

CANBY CITY COUNCIL  
REGULAR MEETING  
APRIL 6, 1988

(This meeting televised live on Channel 5.)

Mayor William F. Pulver presiding. Council members present: Nancy Kopelk, Shawn Carroll, Walt Daniels, Scott Taylor, Terry Prince, and Michael Jordan.

Also present: Administrator Stephan Lashbrook, Police Chief Jerry Giger, City Attorney John Kelley, Aquatics Director Scott Nelson, City Recorder Marilyn Perkett, Derrell Blacker, Bus & Freda Brown, Jean Warren, Kaylene Clawson, Donna Henderson, George Wilhelm, and Clark Chesser.

Mayor Pulver called the regular meeting to order at 7:30 p.m., followed by the flag salute and meditation.

\*\*Councilman Carroll moved to approve as distributed the minutes of regular session, March 16, 1988, and special session, March 30, 1988. Motion seconded by Councilman Daniels and approved 6-0.

CITIZEN INPUT ON NON-AGENDA ITEMS: Clark Chesser, Canby American Legion Post No. 122, addressed the Council and presented individual invitations to them to attend a luncheon on April 23, 1988, when the National Commander, Jake Comer and National Auxiliary Vice-President, Veronica Spence, will be present.

PROCLAMATION - Mayor Pulver proclaimed the month of April as "Child Abuse Prevention Month". Mayor Pulver also announced that Canby Kids is sponsoring a seminar on Child Abuse to be held at Cutsforth's Old Town Hall on April 26th, from 7 to 9 p.m.

COMMUNICATIONS: Administrator Lashbrook read a letter from Dean Boyer, BBC Steel Corp. in Canby, commending the City Council on the recent workshop on the planned industrial park for the south side of Canby. Mr. Boyer indicated his interest in serving on a citizen group to help plan the area.

ORDINANCES & RESOLUTIONS: \*\*Councilman Taylor moved that Ordinance No. 814, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF CANBY, COUNTY OF CLACKAMAS, OREGON; AND DECLARING AN EMERGENCY, for W.L. and O.F. Brown, be adopted and become part of the laws of the City of Canby, motion seconded by Councilman Carroll. Mayor Pulver called for discussion, none was presented. Motion passed 4 to 2 by roll call vote, with Councilors Jordan and Kopelk voting nay.

\*\*Councilman Carroll moved that Ordinance No. 815, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF CANBY, COUNTY OF CLACKAMAS, OREGON; AND DECLARING AN EMERGENCY, for William and Maxine Garmire, be adopted and become part of the laws of the

City of Canby. Motion seconded by Councilman Daniels, no discussion was presented, motion carried by roll call vote 4-2, with Councilors Kopelk and Jordan voting nay.

Ordinance No. 816 was presented for Council consideration. Administrator Lashbrook explained that the Council and Library Board had been meeting for over a year regarding a future site for a Library facility. The present library is in a rented facility on a year to year basis. The funds for the purchase of the library property are from reserve funds, and approximately \$20,000 will remain after purchase of the property. Also, the board can now proceed with fund raising for a future facility. The proposed site is located at the southwest corner of N. Grant and N.W. Fourth Avenue and owned by Eagle Newspapers. AUTHORIZING PURCHASE OF REAL PROPERTY FOR FUTURE LIBRARY DEVELOPMENT; AND DECLARING AN EMERGENCY be properly posted and come up for final action on April 20, 1988. Motion seconded by Councilman Prince and approved unanimously.

At this time Mayor Pulver moved to New Business, item D, Zone Change Request-Anderson, prior to consideration of Ordinance No. 817. Administrator Lashbrook reviewed the record, for which the City Council must make their decision on, and noted that only two criteria were to be considered: 1) compliance with the Comp Plan, with special consideration to the Land Use Element; 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 needs of any use or development. Mr. Lashbrook noted that the original application was for rezoning of 40 acres from R-1, Low Density Residential to R-1.5, Intermediate Residential Density. However, the Planning Commission recommended zoning only 8.5 acres primarily to insure another access street to the area, probably off of S. Ivy Street. The Planning Commission set forth the following conditions: 1) a ten foot dedication for widening of S.E. Township; 2) full curb and sidewalk improvements along the south side of S.E. Township; 3) a waiver of right to remonstrate against LID's; and 4) dedication and waiver to be approved by City Attorney.

George Wilhelm, Wilhelm Engineering from Canby, represented the applicant Mr. Regan. Mr. Wilhelm requested that the Council consider the entire 40 acres for the following reasons: all testimony at the public hearing was favorable; staff recommended the approval; Comp Plan mandates the zone change for the area; to encourage orderly development; by rezoning only one phase of the area it encourages "piece-meal" development; and any further development beyond phase one requires Planning Commission approval.

Proponents - None.

Opponents - None.

Administrator Lashbrook noted that he suggested to the commission

that any further rezoning applications for the area could be initiated by the City, however, the commission chose not to pursue the issue. Councilman Daniels questioned if approving only 8.5 acres jeopardized the second access issue. Mr. Lashbrook said that any future development would require Planning Commission action and they could deny it without the access.

Mr. Wilhelm pointed out that the entire development is scheduled for 8 phases.

**\*\*Councilman Taylor moved that Ordinance No. 817, AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF CANBY, COUNTY OF CLACKAMAS, OREGON; AND DECLARING AN EMERGENCY,** application of David Anderson acting as agent for Joseph and Shirley Regan, and the ordinance to be properly posted and come up for final action on April 20, 1988. Motion seconded by Councilwoman Kopelk and approved 4-2, with Councilors Daniels and Jordan voting nay. Mayor Pulver polled the Council as to their ballot. Jordan-in favor of the 40 acres zone change as he felt the ordinance protected the City for the second access and would cut some "red tape" for the developer; Prince- in favor of only approving 8.5 acres; Taylor- agreed with Planning Commission's findings, and noted they are the people we depend for reviewing such issues; Kopelk-agreed with Taylor and Prince on the 8.5 acres; Daniels-agreed with Jordan and felt the 40 acres should be approved as the additional street access was safeguarded by necessary commission action; and Carroll-felt the 8.5 acres should be approved and also that the the remaining 33.5 should be approved in one additional application.

**NEW BUSINESS:** **\*\*Councilman Carroll moved to approve payment of accounts payable in the amount of \$39,028.40, seconded by Councilman Daniels and approved by roll call vote 6-0.**

The Council next considered a street dedication on the northwest corner of N. Pine and N.E. 10th Avenue. **\*\*Councilman Daniels moved to accept a street dedication from Walt Beaver for street purposes on N.E. 10th and N. Pine. Motion seconded by Councilman Carroll and approved unanimously.**

The Council next considered the application from the Canby Bowl for a permanent liquor license to sell beer and wine. Councilor Kopelk questioned if children were allowed on the premises and where the beverages would be sold. Derrell Blacker, Manager of Canby Bowl, said the smaller children had a game room and the alcoholic beverages would be sold in the cafe section. He also noted that 85% of bowling alleys had liquor licenses.

**\*\*Councilman Carroll moved to approve the application of the Canby Bowl for a OLCC liquor license to sell beer and wine, motion seconded by Councilman Prince. Motion carried 5-1, with Councilwoman Kopelk voting nay.**

Administrator Lashbrook reviewed the criteria for the request from John Torgeson for a permit to place a mobile home on property adjoining Canby Community Park for a caretaker due to trespassing and vandalism on his property. Mr. Lashbrook pointed

out that due to the Municipal Code, the Council must establish that the site in an "industrial area", "large commercial tract" or "construction site". If the Council approve the application five conditions were recommended: one year permit and to sign an affidavit agreeing to remove the unit at termination of the permit; full compliance with Federal Flood Insurance requirements; disclose requirements of permit to inhabitants, including flood prone nature; Building Official to receive written approval for a septic tank; and applicant to take responsibility for compliance with any requirements imposed by Canby Utility Board for water and electric connections. Mr. Lashbrook also noted, that according to the Code it was not an "expansion of the non-conforming use". Attorney Kelley said he felt that the applicant had demonstrated a need on a temporary basis. \*\*\*Councilman Daniels moved to approve the request of John Torgeson for a mobile home placement as per his application, motion seconded by Councilwoman Kopelk. Councilman Jordan suggested that the word "temporary" be added to the motion. Request approved, motion carried 6-0. (Application and conditions will become a part of the minutes of this meeting.)

UNFINISHED BUSINESS: Jean Warren, President of the Library Board, thanked the City Council for passing the ordinance for purchase of property for a future development. Mayor Pulver also thanked Mrs. Warren for the many hours of work the board had put into this project. Stephan Lashbrook informed the Council that Jean Warren, Canby's member of the Citizen Advisory Board for Block Grant funds had taken time off work to attend the last meeting where the City was granted two requests. More information will be forth coming on these grants.

OTHER REPORTS OR ANNOUNCEMENTS: Mr. Lashbrook invited the Council to attend the Planning Commission meeting on Monday, April 11th for a workshop on proposed Comp Plan changes.

ACTION REVIEW: 1. Post Ordinances 816 and 817 for second reading.

\*\*Councilwoman Kopelk moved to go into Executive Session under ORS 192.660 (1)(h), to consult with counsel regarding litigation or litigation likely to be filed. Motion seconded by Councilman Carroll and approved 6-0.

Mayor Pulver recessed the regular session at 9:05 p.m., to go into Executive Session. The Council moved the Executive Session into the City Hall business office so the video crew could remove their equipment.

Mayor Pulver reconvened the regular session at 9:23 p.m. and immediately adjourned.

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EXECUTIVE SESSION  
April 6, 1988

Mayor Pulver presiding. Councilors Jordan, Kopelk, Carroll,

Prince, Daniels, and Taylor present.

Also present: Administrator Lashbrook and Attorney Kelley.

The Executive Session was called under ORS 92.660 (1)(h). Attorney Kelley discussed three litigation cases with the Council. 1) Pienovi vs. the City, 2) a demand letter filed by Fred Larison, and 3) Dan DeRego vs. City of Canby

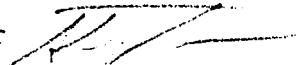
(NOTE: that Mayor Pulver excused himself from the DeRego discussion due to his employment for an insurance agency involved in the case; and Michael Jordan excused himself from the discussion on the Pienovi issue.)

Mayor Pulver adjourned the Executive Session at 9:23 p.m.

  
Marilyn K. Perkett City Recorder

  
William F. Pulver, Mayor

MEMO TO:           Honorable Mayor Pulver & City Council

FROM:             Stephan A. Lashbrook, City Administrator 

SUBJECT:          Application for Mobile Home Placement  
                  (John Torgeson, applicant)

DATE:             April 1, 1988

Attached is Mr. Torgeson's application for a permit to place a mobile home on property adjoining Canby Community Park. Mr. Torgeson cites his concern about trespassing and acts of vandalism on his property.

I have copied the section of the Municipal Code (16.44.110) dealing with temporary permits for mobile homes for "caretakers or watchmen". It is interesting to note that Mr. Torgeson does not use the term "temporary" in his letter of application. The Code does not specify a maximum time limit for the placement of such units but it clearly gives the City Council the authority to set intervals for renewal of the permit and it requires the removal of units when permits have expired.

Looking to subsection "B" of 16.44.110, it appears that the Council must determine that Mr. Torgeson's property is an "industrial area" a "large commercial tract" or a "construction site" in order to approve the application.

Code Section 16.44.110 is somewhat unusual for two reasons. First, because it involves the issuance of a land use permit without requiring a public hearing procedure. Second, because the decision is made by the City Council rather than the Planning Commission. For whatever reason, the City Council chose to reserve this right some years ago when the Code was updated.

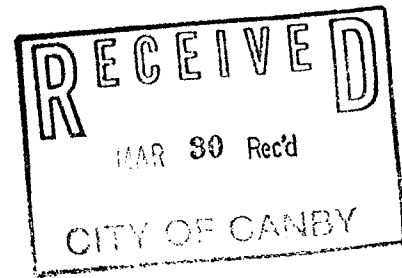
The standards and criteria listed under subsection "D" of 16.44.110 are fairly straight-forward. A further complication for this site, however, involves the requirements of the Federal Flood Insurance program. The subject property is zoned R-1-H, with the "H" overlay having been established because of the flood-prone nature of the area. Using the official Flood Hazard Rate Maps it appears that the location specified by Mr. Torgeson on the plot map he submitted can meet the requirement that the floor elevation of the unit be at least one foot above the base flood elevation. However, it should be noted that the applicant bears the burden of proving, to the satisfaction of the Building Official, that those elevation requirements have been met. This may be complicated somewhat by the amount of excavation that has gone on at the site.

**RECOMMENDATION:**

If the Council finds that the required criteria have been met, I would recommend that you approve this application subject to the following conditions:

1. Duration of the permit not to exceed one year, within which time an application for renewal must be properly filed or the unit removed. The applicant is to sign an affidavit agreeing to remove the unit at the termination of this permit or any subsequent renewal. The affidavit is also to specify that the Canby Utility Board may disconnect the unit from any municipal utility at the expiration of the permit.
2. The applicant bears full responsibility for compliance with Federal Flood Insurance requirements. The staff is to issue no permits for this unit until assured of compliance with those requirements.
3. The applicant is further required to disclose the terms of this permit and the flood prone nature of the site to any inhabitants of the unit. This disclosure is to include the fact that access to the unit may be prevented at times of extreme flooding.
4. The Building Official is to receive written confirmation of the approval of the site for the use of a septic tank system by Clackamas County prior to issuance of the permit for the unit's location on the property.
5. The applicant is to take responsibility for compliance with any requirements imposed by the Canby Utility Board for the connection of water or electric service.

March 28, 1988



City of Canby  
Canby City Hall  
Canby, Oregon 97013

Re: Application for Placement of Mobile Home  
on City Tax Lot 4S 1E 04 C 01790

Gentlemen:

I am the owner of the above-identified tax lot which consists of 23.05 acres in the City of Canby. The property is currently being utilized for a licensed mining operation. It is bordered on the West by the City park, on the North by a bluff and on the East and South by neighboring parcels.

I would like to place a mobile home on the property at the location shown on the attached map for the purposes of housing a watchman for the property. There has been a high incidence of trespassing by persons entering the property from the City Park in addition to acts of vandalism, and improper conduct on the property. In fact, I have been forced to take legal action against one particular person for repeated and flagrant acts of trespassing.

#### History of the Property

This tax lot was once part of a larger parcel of 59.5 acres which carries a rather rare county zoning of EFU 40. At the time the City of Canby expanded the city limits, 23.05 acres of that parcel were annexed to the City which left only 36 acres in the County.

I originally put the watchman's quarters on the 36 acres after digging a well and acquiring a septic permit. The County, however, refuses to allow the mobile home to remain because they say they have no program for watchman quarters. It should be noted that while the mobile home has existed on the property, the acts of trespassing and vandalism have been significantly reduced on the southern part of the property. However, the County refuses to bend, despite the following facts:

1. The parcel lies immediately adjacent to the City limits of Canby, and an industrial mining operation which makes the EFU-40 zoning rather outdated.
2. The two parcels are literally surrounded by mobile homes since there is a large trailer park on the bluff on the north side and a private mobile home on a neighbor's property on the North side. In addition, the City of Canby maintains a watchman's mobile home in the City Park which is immediately West of the two parcels.



3. There is an application pending in Clackamas County at the present time which would change the zoning for the 105 acre parcel (which lies south of my parcels) to commercial zoning. When this is approved, that property will accommodate a mining operation as well as any number of residences if the owner of that property so desires.

However, the only way the County will allow any residence on my County property is if I live in it personally and farm the 36-acres, most of which is too rocky to farm. This simply is not feasible now, therefore, I am submitting this application to move the mobile home to the parcel that lies within the City limits of Canby.

#### Utilities

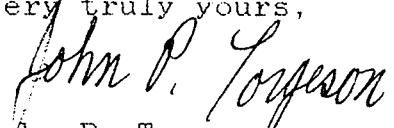
The subject property has access to City water and City power in addition to PGE power which has been brought onto the parcels. The soil is very well suited to a septic tank and no problems are anticipated in that area.

#### Description of Residence

The mobile home a single-wide home which would be placed in accordance with all mobile home placement codes and attractively landscaped.

In view of the above facts, I respectfully request approval of the placement of the mobile home on the subject property.

Very truly yours,

  
John P. Torgeson

