

CANBY CITY COUNCIL

REGULAR MEETING

MARCH 19, 1980

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

Others present: Administrator Harold Wyman, City Attorney Wade P. Bettis, City Planner Stephan Lashbrook, Public Works Director Ken Ferguson, Public Works Supervisor Bud Atwood, Treasurer Myra Weston, Secretary Marilyn Perkett, Sewage Treatment Plant Manager Charles Tooley, K.W.R.C. Reporters Tom and Colette Jelineo, Planning Commissioner Gary Sowles, Charles Landskroner, Marlin DeHaas, Attorney Jack Orchard, David Bury and Lee Engineering representatives Duane Lee and Walt Mintkeski.

Mayor Rapp called the Regular Meeting to order at 7:35 p.m. followed by the flag salute and roll call of Council.

Councilwoman Brown moved to approve minutes of Special Meetings March 3 and 10, and Regular Meeting March 5, as presented. Seconded by Councilman Pulver and carried 6-0.

CITIZENS IN-PUT ON NON-AGENDA ITEMS: None were presented from the floor.

Mayor Rapp moved on into the agenda and reserved the Public Hearing until later in the meeting.

ORDINANCES & RESOLUTIONS: City Attorney Bettis read Resolution 278. Councilman Westcott noted two corrections on page 3 of the Resolution: delete the word current in first sentence on top of page and insert, 1980-81 ; and in the second line delete the word was and add is. Councilman Swayze moved to approve with the two noted corrections, RESOLUTION NO. 287, A RESOLUTION PROVIDING FOR AND CALLING A CITY TAX BASE ELECTION IN AND FOR THE CITY OF CANBY, CLACKAMAS COUNTY, OREGON, ON TUESDAY, MAY 20, 1980, FOR THE PURPOSE OF SUBMITTING TO THE LEGAL VOTERS OF THE CITY OF CANBY, OREGON THE QUESTION OF ESTABLISHING A NEW TAX BASE FOR THE PURPOSE OF APPLYING THE LIMITATION ON TAXATION SET FORTH IN SECTION 11, ARTICLE XI, OREGON CONSTITUTION. Seconded by Councilman Westcott and carried 6-0 by roll call vote.

Prior to the Public Hearing, Councilman Knight requested a short recess, Mayor Rapp recessed the Regular Meeting at 7:51 p.m.

Mayor Rapp reconvened the Regular Meeting at 8:03 p.m. and immediately opened the Public Hearing on the proposed Estate Eight Development Company annexation appeal. Mayor Rapp explained to the audience the Public Hearing procedure.

STAFF REPORT - City Planner Lashbrook read his March 12, 1980, memo of the proposed annexation of three tax lots, comprising a total of 16.69 acres, south of S.W. 13th Avenue. Staff recommendations are: 1) adopt the Planning Commission's findings of fact and support the Commission's recommendation to deny the annexation; or 2)

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forward this recommendation to the Portland Metro Area Local Government Boundary Review Commission for its final action. Mr. Lashbrook noted one question in his mind was the applicability of the applicant to show a public need and a need best met. The main issues are the timeliness and concern of adequate water system. He reminded the Council that if they approved this application they should then address the L.C.D.C. Goal #3.

APPLICANT - Attorney Jack Orchard, representing the Estate Eight Development Company, informed Council that this proposal had been in the works for approximately two years. Mr. Orchard felt the issues of services and transportation were to be addressed at the time of development not at annexation. He pointed out that Canby has no Ordinances for procedure for annexation. He also pointed out a recent Oregon Supreme Court Decision whereby the public need and need best met were not criteria to be considered in an annexation. Mr. Orchard noted that Clackamas County has the right to designate the use of that property now and if it were annexed then the City would control for future decisions. He felt the area was not profitable for agriculture.

PROPONENTS - None were voiced.

OPPONENTS - David Bury expressed his concern regarding an increased traffic problem in the south side of town and also the lack of adequate water was to be considered. Mr. Bury requested, that if approved, this be "red flagged" for development for two years or until the services were adequate.

REBUTTAL - Mr. Orchard felt the traffic concern would be able to be controlled if the property were to be brought into the City. He also felt it would not be necessary to "red flag" the development since the time factor involved in the process of annexation would be lengthy and probably two years anyway.

Mayor Rapp closed the Public Hearing at 8:30 p.m. and immediately reconvened the Regular Meeting.

Councilman Westcott expressed concern about the concept of controlling the utilities at the point of development rather than the point of annexation. He noted that the Canby Utility Board felt a real commitment to supply services to areas already in the city limits.

Planner Lashbrook said it was his feeling that it is better to not annex if services are not available rather than turn down a subdivision for that reason. However, this is not to say to turn down all annexations.

Mr. Orchard noted that we had property now in the city limits with no services. He felt it is a risk the developer takes whether services are available. He felt that conditions on approval can be used to handle the service problem.

Councilman Pulver inquired about natural gas. Mr. Lashbrook said that there was a gas line to the end of Elm Street and through the Pitts Addition.

Attorney Bettis informed Council that a denial of annexation for lack of utilities only is not justifiable for denial.

Councilman Swayze was concerned whether our ratio of R-2 to R-1 is staying reasonably level. His concern is apartment life vs. single family dwelling life.

Councilman Westcott felt concern since we no longer needed to show public need or need best met due to a recent Supreme Court decision. He was concerned on how to control growth and what are basis for denial.

Planner Lashbrook noted that all new annexations are zoned automatically R-1. He also noted that for a zone change or Comprehensive Plan Amendment a public need and need best met is necessary due to City Ordinance.

Ken Ferguson, Public Works Director, pointed out the fact that in less than four years Canby has had eight subdivisions and this hasn't helped the transportation problem in the community.

Mayor Rapp recessed the Regular Meeting at 9:18 p.m. and reconvened at 9:32 p.m.

Because of the new court ruling and the need for more serious thought of the Council, Councilman Swayze moved to table the Estate Eight Development Annexation until the next workshop or Council meeting. Seconded by Councilman Nichols and approved 6-0.

COMMUNICATIONS- None.

NEW BUSINESS - Councilman Knight moved to pay accounts payable in the amount of \$60,882.25. Seconded by Councilwoman Brown and approved 6-0 by roll call vote. Councilman Knight moved to pay a bill to Clackamas County for \$168,442.50 and one to James Montgomery Engineering for \$6,951.49 to be drawn from the County Treasury on water bond warrants. Councilman Westcott informed the Council that the County bill was the first payment to the County on the \$3,000,000 water bond, \$80,000 on the principle and \$88,442.50 on half of the interest. Councilman Swayze seconded the motion and motion passed 6-0 by roll call ballot.

Mr. Wyman read a letter from Attorney Bettis regarding the proposed County Hotel/Motel Transient Tax Ordinance. This tax will benefit the Clackamas County Fair Board and Mayor Rapp felt we should support it. Councilman Nichols moved to approve the intent of Clackamas County of the Hotel/Motel Transient Tax Ordinance as it will be presented to the county voters and support its passage. Seconded by Councilman Pulver. Councilman Westcott inquired whether this would preclude in the future of having a city tax on this issue. Attorney Bettis assured him it would not make a difference. Motion carried 6-0.

The next item was the Southern Pacific Supplemental Agreement for leasing the area on N.W. 1st Avenue for parking lot purposes. Mr. Wyman recommended we accept the lease effective April 1, 1980, for \$335.00 per month. Councilwoman Brown moved to approve the supplemental agreement with Southern Pacific for the parking lot on N.W. 1st Avenue and the lease to be effective April 1, 1980, for the total amount of \$335.00 per month for five years and a copy of the agreement be attached to these minutes. Seconded by Councilman Westcott and approved 6-0.

UNFINISHED BUSINESS - Duane Lee of Lee Engineering introduced from his firm Walt Mintkeski who reported to the Council their findings to date on the Sewage Treatment Plant Study. Mr. Mintkeski outlined the purposes of the capacity study: analyze the plant process; determine why discharge permits were apparently being violated and make recommendations for improved treatment efficiency; determine hydrolic and organic capacity of plant; and determine additional number of connections that could be made before reaching full capacity and project remaining useful life of the plant.

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The basic conclusions reached were - due to erroneous flo data and lab equipment the plant appeared to be, but may not have been in violation in discharge permits and the errors in the plant operation maintenance manuel existed, these were corrected and standards are now being met. The plant is presently at 71% of hydrolic capacity and 67% organic capacity, this indicates that 1,050 more single family equivalents could still be connected to the system. Assuming a 5% population growth, the plant should reach capacity around 1984 or 1985.

Methods used to reach the conclusions were basically three: review of plant operation; institution of temporary changes in plant process to determine response of plant; and identifying existing operational problems that resulted from plant design.

Councilman Westcott questioned the flo meter problem. Lee Engineering suggested we install one when a new plant is designed.

Mr. Lee informed Council that in April they intend to return to the Council with the expansion study.

Mayor Rapp informed Council that the flyers regarding the budget and open house will be delivered on Sunday afternoon. He also reminded Council of the planned open house at City Hall on Monday, March 24, 1980, 5:00 to 8:30 p.m. Also, Tuesday, March 25, is the ELECTION DAY FOR THE BUDGET.

Councilman Westcott suggested that we set Public Hearings on nights other than our regular meeting night. Mayor Rapp felt this was a good idea to institute.

Mayor Rapp adjourned the Regular Meeting at 10:33 p.m.


Robert E. Rapp, Mayor


Harold A. Wyma, Administrator/Recorder

Lease 176271

THIS SUPPLEMENTAL AGREEMENT dated this _____ day of _____, 19____, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation, herein called "Railroad," and the CITY OF CANBY, a municipal corporation of the State of Oregon, herein called "Lessee";

RECITALS:

The parties hereto entered into that certain lease dated February 27, 1975, whereby Railroad leased to Lessee those two certain parcels of land (Phase I and Phase II) owned by Railroad at or near Canby Station, County of Clackamas, State of Oregon, as illustrated on the print attached thereto and made a part thereof for the term of ten (10) years from April 1, 1975, in connection with the operation of a public parking lot.

The parties now desire to amend said lease as hereinafter provided.

AGREEMENT:

1. This supplemental agreement shall take effect as of the _____ day of _____, 19____.

2. The print of Railroad's Drawing No. L-2691-B, as revised November 7, 1979, is hereby substituted for that print attached to said lease and Railroad's premises, subject thereof, are as illustrated thereon.

3. For the remainder of the first 5-year period of the term of said lease, commencing as of the effective date hereof until March 31, 1980, Lessee shall pay to Railroad as rental for the leased premises the sum of TWO HUNDRED THIRTY-FIVE DOLLARS (\$235) per month, payable monthly in advance.

For the second 5-year period of the term thereof, commencing April 1, 1980, Lessee shall pay to Railroad as rental for the leased premises the sum of THREE HUNDRED THIRTY-FIVE DOLLARS (\$335) per month, payable monthly in advance.

4. The rental payments specified in Section 21 of said lease are hereby deleted therefrom.

5. Should any leakage, spillage, or pollution of any type occur upon the leased premises due to Lessee's use and occupancy thereof, Lessee, at its expense, shall be obligated to clean the premises to the satisfaction of the environmental protection agency and/or other governmental body having jurisdiction thereover.

Lessee shall promptly and fully reimburse and indemnify Railroad should Railroad suffer or incur any fine, penalty, cost or charge due to such leakage, spillage, or pollution upon the leased premises.

Any related expense of required compliance with federal, state or local environmental regulations incurred by Railroad or Lessee shall be borne by Lessee, including any fines and judgments levied against Railroad or its property.

6. Notwithstanding anything to the contrary as may be contained in said lease or in this supplemental agreement, if improvements on the leased premises other than those which are owned by Railroad are not removed and premises restored prior to

termination date, either by Lessee or by Railroad at Lessee's expense, then said lease, with all terms contained therein and as herein modified, including the payment of rental, may, at Railroad's option, remain in effect until improvements are removed and premises restored.

7. Should said lease continue in effect after the term therein provided, Railroad may,

- (a) without prior notice, automatically revise the existing rental on the later of its anniversary of the effective date of said lease or of the effective date of the last rental revision (if rent is revised for any reason prior to said anniversary date) by the same percentage of adjustment or fluctuation to the nearest one-tenth of one percent as the CPI factor (as defined herein) established for the period from the time the existing rental took effect to the date the revised rent is to commence; or,
- (b) at any time upon thirty (30) days' prior written notice, revise the existing rental based upon the fair rental value of the premises at the time of such revision.

If for any reason the rental is not revised at the time stated in (a) above, the rental shall continue to be subject to revision without prior notice and shall be retroactive to the date the revised rental should have taken effect.

The rental, when so revised, shall never be less than the rental rate then in effect, regardless of whether the revision was based on the CPI formula above or upon the fair rental value.

The CPI factor is that percentage stated in the Consumer Price Index, Urban Wage Earners and Clerical Workers, U.S. City Average, All Items (1967 = 100), published by the United States Department of Labor, Bureau of Labor Statistics, or any successor or substitute index published as a replacement for that index by said Department or by any other United States governmental agency.

Nothing in this section shall be construed as extending the term of said lease or as waiving in any way Railroad's statutory right to terminate at any time after the expiration of the term thereof.

8. Except as herein otherwise provided, all of the terms, covenants and conditions of said lease shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this supplemental agreement to be executed in duplicate as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By _____

WITNESSED BY:

CITY OF CANBY

By Robert E. Rary
Mayor