

CANBY CITY COUNCIL

REGULAR MEETING

APRIL 18, 1990

(Televised Live on Channel 5.)

Mayor Nancy Kopelk presiding. Councilors present: Scott Taylor, Shawn Carroll, Keith Stiglbauer, Terry Prince, Robert Smith and Walt Daniels.

Also present: Administrator Michael Jordan, Police Chief Jerry Giger, City Attorney John Kelley, City Treasurer Virginia Biddle, Public Works Director Rusty Klem, Library Director Beth Saul, City Recorder Marilyn Perket, Public Works Supervisor Roy Hester, Lynn Kadwell, Richard Kadwell, Lyle Read, M. Thompson, Les Wilkins, Myra Weston, Curt McLeod, Ronald Tatone, Sonya Blacksten, Renee McClaugherty, Don Bear, Stacy McGilchrist, Christy Elmer, Ginny Jones, Loretta Lack, Art Goglin, C.C. Sheppard, Bob Kacalek, Jack Pendleton, Butch Olsen, Fred Kahut, Kathy Polley, Frank Chaffey, Ryan Fowler, Ross Potter, Ken & Mavourn Stuart, Bob Westcott, James & Thelma Kriegshauser, Gloria Hudson, M. Cereghino, Jerry & Roberta Simnitt, Jerry & Janice Simnitt, Drew Hunter, Edna Vosika, Jon Guffey, Jeff Jensen, Sean & Barbara McVicker, Delbert Hemphill, Ed Sullivan, Josephine Recht, Lance White, Jay Hoffman, John Burke, Gordon Ross & others.

Mayor Kopelk 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.

**Councilman Carroll moved to approve as distributed the minutes of regular session April 4, 1990, seconded by Councilman Prince and approved unanimously.

CITIZEN INPUT ON NON-AGENDA ITEMS: Mavourn Stuart, 13th Avenue and a member of the Swim Center Advisory Board, addressed the Council inviting them to the pool re-opening and 20th anniversary celebration on May 5, 1990, 7:30 p.m.

Kathy Polley, 551 N. Locust, presented a petition and document listing eight criteria of concerns regarding traffic between Fourth and Tenth Avenues on N. Locust Street. Speed was a major concern due to elderly residents and hearing impaired children in the area. Chief Giger noted that to his knowledge only two complaints were received in the past six months regarding that area, however, he will discuss the issue with the Traffic Safety Committee next Tuesday and Mrs. Polley expressed a willingness to work with the committee on the issue.

PROCLAMATION: Mayor Kopelk proclaimed the week of April 22-28, 1990, as National Student Leadership Week in the City of Canby and specifically cited leadership activities of Knight Elementary and Ackerman Junior High School.

COMMUNICATIONS: Administrator Jordan informed the Council that we had received a request from League of Oregon Cities for a contribution of \$100.00 for the legal fund, in addition to the annual dues. The fund is primarily for participation in amicus, "friend of the court," cases. **Councilor Carroll moved to approve the request of LOC for a \$100.00 contribution to their legal fund. Motion seconded by Councilor Smith and approved 6-0.

PUBLIC HEARINGS: Mayor Kopelk reviewed the rules and criteria in conducting a public hearing. Four public hearings were scheduled for the evening and Mayor Kopelk requested the Council declare any conflict of interest for any of the subject hearings. Terry Prince noted he had spoke with Dr. Kadwell regarding the Northwood Estates open space and parks issues. Councilor Daniels noted he was a realtor but felt he had no conflict in any case due to his profession. Both Councilors declared no actual conflict in a decision making process for the scheduled hearings.

1990-91 State Revenue Sharing - Administrator Jordan reviewed the fund amount of \$32,300, explaining it will be transferred to the General Fund for expenditures to various agencies.

Public Hearing was opened at 7:50 p.m., by Mayor Kopelk,

Proponents: None.

Opponents: None.

Rebuttal: None.

Public Hearing closed at 7:51 p.m.

**Councilor Carroll moved that Ordinance No. 844

AN ORDINANCE

DECLARING THE CITY'S ELECTION RECEIVE STATE REVENUES FOR 1990-91 FISCAL YEAR, be approved on first reading and come up for final action on May 2, 1990. Motion seconded by Councilor Taylor and approved 6-0.

1990-91 City Budget - Administrator Jordan reviewed the proposed City Budget total of \$4,925,354.00.

Mayor Kopelk opened the public hearing at 7:54 p.m.

Proponents: None.

Opponents: None.

Rebuttal: None

Public Hearing closed at 7:55 p.m.

Further action was not required on the City Budget at this time.

Sale of Real Property - Attorney Kelley explained that ORS 221.725 requires a hearing for public testimony when the City sells property. The subject property is on the corner of N.W. Forth and N. Grant Street that was purchased for a library site, however, after purchasing the Ace Hardware Building, that is currently being renovated for a library, the subject property was listed for sale. Attorney Kelley entered into the record the 1988 appraisal document, appraised at \$102,500.00 and the earnest money receipt and offer from Dr. Steven Danchok for \$110,000.00.

Mayor Kopelk opened the public hearing at 7:57 p.m.

Proponents: Sean McVicker, 1485 N. Locust Street asked the purchasing price the City paid for the subject property. He was told \$98,000.00.

Opponents: None.

Rebuttal: None.

Public Hearing was closed at 7:58 p.m.

**Councilman Taylor moved to accept the purchase offer from Dr. Steven Danchok to purchase Tax Lots 6400 and 6500, noting the subject property is not needed for City purposes, and authorizing the Mayor and City Recorder to sign a contract when it is complete. Motion seconded by Councilman Daniels and approved 6-0.

Comprehensive Plan Amendment CPA-90--01 and Zone Change ZC-90-01 (Northwood Estates) - Rusty Klem reviewed the record noting this was a second evidentiary hearing and the Planning Commission hearing was held on February 12 and 26, 1990, on the matter. The Council received the following in their record: 1. Comp Plan amendment procedure; 2. memo from Hank Skinner preceding March 7, 1990 Council meeting; 3. waiver of 120 day response time, 4. application and letter from hearing; 5. application booklet from hearing; 6. Comp Plan amendment staff report from hearing; 7. zone changes staff report from hearing; 8. Minutes from February 12, 1990; 9. Minutes from February 26, 1990; 10. letter from Jack Stark from hearing; 11. twenty-one (21) letters from affected people from hearing; and 12. location map. Also entered into the record were: Faxed to the City on April 13, 1990, letter from James Sitzman, Department of Land Conservation and Development, mailing list from first hearing, public notices from first hearing, memo of April 11, 1990 on action that we are undertaking and the notice for the hearing for tonight.

Attorney Kelley reminded the Council that this was not an appeal and to keep in mind what testimony had previously been received and a decision was to be made on the criteria from the Municipal Code 16.88.180, the six criteria were reviewed for the audience. Also, if a decision is reached tonight, the Findings of Fact will be prepared by staff in legal form and returned to the Council in final form.

Mayor Kopelk opened the public hearing at 8:08 p.m.

APPLICANT - Lyle Read, 580 N. Juniper, one of five applicants, (Lynn Kadwell, Ron Tatone, Fred Kahut, Curt McLeod and Lyle Read) reviewed the history of the 30.19 acre parcel located in the City limits, seven individual tax lots. The subject property was zoned residential until 1984, when it was taken out of the UGB because the City had to eliminate some of the R-1, Low Residential from the Comp Plan. Mr. Read addressed the infrastructure, seven fully improved streets abutting the parcel and availability of water, sewer and electricity abutting the property.

Curt McLeod, using a flip chart, addressed each of the criteria:

1. Comp Plan - felt they adequately addressed each item in the Comp Plan.
2. Need for change - felt they were preserving agriculture land by using this parcel and preserve the agriculture lands on the fringes; need for cost effective housing; completes service systems; and provides single family housing and efficient development.
3. Serve the public better than any other change - allows farmland in fringes to stay in that capacity; eliminates sprawl; completes transportation systems; completes service systems; and eliminates non-compatible use.
4. Preserve health, safety and welfare of community - enhances fire and police protection by access; eliminates non-compatible use; and increases tax base which will generate approximately \$260,000 in annual tax revenues.
5. 19 statewide planning goals - Mr. McLeod felt that the City Comp Plan address the statewide goals and their project complies with the Comp Plan and those goals.
6. Public Services - sited a water well with a potential capacity to service the City as an additional water source.

Lyle Read said that current OAR of Land Use Matters has a ruling that considered property within the City boundary as urbanizable; and rural to be for small farms with no or hardly any chance of public services. Mr. Read questioned why recent developments, such as Rebecca Estates off Territorial Road and specifically the most recent annexation near S.W. 13th Avenue, were allowed to plan for residential development over their parcel; and why these particular proposed developments were not requested to provide open space or parks since Canby has no Parks Master Plan and yet they have been approached about providing open space. Mr. Read reiterated the "logic" of the proposal and stated that past Planning Commissioners and Councilors were not aware of the Comp Plan change that removed this property from the UGB. He pointed out that if this property would set idle, it would attract such things as an area for kids on bikes and over growth of weeds, brush, etc. In summary, he noted their request is consistent with land use laws, is orderly and properly for planning.

PROPONENTS - Art Goglin, Territorial Road, lives across the street from the subject site and supports the proposal for development and felt it was logical.

Josephine Recht, 835 S. Elm Court, said she has been looking for a larger lot to build a home on and could find none available.

Sonya Blacksten, Knights Bridge Road, noted that she was appalled that the request was turned down. She said that the current agriculture in the area creates dust and odor.

Les Wilkins, Times/Mirror employee, reported that they advertised extensively, specifically in agriculture nature periodicals and newspapers, to sell the property as agriculture land and had 5 to 8 responses, however, no options. Councilor Prince questioned if it was advertised as residential or agriculture. Mr. Wilkins said it was offered at a price.

John Burke, S. Ivy Street, said he has been looking for a larger lot to build on and none are available and hoped the proposal would provide such.

Bob Kacalek, local realtor, reiterated the need of large size lots for building in the City and that local people will develop with integrity.

Renee McClaugherty, Knights Bridge Road, said they are looking to buy a home or lot and find little available. She felt the project was very logical and specifically felt it was good that local men from Canby would be developing the area.

Gordon Ross, 2442 N. Locust, noted that he was on the Planning Commission for 13 years and felt the efforts of the commission was to have the area completely developed and the site was logical for good planning.

OPPONENTS - Ginny Jones, 620 N.W. Baker, questioned if conditions for open space and parks would be set on the application or if they could do anything they wanted with the parcel.

Edna Vosika, 680 N.W. 9th, said they bought their home in that area because the subject property behind them was not in the UGB. She said it was her backyard and there has never been "chicken manure" or anything as such put on this parcel. The soil is unique and has been scientifically prepared for prime agriculture use.

Delbert Hemphill, N.W. 13th Avenue, lives two blocks from the site and does like his dead end street, however, he felt the preservation of land for agriculture should be the consideration, not land for housing.

Mrs. Zappatereno, 420 N.W. 10th Avenue, said the parcel was offered for sell at a price to high for agriculture.

Bob Westcott, 1973 N. Grant, pointed out that if there is a need, then this must be the burden of proof of the applicant. He cited some reasons for questioning a need: UGB boundaries can change when a need is shown by growth; trading annexable property for

one not annexable does not create a need; and growth in Canby has not yet met the projection of the Comp Plan. He stated that residential and farmland are compatible and that's why he bought in that area with the promise that the parcel was not in the UGB until a need was proven. Mr. Westcott suggested that Times Mirror had back up offers for the land but could not reveal this since Times Mirror is on the board of directors for the IFA. He implied they could sell it today at a profit to IFA. Finally, he said there is ample land available for development within the UGB and requested the Council uphold that corporate pledge. (Mr. Westcott passed out a document containing his comments which will become a part of the record.)

Ed Sullivan, representing Jerry Simnitt's Nursery, said the Planning Commission was correct in denying the request and that the periodic review, done a year and one-half ago, still has the parcel in question as out of the UGB. (Mr. Sullivan entered into the record a copy of the periodic review.) He maintained that if the period review, completed only 18 months ago, did not change the UGB then there was no need to do so now. When the period review process is done again, that is when the issue could be assessed for change. Mr. Sullivan felt a "trade" needed concurrent approval and must meet needs as well as other criteria, such as quality of soils. He pointed out that the subject property is Class 2 soil which is the second best in the state and should be preserved. He also said that statewide goals 2, 3, 4, 11, 14, were not treated with any specificity. Mr. Sullivan noted that the OAR cited by Mr. Read is an embarrassment to the state and cited case law, Willamette University vs. LCDC, as making the rule invalid. He said the tax base would be added to substantially, however, with the 6% annual increase it would not affect the distribution of taxes. He reiterated that there is no great need for residential land and requested the Council to deny the application.

Jay Hoffman, 1265 N. Grant, felt the property in question should stay in agriculture use. He suggested that Times Mirror complete their last 1% of property liquidation by donating the property to the City for park development and income to the City from agriculture use.

REBUTTAL - Curt McLeod rebutted the opponents testimony as follows:

Ginny Jones - she is entirely wrong, conditions are imposed in further planning process during the preliminary plat stage.

Edna Vosika - in regards to people purchasing because of the UGB, the land is in the same ownership as it was in 1984 and it was zoned residential at that time. Using a map Mr. McLeod pointed out that most residences were already there prior to the UGB change and only a few have been built since then. It is unique soil. However, Canby is all either number one or number two, therefore it is not as valuable as some other areas in Canby. He pointed out that Rebecca Estates, currently being

developed, is also Class two soil.

Delbert Hemphill - questioned the continued use for agriculture since interest could not be generated for the use.

Mrs. Zappatereno - in response to the price to high, he said it was lower due to down zoning.

Ed Sullivan - he pointed out that as we grow we convert agriculture land to residential and most are class two soils. It was Mr. McLeod's impression that the periodic review consisted mainly of technical change aspects, i.e., no land use, population or other updates of the Comp Plan were inclusive in the review. Also, Oregon City and Sandy both have "traded" property successfully. He had spoke with LCDC and they had originated the idea of trading land, they only specified area, they did not mention qualitated trade. He pointed out that Canby is all either one or two class soils, and we are using the least valuable in number two. Mr. McLeod felt the applicant addressed the statewide planning goals. He also felt they are preserving farmland at the expense of other land that is more compatible to the area. Mr. McLeod said he took exception to Mr. Sullivan's remarks regarding the taxes. In response to the cited OAR, it is still a law and still in use. He said if they were requesting the opposite, if they were zoned R-1 and requesting to change to Agriculture zoning, they could not do this. Since they are local people they do care, "we are the ones most important - we live here."

Jay Hoffman - regarding donating land for open space, Mr. McLeod suggested the adjacent property owners do the same. He suggested a park would be nice for the site, however, Canby has no guidelines or Master Parks Plan.

Mavourn Stuart addressed the Council, saying she has lived in the area for twenty years and has never known of "stinky" fertilizer to be used in the area.

Sean McVicker, questioned if there were any financial consideration on a trade or just acre per acre..

Attorney Kelley noted that Sandy's trade was unlike ours and was an entire plan revision. Oregon City did trade specific for specific areas. Mr. Kelley said he could not comment on quality vs. quantity in a trade issue.

Mayor Kopelk questioned each Councilor regarding continuation of the hearing to another date.

Councilor Prince wanted staff to explore the legality aspects of a trade issue.

Councilor Taylor requested that staff research what is appropriate to test the "need" issue.

Councilor Stiglbauer questioned if the Comp Plan had been updated and if there were other agriculture property in the City. Mr. Klem noted that in 1988 there was a periodic review on the plan. Also, the subject property is the only piece of agriculture zoned property within the City limits.

Mayor Kopelk announced that the public hearing will be continued on this matter until May 16, 1990.

Mayor Kopelk called for a short recess at 10:20 p.m., reconvening at 10:23 p.m.

ORDINANCES & RESOLUTIONS: Administrator Jordan explained that Resolution No. 445 was a necessary for the budget process, however, on the bottom section number 5 was eliminated by error and must be included. **Councilman Daniels moved to approve as amended Resolution No. 445, A RESOLUTION VERIFYING THAT THE CITY OF CANBY HAS MET THE REQUIREMENTS TO RECEIVE REVENUES FROM CIGARETTE, GAS AND LIQUOR TAXES. Motion seconded by Councilman Carroll and approved 6-0.

NEW BUSINESS: **Councilman Carroll moved to approve payment of accounts payable in the amount of \$68,982.20, seconded by Councilman Prince and approved by roll call vote, 6-0.

UNFINISHED BUSINESS: The Council considered the Findings of Fact for CUP-89-11, the denial for the Canby Disposal Garbage Transfer Station. **Councilman Prince moved to adopt the Findings of Fact as published for the Canby Disposal Company, CUP-89-11. Motion seconded by Councilman Smith and approved 6-0. (A copy of the Findings of Fact will become a part of the minutes.)

OTHER REPORTS OR ANNOUNCEMENTS: Administrator Jordan announced that the Swim Center is once again open after the renovation process and Councilman Stiglbauer will initiate the newly installed rope swing. Mayor Kopelk announced that she and Councilor Smith will be officials at the swim meet scheduled for this weekend at the pool.

Councilman Taylor asked what the City intended to do about a "trench" at the end of N. Birch Street. Roy Hester informed the Council that due to the sandy soil the project will have to be done over and he anticipates working on that next week. Mayor Kopelk requested barricades be put up in the area in the interim.

ACTION REVIEW:

1. Forward the \$100 to LOC.
2. Post Ordinance No. 844.
3. Research Council requests for the Northwood Estates proposal.

**Councilman Taylor moved to go into Executive Session under ORS 192.660 (1)(e), negotiate real property; (1)(h), pending litigation; and (1)(i), employee evaluation. Motion seconded by Councilman Carroll and approved 6-0.

Mayor Kopelk recessed the regular session at 10:36 p.m., to go into Executive Session in the Police Department conference room.

The regular session was reconvened at 12:09 a.m., and immediately adjourned.

EXECUTIVE SESSION

APRIL 18, 1990

Present: Mayor Kopelk, Councilors Smith, Daniels, Prince, Taylor, Stiglbauer and Taylor, Administrator Jordan and Attorney Kelley.

Mayor Kopelk called the session to order at 10:45 p.m.


ORS 192.660 (1)(e), the Council first discussed the possible sale of real property.

ORS 192.660 (1)(h), the Council discussed the litigation case of City vs. Torgeson.

Attorney Kelley left the session at this time.

ORS 192.660 (1)(i), employee evaluation was discussed by the Council.

Mayor Kopelk adjourned the session at 12:08 a.m.


Marilyn K. Perkett, City Recorder


Nancy G. Kopelk, Mayor

FINDINGS OF FACT, CONCLUSIONS OF LAW and DECISION

CUP - 89-11

On April 4, 1990, The Canby City Council met to consider the appeal by the applicant, Canby Disposal, from the Planning Commission's decision of February 12, 1990 denying a conditional use permit for a solid waste transfer facility at a proposed site at N.W. Third and N. Baker Drive in Canby.

After hearing staff's report, oral argument from the applicant, proponents and opponents, review of written arguments submitted, the Council moved to uphold the Planning Commission's denial of the application, adopting the Findings and Conclusions of the Planning Commission as their own including certain additional findings the Council made as follows:

1) Criterion A. The proposal will be consistent with the policies of the Comprehensive Plan and the requirements of this title and other applicable policies of the City.

Comprehensive Plan Policy # 2-R -- Water Resources: CANBY SHALL MAINTAIN AND PROTECT SURFACE WATER AND GROUNDWATER RESOURCES.

The subject property lies approximately 1,000 feet east of the summer municipal water intake along the Molalla River.

The application calls for drop box type garbage containers to be stored upon a gravel surface. Soil in this area is extremely porous. The council found that contaminants are likely to leak from said containers and percolate into the soil through the gravel with a substantial possibility of groundwater contamination.

The Planning Commission found no information provided by the applicant in the record which demonstrates that this development would not have a negative impact on surface and/or groundwater quality or its potential impact on Municipal water resources located in close proximity to the site.

Policy #3-R, CANBY SHALL REQUIRE THAT ALL EXISTING AND FUTURE DEVELOPMENT ACTIVITIES MEET THE PRESCRIBED STANDARDS FOR AIR, WATER, AND LAND POLLUTION -

The Commission found insufficient evidence in the record to indicate that any conditions imposed to ensure that prescribed standards for air, water and land pollution could be enforced. Specifically the record showed DEQ lacked the time and/or manpower to follow up and enforce regulations and that the City had been unable to enforce conditions on the applicant at another site. The Planning Commission concluded that there is insufficient information in the record to show that the prescribed standards for air, water and land pollution would be met.

Therefore the Planning Commission concludes that there is insufficient information in the record to show that surface water and groundwater resources will be maintained and protected.

Criterion A has not been met.

2) Criterion B. The characteristics of the site are suitable for the proposed use considering size, shape design, location, topography, existence of improvements and natural features.

The Planning Commission determined that the subject property lies within 800 feet of developed residential lands, and truck traffic to the site will pass through that area. The Commission further found that the subject property is less than twice the size of the existing property along the Berg Parkway. The Commission did not find adequate information in the record to show that the new site would be large enough to handle the garbage for a projected population of 20,000. The Commission further found that the City's designated truck route is currently located partially within a developed residential zone.

Section 16.50.020 of the Canby Municipal requires that a Site Plan, drawn to scale, showing the dimensions and arrangement of the development be submitted along with a Conditional Use application. The Commission found that the site plan submitted by the applicant did not accurately reflect the size and dimension of the property or the proposed improvements.

The Planning Commission therefore concludes that the applicant has not provided sufficient evidence to show that the site is suitable for the proposed use, considering size, location, and design.

Criterion B has not been met.

3) Criterion C. All required public facilities and services exist to adequately meet the needs of the proposed development.

The Commission found that no sidewalks exist on adjoining streets, that no information had been submitted regarding how well the existing truck route could handle the increased traffic and congestion, and that the record did not adequately show that, given the number of conditions staff recommended for approval, the City, County, or State had enough available staff to adequately monitor operations and conditions.

The Commission also found that three other facilities already exist within the area to handle all of Canby's current and projected needs for garbage service and recycling.

The Council found that the municipal wastewater treatment facility is unable to effectively treat possible contamination from a garbage transfer station.

The Commission concluded that the record did not contain sufficient information to show that all required public facilities and services exist to meet the needs of the proposed development. The Council further concluded that the record did not show a demonstrated need for a new garbage transfer facility and recycling center in the City of Canby.

Criterion C has not been met.

4) Criterion D. The proposed use will not alter the character of the surrounding areas in a manner which substantially limits, or precludes the use of surrounding properties for the uses listed as permitted in the zone.

The Commission found that the properties surrounding the subject property were zoned for Light Industrial uses.

The Commission further found that no written objections from adjacent business owners had been submitted into the record.

The Commission concluded that the character of the surrounding area would not be altered in a manner which would limit permitted uses on surrounding properties.

Criterion D has been met.
THEREFORE:

Based on the Findings and Conclusions contained in this report and the additional information contained in the record, the Planning Commission has unanimously moved to DENY Conditional Use Application #CUP-~~89~~-11.

Nancy G. Kopelk, Mayor

Date