

CANBY CITY COUNCIL

REGULAR MEETING

OCTOBER 1, 1980

Mayor Robert E. Rapp presiding. Councilmembers present: Beryl Brown, Beauford Knight, Richard Nichols, William Pulver, Robert Swayze and Robert Westcott.

Also present: Administrator Harold Wyman, City Attorney Wade P. Bettis, Attorney Roger Reif, City Planner Stephan Lashbrook, Treasurer Myra Weston, Public Works Supervisor Bud Atwood, Secretary Marilyn Perkett, Oregonian Reporter Pat Jeffries, David Bury, Mike Kock, Karl Telschow, Alvin Rudy, Lee Funrue, Gary Sowles, Mr. & Mrs. Marv Dack and Attorney Jon Henriksen.

Mayor Rapp called the Regular Meeting to order at 7:31 p.m., followed by the flag salute and roll call of Council.

**Councilwoman Brown moved to approve as distributed the minutes of Regular Meeting September 17, and Special Meeting September 22. Seconded by Councilman Nichols and carried 6-0.

CITIZENS INPUT ON NON-AGENDA ITEMS: None were voiced.

ORDINANCES & RESOLUTIONS: Attorney Bettis read Resolution No. 287. **Councilman Swayze moved that Resolution No. 287, A RESOLUTION INCREASING MONTHLY RATES TO BE CHARGED FOR SINGLE FAMILY RESIDENTIAL SEWER SERVICES AND REDUCING COSTS FOR OLDER AGE GROUPS AND HANDICAPPED PERSONS be approved. Seconded by Councilman Pulver and approved unanimously. Attorney Bettis pointed out that Resolution No. 286 was replaced by this Resolution due to the change of the date from October to November for the effective charges.

Ordinance No. 684 was read in full for first reading by Attorney Bettis. **Councilman Westcott moved that Ordinance No. 684, AN ORDINANCE PERTAINING TO THE CONSTRUCTION, ALTERATION, REPAIR AND MOVING OF BUILDINGS WITHIN THE CITY OF CANBY, OREGON; ADOPTING BY REFERENCE UNIFORM BUILDING CODES AS THE CITY'S BUILDING CODE; PROVIDING PENALTIES FOR VIOLATIONS; REPEALING ORDINANCES NO. 590 and 661; AND DECLARING AN EMERGENCY be posted and final reading be at the Regular Meeting of November 5, after 7:30 p.m. Seconded by Councilman Swayze. Attorney Bettis explained that there are no criminal penalties, only civil and also the repealing of Ordinance No. 661, is the ordinance pertaining to the Fire Code for which the state no longer requires the fire zones. Motion carried 6-0.

Attorney Bettis postponed the first reading of Ordinance No. 685, since the staff wished to recheck some of the assessments.

COMMUNICATIONS - None were presented.

NEW BUSINESS - **Councilman Knight moved to pay accounts payable in the amount of \$27,497.93. Seconded by Councilman Westcott and approved 6-0 by roll call.

Administrator Wyman reviewed the bids for the backhoe: Fischer Mill Supply, Inc, \$17,641.00; Case Power and Equipment, \$17,690.00; and Hessel Tractor and Equipment Co., \$23,990.00. Staff recommendation was for the \$17,641 bid from Fischer

October 1, 1980.

Mills which included the trade-in. Councilman Knight questioned the difference between external and internal brakes. Mr. Atwood noted that this was no problem both were effective. **Councilman Nichols moved to accept the recommendation of staff and accept the low bid with trade-in from Fischer Mills Supply, Inc., for \$17,641.00 for a Tractor-loader-backhoe, CASE 580C as specified in the written bid of September 24, 1980, Seconded by Councilwoman Brown. Mr. Atwood noted he had no idea why the Hessel trade-in figure was so low. Mr. Atwood also noted, for the record, the bid from Hessel did not meet the required specs for the weight of the backhoe and the difference of external and internal brakes was of no significance. Motion carried 6-0.

Administrator Wyman read the letter from Attorney Jon Henricksen requesting to extend the deadline on Marvin Dack's R-2 zone change past December, 1980.

Mayor Rapp addressed Attorney Henricksen to the fact that this was not a Public Hearing. The Attorney saw no problem with this as long as no citizens saw cause.

David Bury requested the Council to deny the request since he has had 18 months to comply.

Planner Lashbrook pointed out his memo of September 11 and a letter from Roger Reif, Planning Commission Attorney, was in the packet. He noted that last November an Ordinance #655 was introduced to amend Ordinance #645, to make the subject property a PUD. This Ordinance was tabled in February and in March was the last time he had negotiated with the applicant, which at that time was mid-way in proceedings. His recommendation was to table the request for a time extension until the negotiations have been completed or agreed upon.

Mr. Wyman read a letter from Attorney Reif with the Planning Commissions request to deny the request.

Attorney Henricksen said he only became aware of Mr. Reif's letter last Thursday (Sept. 18, 1980) by accident, however, he did not agree at all with Mr. Reif's letter. Mr. Henricksen pointed out that the, yet to be approved, Comprehensive Plan designated Mr. Dack's property as R-2, which allows for more intensity than he volunteered back in 1978. Mr. Henricksen informed the Council that Mr. Dack started working, with the Gary Kirsch Construction Company, in November of 1978 on a feasibility study for a project estimated to be from 5 to 7 million dollars worth of financing. He listed, by name, several other firms interested in the project. However, in the Spring of 1979 when the interest rate went "haywire" they lost interest in the project. Mr. Henricksen noted that Mr. Dack again ~~seeks~~ ^{could not} to finance this on his own, meeting with several firms, up until June, 1980, but it couldn't be done. Mr. Dack does have a signed earnest money agreement for a project, which he will counter-offer, to build a Mobile Home Subdivision on the subject property. Mr. Henricksen felt it would be additional cost to the city if Mr. Dack were asked to start over for the proposed Mobile Home Subdivision. Mr. Henricksen requested the Council to only deny the request if they felt it to be detrimental to the community or perhaps consider a reasonable extension of time.

Councilman Swayze asked what he considered to be a reasonable time?

Mr. Henricksen's said two years, or at least one year anyway.

Councilman Westcott felt this project was very "muddy", also Ordinance No. 655 has been tabled, negotiations ceased last March and also the fact that the Council

understood this project to be a PUD as did the Planning Commission. He personally felt we should have a "fresh new start" and deny the extension.

Attorney Henricksen asked, if they would stipulate that they would stick to Ordinance No. 665, would that change your mind? Councilman Westcott answered that it would sure make a big difference.

Mr. Dack informed the Council that they will be going to Stephan to finish up the negotiations and that they have very little disagreement on the negotiations.

Mr. Lashbrook explained that if Mr. Dack were successful in the application and negotiations going on now and the application for a Mobile Home Subdivision were to come before the City, this would have to happen after the Comp Plan is adopted and the implicating Ordinances are in affect, at that point it would be a Subdivision Review by the Planning Commission.

Councilman Westcott questioned, that in return for an extention, would Mr. Dack agree to a PUD Overlay?

Attorney Henricksen requested a five minute recess.

Councilman Nichols questioned how close they were, applicants and City Planner, in their negotiations? Are they close?

Mr. Henricksen explained that the internal workings of what has to be done as far as sidewalk improvements and half street improvements down 13th, if the thing is ever going to be extended, is close. Locations of storm drains have been talked about, however, the question of property needed for the curve between the church property and Mr. Dack's property for the extended street is something up in the air, and he felt this was not subject to negotiations.

Mayor Rapp called for a recess at 8:39 p.m. and reconvened the Regular Meeting at 8:58 p.m.

Mayor Rapp noted that the basic reason this area is designated R-2 in the Comp Plan is because that is what it is now. Also, as representatives of the City, he felt they must draw a line between personal feelings and what is legal and logical decisions. Mayor Rapp expressed that he felt Mr. Henricksen's presentations have never lacked any intent of honesty, however, he noted that in looking back there were some times that the applicant has been a little less than earnest because we have been in a situation before where we went right to the hour of deadline after court proceedings. He noted that this body did hear the request in a Public Hearing for change of zone and did not hold anything that had happened prior to that enter into their decision. Therefore, he didn't feel the Council was in a position now to make excuses, or come up with something new, or foster any further negotiations, but that is the responsibility of the applicant at this time.

Mr. Henricksen felt, according to the Mayor's comments, that personalities were to be considered and consider what Mr. Dack may or may not have done on a different issue.

Mayor Rapp said, "That's not true at all!" His intent was that in no way has the Council let the past interfere with its decisions but has made its decisions as taken as charged. If there are reasons, other than those that have been expressed in the past, that the Council should grant an extension then they should bring them forward.

Attorney Henricksen said he thought he had done that tonight!

Mayor Rapp felt that we had "re-hashed" what we've heard before.

Mr. Henricksen informed the Council that during the recess he talked to Mr. Lashbrook, and they felt that they could continue and accomplish their negotiations before December 1, to the satisfaction of the Council and Planning Commission and if the Council is not willing to do that, he has advised his client to "bite-the-bullet" and go with Ordinance No. 655.

Councilman Westcott noted that he did not wish to express false hopes that if negotiations were completed that the applicant would be guaranteed an extension. He also felt, according to their letter, that the Planning Commission had concerns on this issue and his feelings were not to give an extension on a "flawed" document.

Councilman Swayze felt we should let the applicant and staff finish negotiating their points and reschedule to hear them in November.

**Councilman Nichols move to table action on the request for time extension of a zone change until the Council Meeting of November 5, 1980, and give both the applicant and staff an opportunity to work out the problems. This is a motion of privilege and a second is not needed. Roll call vote was: 4 yeas, 1 nay by Councilman Westcott and 1 abstain by Councilman Pulver to be consistent in the issue. Motion carried.

Administrator Wyman presented a Quitclaim Deed for approval on S. Locust Street. **Councilman Nichols moved to accept for recording the deed to the City from Alberta E. Wood, surviving spouse of Leo C. Wood, for street purposes on S. Locust Street. Seconded by Councilman Knight and carried 6-0.

UNFINISHED BUSINESS - None was presented.

OTHER REPORTS AS REQUIRED OR NEEDED - Mr. Wyman reported on the City Auction of September 20. He noted that \$4252.50 was taken in, however, all bills are not in and paid yet. He did note that our towing bill for abandoned autos was \$354, and we sold them for a net of \$342.

Administrator Wyman informed the Council that the League of Oregon Cities Convention will be held November 23, 24 & 25 at the Marriott Hotel in Portland, more information will be forthcoming.

Planner Lashbrook requested authorization for a Conditional Use Permit, and fee of \$150 for the shops to be constructed near the Sewage Plant for City and Utility Board personnel. **Councilman Westcott moved that Planner Lashbrook be authorized to proceed with a Conditional Use Permit and the \$150 fee to be paid from a source to be determined by the City Administrator. Seconded by Councilwoman Brown and approved 6-0.


Mr. Lashbrook also requested Council authorization to file for a land partition on N.E. 4th and Pine Street. This piece of property was offered by the County for relocation of the S.P. Railroad Depot. **Councilman Knight moved to grant City Planner Lashbrook the authority to make application for the land partition on N.E. 4th Avenue and Pine Street for the relocation of the Railroad Depot and the \$150 fee be paid from a source to be determined by the City Administrator. Seconded by Councilman Nichols and carried 6-0.

October 1, 1980


City Attorney Bettis expressed a need for an Executive Session regarding litigations that the City is now involved in. **Councilman Nichols moved to go into Executive Session under ORS 192.610, subsection dealing with litigation against the City. Seconded by Councilwoman Brown, roll call vote was for approval 6-0.

Mayor Rapp recessed the Regular Meeting at 9:28 p.m. to go into Executive Session.

Mayor Rapp reconvened the Regular Meeting at 10:45 p.m. and immediately adjourned the meeting.



Robert E. Rapp, Mayor



Stephan A. Lashbrook, City Recorder Pro Tem

October 1, 1980