

CANBY CITY COUNCIL
REGULAR MEETING
DECEMBER 4, 1991

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

Also present; Administrator Michael J. Jordan, City Attorney John Kelley, City Recorder Marilyn Perkett, City Planner Bob Hoffman, Assistant Planner Jim Wheeler, Police Chief Jerry Giger, Public Works Director Rusty Klem, Nancy Friesen, Karen Hurias, Arden & Carol Eby, Diana Precht, Ted Kyle, Janice Weeks, James Beroe, Nancy Wilmes, Eric Frey, John & Bette Vaudt, Tom Traver & family, Betsy Ross, Dick Hawley and Keith Liden.

Mayor Carroll 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 Taylor moved to approve as distributed the minutes of regular session, November 20, 1991. Motion seconded by Councilman Smith and approved 5-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: Mayor Carroll commented on the vandalism of Christmas lights at Wait Park and urged citizens to be aware of activity in the park and notify the police of any suspected vandalism.

Diana Precht, Chamber Manager, addressed the Council and said the Chamber intends to maintain their lighting program in Wait Park and, in fact, several more trees will be decorated next week. Mrs. Precht said she called other communities, Newberg and Silverton, and they do not seem to experience this type of vandalism. She said the Chamber also will replace the lights on the gazebo.

PROCLAMATIONS: Toys for Tots Week - Mayor Carroll proclaimed the week of December 8th through 14th, as Toys for Tots Week. Members from the Kiwanis group gathered toys and canned food that was brought by the Council and staff.

Civil Air Patrol Week - Mayor Carroll proclaimed the week of December 1 through 7, as Civil Air Patrol Week. Members of the Aurora unit were present to accept the proclamation.

PUBLIC HEARING: ANN 91-06, Bergen Annexation - Mayor Carroll reviewed the hearing procedure and asked the Council if anyone had any conflict of interest or exparte' contact on the subject matter. The entire Council indicated they did not. Mayor Carroll opened the hearing at 7:44 p.m.

Staff Report - City Planner, Bob Hoffman, reviewed the application for annexation submitted by James & Dessie Bergen for a 2.37 acre parcel located at 640 N. Pine. Mr. Hoffman said the site is enclosed by property within the City limits. Also, the Bergen's requested a Comp Plan change to rezone the parcel from Light Industrial to R-2, High Density Residential. Mr. Hoffman pointed out that one person did testify in opposition of the request at the Planning Commission Hearing. The opposition was because the adjacent property owner wanted to be reimbursed for expenses incurred to bring the sewer line to his property past the Bergen property. However, the Commission did not make the reimbursement request a condition for approval, they felt it should be resolved between the two private citizens. Mr. Hoffman pointed out that if the parcel were developed Industrial,

it could employ 56 people, but create a possible truck traffic situation. If it is developed at the requested R-2 zoning, it could create a maximum of 32 residential units.

Planning Commission and staff recommendation was for approval of the proposed Comp Plan amendment and to recommend annexation to the Metro Boundary Commission.

Councilman Taylor asked if the sewer reimbursement problem could be addressed at a later date before development. Mr. Hoffman told him that would be an appropriate time.

Councilwoman Miltenberger asked why this one area was designated for Industry. Mr. Hoffman replied that it was due to the close proximity to the railroad.

Councilman Smith asked if N. Pine was adequate for truck traffic. Mr. Hoffman said it was not, and eventually it would need to be widened.

Councilman Daniels asked if the R-2 zoning could be upgraded to R-1 at a latter date. Mr. Hoffman said it could be.

Councilman Prince expressed concern about the 90 degree corner in the site area on N. Pine. Mr. Hoffman said it was not necessary to correct the turn, actually traffic is meant to go at a slower pace in the residential area.

Applicant - Mr. Bergen asked the Council for favorable approval for his application. He said he wanted to have buildable lots for his sons and to be served by the City law enforcement.

Proponents - None.

Opponents - None.

Mayor Carroll closed the hearing at 7:55 p.m.

****Councilman Daniels moved to approve Resolution No. 493, A RESOLUTION TO AMEND THE COMPREHENSIVE PLAN OF THE CITY OF CANBY TO INCLUDE TAX LOT 1700 OF TAX MAP 3-1E-34BC (CONSISTING OF APPROXIMATELY 2.37 ACRES) FOR HIGH DENSITY RESIDENTIAL LAND USE. Motion seconded by Councilman Smith and approved 5-0.**

****Councilman Daniels moved to approve Resolution No. 493, A RESOLUTION APPROVING ANNEXATION TO THE CITY OF CANBY, CLACKAMAS COUNTY, OREGON (APPLICATION OF JAMES AND DESSIE BERGEN) APPROXIMATELY 2.37 ACRES LOCATED ALONG THE EAST SIDE OF S. PINE. Motion seconded by Councilman Smith. Councilman Taylor pointed out a correction to the resolution title, it should read "N. PINE". Motion approved 5-0.**

ANN 91-07, Logging Road - Mayor Carroll reviewed the hearing rules and asked if there was any conflict of interest by the Council. None was disclosed. The Mayor asked if any Councilor had any exparte' contact.

Councilman Prince said he had a conversation with a neighbor regarding the issue, however, it was only informational and would not affect his decision.

Attorney Kelley asked if anyone from the audience wanted to question Councilman Prince's exparte' contact. None was expressed.

Mayor Carroll opened the hearing at 8:02 p.m.

Staff Report - Planner Hoffman said the subject property consisted of 7.67 acres and is commonly known as the Logging Road. The City of Canby is the applicant, Administrator Michael Jordan signed the application. The road has been designated for a bike/pedestrian pathway by the recently adopted Parks Master Plan. Mr. Hoffman said the proposed annexation met the eight criteria as outlined in Section 16.84.040 of the Code. The ultimate usage of the proposed annexation will be for a bike/pedestrian path and for emergency vehicle use. Mr. Hoffman noted that there has been some concern regarding the heavy use of motor bikes on this road through various entries onto the road.

Jim Wheeler, Assistant Planner, reported on a telephone survey he had completed with Portland, Eugene, Gresham and Lake Oswego, regarding crime in such areas as pathways. None of the contacts experienced any increase in crime. Some of the minor problems were littering and dumping of yard debris. In fact, some of the towns contacted said that surrounding property value increased due to the close proximity to the trails.

Mr. Hoffman said if the logging road were to be annexed, then contiguous property "could" be annexed in five acre parcels. The staff and Planning Commission recommend approval for annexation.

Councilman Taylor asked that Mr. Hoffman review how the City acquired the Logging Road. Mr. Hoffman noted that this was before he arrived in Canby, however, he said it was donated to the City by a previous owner which was a Logging Firm.

Also, Mr. Taylor questioned whether the current problem of sewer capacity and proposed expansion should be considered for this annexation. Mr. Hoffman replied that a sewer line runs under the Logging Road, however, this annexation does not involve any connections to the sewer.

Councilman Daniels asked if the proposal would affect the motor bike issue. Mr. Hoffman said it shouldn't make a difference, however, he felt the issue should be addressed at some further time.

Chief Giger informed the Council that the City has responded to motor bike complaints in the area, however, the road is very easy to get on and off of in numerous areas. The Chief indicated that if it were "properly" posted with signs, they could respond as it would be a criminal access.

Administrator Jordan felt it needed a combination of enforcement and infrastructure, such as signage, fencing and patrol.

Councilman Taylor asked if it were important that the intentional use be declared. Mr. Hoffman said yes, it was a part of the process.

Mr. Taylor also asked if emergency vehicles had access at this time. Mr. Hoffman noted that they did not, however, an access could be made at the Township access.

Councilman Prince asked if the proposal would go to the Boundary Commission as a path/walkway. Mr. Hoffman said that was the Planning Commission recommendation and was reflected as such in the staff report.

Proponents - None were voiced, however a letter was received from Michael and Tracy Reed, 1291 N.E. 12th Way, Canby, in support of the proposal.

Opponents - Karen Hurias, 1177 N. Redwood, addressed the Council and said she had talked to almost each person residing near the Logging Road about the issue. Mrs. Hurias inquired if she could ask for a continuance due to new evidence of the crime study submitted by Jim Wheeler.

Attorney Kelley said this was not a land use hearing and only a recommendation would go to the Metropolitan Boundary Commission for a final decision. However, if the Council agreed it could be continued.

Mr. Wheeler indicated that his report was not a formal study, only antidotal.

Mayor Carroll polled the Council and the unanimous consensus was to continue with the process.

Mrs. Hurias said the main reason for the Logging Road annexation was so property owners could annex. She indicated that the majority of the owners do not want to annex and by having only one or two annex it would become inconsistent.

Councilman Prince noted that if we annex the Logging Road, other citizens will not be "forced" to annex, he did not understand the reason for concern.

Councilman Daniels said the reason for consistency in annexing in the past is due to the availability of utilities.

Mrs. Hurias read a four page document that she had prepared and handed out to the Council containing her reasons for opposing the annexation:

- * 30 names of property owners were submitted as being opposed to the annexation; and she maintained the record did not have substantial evidence that the Logging Road had to be annexed to allow development.

- * no evidence that Policy # 1 of the Land Use Element has been met; although the application is to make the site a bikepath/walkway with underground utilities, Mr. Klem had made the statement it would be developed into a public road; the neighbors in the area would have their backyards subject to the proposed bikepath, which she said would be a nuisance, and no other part of the proposed path subjected other citizens to this element.

- * regarding Policy #2, she felt the zoning of adjacent parcels after annexation has no bearing on the compliance of the application.

- * Policy #3, there was no substantial evidence to show that development of additional utilities on the property is feasible.

- * Policy #5, she noted it was immaterial what the zoning would be for adjacent property owners; and she maintained the staff report said the parcel would be zone R-1, and then in another section said R-1 and R-2, which one is accurate.

- * Environmental Element Policies #2-R, 3-R & 4-R, she maintained lacked of evidence. Staff referred to soil problems in the area, however, did not identify them; there is no evidence that the current sewer and stormwater system will be adequate for the proposal, specifically since the Council recently passed a resolution saying it is necessary to improve the systems; and staff offered a conclusion that building, health and other code regulations will be protected against pollution, but did not identify any types of pollution.

- * Transportation Policies #4, #6 & #7 are not in compliance. Need for improvement on N. Pine, N. Redwood and 99/Pine intersection are immaterial to the application. Also, no safety protection plan had been addressed for a bike path.

- * Approval of the annexation would not be in compliance with the goal of the Public Facilities and Services Element of the Comp Plan.

- * She agreed that the Economic Element of the Comp Plan are inapplicable, however, she felt the economic impact on the City, specifically from taxpayers for improvements.

- * She disagreed that compliance will be met for the Housing Element of the Comp Plan, saying other annexations for low density may be available.

- * She felt the Energy Conservation Elements of the Comp Plan are not applicable.

- * Staff did not identify "other" City ordinances which are applicable to the annexation.

- * Substantial evidence is not supplied to meet the criteria of amply urban level services.

- * The applicable sections of ORS 222 were not identified.
- * She disagreed that the designation of "Priority A" in the Comp Plan of the subject property is justification for annexation.
- * She disagreed with the staff conclusion of no natural hazards due to past history of flooding and high water table.

In conclusion, Mrs. Hurias urged the Council to deny the application because the burden of proof and substantial evidence were not evident to meet standards and criteria for annexation.

Rebuttal - Planner Hoffman requested time to review the document supplied by Mrs. Hurias and submit a written reply.

The unanimous consensus of the Council was to continue the hearing on the annexation to let staff reply. The hearing was set for January 15, 1992, at which time Mrs. Hurias will also be allowed time to reply to Mr. Hoffman's comments.

Mayor Carroll closed the public hearing at 9:02 p.m. and requested a brief recess. The meeting was reconvened at 9:07 p.m.

COMMUNICATIONS: None presented.

NEW BUSINESS: Accounts Payable - **Councilman Prince move to authorize payment of accounts payable in the amount of \$76,568.94. Motion seconded by Councilman Daniels and approved by roll call vote, 5-0.

ORDINANCES & RESOLUTIONS: Ordinance No. 871 - Administrator Jordan explained this was to be considered for final action to allow administrative decisions on Special Animal Permits, with an appeal process if necessary. **Councilman Daniels moved to adopt Ordinance No. 471, AN ORDINANCE AMENDING CHAPTER 6.04, TITLED ANIMALS GENERALLY; AND DECLARING AN EMERGENCY. Motion seconded by Councilman Taylor and approve 5-0, by roll call vote.

Ordinance No. 866 - Planner Hoffman introduced Keith Liden who initially addressed the Council regarding the Solar Ordinance.

Councilman Taylor asked when the ordinance would take affect.

Mr. Liden said it would be with any new applications, after the adoption. He noted very few difference in the ordinances that have been adopted in the Metro area and the building community has been supportive of the ordinance.

Councilman Taylor asked if there had been any opposition to the ordinance at the Planning Commission level.

Mr. Hoffman said there had been no opposition and the ordinance was not difficult to apply to applications. He also pointed out the possible 20% energy savings.

Mr. Liden pointed out that a new energy code that will be implemented next year will have "tougher" constructions standards for energy performance.

Councilman Prince asked Mr. Liden to review the balance point concept.

Mr. Liden said it applies to new construction or remodeling, it review the lot situation and provides a system so you will not shade the neighbor to the north and at the same time you will have access to the sun. The term comes from trying to balance the rights of the

property to the north having solar access with the same right of the builder having some access.

Mayor Carroll asked if it applied to remodeling of residents and was informed it did if it affects the exterior of the building.

****Councilman Taylor moved that Ordinance No.866, AN ORDINANCE AMENDING PROVISIONS OF TITLE 16 OF THE CANBY MUNICIPAL CODE REGARDING SOLAR ACCESS PROTECTION REQUIREMENTS; AND DECLARING AN EMERGENCY be posted and come up for final action on December 18, 1991. Motion seconded by Councilwoman Miltenberger and approved 5-0.**

Resolution No. 492 - This resolution will not need action until January 15th, after the continuation of the public hearing on the Logging Road annexation.

UNFINISHED BUSINESS: None presented.

OTHER REPORTS OR ANNOUNCEMENTS: Mr. Klem announced that the leaf pickup by Canby Disposal will continue to December 30 & 31.

Also, Mr. Klem reminded the Council of a Town Forum regarding the sewer bonds to be held at the Canby Adult Center, December 11th, 7:30 p.m.

Administrator Jordan formally introduced the new Assistant Planner, Jim Wheeler.

ACTION REVIEW: 1. Forward Resolutions 493 & 494, to the Metro Boundary Commission with a recommendation for approval.
2. Continue the Public Hearing on the Logging Road to January 15, 1992.

****Councilman Taylor moved to go into Executive Session under ORS 192.660 (1)(h), regarding pending litigation. Motion seconded by Councilman Prince and approved 5-0.**

Mayor Carroll recessed the regular session at 9:31 p.m. to go into Executive Session in the Police Department Conference Room. The regular meeting was reconvened at 10:00 p.m.

Mayor Carroll read a memo from Jerry Giger regarding Police patrol at Wait Park. Due to Christmas light vandalism, patrol will be enhanced. Mayor Carroll also noted that the City had money in the Parks fund to not only pay for repair, but also the vandalism reward fund.

Administrator Jordan informed the Council that a part-time City employee, Claudie Eide had requested the City to pay her doctor bill of \$93.50 and loss of wages for five weeks, \$446, due to an injury she received during her lunch hour away from her job at the library. The Council suggested we look into Workman's Comp, however, they did not approve outright payment of the request.

Administrator Jordan asked the Council if they were interested in pursuing the "FOCUS", which is a proposal to create a forum in the Metro area urban services. A membership fee would be about \$525 annually. Mr. Jordan noted that he would make this an agenda item in the next packet.

Mayor Carroll adjourned the regular session at 10:16 p.m.

EXECUTIVE SESSION
DECEMBER 4, 1991


Present: Mayor Carroll, Councilor's Taylor, Prince, Daniels, Smith and Miltenberger, Attorney Kelley and Administrator Jordan.


Mayor Carroll opened the session at 9:38 p.m. in the Police Department Conference Room.

ORS 192.660 (1)(h) - The Council first discussed the Rinkes litigation case.

Attorney Kelley updated the Council on the "Boland & Jeans" trial and decision of the Judge.

Mayor Carroll adjourned the session at 9:58 p.m.


Marilyn K. Perkett
City Recorder


Shawn P. Carroll
Mayor

PROCLAMATION

WHEREAS, Civil Air Patrol, a civilian auxiliary of the United States Air Force, is dedicated to volunteer public service in the interest of community, state, and the national welfare; and

WHEREAS, the members of the Aurora Composite Squadron are prepared to give of their time and resources for the benefit of their fellow Americans through aerial and ground search and rescue operations, through humanitarian and mercy flights, and many other activities in time of emergency; and

WHEREAS, the members of this organization, through their humanitarian efforts, saved the lives of over 38 persons, flying over 12,429 hours and finding over 898 distressed individuals nationally in 1991; and

WHEREAS, this organization of volunteers is helping conduct a national program of aerospace education for its members and the general public; and

WHEREAS, this patriotic organization offers an outstanding program of leadership training and development and career motivation to its teenage cadet members; and

WHEREAS, December 1, 1991, marks the 50th Anniversary of the founding of this unique organization, established to help America in its hour of need during the dark days of World War II and which today is dedicated to the service of humanity and to the non-combatant defense of this nation.

NOW, THEREFORE, I, Shawn P. Carroll, Mayor of the City of Canby, Oregon, do hereby proclaim the week of December 1 through 7, 1991 as

CIVIL AIR PATROL WEEK

in the City of Canby and call upon the citizens of this City to observe this week by recognizing the contributions of this volunteer organization and the members of the local Aurora Squadron.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Canby to be affixed this 4th day of December in the year of our Lord One Thousand Nine Hundred and Ninety-One.

Shawn P. Carroll, Mayor

PROCLAMATION

WHEREAS, Toys for Tots, originated for the purpose of providing toys for less fortunate children in our community; and

WHEREAS, it is recognized that greater public awareness and involvement is needed to provide and promote joy in each household in this community; and

WHEREAS, the Canby Chapter of Kiwanis, has undertaken the project of collecting and distributing toys to these children, during the time from December 8th through December 14th; and

WHEREAS, The Kiwanis need your help by providing new and like new articles that may be placed in the Christmas bags; and

WHEREAS, drop boxes for these donations may be found at the Canby Public Library, Canby Utility Board, Canby Police Department, North Willamette Telecom, First Interstate Bank, U.S. National Bank of Oregon, Willamette Savings & Loan Association, Key Bank, Canby Telephone Association, Burgerville U.S.A. Restaurant and Allstate Insurance.

NOW, THEREFORE, I, Shawn P. Carroll, Mayor of the City of Canby, Oregon, do hereby proclaim the week of December 8 - 14, 1991 as

TOYS FOR TOTS WEEK

and call upon the citizens of this City to observe this time by participating in this toy drive helping to provide the assurance that each child may have a "twinkle in their eye" this Holiday Season.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Canby to be affixed this 4th day of December in the year of our Lord One Thousand Nine Hundred and Ninety-One.

**Shawn P. Carroll,
Mayor**