoffman said yes.

Councilman Stiglbauer asked if other cities are doing this, and was told yes by Mr. Jordan. Also, Mr. Jordan noted that the County is taking a "hard line" on the delayed annexation issue.

Attorney Kelley said the County feels the City should pay for the roads since they are running out of money due to Measure 5.

Mr. Klem pointed out that the County is close to adopting SDC's for transportation purposes to supplement their revenue.

Administrator Jordan suggested that a clean copy be returned to the Council for consideration at the next meeting.

Resolution No. 523 - Mr. Hoffman said this dedication of 6 acres for a park is to fulfill a Park SDC for Township Village and is located east and adjacent to Lee-Ackerman ballfields. The parcel is 220 feet by 11,080 feet. Also, the Regan's will be allowed to harvest the crop of Christmas trees on the parcel.

Councilman Taylor questioned the site of the proposed park dedication. Mr. Hoffman said it is a standard for local recreation areas to be within a quarter mile of the development and this parcel will be close to the new school district as well as one that will be dedicated from the new Tofte development.

****Councilman Taylor moved to adopt Resolution No. 513, A RESOLUTION ACCEPTING THE DEDICATION OF A 6.0 ACRE PARK SITE LOCATION ON THE EAST SIDE OF PHILANDER LEE ELEMENTARY SCHOOL, AND NORTH OF S.E. 13TH AVENUE. Motion seconded by Councilman Prince and approved 5-0.**

UNFINISHED BUSINESS: None presented.

OTHER REPORTS OR ANNOUNCEMENTS: Police Department Update - Lieutenant James Scharmota gave the update on recent happening in the Police Department:

- * D.A.R.E. is in about the middle of the program and Officer Landis is in the school three days a week teaching the DARE concepts to 6th graders. A second officer is interested in attending the next academy on the DARE program and Officer Landis will be a teacher at this Academy.
- * Red Ribbon Week is getting started and he expressed appreciation for community support.

*A Police Department Advisory Team is being formulated to set forth lines of communication with the City; and to develop policies and procedures to pursue priorities that will be established. The first meeting is scheduled for October 29th, the 7 member team will meet on a regular basis. The first major goal is to design and promote a Public Safety Survey.

* Neighborhood Watch is active. Lt. Scharmota passed out packets that are given to sponsors. Jim said that Canby is the first department in the state to use this informational packet. Currently the City has 10 active Neighborhood Watch organizations.

* 2,000 kids were surveyed regarding what was the most important need in the community, the predominate choice was a "drug free, safe place to hang out." Out of this, the Canby Prevention Team has helped to set up the proposed Youth Center, a store front has been donated, furniture donated, etc.. hopefully, it will be in operation within six months.

* Brian Howarth and Marc Nunn are the two new detectives that are working narcotics and have recently made two significant arrests.

* Patrol Officers are extremely busy. Mr. Scharmota sited a specific Tuesday a couple weeks ago, 7 felony arrests were made, including two stolen vehicles recovered, and 8 miscellaneous calls from false alarms to disturbances.

Councilman Taylor asked how the Council can have a role in the proposed guidelines that the task force is reviewing. Mr. Scharmota said the program is designed after one in Astoria and prior to finalizing the guidelines they will come to the Council for adoption.

Councilwoman Miltenberger volunteered to attend the October 29th meeting.

Lt. Scharmota informed the Council that a particular neighborhood in the S.E. part of town will benefit a great deal from a formal Community Policing Program, more will be forthcoming on this issue.

Rusty Klem informed the Council that he had been advised that the Block Grant application of redoing a van into a "mobile" City Hall, had been reconsidered by HUD and rejected for funding. Mr. Klem said we should consider how we wanted the \$8,000 reprogrammed.

ACTION REVIEW: 1. Authorize Scott Nelson to work with the S. Clackamas Recreation District.
2. Appoint Mr. Jordan as the voting delegate at the LOC convention.
3. Implement the Abandoned Vehicle Ordinance, No. 881.
4. Revise Resolution No. 522 for the next meeting.
5. Accept the Township Village 6 acre park by Resolution No.523.

Councilman Taylor asked if anything could be done to get better quality audio tapes when copies need to be made. Mr. Klem said that he is currently pursuing a proposal to set up a public address system for the Chambers, which should help the audio problems.

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

Mayor Carroll recessed the regular session at 9:50 p.m., to go into Executive Session. The regular meeting was reconvened at 10:44 p.m.

Mayor Carroll asked if staff had obtained any more information regarding the picketing issue. Administrator Jordan said they have submitted the Wisconsin ordinance and legal opinion to Jim Coleman for a legal analyses, specifically in regards to the Oregon State Constitution.

Mayor Carroll adjourned the session at 10:46 p.m.

EXECUTIVE SESSION
OCTOBER 21, 1992

Present: Mayor Carroll, Councilor's Stiglbauer, Miltenberger, Taylor, Prince and Smith, Administrator Jordan, Don Schaefer, Tom Lawrence and Cam Sivesind.

Mayor Carroll called the session to order at 9:58 p.m., in the Police Department Conference Room.


ORS 192.660 (1)(d) - The Council discussed the labor negotiations that are ongoing with the Canby Police Association.

Don Schaefer left after the prior discussion.

ORS 192.660 (1)(e) - The Council discussed property for a south side park.

Mayor Carroll adjourned the session at 10:38 p.m.


Marilyn K. Perkett
City Recorder


Shawn P. Carroll
Mayor