

CANBY CITY COUNCIL

REGULAR MEETING

JULY 18, 1979

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

Also present: Administrator Harold Wyman, City Attorney Roger Reif, Planner Stephan Lashbrook, Public Works Director Ken Ferguson, Public Works Supervisor Bud Atwood, Treasurer Myra Weston, Secretary Marilyn Perkett, Planning Commission Chairman Gordon Ross, Planning Commission Member Norris Hart, Canby Herald Editor Jeff Durham, Charles and Marcella Lawrence, James and Brenda Rollandi, Dale and Maxine Mallicoat, Gordon Merseeth, Bob and Pat Graham, Virgil and Norma Vandenburg, Eva Herman, Vera Spagle, Paula Mossaider, Mr. and Mrs. Richard Molé, Attorney Gary Bullock and Suzanne Bullock, Bill Morgan, Howard Barlow, Evelyn Birch, Harold Johnston, Syl and Eileen Jaillet, Gary and Milly Goode, Harold Jeans, Architect Donald Stastny, Paul Farrell, Dave Boland and Clarence VanDorn.

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

Councilman Knight moved to approve the minutes of Regular Meeting July 5, 1979, as distributed. Councilwoman Brown seconded, approved 4-0.

Mayor Rapp inquired whether anyone wished to address the Council on Non-Agenda items. No response.

Mayor Rapp instructed the audience as to the procedure of a Public Hearing and presented a sign-up sheet for both proponents and opponents. A five minute recess was declared at 7:35 p.m. for the purpose of signing up for the hearing.

Regular Meeting was recessed at 7:43 p.m. for Public Hearing on the Appeal of Planning Commission Decision of Willamette Green Phase 2.

SUMMARY OF STAFF REPORT BY CITY PLANNER STEPHAN LASHBROOK:

In summary, this is a proposed Planned Unit Development of approximately 4½ acres to divide into a common area plus 11 buildings with up to and not more than 60 units. This is a full evidentiary hearing, the Fasano requirements of "public need" and "need best met" must be addressed. This area was rezoned in 1967 by Ordinance. The existing Willamette Green Phase I was developed in the late 60's and 70's. Planner Lashbrook reviewed by dates the previous meetings and memos of this application and also the proposed plans. The two most critical issues raised by the Planning Commission are: (1) That the developers felt they should not be tied to a specific amount of units provided an overall maximum is stated. (2) Planning Commission felt that the maximum number of units should be somewhat fewer than 60, in spite of the fact the R-2 rezoning will allow 70 apartment units. Applicants have applied for building permits to build apartments. Staff did recommend approval of original application but felt the design could be better, however, the overall design is much better than the standard apartment complex. Lashbrook pointed out the need for some type of gate which would separate the private roads of Phase I and Phase II, so as not to make a continuous loop, as the Fire Department considered this critical. Homeowners of Phase I definitely do not want the road left open as it will become a through area to Phase II.

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Mayor Rapp called for testimony from the applicant.

TESTIMONY OF ATTORNEY GARY BULLOCK, REPRESENTATIVE OF THE DEVELOPERS:

I intend to give testimony as to the legal issues. When the original zone change was made in 1966, the property was rezoned for apartments and the Planned Unit Development was put in the first phase. Since it is zoned for apartments if the developers desire to build apartments they have a legal right as long as they meet Ordinance technical requirements, such as, set backs, fire code, soundproofing, etc. I advised my clients, due to all the hold ups, to apply for building permits to construct apartments so they could put in street and utility services before the weather got bad. I called Mr. Bettis and asked if he felt that if a Planned Unit Development were turned down there would be any reason that the city legally could stop the apartments from going into the premises, since that is what it's zoned for. He said in his opinion no, as a result this is why we applied for permits in hopes to speed things up. Today when I talked to City Staff, they advised me that the request had 17 conditions before the building permit could be approved, such as, set backs of 10 feet from property line, certain things relating to fire codes, soundproofing between walls, all technical things. I talked to Mr. Reif and he said it might be that when the zoning was passed it may have been conditional zoning and that this property be a Planned Unit Development and therefore, on the condition that it be a PUD that is what will have to go in there at this point. My argument is that it isn't and therefore my client will have a legal right to build apartments on the premises if in fact a Planned Unit Development is not approved. I want to put into the records a copy of the Zoning Ordinance 498, dated May 19, 1966, this is the Ordinance which refers to any condition which relates to any condition that there be a PUD in the future. In the discussion in the minutes there is some talk of it but it would be my position that the final document that really counts relating to an order is not what is talked about but what the order actually says. There is nothing in that Ordinance conditioning any further building being Planned Unit Developments. (THIS WAS OFFERED AS AN EXHIBIT.) If the PUD were turned down and the building permit were turned down on the basis this was really a Planned Unit Development, I would file a Writ of Mandamus, this is where a public official does not do what they are required to do by law and the court says you will do this and even have the court be required to carry out some duty that a court has if they don't proceed to carry it out. In this specific case, if this really is a PUD then why can the City request his applicants to apply for a PUD? In other words, in the City's position if this is apartment property and therefore since it is, we are going to ask you to go before the Planning Commission and ask for a PUD, and if you appeal it goes before the Council and we ask for a PUD. If the City's position from the beginning was that this is a PUD, then why are we here other than for the fact there might be some conditions which might have to be met? My position from a legal point of view that this in fact is zoned as apartments and therefore my clients have a right to construct apartments there. What is best for the best interest of the people in the area and the best interest for the city of Canby? Is it for apartments or a higher grade housing in that area such as a Planned Unit Development that is there now? In Ordinance 516, on PUD, in section 29.1 as to why does the city have Planned Unit Developments, it states this Ordinance of permitting the development of land in a manner which would be as good or better than that resulting from the traditional lot by lot development while substantially maintaining the same population density and area coverage permitted in the zone in which the project is located. To me what that means is, if you're going to approve a PUD what you're really doing is up-grading from what would be if you just went along with your Zoning Ordinance. If in fact there were a PUD with condominiums it would be like what is out there now. I think that as far as within the legal ramification of what the City had in mind relating to the Ordinance it would comply. A decision came down at the Planning Commission Hearing relating to the fasano decision. I can't really see why a fasano decision would apply in these kind of cases but the court of appeals says it does so we have to look at that. As far as meeting requirements for

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fasano, one of the requirements is to show a need for this type of housing in the area. In this specific situation my clients have had considerable requests and interest by people who would like to have a condominium unit on the Golf Course, it's a beautiful area and a good area to put condominiums on the edge of the City, it doesn't conflict with water or sewers because of the location of it, and it's in an area where you already have a PUD of condominiums, so it will not in any way detract from them. The question of the Planning Commission, one of the requirements they had was, we want to see what you're going to build on that property. In explanation as to why the developers were objecting to having to draw the exact number of units, they explained to me and I'll try to explain it to you. In a PUD in a subdivision, would you require the developer before he develops the property to give you a complete and exact design of every house in that subdivision? According to the Ordinance, I question the fact whether you could request this. In paragraph C-4 of the Ordinance On PUD, the developer can put the type of dwelling they want and site location they want. Why not draw what they are going to be? My developer said we have no objection to drawing the exterior, which they already have, but the problem of having to commit to the number of units is this, what happens if we are required to build 60 units and the economy goes bad and nobody buys them? If people only buy 5 of them and then they will have to build another 55 by Planning Commission order. The Ordinance does not require that and why should they be required to draw every single one and also build 60? The Zoning Ordinance will allow them to build 70 to 80 apartments and what they are requesting of 60 units as far as condominiums, and so they are requesting less units than what the Ordinance allows them to build relating to units. However, they do not want to be pinned down to build 60 if the economy goes flat because of the energy crises. Why wouldn't they want to draw in the exact design of what each one of those is going to be? What happens if they show five 3-bedroom units and 55 2-bedroom units and all the buyers want 3-bedroom units instead of 2-bedrooms, therefore, having to build something people don't want to buy. That was there thinking of relating to the Commission saying they had to draw in exactly what they were going to build even though the Ordinance doesn't require it and even though if you took any development that has probably passed of single family units, have you ever said to any of them you are going to draw the exact house plan before you ever get the approval? I understand there is a lot of hostility in the area by people who don't want apartments or anything there and said that when the first phase was built there would be a certain number of units and you are now asking for a lot different number in the amount of units. In the original proposal that went into the City in 1966 as to what the clients intended to do as far as number of units, in this document in paragraph 4 it shows proposed site development and it says the total project will consist of approximately 100 units and the related utilities, roads, parking and recreational facilities, the cost per unit will be from \$18,500 to \$27,500 projected sales price. This is what the original proposal said, with 41 existing units and asking to build an additional 60, this will make 101 units. (THIS DOCUMENT WAS PLACED INTO EXHIBIT.) Also, originally when the PUD was approved there was no requirement by the City that the developer put in the number of rooms or units, the zoning limits the number of units you can put on the property. Here is a sketch which shows where the units will be exactly as Ordinance 516 requires in C-4. (THE SKETCH WAS PLACED AS AN EXHIBIT.) The sketch shows exactly where the units will be and exactly how many units will be and that condition will be different now than what the original Commission approved and the Ordinance was the same. Ordinance 516 was passed August 6, 1962, and this occurred in 1966. So it is really a different condition. The developers have no objections to meeting every condition that the City Planning Staff requires if the PUD is approved. If it is approved the price and the quality will be greater than if apartments go up, because the expense will be greater. If in fact they have the right to build apartments, and they do, then what will be in the best interest of the City, have apartments of lesser quality than the existing condominiums or condominiums that are equal or better quality?"

WESTCOTT - In your opinion, is this a subdivision?

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BULLOCK - Yes, I would think so in this instance.

WESTCOTT - I thought it was.

BULLOCK - Your Ordinance says that it is a Planned Unit Development Subdivision.

WESTCOTT - That is the way I understood it, in a subdivision we have lot lines and they can build anything within those lot lines.

BULLOCK - That's the way it would be here.

WESTCOTT - Is that what you're suggesting that they would show the 60 lot lines?

BULLOCK - That's right, but not require them to have to go ahead and construct on the 60 if the economy goes bad.

WESTCOTT - Your clients felt if a PUD for 60 units were approved they would have to build 60 units. We have subdivisions that aren't filled out yet.

BULLOCK - They are having to draw in the design of every unit that goes in there, that's what the Planning Commission wanted. I may be wrong, that's my understanding and the Architect is here and will know better than I.

WESTCOTT - You eluded to it on this court matter, that we are under Fasano and we are quasi - judicial here and need to have a finding of fact of public need. Do you have any documentation to enter as public need?

BULLOCK - No, I will explain it this way. I think that the question of the Fasano position, because it's already been determined by the Council that this area is a Planned Unit area, that is what is out there and that is what the discussion was even though there wasn't any condition that the future part be a PUD. But if your position is that when you originally zoned it that you conditionally zoned it, which you have the right to do, in my opinion you can conditionally zone something and you will do this, if we approve the zone and that's fine.

WESTCOTT - But what we're talking about now is a subdivision, and you agree that it is a subdivision and under Appellate Court ruling we must find a public need.

BULLOCK - My point in place of public need would be this as a lawyer, I think it is kind of nonsense. I think really what you should go on is your feeling as to what the City needs and what it has, but there is certain criteria because of the Fasano that you're going to have to meet. In fact if someone appeals your decision, to cover that as far as what the public needs here is as far as the appropriateness of the project in the area. It would be my position, that is what is there already and it would be more appropriate to have apartments next to a PUD. There is no requirement for any hearing if they build apartments, they are just there because that is the Ordinance. That's there now. If you look at your Ordinance what it says that what should come out as far as a PUD would be, which is a better development that substantially is the same as the area now. That is something that is a decision that you as a Council should make, is it better to have what is there already or is it better to have apartments? That's presuming of course that they can construct apartments there, that's the first thing. As far as the second thing, as far as the demand, my clients have a great interest of people wanting to buy condominium units along the Golf Course. There aren't any condominium areas in the City of Canby that I know of that would be similar to that areas as far as the local that would meet in my opinion the requirements of Fasano.

SWAYZE - Are all the condominiums currently sold?

BULLOCK - Yes, my understanding is they are.

SWAYZE - There are still for sale signs and they are still having open houses.

BULLOCK - That, the architect can speak too. You're referring to those in Phase I, Mr. Boland can probably explain it better than I, but some of the very last units my clients had nothing to do with. The property was sold. Property owners in the area met with the purchases and there were certain conditions which had to be met to build those units. My clients had nothing to do with those units.

SWAYZE - It doesn't matter who had anything to do with them, if there is such a great need for condominiums on the Golf Course, I'm wondering why they have been there so long and not selling.

BULLOCK - Now I went out and looked at them, did you see them?

SWAYZE - No!

BULLOCK - Can you compare those units that are for sale with the units that my clients built? I personally don't, because I think the construction of them is really shabby. The exterior walls as far as material goes doesn't come up to anything close to what the units are my client built. The construction of them, I question whether people will buy them because of the quality of them.

SWAYZE - There are a lot of shabby built houses around that are selling like hot cakes. I still don't feel you have shown me a great need for 60 more condominiums.

BULLOCK - I'm not here to argue, I'm just here to present the legal end of what I feel is the case relating to this.

RAPP - Did you not say that your clients were willing to agree not to build more than 60 units?

BULLOCK - Yes, sir! Even though zoning requires that and I think you have the perfect right to condition that if you so desire. I had that happen in Clackamas County before they had a Planned Unit Development Ordinance.

KNIGHT - How does your client feel about building less than 60 units?

BULLOCK - That is something they will have to speak about, I really didn't go into that with them.

TESTIMONY OF ARCHITECT DONALD STASTNY, REPRESENTING THE DEVELOPERS AND USING A WALL MAP:  
There were a number of criteria in setting up the plan and design. The existing Willamette Green, the Golf Course, natural setting, utilize the view of area. The units themselves would consist of 4-6-8 units per building with 3 prototype units; 2 split level units and one flat unit. The design marries the units which are already in existence. There are 71 parking spaces, including garage, the total amount varies depending upon which design is used. Along the Golf Course side we have 5 feet from the property line to the patio walls (screen walls), actual occupied space and roof area is 11 feet from the property line. Site service as far as sewer, water, electricity, fire truck access, to my knowledge they answer all the criteria needed. Application has been made for building permits based on apartments, based on 17 points of condition, 5 of the points are tied into the Planned Unit Development, the remaining 12 are standard matters

concerning structure. Several Councilmembers brought up questions concerning width of streets, right of way, etc. Planner Lashbrook pointed out these were private roads within the development and did not have to meet the standards for Public Works, these are privately owned and maintained roads. Mr. Westcott inquired as to the road circling around to the road of existing Phase I, with a chain across to separate the two. These would be two private ownership roads. Mr. Boland responded saying "the homeowners of Phase I owned that road and it would be the fire department request for the chain."

Mayor Rapp called for testimony from proponents with no response.

Testimony was called from the opponents, using the sign-up sheet, Mayor Rapp called the opponents in the order in which they signed.

TESTIMONY FROM VIRGIL VANDENBURG, HOMEOWNERS ASSOCIATION CHAIRMAN OF WILLAMETTE GREEN PHASE I: (At this point a two-page typewritten report was handed to Councilmembers, dated July 18, 1979, and also put into exhibit. Also a model of the entire 10 acres of Planned Unit Development Willamette Green Phases I and II was brought into the chambers and set on the center front table. Mr. Lashbrook asked, "Are you prepared to leave that there?" Mr. Vandenburg said, "Yes, we could ----if you guarantee its save return." Mr. Lashbrook replied, "It becomes a part of the records and you don't get it back.") We invite you to view the original model and sales brochure, of which I am ready to put into exhibit, as presented to homeowners in Willamette Green Phase I and we are sure you will agree it was well planned and would be an asset to any community. (SALES BROCHURE WAS PLACED IN EXHIBIT.) "We would like to emphasize the plan was for single family condominium homes, and we understand the plan applied for is to build a combination of homes and apartment rentals. We are definitely opposed to this type of development. Willamette Green Phase I is now complete with 41 condominium homes on approximately 6 acres of land or about 7 units per acre. The present density allows for adequate off-street parking, open park-like area and a clubhouse with a swimming pool. However, you will note the original brochure and model, planned for a total of 84 homes to be built to complete all of Willamette Green. Therefore, we would not be opposed to an additional 43 units providing adequate parking and open area could be accommodated with that many units being built on approximately 4.64 acres. There has been some discussion as to whether there is 4.65 acres, it may be somewhat smaller. Phase I has 4.5 parking spaces per home including garages, driveways and guest parking, if you take away the garage parking we would have 40 less units for parking. This is only adequate due to the automobile ownership in the area and the number of guests that must be taken into consideration. The Homeowners Association Board of Directors and most of our members are concerned that any higher density than originally planned will seriously detract from the real and esthetic value of the homes in Phase I. We are also very concerned that the parking being planned in Phase II is not adequate. Due to a portion in Phase II of that property being a natural drainage for the surrounding area, we believe it is of the utmost importance the exact location and configuration of buildings, roads, parking areas and storm sewers be shown on the application, I dispute what was shown before, a natural draw comes around at the end of our road and right through their building, a topography would show this (he referred to the map and pointed this area out). For all of the above reasons we would recommend that this application be denied. One further point, the west entry road into Phase I is a private road, 18' 8" wide, serving 33 homes and is not to be extended beyond its present location, now that comes from the people that own the street. We are also opposed to any chain at the end of our private road or any access or egress. However, the private road does go clear up to the point where the suggested chain would be."

TESTIMONY OF DALE MALLICOAT, HOMEOWNER IN WILLAMETTE GREEN PHASE I: Speaking for only

himself and wife, Maxine, not the Homeowners Association. "We are in favor that Phase II be developed as soon as possible in the context of the original plan. We purchased our condominium from Robert Shaw, one of the original architects of the Phase I, he explained to us before we purchased that when Phase II, when it was developed, the access would be through the area parallel to the logging road and there would be no access through the existing street of the units. He also said the whole project was a Planned Unit Development, no question in his mind or ours. We are of great concern when we find this evening that it is zoned for R-2, apartments. Other concerns are numbers, quality and value of property that may be affected by the quality of the proposed development. The proposal for 60 units is for 20 more families than we thought would ever be there. We thoroughly enjoy our unit, neighbors and the setting. We readily accept the idea of more developing in the rest of the area, but we do hope it will be developed in such a way that it will not unfavorably affect the value of investment we have already made. The decline of quality on the tail-end of Phase I, the nine units are now sitting and several are unsold and unoccupied, we would agree the quality is not compatible with the rest of Phase I and if this is any sign or omen of what to expect in Phase II, in the decline of construction. There is a great deal of work already which needs to be done on the last 9 units which means a cost to the Homeowners Association, so they are concerned of the quality. When we view this current quality we can see the new group being of very shabby type units and rentals rather than owner occupied units. With this concept it makes us question the fact of any more units than was originally planned. We plead with you to turn this proposal down, to observe the promises, the things that they portrayed would be part of the development at the onset and to incorporate those qualities of architectural design and construction and of numbers into the new area."

TESTIMONY OF GORDON ROSS, PLANNING COMMISSION CHAIRMAN: "In 1966 when I was a commissioner of the City and remembered seeing the mockup of the same such as exhibited, at that time they did not have sufficient Ordinances. At that time our staff was the Clackamas County Home Planning Staff, presided by Jim Hall, who advised the Canby Planning Commission. At that time it was zoned R-1, in order to make the plan workable they changed the Ordinance to multi-family. It is unfortunate that the City's files have portions of the necessary minutes missing. If the applicants have proof, the minutes which state that they would rezone this multi-family, then submit them to the City so they can get the file back in order. The application went through the Planning Commission twice, and due to many critical things being left out the Planning Commission denied it, they are not against it and whole-heartedly feel it should be developed, but they want to see exactly what is going to be. However, they are not asking the developers to draw every floor plan or exterior design, all they are asking for are a couple exterior shots and floor plans and show exactly the density that they are asking. They also are not saying that they have to have 60 units, they can have 5, 10, etc., what they want to know is the maximum. The applicant has submitted tonight some of their original proposals and what the original proposals were is not what was adopted, everything that was presented was not necessarily what was adopted. In my memory from 1966, they passed on a Planned Unit Development maximum amount of units, plot plan and layout, and an alteration at all had to come to the Planning Commission. When the original PUD was adopted it was to be in three phases and a complete loop system road, what we have now is two complete different ownerships which are fighting among themselves as far as the access. So in order to satisfy both parties and for safety the Planning Commission and Fire Department suggested the gate and chain of some sort, for emergency use only. The condominium is a nice lifestyle and with high rise of single family homes, we are in favor of the condominium development, our concern is the circulation, safety and density and quality of construction."

TESTIMONY OF NORRIS HART, PLANNING COMMISSION MEMBER: "Never at any time at the two meetings held did we ever say we would not approve this. The first plans of April 11,

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were totally inadequate and no one could figure anything. The second time the plans were submitted to the Planning Commission on April 25, and received the night of the meeting, when we had asked for them in a weeks advance, therefore, we had no chance to study or go check it out. The density seemed to be the big problem and was discussed at some length. We moved to deny the application of Willamette Green Phase II as presented because it was presented very bad and applicants expressed not being sure of this or that. We wanted exact location to be shown, as per 29.1 of the Subdivision Ordinance, density is too great, we asked them to modify that, exact location of parking, landscaping was not shown. Instead of going back to redesign or modify plan, they've come before the Council. I feel he did it for no other reason than to circumvent the Ordinance and the Canby Planning Commission and to make Council make a decision on something we could have done if we'd have had the plans."

TESTIMONY OF PAT GRAHAM, HOMEOWNER IN WILLAMETTE GREEN PHASE I: "We are not opposed to the development and anxiously await the development and want it. We are concerned of density. (Mrs. Graham had copies of three articles from past Canby Herald which she left for exhibit.) On April 13, 1967, Canby Herald headline read, 120 Family Housing Plan Forms, the park-like setting will be occupant owned. On August 24, 1967, the article reads-85 family units being rezoned, earlier projected as 120 units will contain a maximum of 85 units under F.H.A. Home Rule Regulations. November 9, 1967, article read - a scale model is in process and this is the mock-up (points to model exhibited). Having lived there 6 years, the problems because of the surrounding area, there is no place to park. Speaking from experience, on Mother's Day, holidays, parties, etc, it is difficult to find extra parking. As far as the road going through, I spoke with the Canby Fire Marshall, it is a private road and we are directly responsible for the upkeep and are concerned with heavy traffic. The Fire Marshall told me he can suggest what should be there, we don't want it so a fire truck can't through. Right now there is a hedge there, they can go through and even tear up the edge, who cares. I'm afraid a chain won't be seen at night and a driver might go right through there."

KNIGHT - Does a garbage truck come in your area?

GRAHAM - Yes, and he has to back out all the way. Also, when I spoke to the Fire Marshall, he said he could only suggest what is best and there is no way he or anyone else can make us require to join roads with anyone else, it's a private road.

TESTIMONY OF RICHARD MOLE', WILLAMETTE GREEN PHASE I HOMEOWNER: "We were promised a certain thing in the brochure when we bought the unit, that Phase II would be as represented in the brochure and in this mock-up, we bought on the faith of this. Now do these promises mean anything or don't they? We believe any higher density will seriously affect the value of our units. We purchased the condominium on the strength of the printed brochures. I also object to the building of any more than is in the brochure or the model.

Mayor Rapp asked for any further opponents, no response. Rebuttal response by proponents was called for.

REBUTTAL FROM GARY BULLOCK, ATTORNEY: From a legal aspect, there has to be a supreme end to how things operate. It's true the folks that testified say, we don't want this in the way of density, but it's also true they have to abide by the rules that the laws of your City say can and can't be done and you as a Councilmember also have to abide by the rules. One of the rules is the zoning of the property and it is zoned R-2 and under the laws of your City the property can hold up to roughly over 70 units and what the developer is asking for is less than what you say by your own Ordinance can be put on there. From a liberal aspect, my clients have a legal right to place on the property either as apartments or a Planned Unit Development the number of units they have requested because your Ordinance authorizes them to do so. If people disagree with these Ordinances and come to the Council, then through a democratic society should have them changed by passing other Ordinances, but until that is done my client has a right to



go by what your rules are. As far as the Chairman of the Planning Commission, I thought that was an unbiased group, but I think he was an advocant and one of the things he said was this, it was the responsibility of the developer to bring in evidence to show what he says in fact wasn't true. The Ordinance that was passed is a matter of public record and it is put in evidence. That Ordinance specifically does not say anything about there being a certain number on there. He said since we had no rules to go by Jim Hall came out to help. The Ordinance was enacted August 6, 1962, this occurred in 1966 and we're still going by the same rules except for one Ordinance and that is #517, February 19, 1974, after this occurred. Legally you as a Council are required to go by what your rules are and therefore, we've required that the PUD density be less than what the Ordinance allows and going along with all the conditions your planning unit set up.

WESTCOTT - We're holding a ~~denovo~~ hearing, should we consider the project as a whole?

BULLOCK - Consider it as a whole. We appealed because of procedure and the Planning Commission complaint of density, and they must go by your rules too.

WESTCOTT - In paragraph 5 of the PUD Ordinance, the development must be designed so that land areas and buildings around the perimeter of the project are in keeping with the adjoining property. The Planning Commission was trying to deal with R-2 Ordinance and PUD Ordinance because you have a PUD application, what's your response to paragraph 5?

BULLOCK - At the time the original project was approved, it was the same zoning as it is now, therefore, you have same number of units.

WESTCOTT - But you applied for a PUD.

BULLOCK - Yes, I don't know whether they applied for a PUD or not, but from what I understand that's what occurred. The requirements as far as zoning would be the same.

WESTCOTT - So, they're under the PUD Ordinance, correct?

BULLOCK - O.K., see if you turned us down, then we'll-----

WESTCOTT - I understand that, what I see we're looking at here is a PUD appeal.

BULLOCK - All right, but also, the Ordinance says, consider what's in the best interest of that area, if in fact it's zoned for apartments and they can put on 70 units on there, now what's in the best interest of the area. Put in 60 condominium units or 70 apartments, that's the key to your whole Ordinance.

WESTCOTT - I understand, you're trying to hold a club over our head by using-----

BULLOCK - I'm not saying that, no.

WESTCOTT - I understand the appeal is on the PLanned Unit Development.

BULLOCK - That's correct.

REBUTTAL FROM DAVE BOLAND, ONE DEVELOPER OF WILLAMETTE GREEN PHASE II: I bought into the property 9 years ago from three other people. Mr Jeans and I are owners. My understanding was we could build up to 100 units there if we couldn't go through with the PUD and continue on. I knew from the architect we purchased from we could build apartments there, that was the only reason I would have bought into it. Regarding the shabby last nine units, because we couldn't cope with existing homeowners and agree on anything justifiable, we sold to another builder whose plans were approved by a committee from

Phase I, including 3 architects they called into look at the plans, so it's their own darn fault. Regarding Mr. Ross's accusation, our plans were brought in the day before the meeting, those plans were totally complete. They said (at the Planning Commission meeting) they weren't complete and they didn't go past page one. He didn't look at the lot lines! In all fairness, he didn't have much time to look at them, but to tell us they weren't a complete set of plans was a falsehood.

REBUTTAL FROM HAROLD JEANS, ONE DEVELOPER OF WILLAMETTE GREEN PHASE II: Concerning the display and the brochures, I would draw a line where Phase I and II would be, this would be the concept on Phase I and if all went well it would be the concept of Phase II. When we do an item we can't guess exactly what someone wants to buy, so when we draw up one of these things, any subdivision has a brochure, presentation and so on. We show concepts. The first 8 sold were designed as the buyer wanted not what we wanted, we made several changes as we went along and that's why we didn't want to get locked into 60 units. I don't really know if you left us alone how many we would end up building, no more than we knew what would be built in the first phase. This was stolen from us (pointing to the model on exhibit), I don't know who got it. We asked the Board of Directors and all the owners, we paid a lot of money for it and never got it back. This is a concept, the brochure is a concept, this evidence is a concept. I think it is extremely interesting that a man as supposedly as bright as your Planning Commission Chairman, Mr. Ross; can't find any of the records of the minutes but can conveniently remember 10 years ago everything that happened and infer that we might have all the minutes. This is an exact copy of what we turned in as what we wanted as a concept. We weren't the ones that insisted on 60 units, they asked us, outside your own requirements, how many units and we will say 60 units maximum. If you pass what we turn in these plans become "cast in stone", we are then required to build exactly those 60 units unless you stipulate otherwise. We expressed we'd prefer not to be stuck with those 60 units, we have one customer that has asked to buy an entire block (one building), each block can be divided into any number of units. If you want a maximum we can pull it out of the air and say 60 units. The Planning Commission instructed us to draw these up and again it was a concept. We went to the trouble to through HUD. We would like to do the same thing we did in Phase I. I am sorry the last 9 units turned out less than adequate. In all fairness, their entire Board of Directors and architect committee approved those plans and they have recourse. I think it's bad manners to come down here and discuss something legally right and they approved themselves. All we want is to do something that is compatible with the part we did in Phase I. We would like to have a maximum of 60 units and let us build what we can sell. We did not apply for the zone change, that was a requirement. When we bought the property it was already zoned for apartments, it's our intention, I can get it out of Mr. Van Dorn's minutes, if Mr. Shaw told that gentleman that it would be nothing other than a PUD, I will show in the minutes of which Mr. Shaw was chair of, that it states 3 alternatives developers always have and he was one of the people who made up those alternatives.

WESTCOTT - Why did this get forced to a vote that night, why appeal, why not ask for a continuance?

JEANS - The Planning Commission does not allow to make negotiations or suggestions, all they could do was accept or deny and state reasons for denial.

REIF - That's pretty accurate, we have to accept or reject.

WESTCOTT - Why appeal?

JEANS - We were told when the Planning Commission denied, our proper procedure was to appeal to the Council.

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WESTCOTT - If they were minor in nature, why appeal?

JEANS - I understood we couldn't go back to the Planning Commission but had to go to this level.

Mayor Rapp called for recess at 9:45 p.m., and reconvened the Public Hearing at 9:56 p.m.

Mr. Jeans submitted minutes of a meeting from Mr. Van Dorn's file, he was a member of Willamette Green and stated parts of these were private.

REBUTTAL OF ARCHITECT DONALD STASTNY: The transmittal of drawings to the Planning Commission were delivered at 8:00 a.m. on April 24, and they would attempt to get them to the members, however, they got them at the meeting the next evening and no revisions have been made, these are exactly as presented that night. Mr. Stastny explained the high qualifications of his architect firm and felt his design is adequate and if not better than the majority being done around.

Mayor Rapp closed the Public Hearing at 10:01 p.m. and immediately reconvened the Regular Meeting. After taking notes throughout the Public Hearing, Planner Lashbrook added some responses on a staff level: You have a right by Ordinance to approve, deny, conditionally approve or modify the proposal you have before you. Staff would recommend a conditional approval. Council should consider using the right to conditionally or to modify the proposal. In his review, he felt it better to approve the Planned Unit Development with conditions and set standards rather than an apartment complex built in retaliation. You might want to hold over for a decision asking for specific information. Mr. Bullock replied about conversation with Mr. Bettis, this should be considered as hearsay. Referring to Section 29.1, D-1 of Ordinance 516 PUD of Subdivisions, if you approve some sort of conditional plan for this project, applicants are bound to comply with it, then they can no longer get building permits for apartments. I feel the public need question was not adequately addressed tonight. If apartments were put there in accordance with zoning, the maximum would be 71 or 72. Mr. Bullock was in error as to the date of approval of Ordinance 516 and 517, both were adopted in September of 1968, not 1962. If you approve the proposal, you're approving 11 buildings and the division within those buildings are the lot lines up to 60. We are talking of private streets within the development and they need not be a 40 foot right of way. Mr. Bullock's rebuttal stated he felt applicants have a right to construct 60 units. I will point out that the Council has the right according to terms of the Ordinance to condition or modify. In terms of lack of complete information submitted, it was submitted the day before the Planning Commission meeting and I couldn't get it to members that day. Our file for the original Willamette Green has pieces missing and we have no idea why. The Planning Commission also did have the authority to conditionally approve the application, the communication between developer and commission broke down during the second meeting and I instructed that as procedure the appeal must come to Council, applicants cannot appeal a Planning Commission decision back to the commission.

WESTCOTT - Do you feel that the density is a conditional type item?

LASHBROOK - I feel that it is. I don't feel it's appropriate to say the density is too high, the key is the design, what kind of finding do you find that leads you to think the density is too high, if you think it is? Another design might be better if you feel this design makes density too great.

REIF - There was a lack of communication between bodies. If you conditionally approve 40 instead of 60 units, who is to say where they'd go and one concern of the Planning Commission is to know the exact location of the units. They wanted to reduce the overall

density and overall impact of the area. What's best to do is to go back and redraft the plans and see exactly what you are approving. That was one problem in the past when Phase I was designed, if we knew what had been approved for certain in 1966.

WESTCOTT - Professional fees compound, how does applicant get necessary feedback?

REIF - Comes through the process of Public Hearings and reasons for denial, they should then try to come back with modification for approval.

Councilman Westcott moved to table this matter for a decision on August 1, 1979, at a Regular Meeting, so more research on the legal questions can be done, and no more testimony will be received. Seconded by Councilman Swayze. Mayor Rapp questioned what do you intend to accomplish by waiting. Councilman Westcott said he'd like to try to follow up the legal opinions as to modification vs. denial and would also like to discuss this with the Planner and Attorney. Motion was approved 4-0.

Mayor Rapp commented that the Public Hearing was conducted very well by all parties and thanked them.

At this point in the meeting the large model was attempted to be retrieved and they were denied it as it was put in as evidence.

Next item on the agenda was the Public Hearing on Appeal of Planning Commission on the Martin Clark Minor Land Partition. Due to conflict of interest Councilman Westcott stepped down from the hearing body and left Council without a quorum. Attorney Reif suggested to open the Public Hearing and take testimony and have the absent Councilmember listen to tape and then vote.

Regular Meeting was recessed at 10:25 p.m. to go into Public Hearing on the Minor Land Partition. Mayor Rapp noted Councilman Westcott not a part of the hearing body due to conflict of interest. Planner Lashbrook gave the staff report. The minor land partition was conditionally approved due to the right of way on N.W. Baker Drive and the change of the Ordinance to have N.W. Baker Drive have a 50 foot right of way instead of 60 foot accomplished the problem of appeal. Tom Tye, Compass Engineering, spoke as a representative for the applicant and concurred with Mr. Lashbrook's statements. Mayor Rapp asked for response from proponents. Marcella Lawrence asked, "Are they going to widen the street to 50 feet all the way through, I don't understand what they're doing." Planner Lashbrook explained that this is another issue and had nothing to do with the proposed LID # 9. There was no more response from either proponents or opponents on this issue. Mayor Rapp then continued the Public Hearing until August 1, 1979, after 7:30 p.m., and at that time it will be considered and the Public Hearing closed and a decision made.

Attorney Reif read Ordinance 660 for the second time and the affidavit of posting was presented. Councilman Swayze moved to approve and adopt Ordinance 660 An Ordinance Declaring the City's Election to Receive State Revenues. Councilwoman Brown seconded, approved by roll call vote 4-0.

Resolution 269 on LID # 9 was postponed until August 1, 1979, as we did not have a quorum for this issue.

Under Communication Mr Wyman read a letter from the Canby Library Board recommending Anne Nolte, Eccles School Librarian, as a new Board member. Council now has two names to consider for the position and will make a decision on August 1, 1979.

A letter was read from Mayor Rapp requesting Council to allow overnight campers in the Canby Community Park on August 3, 4, 10 and 11 and grant \$200.00 to offset expenses for the Girls Class A and B 9 to 12 Year Old Fast Pitch State Tournaments. After Council-

discussion. Councilman Swayze moved to approve overnight camping by request for the participants and their families of the softball tournaments at Canby Community Park on August 3, 4, 10 and 11, and to grant \$200.00 total to offset expenses for the tournaments. Seconded by Councilwoman Brown, approved 4-0 by roll call.

Administrator Wyman read a letter of resignation dated July 13, 1979, from Councilman Leonard Taylor, due to health and contemplation of moving from the area. Councilman Swayze moved we accept the resignation of Councilman Taylor, effective July 13, 1979, and send a letter of thank you for his long hours spent and an appropriate plaque be presented. Seconded by Councilman Westcott, approved 4-0.

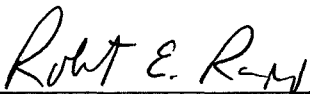
Under New Business, Councilman Knight moved to approve and pay accounts payable in the amount of \$10,975.11 for period ending June 30, 1979, and \$42,774.84 for period ending July 16, 1979. Seconded by Councilman Westcott, approved 4-0 by roll call vote.

Unfinished Business, in regards to the Sewage Treatment Plant enlarging, Councilman Westcott gave a committee report. They reviewed the proposals, visited the plant and talked with staff and came down to a couple firms. Staff contacted and visited other plants built by the firms. The committee has come up with a preliminary decision and on August 15, a firm has been selected to be here for a spot on the agenda for an interview.

No action was taken on LID # 9 due to lack of a quorum, will be carried over until August 1st.

Other Reports, a letter from David Blair and the two contracts for Public Works and the Police Association were presented. Councilman Westcott moved to instruct the Mayor to sign the contract agreements with the Canby Police Association and Public Works Committee for the City of Canby. Seconded by Councilman Swayze. Councilman Knight questioned the wage scale. Mr. Wyman noted the wage scale was wrong due to an error in calculating last years wages; if necessary it could be taken to grievence procedure if it couldn't be handeled on administrative level. Approved 4-0.

Meeting was adjourned at 11:00 p.m.



Robert E. Rapp, Mayor



Harold A. Wyman, Administrator/Recorder

CORRECTION: Page 12, last paragraph : the motion should have the dates for overnight camping at the Canby Community Park as follows: August 2, 3 & 4 and August 9, 10 and 11.

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