

CANBY CITY COUNCIL

REGULAR MEETING

NOVEMBER 21, 1979

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

Also present: Administrator H.A. Wyman, City Planner Stephan Lashbrook, Public Works Director Ken Ferguson, Public Works Supervisor Bud Atwood, Treasurer Myra Weston, City Attorney Wade P. Bettis, Secretary Marilyn Perkett, Canby Herald Editor, Jeff Durham, Duane Lee of Lee Engineering, Charles Tooley, Thomas and Colette Jelingo of K.W.R.C. Radio, David Bury, Marv Dack, R.H. Coffall, Toni Hubbard, Dave Peters of the Enterprise Courier, K. Bauer and Attorney Jon Henriksen.

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

Councilwoman Brown moved to approve as distributed the minutes of Regular Meeting, November 7, 1979. Seconded by Councilman Swayze and approved unanimously.

CITIZENS IN-PUT ON NON-AGENDA ITEMS: None was presented from the audience.

PUBLIC HEARING: Mayor Rapp recessed the Regular Meeting at 7:33 p.m. to go into the Public Hearing on the Ordinance on Condominiums. Planner Lashbrook read his staff report noting that last spring the Planning Commission dealt with its first and only application for conversion of apartments to a condominium and used the Subdivision Ordinance. The Planning Commission felt the Subdivision Ordinance was not adequate to deal with that situation and that is a result of the proposed Ordinance No. 669. If adopted in its present form, Ordinance No. 669 will require that any condominium project, whether new or conversion, must go through a Planned Unit Development process.

PROPOSERS AND OPPOSERS - None were voiced.

Mayor Rapp closed the Public Hearing at 7:47 p.m. and immediately reconvened the Regular Meeting.

Councilman Nichols spoke in protest against several areas of the proposed Condominium Ordinance. He felt the rights of the property owners were left out; condominium concept is a type of ownership not a type of property; economically owners can't afford to keep apartments in many cases and want to convert; conversion doesn't take it out of the renter market. Councilman Nichols felt there were several areas that should be discussed and suggested we set up a workshop to go over the proposed Ordinance. Councilman Knight moved that we postpone action on the proposed Ordinance No. 669 on Condominiums until after a workshop on December 3, and invite the Planning Commission to attend the workshop. Seconded by Councilwoman Brown and approved 5-1, with Councilman Swayze voting nay.

ORDINANCES AND RESOLUTIONS: Attorney Bettis read Ordinance No. 665, for the first reading. Councilman Westcott moved that Ordinance 665, AN ORDINANCE AMENDING ORDINANCE 645 TO CLARIFY BUILDING PROJECT AS PLANNED UNIT DEVELOPMENT be posted and second and final reading be December 19, 1979, after 7:30 p.m. Seconded by Councilman Swayze. Jon Henriksen, Attorney representing Marv Dack at the time of the proposed project, said he felt the Ordinance should not be made, at the time of the zone change for Mr. Dack came up, Mr. Henriksen said he did not believe we had a zone as such in the City of Canby for a Planned Unit Density. By agreement

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with the City, the applicant committed himself to be bound by certain things, also to any subsequent purchaser to be bound as the Ordinance No. 645 was approved to a cluster housing concept with medium density. Mr. Henricksen inquired as to why the Ordinance change? In his conversation with the City Planner today, he felt the change request was because staff felt the interior roadways in the development would not be built to City specifications. Mr. Henricksen said if we put the entire project under the PUD Ordinance, which has a lot of constraints and possibilities, they were not bargained for at the time this was presented in the past. City Planner Lashbrook explained the issue was the extension of S.W. 13th Avenue as a major road on the boundary of the property and that we have no other tool except the PUD Ordinance to make sure the road is developed and that the overall development is as it was presented at the time of the zone change. Councilman Knight replied, as to his memory, that Mr. Dack would improve S.W. 13th Avenue from N. Elm Street to his property and that between Mr. Dack and the Canby High School they would jointly dedicate property for the street to go through to SW Berg Parkway. Mr. Dack said there was no agreement with the High School to go in on this street. Mr. Henricksen said, "It wasn't applied for as a Planned Unit Development under any existing Ordinance or Planned Medium Density Ordinance, if the City would have had a Planned Medium Density Ordinance that is where we would have had to applied to. Since we didn't have one, we volunteered to certain constraints as if you did have one, for the benefit of both landowner and the people." Councilman Westcott asked, "Didn't you volunteer a Planned Unit Development before us?" Mr. Henricksen replied, "No, Sir! The concept was cluster housing and not rectangular apartments to be built with all the restraints that we ended up with, is what we volunteered to do." Councilman Nichols noted, according to his memory, that Councilman Taylor specifically asked if this would be a Planned Unit Development and that Mr. Henricksen answered, yes. Mayor Rapp recessed the regular Meeting at 8:27 p.m. and reconvened at 8:37 p.m.

Planner Lashbrook said he felt that we had a problem with semantics and there may have been different intentions on the part of the City and the applicant. Mr. Henricksen doesn't consider this a Planned Unit Development, he uses the term Planned Medium Density, yet the City feels it should definitely be a Planned Unit Development and the types of Ordinances that we have had in effect for 10 years would consider this a Planned Unit Development. Mr. Lashbrook cited a tape of the Planning Commission Meeting of June 28, 1978, where Roger Reif, Attorney, asked Mr. Henricksen the following: "Let me ask a question of the applicant." "Mr. Henricksen are you making a Planned Unit Development a condition, voluntarily, coming before us at this time?" Mr. Henricksen replied: "Absolutely!" "Without question about it, we would be bound by our public testimony." Mr. Lashbrook noted that since we don't have a design review system, the amended Ordinance is our solution. Mr. Henricksen asked if staff and the developer couldn't sit down and compromise and work this out and set forth all constraints. Councilman Swayze withdrew his second of the motion. The motion died from a lack of a second and Mayor Rapp instructed staff and Mr Dack and his representatives to get together and come back with a new proposal to the Council.

Attorney Bettis read Resolution No. 274. Councilman Westcott moved that Resolution No. 274, A RESOLUTION ACCEPTING JURISDICTION OVER A PORTION OF NORTH LOCUST STREET, COUNTY ROAD NO. 2578 be approved. Seconded by Councilman Swayze and approved 6-0.

COMMUNICATIONS : Duane Lee, Lee Engineering, went over a letter of November 15, 1979, noting new developments at the sewage treatment plant. With some adjustments, we will have more breathing room as far as plant expansion, and they will continue for the next few weeks to review the adjustments they made and analyzing them.

Administrator Wyman read a letter from the City Manager of Bend, Oregon, regarding their Boxing and Wrestling Commission, which merely stated that they followed the state laws (ORS) and by minute action appointed a board. Mr. Wyman noted that ORS calls for 50 names of local residents to be on a valid petition. Staff will notify Mr. Adams of the invalid petition.

NEW BUSINESS: Councilman Knight moved to approve accounts payable in the amount of \$23,845.27 to be paid. Seconded by Councilman Westcott and approved 6-0 by roll call vote.

Administrator Wyman read a petition from residents near N.E. 22nd Avenue and N. Greenview asking for more street lights to be placed on N. Maple Street. Mr. Atwood noted that the developer will be putting a street light up on N.E. 21st Place when it is developed and he recommended putting three new street lights on N. Maple, N.E. 20th Avenue, N.E. 23rd Avenue and the entrance to the Country Club. Councilman Westcott moved that we install street lights at N.E. 20th Avenue, N.E. 23rd Avenue and the entrance to the Country Club at an approximate figure of \$437.00 each to be funded out of the Federal Revenue Street Fund. Seconded by Councilman Nichols and approved 6-0, staff will notify the petitioner.

Mr. Wyman recommended that we carry over the discussion on the Pacific Mutual Actuary report to December 3, after Attorney Bettis has reviewed the reports on our retirement system.

At this time Councilman Westcott moved to remove from the table the Grossnickle Annexation decision. Seconded by Councilman Swayze and approved 5-0, with Councilman Pulver abstaining on this issue due to the fact he was not on the Council at the time of the proposal. City Planner Lashbrook read the Order prepared by the Attorney regarding the Lindsay Soft Water Company and other owners to Annex Property consisting of approximately 25.6 acres to the City of Canby more particularly described as Tax Lots 200, 300, 400, 402, 500, 600, 601, and 800, Section 28DB, T. 3S R1E of the W.M. Councilman Westcott moved that the Council deny the annexation and make the findings as listed in the order and attach to the minutes of this meeting the order in the matter of the Lindsay Soft Water Company and others, commonly referred to as the Grossnickle Annexation, and approve the order. Seconded by Councilman Swayze. A roll call vote was requested and approved 5-0, Councilman Pulver abstaining.

Public Works Director, Ken Ferguson, brought up the Street Cut Ordinance of which a sample was in this Council packet. Mayor Rapp said he would set this up for a workshop.

Mr. Ferguson also inquired about the request of Richard Morse for financial aid on the LID # 9. Mayor Rapp noted that this was declined by motion at the meeting in which Mr. Morse was in attendance, however, we will try to revise some form of a Reimbursement Ordinance at a future workshop.

Mr. Wyman brought up the fact that City Hall is trying to go along with the Federal Energy plan of 65° temperature in the building. Due to the fact of the condition of the old building this is far too cold for working atmosphere. Mr. Wyman suggested that we do one of two things: Let Mr. Carter know that we will raise the thermostat or ; he had received an estimate for double-pane aluminum sash windows from Darrell Blake. This would include two for the Public Works Office and eight for the Business Office with a total cost of \$2,121.80. Councilman Nichols moved that the recommendation of the City Administrator for aluminum sash-thermal pane windows, with a bid from Darrell Blake of \$2,121.80 for both Public Works and the Business

Office be approved and the funding to be from the General Revenue Sharing Facility Development. Seconded by Councilwoman Brown and unanimously approved.

OTHER REPORTS AS NEEDED OR REQUIRED: Mr. Lashbrook gave a report on the "Save the Depot Committee". The committee has selected a new piece of state property that is triangular and adjacent to Mr. Hulbert's Flower Shop, but we would have to receive a variance from the set back requirements along the highway. The issue is who will pay the fee for the variance application. All paper work has been done and things are moving along. Councilman Nichols moved that the City pay the variance fee for the moving of the Southern Pacific Depot to the new site. Seconded by Councilwoman Brown and approved 5-1, with Councilman Swayze voting nay.

Mayor Rapp noted that former Mayor Paul Roth is seriously ill at his home in the Freewheeler Trailer Court this side of Hubbard and is accepting and likes to see visitors. The Mayor urged anyone who could to visit.


Topics set for the December 3, Monday Workshop are as follows: Meet with the Budget Committee and select a chairman and set dates for meetings; Set number of elections; Discuss the Pacific Mutual Retirement; Discuss the City Audit; Discuss the proposed Condominium Ordinance. On the December 3, meeting the Mayor will set some more workshop dates.

At this time Councilman Westcott moved in accordance with ORS 192.610, Section 2, to go into Executive Session on Personnel matters. Seconded by Councilman Swayze and approved 6-0. The City Administrator was requested to stay for the Executive Session. Regular Meeting was recessed at 9:53 p.m.

Regular Meeting was reconvened and adjourned at 10:55 p.m., following the Executive Session.



Robert E. Rapp, Mayor



Harold A. Wyman, Administrator/Recorder

BEFORE THE CITY COUNCIL OF CANBY, CLACKAMAS COUNTY, OREGON

In the Matter of the Application

of

LINDSAY SOFT WATER COMPANY and other
Owners to Annex Property consisting
of approximately 25.6 acres to the City
of Canby more particularly described as
Tax Lots 200, 300, 400, 402, 500, 600,
601 and 800, Section 28DB, T.3S R1E of
the W.M.

ORDER

The application of Lindsay Soft Water Company and other Owners to annex property to the City of Canby was first considered by the Canby City Planning Commission at a regular meeting and public hearing on July 11, 1979, and again on August 8, 1979. The Planning Commission made its Order dated September 12, 1979, nunc pro tunc August 8, 1979, recommending denial to the City Council and the applicants appealed to the City Council.

The appeal hearing was duly and regularly scheduled, noticed, held and closed on October 3, 1979. Gerald Grossnickle appeared in person and on behalf of the applicants and the City of Canby was represented by City Attorney Wade P. Bettis. After the hearing was closed the Council as the hearing body considered staff reports, recommendations of the Planning Commission, presentations and oral arguments of the applicants and other property owners, and the entire record and file of this matter, and by majority vote of the Council postponed a final decision on the matter until after the Council's workshop meeting with the Canby Utility Board on October 8, 1979.

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-1- Order.

1 ORDERED that

2 (1) The recommendations and final order of the Canby City
3 Planning Commission is affirmed and the application of Lindsay Soft
4 Water Company and other Owners to annex approximately 25.6 acres of
5 land to the City of Canby, is DENIED.

6 (2) A certified copy of this Order is to be mailed to and
7 filed with the PORTLAND METROPOLITAN AREA LOCAL GOVERNMENT BOUNDARY
8 COMMISSION (PMALGBC) in due course.

9 DATED this 21st day of November, 1979.

10 Robt E. Rapp
11 Robt. E. Rapp, Mayor

12 Beryl Brown
13 Beryl Brown, Councilperson

14 W. Beauford Knight
15 W. Beauford Knight, Councilperson

16 Robert D. Westcott
17 Robert Westcott, Councilperson

18 Robert Swayze
19 Robert Swayze, Councilperson

20 Richard Nichols
21 Richard Nichols, Councilperson