

CANBY CITY COUNCIL
REGULAR MEETING
NOVEMBER 16, 1983

Mayor Michael L. Gabrion presiding. Councilmembers present: David Anderson, Gene Clift, Nancy Kopelk, Bill Pulver and Scott Taylor.
Absent: Gary Sowles.

Also present: Administrator Doug Zenor, Public Works Director Bud Atwood, City Attorney, John Kelley, Chief of Police Jerry Giger, Deputy Recorder Marilyn Perkett, Dick Archer, Ron Hopkins, F.R. & Judi Land, Clay & Wanda Boyce, Rene Dupont, Steve Frederick, Linda McCarthy, Rod Beck, Ron Gray, Marv Dack, Art Ellickson, Norris Hart, Cheryl Anderson, Earl Oliver, Myra Weston, Lee & Virginia Shirley, Stephan Lashbrook, Catherine Davis, and others.

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

**Councilman Taylor moved to approve as distributed the minutes of regular session, October, 19, 1983, seconded by Councilwoman Kopelk and approved 5-0.

PUBLIC HEARING ON SALES TAX REFERRAL: Proponents: None was voiced.

Opponents: Senator Walter Brown of Milwaukie addressed the Council urging them to vote no on referring the sales tax, which would mean the legislature would go back into special session to present a new tax relief package. Council wished to give the issue more consideration.
**Councilman Taylor moved to table the issue of referral or non-referral on the proposed property tax, seconded by Councilman Anderson and approved 4-1 by roll call vote, with Councilman Pulver voting nay.

COMMUNICATIONS: Administrator Zenor read a letter, dated October 17, 1983, from Kathy Hamlet, Secretary of the Swim Club, requesting use of the Swim Center to host swim meets and a two day tournament in March. Mr. Zenor reminded Council that in the past, the Swim Club turned over the fees they received from the league for hosting the tournament. **Councilwoman Kopelk moved to approve the request of the Swim Club for the use of the Swim Center for the scheduled meets and tournament as set forth in their letter of October 17, 1983, with the condition that league fees for the tournament of March, 1984, be turned over to the City of Canby. Motion seconded by Councilman Pulver and approved 5-0.

ORDINANCES & RESOLUTIONS: Mr. Zenor read by title only for second reading, Ordinance No. 728, However, since two Councilmembers could not vote due to conflict of interest, a quorum would not be present to act upon the Ordinance, it will be set over to the December 7th meeting.

NEW BUSINESS: **Councilwoman Kopelk moved to approve payment of accounts payable for October 31, 1983, in the amount of \$18,034.70 and for the accounts of November 15, 1983, in the amount of \$11,738.45. Motion seconded by Councilman Pulver and approved 5-0 by roll call vote.

November 16, 1983

UNFINISHED BUSINESS: Mayor Gabrion briefed the audience in the procedure for the appeal on the Planning Commission decision on the proposed Mobile Home Project.

Attorney Kelley informed the Council as to the procedure for the appeal of a Conditional Use Permit approved by the Planning Commission for Canyon Ridge Inc., giving them authority to construct a manufactured home park on the Estate Eight Property, the appellants being Rod and Carol Beck, Arthur and Kathy Ellickson, John and Nadine Beck, Sam and Pat Schwarzin, and Mr. and Mrs. Bill Stevens. Attorney Kelley cautioned the Council to consider only the facts based upon the record (each Councilmember listened to 5½ hours of tapes) and no new evidence would be introduced or considered tonight, however, the applicant and appellants would be allowed to present argument.

APPELLANT - Rod Beck, 1555 S. Fir, spoke for the appellants. Mr. Beck referred to his letter of September 26, 1983, and presented the following reasons for the request for reversal of the Planning Commission decision:

- the Planning Commission accepted a revised plan with changes at their September 21, 1983 meeting and did not allow public testimony on the new items presented.
- the Planning Commission failed to make findings of fact in conformity with the public testimony and evidence presented.
- the Dick Land project was in essence the Canyon Ridge Corp. project and the status of the corporation, specifically financial status, was not addressed. Mr. Land had only an option to purchase and at no time was the question asked of who would finance the project.
- Mr. Beck stated that all evidence provided negative impact and livability conditions of the project area.
- the zoning is residential and the project is a commercial project.
- the Planning Commission did not consider all information, specifically another mobile home park pending, he felt they should have been compared.
- no other site was available for the project, he felt this was in error.
- provisions should be made to have public input as the stages of development progress, i.e., landscaping fencing, etc.
- the project is in violation of the Zoning Ordinance in that 15 feet of separation is required between buildings.
- the Planning Commission meeting of August 22, 1983, was chaired by the City Attorney, a procedure violation.
- the Planning Commission failed to address the Comprehensive Plan: Urban Growth (Clackamas County was not notified); Environmental Concerns; Transportation; and Public Facilities and Services.

CONCLUSION- Mr. Beck felt procedures were not followed and asked that the project be sent back to the Planning Commission, or approve the appeal on the fact that Mr. Land and his Corporation did not fulfill their burden of proof.

City Attorney Kelley, for clarification, questioned Mr. Beck on the following:

-did Mr. Beck agree that the City Council could make their own findings of fact from listening to the 5½ hours of testimony, since the appellant stated that the Planning Commission did not make the findings? Mr. Beck agreed that the Council could promulgate their own findings of fact.

-Mr. Atwood was asked to address the alleged Zoning Ordinance regarding the 15 foot required separation between buildings. Mr. Atwood stated that the Oregon State Building Code is different for mobile homes and in fact codes have been followed and no variance would be required. Mr. Beck disagreed in accordance with the ordinance since it was not a mobile home subdivision.

-Mr. Kelley questioned if there was an precedent where adjoining land owners would be allowed to give public testimony during stage developments of a project, rather than have staff control the conditions of development. Mr. Beck said under a subdivision yes, but this is not a subdivision and felt a condition should be set to allow public hearings on different stages of the project.

-Attorney Kelley noted that the subject property is in the city limits and not in the Urban Growth Boundary, therefore the County need not be notified of the project, and historically the County has had interest only in annexations. Mr. Beck felt that the County is trying to save agriculture land.

-Attorney Kelley questioned Mr. Beck's use of the word "commercial"? Mr. Beck stated that the people do not own the property, but lease it as compared to residential areas where people own property. Also, apartments are commercial operations and zoned for multi-family and this area is not zoned for the multi-family.

Councilman Anderson questioned the criteria of financial capability of the applicant. Mr. Beck noted that it was never an issue, however, we should know the financial and physical capability of the applicant. Mr. Anderson pointed out that the applicant is required to be bonded.

Councilman Anderson also questioned Mr. Beck's accusation that no testimony was allowed on the changes entered at the third meeting. Attorney Kelley stated that after the second meeting public testimony was closed. Mr. Beck stated that six new items were introduced at the third meeting, one being a park in his back yard. Mr. Atwood said the revised plat was not submitted to the Planning Commission, however, he did have it in his office for review of the conditions that have been imposed upon the applicant. Mr. Beck felt there was a difference between an imposed condition and a change. In checking the maps, Mr. Beck pointed out that trees left in place were not on the first map. However, Council noted that several people asked for the preservation of the trees in question.

Mayor Gabrion asked the legal aspect as to the former City Attorney chairing the Planning Commission meeting. Attorney Kelley could find no prejudicial wrong doing or case law on the issue. Mr. Beck felt it was an improper procedure.

Mayor Gabrion called for a short recess at 9:05 p.m., reconvening the regular session at 9:17 p.m.

APPLICANT - Mr. Fred Richard Land addressed the Council regarding his application:

- the trees that were left were an afterthought to serve as a buffer for the park.
- the map in question was never submitted to the Planning Commission, however it showed the conditions that were imposed.
- Mr. Land maintained that he had followed all of the LCDC goals and been in contact with them, the 1,000 Friends of Oregon and the Clackamas County Planning Department.
- the State of Oregon reviewed the project and rated it as the highest they had seen for desirability and standards.
- Mr. Land explained that Canyon Ridge Inc., is solely owned by himself and his wife.

Councilman Pulver asked clarification between mobile homes and manufactured homes. Mr. Land stated they would use the latest models in manufactured homes, with high standards such as composition roofs and looking very much like a normal home, also getting away from the metal look. However, they do have the capability of being moved or use of running gear.

Ron Hopkins, broker for Estate Eight, noted that this is not an option sale, but a land sales contract. Also, it is not a commercial development and as the record states, the water tower, medical clinic and nursing home have more adverse impact than a mobile home development.

REBUTTAL - Mr. Beck reiterated that both procedure and burden of proof were not evident in the project and urged the Council to approve the appeal. Also, that the record did not show any evidence of any other developments done by Mr. Land and that the evidence of the impact of the water tower, medical clinic and nursing home was staff conclusion.

Council first considered delaying a decision until the next meeting, however, after further input decided to make a decision.

Councilman Anderson commended Mr. Beck for his presentation but felt according to the record the plan should be approved, therefore, **I move to uphold the Planning Commission decision and deny the appeal of Arthur & Kathy Ellickson, John & Nadine Beck, Sam & Pat Schwarzin, Mr. & Mrs. Bill Stevens and Rod & Carol Beck and adopt the staff finding of fact and conclusions of law dated September 7, 1983, regarding the Conditional Use Permit for Canyon Ridge, Inc., to construct a manufactured home park on the Estate Eight property. However, striking out, on page 3, last paragraph of the staff memo: "the present site of a church, medical clinic, nursing home and water tower obviously have more adverse impact on a residential area than a mobile home park of single family mobile homes". Motion seconded by Councilman Pulver and approved 5-0 by roll call vote. (A copy of the 9-7-83 staff memo will become a part of the records of this meeting.)

The next order of business was Council consideration to approve staff recommendation for the proposed 13th Street bypass. **Councilwoman Kopelk moved to approve the S.W. 13th Street bypass as presented by staff, seconded by Councilman Anderson. Rene Dupont, owner of S.R. Smith for over 30 years, spoke in opposition noting much of the S.R. Smith Company would be affected and future plans for further development of the area are proposed by the firm that now owns the property. Mr. Dupont suggested Aspen Street as an alternative. Mr. Boyce, Oregon Bag Company, also spoke in opposition, saying that 60 feet of his property would be taken. Marv Dack remonstrated against the proposal, alleging the City is always imposing on his property for acquisition. Mr. Zenor cautioned the Council on the impact to the City of reverse condemnation, which could amount to a great deal of money. Council felt it needed more information regarding the cost affects of reverse condemnation, also, other routes to consider done by an engineer. Council vote on the motion on the floor was 0-5 for denial, by roll call vote. Mr. Atwood questioned Marv Dack if he would be willing to wait to submit his proposed project until further work is done on the bypass. Mr. Dack said he would be willing to wait if the Council will obtain an engineer to work on the project, Council agreed to this, however, noting Westec Engineers had been obtained for the first proposal.

Council considered the request of Roger Warren, of dismissing his litigation against the City and also, requesting reimbursement for attorney fees. **Councilwoman Kopelk moved that we authorize our Attorney, Emil Berg, to reject Mr. Warren's offer of settlement with a counter offer to agree to dismissal with prejudice, provided the motion recite that the reason for dismissal is that plaintiff is now in a law firm which represents the two cities, Canby and Hubbard, and his continuing to pursue the claims could create a conflict of interest and further that neither side makes any confession about the merits of Mr. Warren's claim. I further move that we expressly reject payment of any compensation for costs or attorney fees as requested by Mr. Warren. Motion seconded by Councilman Taylor and approved 5-0.

Bud Atwood submitted to the Council a recommendation for street improvements in order to be eligible for Federal Aid Urban System funding in the approximate amount of \$104,000. **Councilman Anderson moved to approve the following list of streets for Federal Aid Urban System funding as proposed by the memo of October 12, 1983, by priority as listed: 1) S. Elm Street; 2) N. Birch Street; 3) N.E. 10th Avenue (east of Locust); 4) N.E. 3rd Avenue; and 5) N. Cedar Street (Third to Fifth). Motion seconded by Councilman Pulver and approved 5-0.

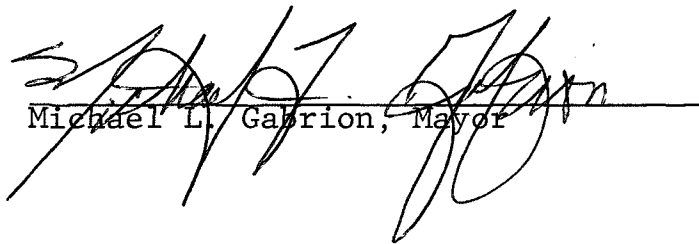
John Kelley informed the Council that in consideration of turning the deed of the property from the County over to the Historical Society for the depot site, in accordance with ORS 271.310, a resolution is required. Mr. Kelley further suggested that a condition of reverter be incorporated into the resolution for protection of the City. Council agreed and it will come before the Council at the next meeting.

The memo regarding the Police Department computer system was for information only at this time, staff is still trying to finalize some

analysis on the proposed system.

Due to the length of the meeting for the evening, Mayor Gabrion noted that no other reports would be brought before the Council.

Mayor Gabrion adjourned the regular session at 11:20 p.m.


Michael L. Gabrion, Mayor


Marilyn K. Perkett, Deputy Recorder