

CANBY CITY COUNCIL
REGULAR MEETING
NOVEMBER 19, 1980

Mayor Robert E. Rapp presiding. Council members present: Beryl Brown, Richard Nichols, Bill Pulver, Robert Swayze and Robert Westcott. Absent: Beauford Knight.

Also present: Administrator Harold Wyman, City Attorney Wade Bettis, Public Works Director Ken Ferguson, Public Works Supervisor Bud Atwood, City Planner Stephan Lashbrook, Treasurer Myra Weston, Secretary Marilyn Perkett, Judge Jon Henricksen, Mike Gabrion, Lee Funrue, David Bury, Attorney Roger Reif, Oregonian Reporter Pat Jeffries, Canby Herald Editor Steve Fredrick, Gary Sowles and Russ James.

Mayor Rapp called the meeting to order at 7:30 p.m., followed by the flag salute and roll call of Council.

**Councilwoman Brown moved to approve as distributed the minutes of Special Meeting November 3, and Regular Meeting November 5. Seconded by Councilman Swayze and approved unanimously.

CITIZEN INPUT ON NON-AGENDA ITEMS: Judge Jon Henricksen came before the Council to explain the Canby Herald articles that appeared in the November 19, 1980, newspaper, concerning a case that happened in the court on Thursday, November 13. Judge Henricksen said, "It appears to be, in both articles, that the City of Canby, at least the Municipal Court that of what went on last Thursday, is being accused of impropriety to the point of the Nixon years or something of that sort." He noted that there is a complete transcription of the case in question. He explained that if the District Circuit Court overturns his decision it will then be sent back to the City of Canby for a new trial. Judge Henricksen felt this had been "blown-up" out of all semblance of proportion. Councilman Westcott noted that the paper implied a "cover-up" and questioned if Judge Henricksen directed the Court Clerk to omit from the public records to be submitted to the Canby Herald any mention of this case? Judge Henricksen replied, "No." However, he did comment that before any release of the facts and decision, he did request that the editor of the newspaper contact the Court Clerk, so it doesn't get blown-up out of proportion and get the facts and the report accurately. Judge Henricksen noted that there was a citizen, a witness, who did not understand about the motions and decisions, and became very emotionally upset about being asked to leave the court room and as a private citizen asked to be ordered from the room which Judge Henricksen did. Judge Henricksen said, "He'd give the Court Clerk every benefit of the doubt and I think she misinterpreted my last comment" which was to have the editor stop and get a full report before putting anything in the paper. Councilman Westcott questioned if the Judge intended for the Court Clerk to omit the short few sentences that are usually turned over to the paper recording the court trials? Judge Henricksen replied, "Heavens, no!" Councilman Swayze questioned why this trial did not go into Oregon City in the first place? the Judge explained that it is not up to the court and every defendant who appears before the Municipal Court for any major traffic infraction, if that defendant pleads not guilty, the defendant has the absolute right to have the case removed to another court and if they do not do that it is against the defendants constitutional rights if the court implies an intent to have it removed. Councilman Westcott reiterated that it was then the defendants right and not the prosecutions right of where the case would

be tried. Judge Henricksen said, "True!" The Judge also stated that in his personal opinion the City Attorney's office acted very properly, because of being also the Attorney for the City and quasi representing the City employees, and this case involving a City employee, bring in an outside unbiased prosecutor. Councilman Westcott asked why another Judge was not called in for this case? Judge Henricksen explained that a "jury trial" had been called for and would not be waived. However, if in a higher court they feel this was not right it will then be corrected. Councilman Pulver questioned how the legality of the jury came about. The Judge explained that this was done in the form of a "written motion" from the defense attorney and with testimony. Judge Henricksen explained that the process of the City Ordinance of having either the Mayor or the Judge pull the jury has not been followed and if City Ordinance or ORS is not followed it causes an infraction of the defendants constitutional rights. He noted that this was the first time the court has been questioned on this issue, and explained it was a matter of a bright attorney that did his "homework" to represent his client to the fullest. Judge Henricksen also responded about the papers quote of the "irate citizen" that the Judge ordered from the court room. The Judge explained that he tried to explain to the citizen that as a witness he could not hear some of the defense testimony, the witness did not understand and requested to be ordered from the court room. At this point, Steve Frederick of the Canby Herald, addressed the Council stating that he made an error in that part, "Mr. Brown was upset because he had been subpoenaed to appear as a witness and he was asked to leave before he testified and he was upset because he had taken a day off work and he was not allowed to testify and in fact he was not allowed to listen to the rest of the trial." Mr. Fredrick said, "It was not the dismissal that angered him." Judge Henricksen expressed that it was unfortunate it was a City employee (noting that it was no secret, he pointed to the Secretary, Marilyn Perrett), but even if it had been "Mrs. Brown" or "someone out there on welfare in the streets" the decision would have been identical. Mayor Rapp thanked Jon Henricksen, Municipal Judge, for addressing the Council.

ORDINANCES & RESOLUTIONS: Attorney Wade Bettis read Ordinance No. 687 in full for the first reading. **Councilman Swayze moved that Ordinance No. 687, AN ORDINANCE AUTHORIZING CONSTRUCTION OF THE SOUTH ELM STREET SANITARY SEWER be posted for second and final reading at a Special Meeting on December 8, 1980, after 7:30 p.m. Seconded by Councilman Pulver and approved 5-0.

COMMUNICATIONS: Administrator Wyman read a letter from the Bureau of Labor, Washington, D.C., with a preliminary population count for the City of Canby at 7,642 and the preliminary housing count at 2,856. Final counts will be forthcoming at a later time.

Administrator Wyman read a letter from Dennis Nolder, Utility Board Member, noting that he did not wish to be reappointed to the Board and thanking the City for giving him the chance to serve in that capacity. Mayor Rapp directed that a thank you letter of return be written and also request that Mr. Nolder continue on the Utility Board until after the new Mayor and Council are seated and will then appoint a replacement. Mayor Rapp noted that several other appointments are due which will be done after the new Mayor and Council take office, unless we go very soon into budget meetings and then two members will be needed for this committee sooner than the first of the year.

A letter from the State Parks and Recreation Division was read by Mr. Wyman regarding the \$15,700 in Heritage Conservation Funds. The City will have a full year to use the funds.

Administrator Wyman read a staff memo from City Planner STEphan Lashbrook regarding the Intergovernmental Agreement for S. Locust Street which had been reviewed by Mr. Bettis, Mr. Ferguson and Mr. Lashbrook and the suggested changes had been made by the County staff. **Councilman Swayze moved that the Mayor, on behalf of the City of Canby, be authorized to sign the Intergovernmental Agreement with Clackamas County and the City of Canby and the agreement shall become a part of the minutes of this meeting. Seconded by Councilman Westcott and approved 5-0.

NEW BUSINESS: **Councilman Westcott moved that accounts payable be paid in the amount of \$18,992.55, inclusive of a 50¢ correction on Purchase Order 10444. Seconded by Councilman Swayze and approved 5-0 by roll call vote. Councilman Westcott questioned how much Council had voted for the Flow Meter Study. The original motion approved was for approximately \$1,000 for the Flow Meter Study and the final amount was very close to that. Some Councilmembers felt that was a large sum for a purchase of a \$4,000 item. Mayor Rapp noted that this and other questions will be answered at the December 8 Workshop with Lee Engineers. **Councilman Westcott moved to approve payment of bills totalling \$2,588.10, to be paid from the Clackamas County Treasury on warrants from the 1979 water bonds. Seconded by Councilman Swayze and carried 5-0 by roll call vote.

Traffic Safety Study, this item was covered in a workshop on November 17.

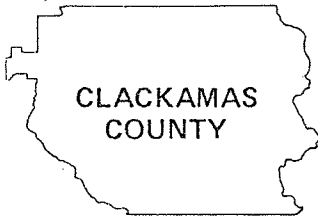
UNFINISHED BUSINESS: A request for a one day beer license by St. Patrick's Church for a dance on November 22 was presented. **Councilman Nichols moved to approve the request of St. Patrick's Church for a one day beer license for a dance to be held on Saturday, November 22. Seconded by Councilwoman Brownn, roll call vote was 4-1 with Councilman Westcott voting nay.

OTHER REPORTS AS REQUIRED OR NEEDED: Administrator Wyman reported that he had visited Councilman Knight after his surgery who is doing quite well.

Mayor Rapp adjourned the Regular Meeting at 8:10 p.m.


Robert E. Rapp, Mayor


Harold A. Wyman, Administrator/Recorder



DEPARTMENT
OF
HUMAN RESOURCES

COMMUNITY
DEVELOPMENT
DIVISION

GARY DICENZO, DIRECTOR

November 5, 1980

Stephan Lashbrook
City Planner
182 N. Holly
Canby, OR 97013

Dear Stephan:

Enclosed please find a copy of the Agreement for street improvements. The changes you requested have been made. If you find the Agreement acceptable please have it signed and returned to us for the County Commissioners signatures.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed Reilly".

Ed Reilly
Project Manager

ER/rn

Intergovernmental Agreement
Between
Clackamas County and City of Canby

This Agreement is entered into between Clackamas County (COUNTY) and the City of Canby (CITY) for the cooperation of units of local government under the authority of ORS 190.010. It will become effective upon adoption by each of the parties and will continue until terminated as provided herein.

The circumstances surrounding the making of this Agreement are as follows:

1. CITY desires to have street improvements undertaken along South Locust Street from SE Second Avenue, southerly to Township Road, consisting generally of widening, paving, storm sewers, sidewalks, curbs and gutters.
2. COUNTY, acting through its Department of Human Resources, Community Development Division, has applied for and received preliminary approval for funds from the United States Department of Housing and Urban Development for construction of said street improvements.
3. With the advice of CITY, COUNTY desires to undertake the necessary bidding and contracting for engineering services and construction of the said street improvements.
4. CITY desires to operate and maintain the street improvements built to City of Canby specifications, including American Public Works Association Specifications.

NOW, THEREFORE, in consideration of the mutual promises made herein and the mutual benefits obtained hereunder, the parties agree as follows:

1. COUNTY and CITY agree to facilitate the installation of street improvements.
 - a. COUNTY will apply project funds as received from the Department of Housing and Urban Development for engineering, implementation and administration of the street improvements. The amount of \$113,700 has been received for engineering and construction. Notwithstanding the termination clauses contained herein, the obligations of the COUNTY in this Agreement are contingent upon the COUNTY'S receipt of these amounts from HUD for this project and in no event shall the COUNTY be liable in an amount exceeding the funds received from HUD for this project.
 - b. COUNTY and CITY will jointly determine the installations to be made, and in the event not all installations can be made with the project funds, the COUNTY and CITY will jointly determine the priority of installations.
 - c. With the advice of the CITY, COUNTY will contract for engineering services and appropriately bid and contract for construction, according to the CITY'S Public Works standards. In such Contracts, the COUNTY agrees to assume the responsibilities of the owner of the project, except as specifically agreed by the CITY and the COUNTY.
 - d. The CITY agrees to assume the responsibilities of owner of the project, to the extent required or allowed by applicable law, for the following purposes: Provide all necessary surveys and information and services under the CITY'S control;

initiate and apply for easements and land use and development approvals necessary, convenient or desirable for the installation; provide necessary and appropriate insurance coverage, such as owner's liability, property and loss of use, including builders all-risk insurance in the amount of the full insurable value of the project.

2. Upon completion of construction of the project, CITY agrees to accept the installation of the street improvements and preserve and maintain them for public use for their useful life subject to the limitations on the expenditure of funds by the City of Canby as provided by Oregon Statute, the Canby City Charter and City Ordinances.
3. COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
4. This Agreement and the obligations of the parties hereunder shall terminate upon the first happening of the following events:
 - a. The expiration of the period of useful life of the street improvements.
 - b. Agreement of the parties.
 - c. Notice by CITY to COUNTY of its desire to terminate the Agreement provided the notice is given by CITY and received by COUNTY prior to COUNTY awarding the construction contract.
 - d. Notice by COUNTY to CITY of its desire to terminate the Agreement provided the notice is given by COUNTY and received by CITY prior to COUNTY awarding the construction contract.

5. Upon termination of the AGREEMENT, any unexpended balance of AGREEMENT funds shall remain with the COUNTY.

Adopted by the City of Canby:

Robert E. Rapp, Mayor

Date 11/19/80

Harold Wyman, City Administrator

Adopted by the County of Clackamas:

BOARD OF COUNTY COMMISSIONERS:

Chairman Robert Schumacher

Date _____

Commissioner Ralph Groener

Commissioner Stan Skoko

Canby City Council

Special Meeting

November 17, 1980

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

Also present: Administrator Harold A. Wyman, Public Works Director Ken Ferguson, Public Works Supervisor Bud Atwood, City Planner Stephan Lashbrook, Traffic Safety Committee Members Matt Knoblauch, Burt Lindsay and Andy Ditommaso, Compass Corporation representatives Tom Tye and Gerald Kammerman, David Bury, Marilyn Perkett, Brenda Lashbrook and Chief of Police Richard Seigler.

Mayor Rapp called the Special Meeting to order at 7:30 p.m. followed by the flag salute and roll call of Council.

The Special Meeting was recessed at 7:33 p.m. to go into a workshop on the results of the Traffic Study and also to view a short video tape on Cable TV.

Mayor Rapp reconvened the Special Meeting at 9:05 p.m.

**Councilman Swayze moved that the Council accept the Traffic Safety Improvement Study as submitted to the City of Canby by Compass Corporation. Seconded by Councilman Nichols and approved 5-0.

Mayor Rapp suggested that Ken Ferguson, Public Works Director, arrange meetings with the Traffic Safety Committee and Compass, if necessary, and come back to the Council with recommendations, the first to be the procedure for which the Committee will operate.

The Special Meeting was adjourned by Mayor Rapp at 9:10 p.m.

Robert E. Rapp

Robert E. Rapp, Mayor

Harold A. Wyman

Harold A. Wyman, Administrator/Recorder

November 17, 1980

PROCLAMATION

Where as it is the privilege and duty of the American people to commemorate the one year of American citizens being held captive in Iran, with our prayers and admiration for the 52 citizens of America, their strength to keep the American Dream Alive.

Where as, the Jaycee's of Canby have instituted a memorial flag and ribbon registrar, ~~in part~~ ^{to wit}, 52 flags of our country will be set in honoring the hostages at Wait Park, with a registrar and a tree for the citizens of Canby to participate by signing and placing a ribbon on the tree, in which the ribbons will remain until the hostages are returned to their native soil.

HOSTAGE DAY

Therefore, I Robert E. Rapp, as Mayor of the city of Canby, do hereby proclaim this day of November 4th. as HOSTAGE DAY, and urge all American citizens to show their support for the 52 hostages in Iran.

In witness whereof, I here by set my hand and the seal of the City of Canby to be affixed on this 4th day of November in the year of Our Lord, One Thousand Nine Hundred and Eighty.

Robert E. Rapp, Mayor