

CANBY CITY COUNCIL

REGULAR MEETING

MAY 16, 1990

(Televised live on Channel 5.)

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

Also present: Administrator Michael Jordan, City Attorney John Kelley, City Recorder Marilyn Perrett, Police Chief Jerry Giger, Public Works Director Rusty Klem, Library Director Beth Saul, Ken & Mavourn Stuart, Morris Cederquist, Delbert Hemphill, Jerry J. & Roberta Simnitt, Mary McCurdy, Jerry & Janice Simnitt, Edna Vosika, Rex Sanders, Lyle Read, Lynn Kadwell, Rex Samples, Ingeborg Zappertereno, Marcella Baker, Bob Westcott, Pat Ewert, Ronald Tatone, Curt McLeod, Edward Montecucco and Janine Brooks.

Mayor Kopelk called the regular session to order at 7:30 p.m., followed by the flag salute. During meditation, the Mayor memorialize the passing of Marie Liberty, wife of former Canby Municipal Judge Dale Liberty, and former Councilor Joe Wagner.

Roll call of the Council showed a quorum to be present.

CITIZEN INPUT ON NON-AGENDA ITEMS: Chief Giger requested that the Chamber of Commerce be allowed to display a banner on the overpass at the north end of town to advertise the Wine, Food and Craft Festival of June 2 and 3, 1990. **Councilman Daniels moved to approve the request of the Chamber of Commerce to put up a banner on the overpass to advertise the June 2, & 3, 1990, Wine & Food Festival. Motion seconded by Councilman Carroll and approved unanimously.

**Councilman Daniels moved to approve as distributed the minutes of regular session, May 2, 1990, seconded by Councilman Smith and approved 6-0.

PROCLAMATION: Mayor Kopelk proclaimed the month of May and Poppy Month; and May 23 through 26, 1990, as Poppy Days in the City.

PUBLIC HEARING: The Northwood Investments hearing for a Zone Change and Comprehensive Plan Amendment was continued from April 18, 1990. Councilor Carroll informed the Council that as Loan Officer of the U.S. National Bank he had knowledge of the Northwood transaction, however, he felt this presented no conflict in his decision making process.

Attorney Kelley reviewed his memo regarding the two issues he was asked to research on the issue. First, Mr. Kelley said he felt "fairly confident", due to recent case laws that a "need" must be demonstrated. As the application was presented, Mr. Kelley felt that the need would not be defensible at DLCD. If all the UGB

areas were in use at this time, then a need could possibly be demonstrated. Second, the issue of a trade should be qualitative and site-specific criteria, using applicable State Land Use Goals.

Attorney Kelley suggested a couple alternatives: request applicants to submit new application with a trade inclusive; or initiate a legislative plan review. Mr. Kelley recommended reviewing the entire UGB, not just this specific site, however, it would take time, perhaps one or two years, and be very costly.

Councilor Taylor asked what the procedure would be for the latter. Mr. Kelley noted that first the matter would have to be denied and findings adopted, decide "who" and "where funds" would come from to initiate the entire Comp Plan review, inclusive of public hearings. Actually, the procedure would be much like the initial one when the plan was adopted. Then a new application could be filed.

Administrator Jordan suggested a workshop session to discuss the Comp Plan review approach.

Councilor Carroll questioned if current businesses in various zones would be endangered and was told they would be "grandfathered" as pre-existing.

Councilor Daniels questioned if we could claim this as a gross error due to the fact the improper owner's name was used in some of the preliminary processes. Attorney Kelley said it would have no bearing with LCDC.

Attorney Kelley pointed out that two new pieces of evidence had been submitted for the record in this issue.

Mayor Kopelk opened the public hearing at 7:56 P.M.

STAFF - Attorney Kelley read the new evidence into the record. The first was a letter dated May 7, 1990, from Smith French, Fire Chief, encouraging the approval of the request. The Fire Chief cited need for proper continuation of streets to enhance emergency equipment response time and the completion of the dead-end water mains to enhance the water availability. The second letter was dated May 10, 1990, and signed by several Realtors in the City, citing factors for the need for buildable lots and homes in the City.

PROPONENTS - Lyle Read, 588 N. Juniper, one of the applicants, reiterated the facts of their request was to enhance traffic patterns, safety factors, better water supply and they felt the need had been demonstrated. Mr. Read said their organization would be most willing to cooperate in any way possible. He questioned why their application could not be treated like Mr. Kahut's Transfer Station application with approval and conditions set.

Rex Samples, 1105 N.E. 13th Circle, felt this was not suitable for farm use since you could not put cattle on it and various crops needed chemicals. He sited the removal of a filbert orchard on S.W. 13th Avenue to put in a mobile home park. He stressed that the current City limits looked like a puzzle with a piece in the middle missing, he urged that the City be made "whole" and the area be put back in the UGB.

OPPONENTS - Ingeborg Zappertereno, 420 N.W. 12th Avenue, addressed the Council expressing her concern about already overcrowded schools and the possible need to build more schools, as well as the fact of higher taxes.

Edna Vosika, 680 N.W. 9th, expressed concern for senior citizens that are already burdened with taxes and the fact that the already enrollment pressure at the schools will make it necessary to build more classrooms.

Mary McCurty, representing the Simnitt Nursery, supported the City Attorney's suggestion of denial based on no justification for the need. She disagreed with the concept of a trade, and felt this was not a role for the City to become involved in as it would make the City a "joint developer"; and the trade would fail to protect the unique agriculture land. Ms. McCurty felt the legislative plan review would be very costly for the City specifically when it is due to one application. She pointed out that the soon to be implemented Enhanced 911 should remedy some of the concerns of the Fire Chief. Also, on April 25th, Simnitt's made an offer on the subject property and received no response. Finally, she noted that the proposal would be an increased pressure on the school system and take good soil out of production.

Ed Montecucco - 3468 N. Holly, informed the Council that he had made three different offers on the subject land to Les Wilkins, July 27, 1989, October 23, 1998 and April 24, 1990, the latter was a back-up offer to the Northwood offer. He noted that his offers were not considered. Mr. Montecucco's intent was for agriculture use of the property.

REBUTTAL - Lyle Read, noted that the current taxes on the property is \$800 annually and if developed with 100 home sites, the taxes would be \$260,000 annually. He pointed out that the kindergarten, which was state mandated a year ago, pressured the schools. Mr. Read also noted that they had a contract with IFA to purchase the property and due to the contract, other offers could not be considered. He also reiterated that all of Canby is either Class I or II soil, and the recent annexation of 30 acres on the south side of town was Class I soil.

Rex Samples, pointed out that if the property were developed it would provide more tax revenue for the City.

Mayor Kopelk closed the public hearing at 8:30 p.m.

Councilor Prince asked how much developable land was in the City limits and also in the UGB. (Mr. Klem went to his office to get the answer to this question.)

Councilor Daniels felt that due to the reputation of the good schools in Canby and closeness to I-5, the supply and demand for land is apparent in Canby.

Councilor Taylor questioned the trade issue with conditions. Attorney Kelley said the Kahut issue was a Conditional Use Permit and an entirely different matter and process.

Mr. Klem offered the figures on developable land from the 1988 Periodic Review: City Limits, 167 acres, 65 acres in small parcels under 5 acres and 102 acres in larger parcels over 5 acres; and in the UGB, 1,205 acres developable. A total of 1,372 developable acres. He noted that some changes have been made since the 1988 figures.

Councilor Smith questioned who would make the decision on a trade regarding qualitative issues. Mr. Kelley said the Planning Commission would first review it, then the Council and ultimately LUBA for the evaluation of the land. Also, the decision would be based on evidence.

Mayor Kopelk reminded the Council of the options they must consider for denial or approval.

Councilman Taylor commented that he supported Mr. Kelley's recommendation to deny, although the property fits the scope for sound development, he felt they had not demonstrated need. Mr. Taylor felt the Council should pursue a review of the entire Comp Plan. **Councilman Taylor moved to deny the request of Northwood Investments for a Zone Change and Comprehensive Plan Amendment based on the Findings of Fact that sufficient evidence was not demonstrated a need for an expansion of the UGB; and that staff return with Findings of Fact. Motion seconded by Councilman Carroll and approved by roll call vote, 5-1, with Councilman Daniels voting nay.

A workshop session was set for May 30th, Wednesday, 6:30 p.m. for preliminary examination of a complete review process.

Lyle Read addressed the Council, noting his disappointment, however, commending Mayor Kopelk on the process and confirming that they intend to be good citizens and keep the site orderly.

Mayor Kopelk called for a recess at 9:00 a.m., and reconvened the regular session at 9:05 p.m.

COMMUNICATIONS: Administrator Jordan read a letter from the American Legion Post 122, requesting permission to hold their annual Flag Day Ceremony on June 14th, to destroy flags and requesting it become a permanent calendar item. Also, they reminded staff to fly the City flag at half-mast until noon on

Memorial Day. The Council gave approval by consensus for the June 14th ceremony and are to let the Mayor know if they feel this event can be an automatic calendar item.

Administrator Jordan read a letter from Michael Barnett, Mayor of Barlow, commending our Police Department and specifically, Officer Edward Stelle on a recent problem.

A letter from the Canby Art Association was read by Administrator Jordan, requested Council approval for use of Wait Park for the annual General Canby Day and inviting the Mayor and Council to ride in the parade. Once again, the Council gave approval by consensus.

NEW BUSINESS: **Councilman Carroll moved to authorize payment of accounts payable in the amount of \$159,006.39, seconded by Councilman Daniels and approved by roll call vote, 6-0.

The Council next considered a ballot measure for a three year serial levy for street construction. Mr. Klem had set a tentative schedule of streets and proposed costs to consider. It was suggested to add the wording to the question of the measure, "each year". **Councilman Daniels moved to approve, as presented and amended, the Street Construction Measure of \$300,000 for each of three years to be presented to the voters on June 26, 1990. Seconded by Councilman Prince and approved 6-0.

The Council reviewed a policy and procedure statement requested by the State Audit Division to ensure balancing of the annual budget. The words "Budget Chairman" were added to Section IV. **Councilman Carroll moved to approve, as presented and amended, the Policy and Procedure to assure the City's budget balances each fiscal year. Motion seconded by Councilman Smith and approved 6-0.

Beth Saul informed the Council that Jacob Taasevegin requested, as an Eagle Scout project, permission to help organize the moving of the library when the new building is complete. Jacob will be invited to a June 13th meeting for the planning of the project. The Council approved by consensus the request for the Eagle Scout Project by Jacob Taasevegin.

ORDINANCES & RESOLUTIONS: The Council next considered an ordinance amending the Canby Telephone Association franchise ordinance. Administrator Jordan noted that HB3000 had imposed new regulations regarding franchise fees for telecommunication utilities. Currently, the League of Oregon Cities is contesting some of the new regulations, one of them being that the billings must have a line item declaring that part of the payment is a City franchise tax. Also, each patron will receive reduction of 20 cents for each access line. Mr. Jordan explained that our current franchise fee is 3% of gross revenues and since the new regulation changes the base structure to City limits revenues, it has been suggested we raise our fee to 3.7%, which will keep our revenue at the same level. New legislation does allow up to 7%

franchise fee. These new laws will take affect July 1st.

Janine Brooks, from the Canby Telephones Association, was present to answer questions. She noted it is mandated that bills have the new "tax" printed on it.

****Councilman Carroll** moved that Ordinance No. 845, AN ORDINANCE AMENDING SECTION 7 OF ORDINANCE NO. 668, REGARDING ANNUAL FRANCHISE FEE TO BE PAID BY THE FRANCHISEE, CANBY TELEPHONE ASSOCIATION, TO THE CITY OF CANBY, AND AN EFFECTIVE DATE, be posted and come up for final action on June 6, 1990. Motion seconded by Councilman Daniels and approved 6-0.

UNFINISHED BUSINESS: Carl Mosely, project manager for the new library project, was present to update the Council on the construction: exterior stone has been removed; windows are being cut on the north side; roof repair is complete; interior walls are in place; plumbing and electricity in place; ceilings lowered; acoustical ceiling and new lights are being put in; and furniture has been ordered. Mr. Mosely said the completion date is August 9th and we should have some money left for future maintenance. The Council also considered a change order of \$35,000, which was primarily for interior walls, which should cut the utility bills by 25%. Mr. Mosely was commended for the project and specifically his efforts. ****Councilman Taylor** moved to authorize the change order on the library project in the amount of \$35,362, for a total project cost of \$231,573. Motion seconded by Councilman Prince and approved unanimously.

The Council considered various appointments to City committees. ****Councilman Daniels** moved to appoint Morris Cederquist to the City Budget Committee, with his term expiring in July, 1993, and Dale Carter to another term on the Library Board, with his term expiring, July, 1994. Motion seconded by Councilman Smith and approved 6-0.

OTHER REPORTS OR ANNOUNCEMENTS: Councilman Stiglbauer commented on how nice the new mausoleum is now that it is complete.

Mayor Kopelk noted that the re-opening at the Swim Center was very nice and specifically the Rope Swing Exhibition.

Councilor Smith reminded the Council of the Design Review hearing on May 21st.

ACTION REVIEW:

1. Authorize banners for Chamber Wine Festival.
2. Prepare Findings of Fact for the Northwood decision.
3. Schedule workshop for May 30, 1990, 6:30 p.m.
4. Authorize American Legion to use Wait Park for flag destroying ceremony.
5. Authorize use of Wait Park for General Canby Day.
6. Set 3 year serial levy on June 26th ballot.
7. Prepare for second reading of Ordinance No. 845.
8. Letters to new committee appointments

**Councilman Taylor moved to go into Executive Session under ORS 192.660 (1)(e), to discuss real property negotiations. Motion seconded by Councilman Carroll and approved 6-0.

Mayor Kopelk recessed the regular session at 9:45 p.m. to go into Executive Session in the Police Department conference room. The regular session was reconvened at 10:22 p.m. and immediately adjourned.

EXECUTIVE SESSION
MAY 16, 1990


Mayor Kopelk presiding. Present: Councilors Taylor, Smith, Daniels, Prince, Carroll and Stiglbauer. Also, Administrator Jordan.

Mayor Kopelk opened the session at 10:001 p.m.

ORS 192.660 (1)(e), the Council discussed possible real property negotiations.

Mayor Kopelk adjourned the session at 10:22 p.m.


Marilyn K. Perkett, City Recorder


Nancy G. Kopelk, Mayor