

CANBY CITY COUNCIL

REGULAR MEETING

MARCH 5, 1980

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

Also present: Administrator Harold Wyman, City Attorney Wade P. Bettis, City Planner Stephan Lashbrook, Public Works Supervisor Bud Atwood, Secretary Marilyn Perkett, Canby Herald Editor Steve Fredricks, K.W.R.C. Reporter Tom Jelineo, Chief of Police Richard Seigler, Willamette Green Homeowners Association Members Bob Graham, Dale Mallicoat, Harold V. Johnston, Jim Haas and Norma Vandenburg, Jack A. Henry, Marv Dack, Attorney Jon Henricksen, David Bury and several students from North Marion High School.

Mayor Rapp called the meeting to order at 7:34 p.m., followed by the flag salute and roll call of Council.

The following corrections were made to the previous minutes: February 20, 1980: page 3, paragraph 6, the rebuttal of John Brosy should read - DO THEIR SHARE TO IMPROVE TOWNSHIP ROAD; page 4, paragraph 7, it should read - THE PLANNING COMMISSION ORDER BE UPHELD DUE TO THE....; page 5, last paragraph, Councilman Westcott's input was to relay the fact that, MEALTIME COCKTAILS BE SERVED; page 6, paragraph 3, it should read, TRY TO REACH HIM...; minutes of Special Meeting, February 21, 1980, the last paragraph the word should be RESCIND not resend. Councilman Knight moved to approve the minute of Regular Meeting, February 20 and Special Meetings, February 21 and 27, 1980, as corrected. Seconded by Councilwoman Brown and approved 6-0.

CITIZEN IN-PUT ON NON-AGENDA ITEMS: BOB GRAHAM - Mr. Mayor, my name is Bob Graham, I'm the president of the Willamette Green Homeowners Association and I'd like to make a couple of comments and ask a couple questions if I may. This regards, obviously, the decision you made in your Special Meeting last ah, last ah, I think it was the 21st of February. My comments first have to do with kind of a compliment to the Council and Planning Commission for the time effort and decisions that you made and through our problem with the developer that you are all aware of, we were very impressed with the quasi legal proceedings and the way that you handled those and the decisions that you made and ah, we felt you served our interest very, very well. The last Wednesday, ah I received word by rumor that a number of things had happened and if I may I'd kind of like to turn this thing around to the Council and see if maybe what you would have thought had this happened to you instead of us. We lived in a place that we feel is very special. We have become very protective of this area because there are developers that wish to build many units on this small, very special area in our estimation, and we become very defensive and protective of it. A newspaper article we read in the Canby Herald, the last Canby Herald, had an article about the fact that the developers had come to this meeting and had attempted to cause a reversal of your decision, from what I can gather by a newspaper article, and ah, in this article it said that the City Attorney wished to capitulate the position of the Planning Commission and the Council in previous meetings and that this very important issue of density was going to be changed. The Council held firm on that and we appreciated that very much and so we felt again very, very secure. Then on Tuesday, the following Tuesday, I received word, again by rumor, that the -- there had been a Special Meeting called and that the Council had reversed that decision without notification to us and obviously we were very concerned about that. We also heard, and again this is rumor, that the Council

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allowed the City Attorney to negotiate away the prior decisions that the Council had made and also the Planning Commission, ah, in the past. Needless to say, we felt somewhat betrayed, disillusioned and disappointed by your actions. Now, we live, again, in this part of the City and our concern for keeping it very small area liveable is very, very important to us. We feel that developer's self-interest by nature is profit motivated and that long after the developers are gone this group of people that are here, myself and many, many others are still going to be there. Our self-interest, by the same token I guess, and we all have self-interest and I understand that, revolves around liveability and quality of life in a very small, very special area. Our major enemy in both these very important characteristics is density. And the important point of density, from what I understand was negotiated away. To the developer, density is money. To us, density lessens the liveability and quality of our lives. So I'd like to ask, if I may, between these two, very obviously biased groups who have to make the final decision, we'd like to think that you people would make a final decision and if you could not make a final decision that, that has been upheld long ago by a Planning Commission, by appeal to you the City Council, that the Circuit Court could make a decision in their writ of review, and from what I understand this is not to be closed until the 10th of March, ah - we hope at least that this would occur. We happen to think that the court would rule in our favor. From what I understand, there are people who feel that the court would not rule in our favor, when I say our I'm talking about us as a citizen of Canby just like you are a citizen of Canby, so our, is yours as well as ours. I would like to think that we would not give in to outside interests and that the sole purpose is obviously financial and we feel that we are, obviously very deeply concerned and as you can guess, we need your help. I have a number of questions I'd like to ask and I'd like to read them all and then come back to them one by one if I may, and then if I-- I'd like to-- I have a number of other people that are on the board that are with me here and if they have something to add, I'd like them to add just as well.

1. I'd like to know why on Wednesday evening, Wednesday evening of the last board meeting, when you knew so well our interest and had been issued a letter that we'd like to be informed of all information, or meetings or whatever regarding this developer, that we were not notified. Or why the audience was not postponed until all parties concerned could be present? Again, we feel left out here.

2. Why were we not notified of the Special Meeting on that evening and I again know that this is not something legal but something that I would consider just a common courtesy.

3. We're interested in knowing why the City Attorney feels that our legal position is poor? When the legal advice that we have shows that it is not.

4. Is the Council decision irrevocable at this point in this legal process? We're not sure of this.

5. We'd like to know the contents of the contract agreement with the developers. And if we can obtain this information.

6. What happened between Wednesday and Thursday that could have possibly have changed the minds of all of you people to alter your decision in favor and come up with a reversal?

That's my statement, does anyone else have something to add to that? Should I go back one by one on the questions then, Mr. Mayor?

MAYOR RAPP - You will after I--- you can-- after I mention to the Council that you did call me over the weekend and I tried to the best of my ability to explain

to you the answers to these questions you have and I think they should be aware of that and that you feel that I -- indeed treated you in some manner other than very congenial way, I wish you'd let me know.

GRAHAM - No, I didn't say anything like that!

RAPP - Well you didn't mention it either way.

GRAHAM - No, I--I attempted to obtain information after we had read this in the paper. You seemed to be the proper one to call, I did that and ---

RAPP - Yah, well---

GRAHAM - There were many things that we couldn't solve at that time and there are still many problems and questions that we can't answer and I'd like to have some---

RAPP - That's fine. I just want them to be aware that I've already-----

GRAHAM -- O.K. I talked to Mr. Lashbrook and a couple other people as well, we're very concerned about this.

RAPP - That's fine!

GRAHAM - Number one, why weren't we informed? I understand that this was a late evening meeting, not an agenda item -- ah - why, I don't know but it seems that it could have been put off until later, you all know our concern and why this wasn't done I don't know.

SWAYZE - As I recall, our Attorney advised us that we had very limited time to respond to the court case and we had to take action one way or the other.

WESTCOTT - It wasn't on the agenda & none of us knew about it until that evening.

SWAYZE - At the advice of the Attorney, we did take his advice on that particular issue and proceed to try to meet a deadline.

GRAHAM - This was the 10th of March, I understand.

WESTCOTT - No, it's not true. It was the following Monday.

GRAHAM - I checked with the Circuit Court, they said that your brief had to be filed by the 10th of March. Is that correct?

BETTIS - No, No! Perhaps, maybe I can help.

RAPP - Sure, go ahead.

BETTIS - Sit down if you'd like, this will take a few minutes I won't spend a great deal of time because-- it's not unusual that most people are not privileged or permitted to know all that goes on behind the scenes in litigation. Not everything that was reported was accurate and not everything that you've heard is accurate--

GRAHAM - In my case, are you talking about my statement here?

BETTIS - O.K., after I've finished, then you can ask me questions. Even the caption in the headlines of the last newspaper article was totally erroneous. Most of the material reported below the caption was reasonably accurate. The newspaper had called me prior to the publication asking for a statement, which I refused to give because it's not my place of responsibility to give the newspaper stories on matters that are still pending, especially if litigations are involved. The petitioners in this case, which is still pending, incidently, had until the following Monday prior to the Special Meeting of the Council in which to file its brief, so they had three days in which to do that, and then if that brief were filed then I had ten days thereafter in which to file a response brief for the City which would have put it on the 10th. So it became important to determine whether the matter could be settled by compromise and not by capitulation as you suggested. If there was any basis for it, there was good justification for me to advise the Council that they should consider a compromise in the matter, and I'll soon tell you why. Now, your attorney, if you have one, and whoever he might be, didn't contact me for any suggestions or any advise from me or to find out what I know about the case. And there isn't anyone in this state that knows any more about it than I do. So when you say that your attorney says that we had a defensible position, I take exception to that. And I seriously doubt that you were told that by any attorney and certainly not by any attorney that knows much about the matter. Now, the reason for my advise to the Council is this. Under the present zoning of that 9 acres in that area of this City, multi-family units are permitted up to a maximum 120. And if we had been ruled against in Circuit Court on this order that it ultimately would have made, had ruled against us, it then would have left the door completely open for the development by the present owners to the full extent of the multi-family limits which is 120. And it did not warrant, in my opinion, a defense of the case at the risk of losing 56 units negotiated for compromise settlement to a 120 that is now permitted under the existing laws of the City. Now that's what it comes down to. Now the other items--everything else that was included in the Council's order of oh--15 or more demands or conditions that were imposed for the future development of this Willamette Green No. 2 have been met or will be met or adequate safeguards and precautions have been or will be taken to insure full compliance. Leaving then only two changes, one - reduction from 60, which they had requested, to 54, which is 9 more than the Council's previous order. So that's a difference of 9 and that compared to the 120 now permitted by our Zoning Ordinance. The second and only other change is the reduction from 32 feet paved width road through the entire unit to 28 feet for a difference of 4 feet. But in order to reach that compromise there were also some other things mandated by the Council. And I can't recall, but maybe Stephan can help me, one - they --oh, no parking--is that true Stephan?

LASHBROOK - No parking on the roadway.

BETTIS - No parking on the roadway and a few other things I can't recall now. The end result of which is that we are now assured, we the City which includes you, of a development that is -- can be carefully regulated in keeping with the past and present design and the present plans for development. Now I'll--that's the basis of my initial remarks. Now if you have further questions and the Council wants me to endeavor to answer.

GRAHAM - I'd like to know why this judgment wasn't made six months ago and why you sat here and didn't come up with that thing six months ago? Why all of a sudden between Wednesday night and Thursday of the a week ago all of a sudden this thing came to bear?

BETTIS - I can answer that question. The -- it didn't work just that way. Since the case was filed originally, and this I'm sure you're not aware of, that extensive time at considerable expense by the City, I suppose--I don't know--a few thousand dollars, was spent in fees by me and additional thousands of dollars on staff time was spent in preparing a return to the writ. Have you been to the court house to examine the clerk's file of that matter?

GRAHAM - Yes.

BETTIS - Did you see the writ that was returned?

GRAHAM - No.

BETTIS - Or do you know what I'm talking about? It's a voluminous document. And they don't keep it in the same clerk's file where the petition was filed, the order for writ presented, its too bulky so it's in a separate manila folder. That return to the writ which has certified copies of the total record from the beginning of Willamette Green No. 1 upto the very date when the Council's last order was made on September - er August 15, 1979. That's the record that was put together, compiled, certified and returned to the court, that's the return to the writ. So there was a lot of time spent on that. Subsequent to that there were numerous negotiations between my office, Mr. Lashbrook and the attorneys for the other side, including conferences in my office and negotiations to try resolve and settle the matter. So the great bulk of the work had been concluded and completed, leaving only two or three items that we had not been able to resolve by negotiations. And as is usual in litigation matters, some of those matters don't resolve until on the court house steps. And that's basically what happened here, when it got down to the final deadline when the opposition, the petitioners, were forced to file their briefs. That's what it was, they had to file their briefs, then they came around and said, O.K. we'll make some more concession let's try and settle this to save expense to the City and save expense to them and possibly avoid a total loss to one side or the other. One side or the other would have lost completely. Either we'd have lost it all or they would have. So that's why it was on -- let's see-- I was notified probably five days before Monday, which would have been Wednesday, that there was a chance now. By the time I reviewed the file it was the next day I believe that I called the Mayor on the job and by the time that he would have notified the Council and called a Special Meeting, which requires 24 hours---

RAPP - We'd already set that Special Meeting for a workshop anyway.

BETTIS - Oh, you set it for a workshop.

RAPP - It had been posted for a week.

BETTIS - All right. So that's the story on that.

GRAHAM - Is this irrevocable, my third question. Now it's irrevocable, you signed the contract and the-----

BETTIS - No, it hasn't been completed. No, now let me explain the last phase. And so far as you say, is it irrevocable? I'd say yes, but it hasn't been signed yet, however, the Council has authorized me and I have committed to the court that the matter has been settled. And also notified the attorney for the other side, so neither of us has prepared the briefs that were required to be filed. Now, the agreement that has to be made between the petitioners, which are the developers known as the Willamette Green, and the Council was just completed. I prepared it last week, sent draft copies over to Mr. Lashbrook, he found some omissions of mine or some oversight, returned it and I made corrections and changes, submitted to him on Friday, I think, and he returned to me today his comments. I reviewed in part and the phone rang and thereon the end of the day came so I've still got to review the last of the materials which was sent to me today. After I do that, it will be my plan to send to the City Administrator the copy of the signature draft of the agreement with the exhibits that are attached, also the memorandum of Stephan Lashbrook and ask the City Administrator to duplicate those distribute to the Council and request that they review promptly and contact me directly if they have any suggestions, changes or additions, or questions or comments. If all come back favorable saying it's O.K. as we understand and proceed as you've indicated, then I'll send copies to Mr. Bullock, the attorney for the petitioners and see if it meets with his approval. If it doesn't, then we'll have to go back and pick up somewhere along the line to try to resolve any discrepancy or dispute. If he says yes this is the basis for our agreement for compromise settlement, then the agreement will be signed by the Mayor and City Administrator on behalf of the City and by Mr. Bullock, as attorney for the other parties and by those parties. The agreement itself would not be filed with the court but shortly after that a motion would be filed with the court for a dismissal with prejudice and without cost to either party. And upon the entry of that order by the court the pending writ of review would then terminate. Which would probably be, I'd anticipate, at least a month from now if everything proceeds on schedule as I've now outlined.

GRAHAM - And this group is going along with that, I understand.

BETTIS - Go along with what?

GRAHAM - The Council?

BETTIS - Go along with what?

GRAHAM - With what you're saying, we're gonna -- we're gonna be given 9 more units on an acre less land than we have right now.

BETTIS - Well, yes. If they ever develop that. The agreement is that they will not be permitted to develop any more than that. However, also a part of that deal, they're going to leave vacant one of the six-unit building areas at the intersection. Where Stephan?

LASHBROOK - It is my understanding that it will be first one entering the phase 2 part of the project.

BETTIS - That will be left vacant without any development.

GRAHAM - For what reason?

BETTIS - That was a part of the compromise deal. Some of the reasons that were discussed was to for aesthetic purposes, eliminate any appearance upon approach of overcrowding or excessive development , a few other things like that.

GRAHAM - Is this then what was added in the newspaper article where it said for future--or could be added to later a future date or something of that sort? Is that what was meant by that?

BETTIS - I don't know what they meant by that, there is no commitment or promise or assurance or guarantee that any further development would be permitted there. But this Council can't say, nor can you, nor can I, nor can anyone say what a future Council might do under--at a different time when there are different fact situation. Yes, Dale.

MALLICOAT - It seems really strange to me, Mr. Bettis, that after such an elaborate public hearing before the Planning Commission last summer and then on your advice again that it be heard de novo again in total, elaborately before the City Council that six months later or more that after what you said was a series of negotiations that the -----

BETTIS - Stop there! I'm with you up to that point, but when you start quoting me on a series of negotiations----

MALLICOAT - You said, you have negotiated several evenings -----

BETTIS - That was after the Council's order of August 15, 1979.

MALLICOAT - Yes, ah uh.

BETTIS - O.K. That's true.

MALLICOAT - O.k.

BETTIS - No, a series of phone conferences and some meetings, I don't recall how many.

MALLICOAT - And you said there was a residue then of a few things that haven't been settled.

BETTIS - Right!

MALLICOAT - And that was what was settled by the meeting last week.

BETTIS - Right.

MALLICOAT - The thing that really seems strange to me is that, and in fact I wondered if we don't have the legal right, to be an adjacent property owner to be either a party to those negotiations or notified that they are taking place, we were served, for example, when the writ of review was filed. Why then were we not informed or notified or told that this negotiation was going on and that the result of all the elaborate public hearing last year was being nullified?

BETTIS - No, what you just last said is absolutely not ~~true~~. It isn't totally

nullified. There are some changes made and for the reasons which I mentioned. Now after the case got into court, after litigation developed, then it became matter for the court and the attorneys and the principal parties involved it was not then any further a matter for the citizens hearing as it was before.

MALLICOAT - But we were party to the writ of review and served by the court as as a part----

BETTIS - All right. Now the agreement that is been filed or will be filled or is being prepared I should say, is on behalf of the City and on the appearance I made for the City. First by motion quash, and was denied on that. Were you aware that we filed that and argued it strenuously and didn't prevail on a motion to quash? You're not aware of that? And on the return to the writ later filed I expressly explained that it was being filed and the appearances were made on behalf of the City only and not on your behalf. So this matter is not closed yet, as I explained and since those of you who are parties to it, you're free to get your attorney and make any appearance that you want to. Because what I've done was not for you as individuals named in that writ of review. The case is still pending.

MALLICOAT - The thing that really, I really have a question about is whether -- not whether it is technically but legally proper but whether it is morally right to not let us know what is going on. But just think of-----

BETTIS - You're being told right now. You're knowing now. Now I explained to you why you weren't notified on the short notice of the Special Meeting and the matter that was discussed in Executive Session wasn't open to the public and couldn't be.

MALLICOAT - But it would just take a phone call to tell us it was coming up on the agenda. Our president of the Homeowners Association invited to be here.

BETTIS - Well, I now ---

MALLICOAT - Look where we stand right now. We don't even know what's in the agreement. I have no idea, we ask for a copy and they don't have it.

BETTIS - I just got through telling you that tomorrow after I review the materials from Mr. Lashbrook, unless there are some changes to be made, then I'm going to send over to the City Hall for duplication and if the Council approves they can direct the City Administrator now to make copies for whoever wants them. That's up to the Council.

SWAYZE - Also, you did address exactly what's in there. Two things changed, the density and the width of the road, everything else remained the same

GRAHAM - Well, that is the key to the whole thing.

(Several voices at once - inaudible.)

BETTIS - What if the court had ruled against us, which could have very well-- ours is not a defensive case totally defensible, Gentlemen. Now I know a good case defend and bum one.

GRAHAM - But there are other people, Mr. Bettis that know it as well. There are other people that know that - and we've been informed, that it is defensible. We----

BETTIS - They didn't come and talk to me. Why didn't they come and tell me what the defense was? Why do you wait till now to say there was defenses?

MALLICOAT - We just heard about it.

GRAHAM - We're just on the rumor end of this thing and we're just trying to get-----

BETTIS - You're still talking about rumors.

UNIDENTIFIED - Rumor!

BETTIS - All right, who told you this was defensive.

GRAHAM - I'm not going to divulge who told us it was defensible but I'll tell you it is legal counsel.

BETTIS - O.K. Why don't you have your legal counsel give me a call and-----

GRAHAM - We'll probably have to do it -- and it's unfortunate that it had to come about.

BETTIS - That's true.

GRAHAM - But we have to take action against our own City.

BETTIS - Why? But that would be regretable but---

GRAHAM - It is!

BETTIS - But what I'm saying, it was not totally defensible and the risk of the loss was the risk of a 120 unit development.

GRAHAM - They are buffaloing you! And you know it! You know Harold Jeans! You know exactly what the scoop is!

BETTIS - Now I've explained the answer, as best I can to some of your questions.

GRAHAM - I know---I know.

BETTIS - Now if you have further questions that the Council would want me to answer or attempt to answer I'll do it otherwise I won't continue the harangue on these matters.

WESTCOTT - I think I'd like to say just one thing. As far as the Council is concerned, I certainly shared your concern and I voted the Cities position that night. But we had not had the opportunity we were hit cold with it that night and Mr. Bettis knows, it was very late, none of us were in particularly good mood by the time we got to that thing or especially by the time we got done with it. So the next evening we had a Special Meeting, that was a Regular Meeting that Wednesday night, that was a Regular Meeting at the end of the meeting this came up, it was not on the

agenda none of the Councilmen were aware of it. The next evening we had a workshop in conjunction with the Special Meeting. Mr. Bettis took his time and came down and we held an Executive Session to meet with him. And that's when the Council became aware of the things that we became aware of in that session in regards to the City's defense of the matter. And that's what happened, you asked the question what happened between Wednesday and Thursday night, we had an Executive Session with the attorney. And it certainly was the concern of the Council, that as I understand it, I welcome Wade to rebut this statement if it's not the truth, but as I understand it, we were not in the case of a hearing anymore we were in a case of litigation and trying to settle out of court. I guess one of the ground rules of settling out of court or (BETTIS - Court trial) any sort of compromise is that both parties feel like they have to give up something. Well, that didn't fit my "craw" very good. But the thing that I did look at was that we still had the surety bond, the swimming pool and we did -- we did gain some street width and we had these other things and if we went to court and lost it all and they came back and built apartments that was our alternative. If they scrape the whole PUD and just came back and said O.K. we'll do it as one common owner and we'll build to full density in R-2 zoning because when that zone was put into effect the City did not have the tools we have now. We have the tools now to call that zone an R-2-PUD. But that zone out there is not a - PUD. So as unpalatable as it was to me as a Councilman, I had to look at the alternatives and I guess that's the secret of a compromise, both parties are not real happy like they want but at least you felt like what's our alternative if the court goes ahead against us.

BETTIS - Let me explain a little more, Bob. I doubt that the people here know this that I'm going to tell you-----

GRAHAM - We don't know alot of things, Mr. Bettis----

BETTIS - Like I say, apparently you don't! Of course, it's not possible for everybody in the City to know everything that goes on. Now there was an application during this proceeding, and after this writ of review suit was filed, the owners of Willamette Green came in and filed an application for building permits for multi-family for apartments. Did you know that?

UNIDENTIFIED - Yes, they told us that.

BETTIS - Uh-- Do you know what happened to that?

GRAHAM - That's a smoke screen!

BETTIS - No. No. I say, do you know what happened to that? They filed their application here.

GRAHAM - But, I know why they filed them.

BETTIS - What?

GRAHAM - I know why they filed them!

BETTIS - I didn't ask you that! And I don't care why they filed them. (MANY VOICES AT ONCE.) The fact is that they filed the application here, which required some

kind of decision or some action by the Public Works. Now, if the Public Works would have processed the application and issued the permits then they would have started building their apartments. Which they would have a right to do under the zone classification of an R-2, not a thing the City could have done about it, nor you either, or anybody so long as they conformed to the building code. It's only the building code that would regulate the zone. Well, on our advice, as City Attorney, we told the City staff to do not act on these application leaving them, the petitioners, two alternatives. 1) file a writ of review on our decision of non-action; or 2) give up that and proceed with their then pending writ of review on our denial on the Council's order with conditions. They elected the latter. Because, for this reason, now they didn't tell me this but any attorney that knows anything about this phase of the law knows the reason, if they had lost this pending writ of review and the City had prevailed totally or almost totally, I can't say totally, but if the City had prevailed then they could have come back and filed their application for development of the apartments for 120 units in that 9 acres. They could have! And we wouldn't have any justification to deny it because that's the R-2 zone classification and we'd been back with another writ of review to defend.

MALLICOAT - But, if they'd have lost would the Planned Unit Development Ordinance that you approved last July, wouldn't that prevail?

BETTIS - No--

MALLICOAT - Wouldn't that apply?

BETTIS - No--No--

MALLICOAT - If they had lost?

BETTIS - No! No! Because their development started prior to that. Now,---

MALLICOAT - Isn't that----

BETTIS - Now, one other thing, and this might resolve the matter for these folks that are upset. Now, since the case is still pending, if the Council will direct me, if they agree whether tonight or after another Executive Session or public session or whatever, to -- for me to retract what I've communicated to the other attorneys and say because of public pressure and irate citizens or whatever, the Council has changed its mind and is going to -- is not going to affect a compromise settlement leaving the matter, then I proceed in the courts as was previously planned. In that event, and I've already discussed it with the Mayor sometime ago. At lunch, you recall Bob? I said that you know my advice and you know my feeling so if the Council stands by its guns with the first decision or now changes its mind and if I were to proceed with the defense and didn't win, then everybody that knows presumably would say, Well, Bettis didn't have ah - ah - much of a feeling for it - he didn't devote his best efforts. So I suggested to the Mayor that other counsel be appointed to handle the defense. This matter is not covered by my retainer so it's no loss of money to me or it's money that I just won't -- won't make. But it's not charged against my retainer and whatever the cost is for the defense, by whichever attorney, is going to come out of the City's pockets if the City handles it. So here's a suggestion. Should you change your mind back like it was on

the understanding and agreement that those who are concerned and who are here tonight would then assume the defense at their own expense with their attorney who has a defense. Now, I can't see of a better, fairer deal. And we'll see how you come out. Is that Understandable?

RAPP - It's understandable to me.

BETTIS - Then you'll have your chance to prove, why not, what you're hollering so loud about here.

BROWN - I just wanted to say that we really worried about this and really thought we were doing the best for you and the best alternative for you at the time we made that decision that last night.

RAPP - Is there anyone else? Do you have any more questions?

MALLICOAT - Mr. Mayor, is there some way we can get a copy of the proposed agreement?

RAPP - Ah--I think--the only thing you could do is get a copy of the order and then list the changes.

SWAYZE - Well, that will be ready in a day or two.

BETTIS - Well, he's talking about the agreement, that's almost prepared.

RAPP - Well, it isn't done yet. There is no way to get a copy of it now.

MALLICOAT - Well, it will be like tomorrow-- or soon as-----

RAPP - As far as I'm concerned you can have a copy of it. I don't know--do you see a problem with that, Mr. Attorney?

BETTIS - No, I don't. (SEVERAL VOICES AT ONCE.)

SWAYZE - It needs our review before it's a document.

BETTIS - That's true.

SWAYZE - We have to review it.

MALLICOAT - No. We understand that, but, ah-----

RAPP - The whole thing is a matter of public record. Well, it is----

MALLICOAT - Well, yes after the Council approves or after it's filed. But that's further down the line. When -- minutes of your meeting last week, I came in to get them, I can't get them till you approve them a week later, you see. Even though it's public record.

RAPP - All right.

MALLICOAT - See-----so it's some time down the road before we would get it as a public record. I'm just asking if there's some way which you could just let us---

RAPP - They're approved for record. I assume you understand the reason for that.

MALLICOAT - Oh, yes--we wouldn't want you to-----

FREDRICK - I would like to correct an impression that I was attempting to pry into matters of litigations or anything like that. I had called Mr. Bettis as the suggestion of Mr. Lashbrook to make sure of the fact that no incorrect information did get into my article. And I was, I feel, I was snubbed because I was asking for stuff that should have been a matter of public record. And if Mr. Bettis is concerned about the accuracy of newspaper articles, perhaps as a public servant he might be a little more willing to cooperate with the public.

BETTIS - Well, I can't recall. I don't think there's ever been a time that I've given a statement to a newspaper that I didn't quote it accurately. And instead of retorting why, I just kind of burned. And so I made a resolve long ago, I'm not going to give anymore statements to any newspaper.

FREDRICK - O.K. Well, maybe you----

BETTIS - Now if you recall, the other day, that was a part of my rule then, but we were---but the questions you asked, I didn't have the answers for either and it had to come from the Council after they've made a further decision. Now, as I said a moment ago, your reporting was quite accurate except for the caption and I read---thought as I read, he did a pretty good job. I mean that! But the caption was totally erroneous.

FREDRICK - Well, perhaps we can come to some sort of agreement----

BETTIS - Call me. Please call me when it's convenient. And I'll buy you a cup of coffee and maybe we can get better acquainted and better understand each other.

FREDRICK - You don't hang me with the sins of other reporters and I won't hang you with the sins of other lawyers.

BETTIS - O.K.

RAPP - Any further questions from the people of the Willamette Green?

BETTIS - They haven't been answered, after I send over to the City for duplicating for distributing to the Council, can they get a copy then or after the Council finally reviews?

SWAYZE - I think Council should review it to make sure it's correct.

BETTIS - All right. I agree.

SWAYZE - As to our understanding-----

RAPP - It's much like the minutes, I think what they're looking for is a copy of the agreement that we would send to their attorney anyway and that's what we would approve so that's what you would get a copy of.

BETTIS - And before it's sent to them.

RAPP - That's fine. That's fine.

BETTIS - When will that be?

RAPP - Well, within a week I would say---well----

SWAYZE - Depends upon how fast we can all get----

RAPP - We have a Special Meeting, which is posted for the 10th. If we had it by that time we'd go over it at that time. We probably won't have it by that time so it will probably be the 19th.

GRAHAM - In the office? Will the girls, for example, have it?

RAPP - Yah, after that.

GRAHAM - On the 19th, can we pick it up from Marilyn in the office?

RAPP - No, because we wouldn't have it till the meeting that evening.

GRAHAM - Oh, I see, O.K.

RAPP - On the 20th----

GRAHAM - 20th?

RAPP - You could pick it up if we acted on and approved. Right and approved.

BETTIS - Mr. Mayor, if by chance they disagree or don't approve or object to the provisions of that agreement and if the Council then decides you want to revert to your prior decision so that they can pick up the defense and carry the matter forward, I should be notified somewhere along the line so I don't send a copy in to the other attorney and say here's what we approved----

RAPP - I agree with that. I think you're aware now that if possible, if we have the document to review and to act on on the 19th it will be part of that agenda. And therefore, I would assume you would probably be represented at that meeting and at that time you will be here at such a meeting. You should get an indication of whatever reaction comes out of it.

BETTIS - Fine. I'll get the copy to you probably tomorrow at City Hall so you ought to have it well in advance of the meeting to review and study.

RAPP - Fine-----yes---

HAAS - Mr. Mayor, I didn't quite understand that. Now, would that---would we get the copy that night and then the Council would make a decision on it that night too?

WESTCOTT - It would be a very shorttime for our review.

RAPP - You would hear the discussion by the Council on it. The agreement would be read in that meeting as part of public record. You'd hear the discussion and ah--- have the opportunity to express your opinion in that public meeting, become part of the decision making process as it would be.

HAAS - We would get a copy then?

RAPP - I don't see why we couldn't have some additional copies made to hand out so they could read along if they wish to go over it. How many do you think you would need extra? A half a dozen?

GRAHAM - Oh, that would be plenty.

RAPP - O.K. Then if there were corrections made, you could make the corrections.

GRAHAM - Yes.

RAPP - Anything further on this item?

MALLICOAT - Mr. Mayor, one confusion still exists in my mind and that is, if it goes ahead as it is--as it is proposed under the agreement, is it--will it then be constructed as a Planned Unit Development?

BETTIS - Yes.

MALLICOAT - And will it come under all of the City's regulations as far as Planned Unit Development is concerned?

WESTCOTT - That would put it under the Planned Unit Development Ordinance which has been effect for sometime. I think there was some confusion on that point when I talked about the PUD Overlay, that is a recent tool.

MALLICOAT - Yes, I understand---

WESTCOTT - All right, which just is nothing more than a sentence in the Subdivision Ordinance. It says that we now have a PUD Overlay over any other zone. In the past the zone stood separate from the PUD, with this---- with this little sentence in there they are now tied together. But the R-2 that is out there was prior to this tool.

MALLICOAT - Yes---

WESTCOTT - So there is no overlay on this.

MALLICOAT - Well, what-----

WESTCOTT - But they have applied for a PUD.

MALLICOAT - And that's what would be----

WESTCOTT - They voluntarily applied for a PUD, rather than a building permit.

MALLICOAT - O.K.

WESTCOTT - All right. Now, if we come to a settlement on it, then they're locked into the PUD.

MALLICOAT - O.K. That's the critical point.----As far as we're concerned.

BETTIS - Well, I thought you knew that----

MALLICOAT - No---Not at all.

RAPP - I tried to explain that, --was it Saturday or Sunday when Mr. Graham called.

MALLICOAT - Well, this----

RAPP - 54 is it!

BETTIS - As I was saying, if we lose, we lose 120 units.

MALLICOAT - But you haven't -- ah---the report in the paper says four more units later on if they---you know choose to apply for it. (SEVERAL VOICES AT ONCE.)

PULVER - They can apply for more units, but that doesn't mean we'll give it to them.

MALLICOAT - But the PUD under which they would be operating would preclude anymore units.

WESTCOTT - But if that Homeowners Association that then is formed as a result of this PUD, 20 years from now along with whoever the developers might be at that point and time came in and asked for 40 more units it could be considered at that time in a Public Hearing through a PUD process.

MALLICOAT - Not under R-2----

BETTIS - Not under R-2-----

WESTCOTT - They wouldn't come back in for building permits because it is now a PUD.

MALLICOAT - O.K---O.K.--- One of the concerns about that point is that if they do leave vacant ground there, you see, they could come back under R-2-----

BETTIS - No-----

MALLICOAT - and--- Ah,---

WESTCOTT - They'd have to come back in for a PUD again

SWAYZE - One thing I heard you say something--and I didn't quite like the way you said it, I'm going to say it my way. The negotiation that was finally settled said there may be no more than 54. It doesn't say there can be 54 now and 6 later. It says there will be no more than 54. So we're not considering adding some in the future. We're saying there will be no more than 54.

GRAHAM - Did the plan---was that plan submitted of the 54? The plan like such as we saw before in front of the Planning Commission and the Council? Was there a plan for that, that we could see----

SWAYZE - It's the same plan as before, less 6 units.

GRAHAM - Do you know where those 6 units are going to be removed from and how the-----

LASHBROOK - To restate that, that would be the first building entering the project on the road, which is adjacent---facing the logging road. (SEVERAL VOICES)

RAPP - Is there anything further on this?

GRAHAM - We appreciate your help and thanks alot.

NOTE: THE FOREGOING IS VERBATIM TRANSCRIPT OF THE WILLAMETTE GREEN MATTER.

Next on the agenda, Administrator Wyman read a letter from Mr. Andy DiTommaso requesting Council permission to hold helicopter rides in Canby Square for an Easter Seal benefit. Councilman Swayze moved that Mr. DiTommaso be allowed to hold the proposed helicopter rides on March 15, 1980, during the daylight hours at the Canby Square Shopping Center to benefit the Easter Seal Society, with the approval of the Fire Department and Canby Police Department. Seconded by Councilman Pulver and approved 6-0.

Mayor Rapp read, for the records, the ~~Pro~~clamation which has been signed prior to this meeting in the presence of Mr. Don Fritz and Chief Richard Seigler, proclaiming April 1, 1980, as Census Day in the City of Canby.

Mayor Rapp called for a recess at 8:34 p.m. The Regular Meeting was reconvened at 8:54 p.m.

ORDINANCES & RESOLUTIONS - Attorney Bettis noted a correction to Resolution No. 277, which was adopted February 20, 1980, by the Council. Under No. 3, the aggregate amount should read \$838,029 and NOT \$688,473. Councilman Westcott moved to correct a mathematical error in Resolution No. 277, A RESOLUTION ADOPTING BUDGET AND CALLING A BUDGET AND TAX LEVY ELECTION FOR FISCAL YEAR 1980-81, by changing the figure in the third line of first page, third paragraph as the aggregate figure from \$688,473 to \$838,029. Seconded by Councilman Swayze and approved unanimously.

COMMUNICATIONS - Regarding the James Montgomery Engineering Amendment #3, Councilman Westcott informed the Council he had went to Salem and discussed with Mr. Eckhardt the issue. The Council discussed at some length the consideration of the proposed design of the flocculation/sedimentation building as a part of the project at an approximate cost of \$8,000. The Council felt they should leave the building in for now and when it comes up for bids to take a second look at the issue. Councilman Westcott moved to accept the Contract Amendment #3 with Montgomery Engineering to be entered into by and for the City of Canby. Seconded by Councilman Swayze and approved 6-0 by roll call vote.

Mr. Wyman read a letter from Ray Christian, of Salem, in response to our return letter and photographs regarding our railroad crossings.

Mr. Wyman read a letter from Attorney Bettis regarding a complaint for towing charges on a dismissed citation for Jack A. Henry. Attorney Bettis noted that it was a justifiable claim. Councilman Swayze moved that the City reimburse Mr. Jack Henry the sum of \$23 for an incident when his car was towed away from a parking area that was legal. Seconded by Councilwoman Brown. Judge Henricksen was present and showed by a diagram on the blackboard why he dismissed it, Mr. Henry parked in front of the signs and the City Ordinance says you are not to park between the posted signs. When asked if this settlement would fully settle any and all

claims hereafter to the City by Mr. Henry, let the record show he nodded in the affirmative. Council carried the motion 6-0.

NEW BUSINESS - Councilman Knight moved to pay accounts payable in the amount of \$55,885.51. Seconded by Councilwoman Brown and approved 6-0 by roll call vote.

Administrator Wyman presented a liquor license application for Cutsforth's, noting Council had already approved this license under the new corporation name, however, they need to have approval under the Cutsforth's name for a period of 5 days prior to the time the new corporation actually is effective. Councilman Swayze moved to approve the liquor license application under the old corporate name of Cutsforth's be approved. Seconded by Councilman Pulver and approved 6-0. Councilman Westcott, not paying attention voted yes but now reversed in vote to nay, Motion carried 5-1.

Administrator Wyman presented two more deeds for dedications for widening of S. Locust St. Councilman Swayze moved to accept for recording the deeds from Margaret Kahl and also from Robert W. and Marianne Kahl for dedication for widening of S. Locust Street. Seconded by Councilman Knight and approved 6-0.

Councilman Swayze noted that there have been some minor liability payments on behalf of the City which he had not been aware of, therefore, Councilman Swayze moved that our Insurance Agent of Record, Lyle Read, be asked to determine and report in writing to the Council all liability claims paid on behalf of the City for the calendar year 1979, and also report any future payouts on claims through our liability carrier within 30 days of said payout. Seconded by Councilman Pulver and carried 6-0.

UNFINISHED BUSINESS - Attorney Bettis inquired about the Council Order on the Amato Brothers, Mayor Rapp informed him that the Council had already approved and signed it.

In regards to the Umbrella Policy of \$1,000,000, the Council discussed this issue at great length also the prospect of the City being self-insured. Councilman Westcott moved that the City Administrator find a fund whereby we can fund the last part of this fiscal year for both in and out of state Umbrella Policy and come back at a later time with information. Seconded by Councilman Nichols. Mr. Bettis noted that we should also ask for a list, in writing, of exclusions. Mr. Wyman said he could have the information on budget line item later in the meeting. Therefore, Councilman Westcott moved to table this matter. Mayor Rapp noted this as a Motion of Privilege and motion carried 6-0.

City Planner Stephan Lashbrook read his staff report regarding the Marv Dack Development with the following alternatives as recommendations: 1) drop this negotiation process and adopt Ordinance 665, thereby requiring Mr. Dack to file a PUD application prior to development; 2) drop the negotiation process and reject Ordinance 665 thereby allowing Mr. Dack to proceed on his development as he sees fit; or 3) use the improvement conditions cited elsewhere in the staff report and adopt a set of standards which are mutually agreeable to the Council and Mr. Dack.

Jon Henricksen, representing Mr. Dack, noted that prior to August 1, 1979, he was Mr. Dack's attorney involving this issue and since that date has become Canby Municipal Judge. Mr. Henricksen inquired of the Council if they had any reservations having him represent Mr. Dack and if so he would ask for a continuance and other counsel. Attorney Bettis said there should be no objection as long as the Council, unanimously, and the client have no objections. For the record, Councilman Nichols noted some dealing with Mr. Henricksen as an attorney but had no objection in this matter. The entire Council had no objection and therefore, Attorney Henricksen proceeded.

Mr. Henricksen noted that according to past minutes the Council felt that Mr. Dack had voluntarily entered into a Planned Unit Development and that was not the case. PMD, Planned Medium Density, is what they talked about. Mr. Henricksen read from a letter dated August 30, 1978, stating Mr. Dack's intentions to voluntarily commit for a PMD as if there were a PMD Ordinance in the following particulars: 1) limit the density to 167 units; 2) perpetual open space, green areas, for the use and benefit of the residents of the project; 3) limiting ownership to adults only or not more than one child per family; and 4) if Mr. Dack doesn't take any steps toward the project as proposed it would revert back to original zoning R-1, by December 1, 1980. Mr. Henricksen also noted the request for dedication but never a requirement for improvements on N.W. 13th Avenue. Also, Mr. Dack wants the City to agree not to remonstrate against him so that he would "look bad" in the eyes of the High School District. Mr. Dack also felt the Latter Day Saints Church should give up an equal amount of property when the City puts in an arterial street and it should be at City expense. For now, he wants a right angle curve following the border of his property to be the street. As far as the development begun, Mr. Henricksen asked the Council what they meant regarding the time element of starting the project. Councilman Westcott-turning earth, so permits have transpired; Councilman Swayze-planning done and money there and guaranteed and bulldozers ready. Mr. Henricksen urged the Council to accept Mr. Lashbrook's No. 3 recommendation.

Mr. Lashbrook noted that the street improvements on 13th were also for Mr. Dack's benefit. He also said that Mr. Ferguson, Public Works Director, felt that this street must be approached as an arterial and certain widths are necessary, as for now it would be a temporary private road and in the future some more acquiring of land for widening would be necessary. As far as the time limit, he felt the first phase of applications for building permits should be done by the deadline date.

Councilman Swayze moved that Mr. Dack and his attorney prepare their ideas of a proposal for agreement to resolve the controversy now pending concerning the Planned Development of the Dack property for which the zone was changed by Ordinance No. 645. Seconded by Councilwoman Brown and approved 6-0.

Councilman Westcott moved to take from the table the insurance liability Umbrella Policy issue. Seconded by Councilwoman Brown and approved 6-0. Mr. Wyman noted that we had sufficient funds under line item of insurance to pay the premium. Councilman Westcott moved that we purchase liability insurance from Lyle Read, under line item insurance, for both in and out of state Umbrella Policy of \$1,000,000, for an annual premium of \$6,878 and that the remaining time of this fiscal year (3 months) be a pro-rated premium, also that Mr. Read shall be requested to notify the City in advance, in writing, of a list of all exclusions. Seconded by Councilman Nichols and approved 6-0.

Mayor Rapp adjourned the meeting at 11:10 p.m.


Robert E. Rapp, Mayor


Harold A. Wyman, Administrator/Recorder

P R O C L A M A T I O N

WHEREAS, the Twentieth United States Decennial Census of Population and Housing will be conducted beginning on April 1, 1980; and

WHEREAS, all the inhabitants of the City of Canby, Oregon are to be enumerated in this census; and

WHEREAS, the information collected in the census serves many useful purposes, among which are apportionment of representation in Congress and other legislative bodies, measurement of the economic well-being of communities and their inhabitants, allotment of certain Federal and State tax revenues and other financial aid to our communities, determination of future needs for public services, and numerous other useful purposes; and

WHEREAS, the accuracy and completeness of the census for the City of Canby, Oregon will determine its population rank among other communities of the country;

NOW, THEREFORE, I, Robert E. Rapp, Mayor of the City of Canby, Oregon, do hereby proclaim April 1, 1980, as CENSUS DAY in Canby, Oregon, and do urge and implore all residents to cooperate fully during the month of April with those who are charged with the responsibility of this most important work.

Dated this 5th day of March, A.D. 1980

Robert E. Rapp
Robert E. Rapp, Mayor