

Canby City Council
Regular Meeting
June 7, 1978

Present: Mayor Rapp, Councilmen Knight, Nichols, Giger, Taylor, Swayze, and Westcott

Others Present: Administrator Wyman, City Attorney Bettis, City Treasurer Weston, Ken Ferguson, Director of Public Works, Bud Atwood, Supervisor of Public Works, Howard Barlow, Bob Watson, Thomas Watson, David E. Bury, Hugh Harper, Evelyn Harper, Fred Stefani, David Anderson, Alvin Cibula, Mark O'Donnell, Al Schwartz, Canby Herald, and others

The meeting was called to order at 7:30 p.m. followed by the traditional flag salute.

Mayor Rapp then called for additions or corrections to the minutes of May 17, 24, and 31, 1978. The following corrections were noted:

- May 24, 1978 - page 11 - paragraph 2 - last sentence should read; "Councilman Knight also stated for the record he had heard something on the matter in July, 1970 prior to this meeting on May 24, 1978".
- May 24, 1978 - page 111 - paragraph 4; Items "(b)" and "(c)" should be omitted.
- May 24, 1978 - page 111 - paragraphs 4 and 5, last lines should read; "The motion was passed by roll call vote with 5 ayes and 0 nays with Councilman Nichols not voting due to declaring a conflict of interest in the matter".

Councilman Knight moved to approve the minutes of May 31, 24, and 17, 1978 as corrected, seconded by Councilman Giger. The motion passed unanimously.

Mayor then called for citizens input on non-agenda items at which time there were none.

Resolution No. 242; A RESOLUTION APPROVING AN AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF TRAFFIC SIGNALS AT INTERSECTION OF SW BERG PARKWAY AND PACIFIC HIGHWAY 99E; was then read in its entirety by the City Attorney. Councilman Giger moved to pass Resolution No. 242 as read by the City Attorney, seconded by Councilman Taylor. Discussion followed with the motion passing unanimously.

Next was a letter from the Clackamas County Department of Human Resources in reference to the Canby Loaves and Fishes concerning transportation. No action was called for.

Next was a letter from the Canby Utility Board requesting waiver of permit fees for their new facility which Ken Ferguson read. Mr. Ferguson also read a letter from himself to the Council with the following cost breakdown:

Building Permit	\$ 452.00
Plan Check Fee	293.80
4 Percent State Surcharge	18.08
Sewer Connection Charge	<u>1,092.00</u>
	\$1,855.88

Howard Barlow then spoke to the Council on behalf of the Canby Utility Board. Discussion followed with Councilman Swayze moving that the City charge the Utility Board \$1,501.00 for the four areas they are asking for tonight for fees, permits, sewer connection charges, and surcharges for the property known as the Nelson property, seconded by Councilman Taylor. The motion passed unanimously.

Administrator Wyman then read a memo from the Department of Transportation, Parks and Recreation Branch in reference to the spring 1978 Special Project Fund stating the City of Canby will be allocated the sum of \$41,750 for Maple Street Park. Administrator Wyman commended Mr. Tony Tamerius for his help in putting together the presentation. Mayor instructed the Administrative Assistant to type a letter of commendation to Mr. Tamerius on behalf of the City to be signed by the Mayor. No further action was needed.

The meeting recessed at 7:57 p.m. until the public hearings.

PUBLIC HEARING - Petition for the Vacation of a Portion of So. Juniper Street
Applicant - Hugh Harper

Mayor Rapp opened the public hearing at 8:05 p.m. by asking the City Attorney to read the laws concerning street vacations.

Mayor Rapp then called for any objection to the proposed street vacation of the easterly 20' of S. Juniper Street between SE 2nd Avenue and SE 1st Avenue in the City. Administrator Wyman then read a letter from Lloyd R. Turk voicing a possible opposition of public parking along his property on one side. Ken Ferguson stated a 40' wide street will provide ample parking instead of 50' wide and also that with either 40' or 50' there would be public parking by Mr. Turk's property. Discussion followed.

Councilman Swayze moved that the City of Canby vacate the easterly 20' of South Juniper Street between SE 2nd Avenue and SE 1st Avenue in the City of Canby for the following reasons: There is acknowledged written consent of the appropriate property owners; Required notice was given and publication was made; There is no stated reason that the property should not be vacated; The public interest is not prejudice; All public liens are paid; Vacation of the area will not decrease land value adjoining the property and; It is consistent with the Interim Plan of the City of Canby, seconded by Councilman Taylor. The motion passed unanimously.

PUBLIC HEARING - Zone Change from R-1 to M-1
Applicants - Alvin Cibula and Martin Clark

(The following public hearing was transcribed verbatim from the recording on file at City Hall)

Councilman Nichols - Mr. Mayor?

Mayor Rapp - Yes.

Councilman Nichols - I possibly have a conflict of interest on this matter.

Mayor Rapp - Councilman Nichols wishes to state a possible conflict of interest on this. It should be noted in the minutes of the hearing.

Councilman Giger - Mr. Mayor, before this gets started, may I be excused?

Mayor Rapp - You may be excused. We still have a quorum.

Councilman Giger - If I get done I will come back.

Councilman Westcott - At this time I'll state that I have a possible conflict of interest and have the Council make a determination.

Mayor Rapp - Better wait a minute (Howard Giger).

Councilman Westcott - I am currently engaged in some land trade with the developers of this property and therefore may have a possible conflict of interest and the land trade would involve a portion of this property and is in the negotiation stage now.

Mayor Rapp - We need the attorney's opinion on that.

Attorney Bettis - What is said is enough to indicate to me that he probably should not participate.

Mayor Rapp - You may not be excused Howard. It should be noted that both Councilmen Nichols and Westcott with a possible conflict of interest will not enter into this hearing.

Mark O'Donnell - Excuse me Mr. Mayor. My name is Mark O'Donnell and I represent Alvin Cibula and Martin Clark and I have a question. I apologize for not looking at your rules before hand, but as I count here we have - does the Mayor vote?

Mayor Rapp - No.

Mark O'Donnell - three, so what is the procedure for a zone change?

Mayor Rapp - If four (4) vote yes, it passes.

Mark O'Donnell - One is coming back I take it?

Mayor Rapp - Yes.

Mark O'Donnell - So we start out the evening with a need of 100% vote of the remaining?

Mayor Rapp - That's correct.

Attorney Bettis - But he said one's coming back, one's staying.

Mayor Rapp - Well, he's (Mark O'Donnell) is referring to Councilman Swayze.

Mark O'Donnell - We have, so I understand this, we have four (4) Councilmen and we need four (4) votes to have a - - -

Mayor Rapp - Four (4) Councilmen are hearing the matter and you need all their Yes votes to pass it.

Mark O'Donnell - Go ahead and proceed and maybe I can talk with Mr. Cibula and interrupt. All right.

Mayor Rapp - Well, you may try to interrupt.

Mark O'Donnell - I didn't try to say that.

Mayor Rapp - Okay, at this time Mr. Ferguson, will you give us a short summary of the application and how it arrived here?

Ken Ferguson - The applicants, Mr. Clark and Mr. Cibula presented an application to the Planning Commission. The application was heard by the Planning Commission on the 26th of April at a Special Meeting. In your packets you have the material presented to the Planning Commission at that time. The Planning Commission's ruling is in the minutes. They are in your packets and after the ruling the Planning Commission then through process presented it to the Council.

Mayor Rapp - Thank you. Due to the absence of the Planning Consultant, Eldon Edwards, we need you (Ken Ferguson) to take care of the Staff Report. Therefore, would you (Ken Ferguson) read that report to the hearing body at this time?

Ken Ferguson - Yes. Staff Report from Eldon E. Edwards, City of Canby's Planning Consultant, City Planning Commission, in reference to the Canby Planning Commission on the the 26th of April to the City Council this evening.
The Application: Applicant: Martin, Alvin Cibula, represented by Mark O'Donnell, Attorney at Law. Request: Zone Change from R-1 to M-1. Proposal: To construct an industrial park on a portion of tax lots 800 and 801. The area under development would consist of approximately 10 acres, excluding that land within the designated flood plain.

Al Cibula - That is a mistake.

Mayor Rapp - Well, I was noticing some contradicting stuff here further down. Go ahead Ken.

Ken Ferguson - Location: The property is located on the west side of Baker Drive. Site Size: 20 Acres (more or less). Existing Conditions: The present zoning of the property is R-1, Single Family Residential, and the Comprehensive Plan indicates the property is designated as Light Industrial. The property currently is vacant and is bounded by Globe Union Industrial and City Owned Land. Access is available from the dedicated right of way. Water and sewer are available as specified in the application. Proposal: The applicants propose to construct a 400,000 to 425,000 square foot area into an industrial park space. The current zoning is R-1, which does not conform to the Comprehensive Plan, which specifies the land in question to be of an M-1, or light industrial use. The applicant has addressed the Fasano requirements and the goals which were applicable to the Land Conservation and Development Commission criteria. Results of Approval: Approval of this request would result in the addition of approximately 20 acres of industrial land within the City of Canby. Precedent: No detrimental precedent would be established by the approval of this request, provided that design approval from the Planning Commission be sought. Compatibility: The proposal is compatible with the plan and policies of the City of Canby.

Ken Ferguson - Commission Options: The Canby Planning Commission has the option to : 1) Approve with conditions, 2) Approve, I'm sorry, excuse me. The Canby Planning Commission has the option to: 1) Approve with no conditions; 2) Approve with conditions; 3) Deny; 4) Table for the development of additional information. Discussion: This zoning change request is to change an existing R-1 Zone to and M-1 Zone. To comply with this request will bring the land use into compliance with the Interim Comprehensive Plan adopted November 1, 1976. It would also adhere to policies established in the Comprehensive Growth Plan for the City of Canby, to produce a diversification and beneficial stabilization of the Canby economic base. The assessed evaluation to the City would increase by approximately \$225,000. Public services are available at the site in a cost effective manner. Recommendation: The Staff recommends approval of this application with the following conditions: That an overall development pattern for the property in question be submitted and approved by the Canby Planning Commission, prior to the issuance of permits for construction.

Mayor Rapp - I would like to have the other staff input letters read.

Ken Ferguson - First letter. To the Canby Planning Commission. From Ken Ferguson, Public Works Director. Subject, Zone Change - Martin Clark and Al Cibula. The Public Works Department has the following observations regarding the above zone change request: 1) At present, sanitary sewer service is not available to the properties. The nearest sewer lines are at North Baker Drive and NW Sixth Avenue. These lines are too shallow to serve the subject property by gravity flow. Service to the properties could be provided only by a pump system to lift the sewage into existing lines. The recommendation would be against any type of wet industry unless connected to the City's sanitary sewer system. Also, a wet industry should be carefully considered due to the close proximity of the City's water supply as noted in Canby Utility Board Manager Fred Egger's letter. 2) The type of industry located in this area would have a direct effect on the traffic flow and patterns in the area. Access to and from the property is now available from two directions; on North Baker Drive from a sixty foot road easement granted the City by Southern Pacific. Said easement is perpetual and would probably never be revoked. The other access is from Knights Bridge Road on North Baker Drive. All streets between Knights Bridge Road and the subject property are residential in nature and not constructed to withstand heavy truck usage. North Baker Drive between NW 6th Avenue and the mentioned sixty foot easement from Southern Pacific is a twenty foot right-of-way. The street is unsurfaced and in the past has received only minimal maintenance because of infrequent use. Improvement of this portion of North Baker Drive and possibly Southern Pacific's sixty foot right-of-way should be considered before any development could take place on the subject property if it were rezoned.

Ken Ferguson - Next letter. From Canby Utility Board. Addressed to Mr. Gordon Ross, Chairman, Canby Planning Commission. Subject: Zone Change Request R-1 to M-1, West of N. Baker Drive. Gentlemen: Reference is made to your letter of April 5, 1978 which forwarded a request for recommendations or

objections our department might have regarding the area. As noted in Canby Utility Board letter of April 29, 1977, copy enclosed, to the Mayor and City Council, with copy to you, the City depends upon a water source which is directly below and down stream from the subject property. The list of establishments which could be permitted to build in a light industrial zone M-1 includes many of the type which could eventually pollute our water source. Our springs source flows from the foot of the hill on Tax Lot 700 near the intersection of Tax Lots 800 and 801. Any infiltration from spillage or runoff of contaminants could easily enter our water supply. We again request that if this property is re-zoned to permit light industrial use that each industry be thoroughly investigated before granting a building permit. A copy of the list of Light Industrial Zone M-1 operations which would be permitted to build is enclosed for your review. Sincerely, Canby Utility Board, Fred W. Egger, Manager.

Ken Ferguson - Next Letter. From Canby Telephone Association. Mr. Gordon Ross, Chairman, Canby Planning Commission. Dear Gordon. We have received your letter dated April 5, 1978 in regards to the proposed zone change from R-1 to M-1 by Martin Clark and Alvin Cibula located Tax Lot 800 and Tax Lot 801, Section 32-T3S-R1E WM, consisting of 10 acres each. The Canby Telephone Association will require, at the subdividers expense the following items: 1) One copy of the proposed plat vicinity map showing the property location and type of subdivision being proposed and the date the subdivider is proposing completion of project. 2) Two approved copies of the completed plat vicinity map is to be sent to Canby Telephone Association no later than 15 days after final plat approval. 3) Because of the possibility of delay in the use of the telephone facilities, the Telephone Company may require a written agreement setting forth the amount and condition for prepayment to the Company of the cost of construction before any work begins. 4) It is the subdividers responsibility to contact Canby Telephone Association at least 15 days before telephone facilities are to be place within the subdivision. 5) 6' utility easement on all interior lot lines. 6) 12' utility easement on all exterior lot lines. 7) 2" conduits to be place under all existing and proposed roadways, sidewalks, or any other areas covered by asphalt or cement where telephone facilities are to be placed. 8) All trenching within the subdivision is the responsibility of the subdivider. The subdivider is to open all trenches with aminimum depth of 30" of cover on final grade. The routing of all trenches will be at the option of the Telephone Company. Trenches will be opened in such a manner that telephone facilities can be placed without delay. 9) The subdivider will be held responsible for any damage that occurs to the telephone facilities during the construction of other utilities within the subdivision. If you have any questions please feel free to call at you convenience. Very truly your, Canby Telephone Association, Eugene L. Cole, Manager.

Ken Ferguson - Next Letter. To Canby Planning Commission. From Canby Fire Marshal. Subject; Zone Change, Martin Clark and Alvin Cibula. At this time our department has no recommendation or objections to the proposed zone change. Sincerely, Jack Stark, Canby Fire Marshal. Then follows the rest of the packet that is pertinent to the application.

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Mayor Rapp - We need one more letter to be read and that's the letter to the Mayor and Council from the Utility Board.

Ken Ferguson - I'm sorry Mr. Mayor, which one?

Mayor Rapp - Two more pages.

Councilman Swayze - Page 11.

Mayor Rapp - Page 11.

Ken Ferguson - From the Canby Utility Board. Honorable Mayor and City Council. Subject: Canby Utility Board Water Department Property Location. Gentlemen. Enclosed are copies of maps, two color coded, one each for Mayor Rapp and President Giger, showing various parcels of property owned by the Water Department of the Canby Utility Board. These Parcels are identified as follows. And then described the - do you want me to read the tax lots, Mr. Mayor?

Mayor Rapp - Yes.

Ken Ferguson - Tax Lot 300, 7.33 acres, right-of-way for raw water line, back wash line and roadway to river intake structure. Tax Lot 401, 2.03 acres, location of intake structure on Molalla River. Tax Lot 700, 4.05 acres, location of spring, infiltration tube and gallery, new well no. 10 and chlorination building. Part of Tax Lot 803, 5.21 acres, newly acquired property from Richard Capron, to be used for future back wash settling ponds. Tax Lot 802, .35 acres, across roadway from North Baker Drive to Canby Utility Board property. We have been advised that Tax Lots 800, 1001, and other properties in that area have been zoned for industrial use. The city is solely dependant upon a water supply from the Canby Utility Board property shown on the map. Because of this, we request that any industry requesting building permits for construction in that general area be thoroughly investigated to avoid the possibility of pollution or other undesirable contamination to our water supply. Sincerely, Canby Utility Board, Fred W. Egger, Manager.

Mayor Rapp - Alright. I believe that will conclude the staff report. Are there any questions by the hearing body at this time?

Councilman Knight - I have.

Mayor Rapp - Councilman Knight.

Councilman Knight - On page 3 of the discussion reverts to public services are available at the site in a cost effective manner and on the next page it said there's no sewer there. I'm a little confused. What does that mean? Public services are available at the site in a cost effective manner?

Ken Ferguson - Well, probably what he is saying is that they are available at a distance, at a cost effective manner. I'm saying they are not available in the immediate vicinity. They're available at a distance.

Councilman Knight - They have the money, you can get them there.

Ken Ferguson - Right.

Mayor Rapp - Is there any further questions by the hearing body at this time? Are you done (Councilman Knight)?

Councilman Knight - No. The 20' right-of-way, there's a part of NW Baker Drive that extends from 3rd up to 6th. Globe-Union has recently purchased just across that road from the property under consideration included a fence. Do you know just off hand if that fence is inside of the right-of-way or is it beyond or just on the line or ---

Ken Ferguson - I talked to two gentlemen from Globe-Union and they don't really know. They are checking on it. The reason we talked to them, we were discussing more development in that area and they more or less said that they would dedicate an additional 20' on their side and make it right.

Councilman Knight - In other words the power pole line that goes down NW Baker, what would happen to that?

Ken Ferguson - If it's in the paved right-of-way it would have to be moved.

Councilman Knight - By whom?

Ken Ferguson - By Canby Utility Board I would imagine. That's something that they developed. Right now I don't know. Globe-Union has said in essence that they would be willing to remove their fencing if it became necessary.

Councilman Knight - As I understand in subdivisions now they standard street width is 50' and 40' of paving ---

Ken Ferguson - 60' of right-of-way and 40' of paving.

Councilman Knight - Has that been changed?

Ken Ferguson - No, that has always been.

Councilman Knight - No it isn't. I disagree.

Ken Ferguson - There are instances where the Planning Commission has granted 50' right-of-way, but 40' of paving has remained standard.

Councilman Knight - At least I know of one other addition has 50' street and 40' paving and it isn't all that old. This is really the question I was trying to get at. In an industrial area, if this is all made in to an industrial area,

would it be 50' or 60' street.

Ken Ferguson - Well, usually in an industrial area you disallow parking on either side, so you use a 40' street, but it is a heavier street than a residential street.

Councilman Knight - 40' paved? 50' right-of-way?

Ken Ferguson - If you have to allow parking, then the probable recommendation would be a 50' street.

Councilman Knight - That's all I have right now.

Mayor Rapp - Any one else in the hearing body have questions at this time?

Councilman Taylor - Mr. Mayor, I would like to ask is there any indication as to the type of industry that is contemplating moving in on this area? The reason I am asking that is because, like the Utility Board, I'm just a little bit dubious about it.

Mayor Rapp - I think I can answer that for you. Perhaps Ken would give you the same answer. The Utility Board included a list businesses allowable in the proposed change and they include such things as a bulk storage for fuel and gas for distributorships. I think this is the thing they are concerned with being close to the water. I don't think there has been anything expressed as far as types of businesses that want to locate there to the staff. You might want to discuss that later in the discussion here. Any further questions at this time by the hearing body?

Mayor Rapp - Alright, to familiarize Mr. O'Donnell, we now will enter the testimony as far as what procedure and the applicant will be heard from first and then any proponents will be heard from and then opponents will be heard from. You will have a chance to rebuttal and then anyone else wishing to enter into the discussion. I usually ask at this time or before the hearing how many people wish to speak as proponents other than the applicants. Could I see your hands? Are there any people here wishing to speak as opponents? Then I see no reason for the sign up list and unless your presentation lingers on in to the wee hours you (O'Donnell) may have the floor as representing the applicants.

Mark O'Donnell - Mr. Mayor, members of the City Council, Staff, I have never appeared before your Council and appreciate your patience with me, but I'd like to start out, and I don't like to raise this issue, I get very nervous starting the zone change request knowing I need 100% of the people eligible to vote for application. And I don't care to disagree with the eminent City Attorney who is well known throughout the valley for his abilities as City Attorney. I did want to just briefly record my objections to the disqualification the two Councilmen and as I understand it neither Councilman said that they could not be fair and impartial to the proceedings and I really think despite the relationship that they have or may have with Mr. Cibula or Mr. Clark as they disclosed it, but that did not disqualify them, especially when there was no one in the audience who would have objected to their par-

ticipation. I checked with your, for the record, I am Mark O'Donnell, Attorney for the firm of O'Donnell, Rhoades, and Gerber, 811 NW 19th Street in Portland. I assume the Planning Commission file has been transmitted to you and my first surprise is that Mr. Edwards is not here because it was my understanding that he would be here and I shuddered in my boots when I found out he wasn't going to be here because that may mean that my maps and other exhibits are not here that were introduced at the Planning Commission. Is that correct? (Ken Ferguson)

Ken Ferguson - I think I have them.

Mark O'Donnell - Do you? (Mr. Ferguson left to get them).

Mark O'Donnell - Mr. Mayor, if it would be alright I'd like to hand to you and the Council members, a copy of the exhibits I will be working from tonight and I think it'll help me to move along.

Mayor Rapp - Okay.

Mark O'Donnell - As previously disclosed to you by the Staff Report, the Planning Commission has approved a zone change from R-1 to M-1. Reference was made to 20 out of 29 acres being included in the zone change. Eight and a half to 9 acres were excluded from the zone change. The purpose of the zone change is to construct what Mr. Cibula and Mr. Clark has named the Riverview Industrial Park that will contain approximately 400,000 to 450,000 square feet of industrial space. I think it is very important to go through two of the conditions that the Planning Commission has hashed. While I realize you make your own independent determination they've spent a considerable amount of time the first evening we were before them working through these conditions. Have you had submitted to you the finding and conclusions that have been adopted by the Planning Commission for the zone change consisting of eight pages?

Wade Bettis - I have. I'm looking at the packet.

Mayor Rapp - Yes, we have the packet of information.

Mark O'Donnell - The Planning Commission granted the zone change subject to two conditions. First condition is that the applicants, if the zone change is approved by the City Council, file a site plan which complies with Section 5 of the Canby Plan Unit Development Ordinance and this Ordinance says that an accurate map of plans should be submitted to the Planning Commission showing the following. So if you approve this tonight and let's assume that everything went well, Mr. Clark and Mr. Cibula will go back to the Planning Commission and they will submit their site plan which contains the A through I type of information. Now I am referring, in looking at five of these conclusions. To avoid problems set forth, I think by the Canby Utility Board, in which your Planning Commission were extremely concerned with, we agreed to a statement of usage for the Riverview Industrial Park.

Mark O'Donnell - How this could work is that the time and the site plan approval --- If the site plan were approved and it had all the information that is required, then Clark and Cibula could go ahead with leasing otherwise development of the industrial park and would not have to go back to the Planning Commission for approval of any usage except three, three general kinds of uses. I don't know if I can do this here. I have got here on a chart the twenty-two uses that are allowed by the (Exhibit 4). Exhibit 4 represents the 22 uses allowed by the M-1 zone district, which is the zone we are asking to be changed tonight. Now, the Planning Commission adopted as one if the conditions as part of the site plan that, and if they approve the site plan, then Mr. Clark and Mr. Cibula would not have to come back for approval except for any use in #1 which uses a large amount of water or if it did not discharge directly in the sewer system. In other words, if you had to use --- If you had manufacturing fabrication processing any one of these uses listed in #1, but they use large amounts of water and they did not discharge directly into the sewer system, the municipal sewer system, Mr. Clark and Mr. Cibula would have to go back to the Planning Commission for approval for that specific use. Also, #5 referring, Exhibit 4, includes processing plants. If a food processing plant came in and wanted to take the whole thing, they would have to go back, even though the Planning Commission had approved the general site plan. The other one is #22. We said we won't do any 22's, similar uses as determined by the Planning Commission without first coming back and getting approval. So, the only uses, if you would adopt the findings and conclusions of the Planning Commission, with their conditions, we could not do any uses without their prior approval and which seems to be the concern of the various public agencies. Now I realize this is a little complex because I'm presupposing that we are getting the zone change and that obstruction is if you did approve the zone change, they would have to go back to the Planning Commission and go through and submit the rather detailed information that is set forth on page 1 and page 2 of the findings and conclusions and just to give you an example, they would have to show the boundaries. They would have to show the proposed locations and dimensions of open space within the site, any proposed public dedication, if any, within the street. Locations, dimensions, designs of off-street parking facilities. Points of ingress and egress. Location and direction of any major physiographic features such as, railroads, drainage channels, canals, etc. And, of course, the statement of uses. I don't know if you have had the opportunity to see the statement of uses, but this is the document that we prepared and the Planning Commission adopted and it is a representation by Mr. Clark and Mr. Cibula of what they will do and what they will not do. In other words, now that I have given you the 500 word or 1,000 word lawyer explanation, I'll try and say it in ten words. To accomodate the concern of the various public agencies, Mr. Clark and Mr. Cibula have agreed to a condition which eliminates three uses in the M-1 zone unless they go back to the Canby City Planning Commission and get permission. The second condition which is a burdensome condition as the government expands today is that, and this was imposed by the Planning Commission, that the site plan must not only be submitted by Mr. Clark and Mr. Cibula, but it must be approved by the Planning Commission one year from April 26, 1978, so we basically have, if we can get out of here tonight and we don't get sued and go to Circuit Court, we wait 60 days, we go out and start working on the property we've got seven or eight months to put it together. I want to be careful and I think sometimes people

misinterpret other people. I want to be careful about one thing. We have tried in this process at your Planning Commission to meet every reasonable objection or concern that may have arisen. Personally, and all of us have dealt with the County Board of Health, the County Sanitarian, and the people at DEQ. We know that basically today, and I am not being facetious, but if we spit too many times on the ground you are going to pollute the ground water and then you have to hold a hearing. You only have to hold a hearing so that they can fine you right there and then you get to go; are you against it and they can shut you down. So what I'm saying is, despite my belief that the laws - there's many many laws that protect the concerns that Mr. Cibula and Mr. Clark have instructed me to work with the Planning Commission and to agree to those conditions which basically means if we found a major tenant, we would go back and get approval of the Planning Commission that fell under any of those three categories in the M-1 zone. A little bit later we'll try and get into them, but I am going to try and be brief. We all know today that, at least I think, from every indication I can see from reading your Comprehensive Plan and lack of industrial zoned land, the Globe-Union, where this property is located, that this city to carry out the purposes of its Comprehensive Plan would like to have more industrial development, primarily from a tax base basis to carry out a lot of the quality plans. And I don't know how many of you pay attention to what is going on up in Portland, but Martin Clark and Al Cibula, there just two people that are engaged in the free enterprise system of trying to put together a 20 acre industrial park. You have up, today, in Portland an entity called the Portland Development Commission and the Portland Development Commission recently, and I just brought it down with me tonight and I am sure that some of you have read it. They went out and bought land that sold for \$45,000 an acre and then sold it to the wacker people, who I guess are coming over here from Germany to start some kind of business there, for \$14,000 an acre and then they, and I don't know for sure, but I'm sure it wasn't \$14,000 now. It was \$14,000 for a period of time. Secondly, we know that Multnomah County is now considering the rezoning of and change of their Comprehensive Plan for 1,200 acres out by the airport and look, Martin and Cibula can compete with anybody, but what they have trouble competing with is the 6% money, I believe it is, through the Development Commission that Multnomah County just created to discourage the location of industry. Now, the reason I say that is that if we all want industrial; and I know we all want good industrial development, I think we have to be realistic. Clark and Cibula don't have any subsidies and they are not asking for any subwork. They are asking for a system that is realistic and allows them to go through the process and that is why we concur with the findings and conclusions of the Planning Commission and the system that they have set up.

Councilman Swayze - Mr. Mayor, I think this is being a bit too long.

Mayor Rapp - Continue (Mark O'Donnell).

Mark O'Donnell - I'll take that under advice, your honor. I'll get with it. See if I can shorten it up here. Have you had distributed to you the justification statements submitted by the applicants and I assume all Council Members have had the opportunity to read that?

Mayor Rapp - Yes, we have.

Mark O'Donnell - Based on the fact that the findings and conclusions have been distributed and I assume those have also been read by the City Council and that the Exhibit #6, which is our Applicants Statement of Justification which consists of 17 pages, there is no sense in going through and reading 17 pages if you have read that. Other than just briefly showing you these exhibits, we would include all eight of the exhibits on record. Basically we have exhibit 1 and 2. Exhibit 1 is the current zoning for the area in the immediate vicinity of this property and Exhibit 2 is the actual land use described on these legends and by the colors and I am sure most of you are more than familiar with the surrounding property uses in this area. We also had in Exhibit 1, and we make no pretensions that Exhibit 1 is a temporary, preliminary site plan, which we all know if this is approved we go back to the Planning Commission and submit a site plan that could be substantially different from this. We'd be glad to answer any questions that you may have.

Mayor Rapp - Does the hearing body have any questions at this time?

Councilman Taylor - Mr. Mayor, I have a question I would like to ask of the City Attorney. Mr. Attorney, is it possible to make a zone change and put restrictions on it? It has been my experience with the County that you can't do that. But you think you can.

Attorney Bettis - You can with certain limitations. You can't say that you unequivocally, in regard to certain things, impose restrictions and conditions the Zoning Ordinance doesn't permit. I don't have the ordinance before me or I could find it if it is important to pursue that now.

Mayor Rapp - I would rather get into this during discussion. Is there anyone here wishing to speak as a proponent of the proposed change? Other than the applicant? Is there anyone here wishing to speak as a proponent of the proposed change? Is there anyone here wishing to speak in opposition of the proposed zone change? Again, anyone wishing to speak as an opponent or against the proposed zone change? Then, I will state I don't feel there is any reason for rebuttal here since you didn't have any opponents on the floor. Anyone wishing to address the subject at all for any reason, way, shape, or form, manner, whatever? At this time I will closed the public hearing (9:04 p.m.).

Mayor Rapp - Now, you may get into further discussion on the avenue you opened up, if you would sir (Councilman Taylor).

Councilman Taylor - I really have some question --- I don't know --- but Wade seems to feel that the ordinance allows this, but I'm a little bit

dubious about whether you can make a zone change in the area and put restrictions on it. I think when you make a zone change I think that it goes to the zone you are making the changes in. I don't think you can make restrictions in it. I guess that the part that kind of bothers me is ---

Attorney Bettis - Let's see if I can find it here.

Mayor Rapp - Well, up to this point it appears that any restrictions the Planning Commission wanted to make on it, the applicants agreed with. In other words ---

Councilman Taylor - I know but, the thing I get mad at is that there is no doubt in my mind that this property is not going to remain static, the applicants are not going to be forever the owners. They are going to sell the property and somebody else is going to come in there and zone the area and I think they would be entitled to put whatever they wanted to in there, it's just a zone. And this is the part that bothers me as to they are not going to own the whole 20 acres or 29 acres or whatever it is in the entirety forever. This is going to sell and somebody is going to come in there and want to do something that is not in accordance with what they have been talking about.

Ken Ferguson - Would it be appropriate to read the action of the Planning Commission and their motion?

Councilman Taylor - I don't care about the Planning Commission. I want to know what the ordinance is.

Wade Bettis - For one thing, the additional uses are permitted.

Councilman Taylor - Yes, that is not a zone change.

Wade Bettis - Conditional Uses in Zones. What I am saying is that those conditional uses in zones are established by the ordinance. And it takes an ordinance to change a zone and the same ordinance can impose conditions in addition to those that now appear as conditions in the zoning ordinance. Now, that is one answer to your question. Do you follow what I mean?

Councilman Taylor - Yes I follow, but that is not what we are doing at the moment.

Wade Bettis - Okay, of course, ---

Councilman Taylor - That is not what we are doing at the moment.

Wade Bettis - You haven't decided what you are going to do.

Councilman Taylor - I understand that, but which comes first? The horse or the cart?

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Wade Bettis - You can impose conditions. Not the conditions, if you were to impose conditions which exceed your authority. I'll give you a decision for such an example. Providing an applicant annually pays the City \$20,000 That's not inforcable condition.

Councilman Taylor - Right.

Wade Bettis - Understand. But if there was a condition that a ---

Mayor Rapp - Not a bad idea.

Councilman Swayze - How do you like that one Al?

Wade Bettis - Only one-way streets within the easterly half of the area to be established to conform to the writ pattern which is in progress. That would be an inforcable condition.

Councilman Knight - Right along the same line, Mr. Mayor, and Wade can possibly answer this. The thought right in my mind is if this PUD idea were established there, there is one building on which a man is going to raise gladiolis, which would be real fine. Now if that building is sold or given to another ownership, is that past on or can he put in a processing plant?

Wade Bettis - From the time of the zone change, the uses within the zone are only those permitted by the zoning ordinance or as may be permitted by any --- Everybody is not effected by what is established by the zoning ordinance or any conditions that you might impose effecting the zone change. Here are conditions that are established quite often. Zone change approved if providing sufficient property be donated to the City for widening streets because of increased traffic shall be generated. That is the most usual condition that comes up on these approvals. I imagine you ran into that in County (Councilman Taylor).

Councilman Taylor - Oh yeah. We do that all the time.

Wade Bettis - But there is no ordinance for it.

Councilman Taylor - The County does not have any ordinances. They don't operate under the same rules as the City does.

Wade Bettis - Okay, well, that's true.

Councilman Swayze - Is a motion in order?

Councilman Giger - My only concern would be the street and avenues access to the property to come in. Those streets are in bad condition. Who is going to put the streets in shape and foot the bill to put the streets in shape to handle the traffic?

Mayor Rapp - Once again, I don't vote on this issue unless there is a tie. There could not be a tie with only 4 members voting since you must have a majority vote. But I think that in reading over this material and listening to the presentation, I think there are three things that have to be considered. When you are dealing with the health, safety, and welfare of the community. One is the problem of who, for instance, on recommendation of Public Works staff that no wet industry be allowed. Because of the situation for the sewer is not able to work without lift stations. Alright. Secondly, the traffic problem you are talking about Howard. I wouldn't want to see NW Baker Drive become a truck route. Thirdly, it seems to be the concern of the Utility Board and others, our staff included, about the types of industry that go in here. There are, as indicated by the applicants, in the existing ordinance 22 types plus conditional uses. And they have agreed not to put any in the first category which is the manufacturing or using things that have been previously manufactured. #5, Food processing plant or anything that requires a conditional use. Is that correct?

Mark O'Donnell - What is #22 sewer uses?

Mayor Rapp - Similar uses.

Mark O'Donnell - Which we have to come back for.

Mayor Rapp - That could be anything. Right. You can't much figure on that. Almost anybody could agree to that. I think though that more than what might be done right into the sewer, if you were to consider to put in a large laundry and dry cleaning plant that might store thousands of gallons of cleaning fluid there, what would happen if that tank ruptured and all ran down to the water intake. I think this is what they are concerned with also. I think you must be concerned with that. That's why I don't know what precedent allows for Councilman Taylor, but I think that's why, assuming as I've been told by many attorneys and by many legislators that most laws are created because the logical need. Supposedly they are logical. Well, it is logical that we may impose it on an area so close to our water intake and whether it holds up in court, which is logical or not, I don't know.

Wade Bettis - Another answer on Councilman Taylor's concern is found in different places in the zoning ordinance. For one example; lot frontage in different zones is established by 70' in an R-1 or shall be approved by the Planning Commission. There is another instance where the Planning Commission give approval and in doing so establishes a condition and there are other places throughout the ordinance. You have to look at each different section. Another one; similar commercial uses as determined by the Planning Commission; Item #15 in the C-1 zone. So there is authority throughout the ordinance for the Planning Commission and Council now to establish within certain restrictions or limited conditions.

Councilman Taylor - My feeling, personally, is that rather than grant a zone change, I'd rather see apply for a conditional use. I think we would have more control in what went in there if they were to apply for a conditional use. I've no quarrel with the idea of it being light industrial or commercial or whatever it is, but I think the Utility Board has a valid argument there that they are concerned about what's going in there and I think it should be recognized. In some manner I don't know whether these restrictions on a zone change ---

Wade Bettis - It is not a restriction on a zone change, it is a restriction on the use or the zone change is made conditioned on subject to restriction on use.

Mayor Rapp - So this doesn't affect the actual zoning ordinance? Just this particular parcel?

Wade Bettis - That's right.

Councilman Taylor - I just wanted to make the matter --- that was the only thing I was concerned about.

Mayor Rapp - We have the option at this point to approve, or approve with conditions, or disapprove, or hold for further reference, so I would suggest that if anyone has a motion.

Councilman Swayze - I move that the following motion as read by the City Attorney be approved: to accept the findings of the Planning Commission at a Special Meeting of April 26, 1978 and the applicants statements of justification as filed with the Planning Commission as the findings of the City Council and that the requested zone change from R-1 to M-1 for Tax Lots 800 and 801 in Section 32, T3S R1E W.M. except 9 acres of Tax Lot 801 which lies in the flood plain be approved subject to submittal to the Planning Commission of an overall development pattern for the property prior to the issuance of permits; that the applicants furnish, if required, legal descriptions of each parcel which is the subject of their application for zone change and that an appropriate ordinance be prepared for first reading as soon as it can be prepared by the City Attorney.

Councilman Giger - I second the motion.

Mayor Rapp - You heard the motion read by the City Attorney. It has been moved and seconded. We now have discussion on the motion.

Councilman Taylor - I didn't think Howard had an answer to that.

Councilman Giger - No I didn't.

Councilman Taylor - I would like to know more about that.

Councilman Knight - And I have two or three questions I'd like to ask sometime or other.

Mayor Rapp - Alright. The question presented at this time is on the street situation. Do you have an answer for that Mr. Cibula?

Al Cibula - We have met with staff, Ken Ferguson and Eldon Edwards and property owners in the immediate vicinity and in answer to your question, Beauford and Howard, I believe that we're willing to do whatever is necessary to make it an attractive industrial park and that would include industrial paving of the Baker Drive and 3rd Drive. We disagree with the idea that Baker should be run through a residential area. We want to limit our truck pattern to Baker, going out 3rd. The same way all of the truck traffic from Globe-Union goes out. Now sewer is approximately 1,100 and some odd feet off of 3rd to the property and we are prepared to bring that in. There is a 10" water main that runs right on the property. That water main was put there because there was a transfer on the property. So we would like to think that services would be provided in keeping with an industrial park that should be for the City of Canby. I would agree with the Council's thinking that to have 50' road might be all that is necessary. It will be a heavy road. In other words, a heavily packed road and possibly 60' would not be necessary because we anticipate no parking on that side of it. Here again, that would be something would have to be presented in our site plan and our proposal on the PUD when we go before the Planning Commission. I hope that answers all your questions. In other words we are willing to do and ready to do anything that is necessary to upgrade the area and that includes the streets, which I agree are in pretty bad shape. The other property owners have verbally agreed to assist us in this and we are going to be working out the best proposal.

Mayor Rapp - Did you perhaps, point out to Council on that map where you think the truck drivers should go and just how much of the paving in that truck route you will be responsible for?

Al Cibula - This was quite an involved situation. I'll show everybody here first this particular --- This is Baker Road here and this is 3rd. It was our intention to possibly pave about halfway up Baker and leave the balance unpaved. Maybe even putting a bump or barrier there. Because we didn't want truck traffic to go this way and go through that ess curve jog and go through the residential area. We had talked with several other people and they thought possibly a better idea would be to pave the entire Baker, but leave Baker unpaved from thence on. And put a sign stating no trucks. It is our understanding then that if trucks do go there they would be sited by the Canby Police.

Mayor Rapp - How wide would that paving be on Baker?

Al Cibula - On Baker?

Mayor Rapp - NW Baker Drive.

Al Cibula - I think their suggestion of 40' paved on a 50' road is a good idea. The suggestion for 60' as it was drawn out here is generally is a requirement if you would have off-street parking. We intend to have all of our parking

interiorly. Globe-Union has all their parking interior. We assume that people who have this have their parking interior. I don't really see a reason for having an extra 10' for off-street parking.

Mayor Rapp - My next question is where would the sanitary sewer lift station have to be?

Al Cibula - Well, in discussion today with Ken, there is a possibility we wouldn't have to put a pump station if the sewer is as low as it is, but we're also --- in other words we have to find out the depth of the existing sewer lateral.

Mayor Rapp - Where does the sewer line go to now?

Al Cibula - There are two. One up here by Cedar. Another one down here at the entrance of Globe-Union. It is far less expensive to go from here to here, but it is unrealistic. That's too shallow a sewer lateral. If we go this way 1,100 and some odd feet there is a possibility by centrifugal droppage we could make it. If not, we'll put a lift station. That should take care of everything. I am not a design engineer gentlemen, so don't --- and as Mark suggested this site presentation that you see was really for illustration purposes, more or less, so that you would understand we're looking at dry good type industry. We're certainly not looking for anything that's polluting.

Mayor Rapp - But you're committing yourself, at this time, that if a lift station is required it will be installed on your property at your expense.

Al Cibula - Well, that's a terrible statement to admit to, but the point I'm getting at is we're willing to do whatever is necessary to make the park a good park. I hope that answers your question. We don't know, at the time, whether a sewer pump station is going to be necessary and we have not yet touched base with the people here to find out whether they will share the expense. If there is a possibility, we would love to have sewer on our property and maybe this is the real answer to whatever is necessary to get sewer to the property.

Mayor Rapp Alright.

Wade Bettis - Mr. Mayor, before you see too much further, Mr. Ferguson raised a question here with me that should be mentioned before you go any further.

Mayor Rapp - Okay, go ahead.

Wade Bettis - Pointed out in the minutes of the Planning Commission meeting, Commissioner Edgerton moved to recommend approval etc. with a provision of a Planning Unit Development overlay to be presented and accepted by the Planning Commission within one year from this date. That is not a condition that the Planning Commission could impose or that you can impose.

Mayor Rapp - Alright.

Wade Bettis - The zones are there, as specified by ordinance, for an applicant to choose and if he can qualify for a change from one to another, meets fasano and court decisions, and all of that and has approved the zone change then it is approved, but you can't approved it on condition that he then pursue like PUD. After the zone change is made the PUD Department is there available if he wants to pursue the development of his area within the zone under this PUD ordinance. However, you can impose as a condition, which you just did in the motion, that his overall development be submitted to the Planning Commission prior to the issuance of any city permits and that's also a condition you can enforce. You just don't issue permits until it's done and it's a defensible condition.

Councilman Taylor - Would it be proper to have these conditions presented to the Council, rather than the Planning Commission?

Mayor Rapp - Or both, perhaps?

Wade Bettis - The Planned Unit Development pattern lets you know about the plan and gives you a chance to object or turn thumbs down if you have justification to do it. Planning Commission, I really think, is the one directly concerned. What you don't have and what we need is a design review board. And in order to create one, and that should be in the making.

Mayor Rapp - We have talked about that and there is a varying opinion on that.

Wade Bettis - I know that.

Mayor Rapp - I think what Commissioner Edgerton is getting at was trying to set a precedent that the Planning Commission is, in itself, a design review board.

Councilman Taylor - The only thing that bothers me is that it seems that whenever any trouble develops, it turns out that the City Council has to handle it. You know it it is out of the Planning Commission's hands and it has come to the City Council. It's the same two people a couple-of weeks ago on 13th or Fir. At any rate this was the first the Council had any knowledge of this predicament and all of sudden now we're faced --- Now somebody is stuck with \$5,000 and I think that there should be some way that the Council should be some how kept aware of what is going on and have some voice in this thing and ---

Ken Ferguson -The intent of the Planning Commission was to prevent the location of what industries or anything detrimental either to the Utility Board's water supply or the City's sewer system. I think that was the intent of the PUD in the minutes. I still have the same question as Mr. Taylor. What happens if in five years, after the development plans approved by the City, someone wants to create a light industry in the area. How can we prevent it?

Wade Bettis - I'll tell you that after Councilman Knight, who has been trying to get the floor.

Mayor Rapp - Councilman Knight.

Councilman Knight - Well, I wanted to ask a question a little while ago, but if it is still permissible I would like to ask Mr. O'Donnell a question.

Mayor Rapp - That's fine. Go ahead.

Councilman Knight - In this prepared presentation you had, it also included a letter from Mr. Baldwin from Southern Pacific about this area could possibly be served by trackage. Were there any preliminary prints made as to possible ways to serve your property?

Mark O'Donnell - If I may explain this a little bit. Maybe you can help me a little bit. We have had meetings, of course, Southern Pacific is interested in that in a sense that, you know, it is their railroad there and they feel that Globe-Union will eventually have to use more rail service and the rail service could be extended economically. There have been meetings with the various --- with Globe-Union --- you know it's really amazing; everybody's working together down there and trying to put together the best package. When we come in with a site plan, that is when we have to show the trackage as I read the PUD ordinance. I think it even refers to it and that's what will be shown. The problem we have, sir, is how much money can you spend unless you're the bantrust? I did most of the Oregon Industrial Park for them up there and bantrust is a little bit different. They hire teams of planners, lawyers, and --- We'll incur our big expenses, our big heavy expenses, when we come in with the site plan and that's when we will show --- That's one of the things we'll have to show then.

Councilman Knight - In these preliminary discussions, like if Globe-Union wants served and then we extend it back to your area, will that go along Globe-Union's property or in this preliminary thought, were you thinking about utilizing this 60' street?

Al Cibula - I think, possibly, I can answer that. Are you referring to 3rd?

Councilman Knight - NW 3rd.

Al Cibula - It is not our intentions to utilize 3rd if there would be rail to go to the property. Now my understanding, if rail goes through this entire complex, then I say that proposed Riverview Industrial Park, Globe-Union's property, and there is another 10 acres south of Globe-Union. It would best be served if it were to swing in between Globe-Union and the 10-acre site and if it did come to us, it would come across the Baker Drive. If that is correct. And we have nobody in mind, at this particular time for rail, however we have told these people that if, at some later time, if there is a tenant who needs rail and can fall within the dry uses that we have proposed in the industrial park, that we would help share costs to bring the rail through the project.

Councilman Knight - Thank you.

Mayor Rapp - Is there any further discussion at this time?

Councilman Knight - One more.

Mayor Rapp - Yes.

Councilman Knight - I'm thinking now about sanitary sewer. That was pretty well covered, but Ken, storm sewers protection be required. I'm thinking that where our water supply is and it leaks down through. If we take storm sewers off of a parking lot, that isn't all, that could slip down through the ground and we could be drinking it the next day, so is there a way that storm sewer water could be taken, say down to NW 3rd?

Ken Ferguson - It would require that it be taken to the river. I don't think dry wells would cause that much of a hazard. We now have a storm sewer line from the water treatment plant going down to the river that other places are tied into and using it. And the surface run off really isn't that much of a problem unless you get into a grease situation, or a garbage waste, you won't have a problem. It is something that would have to be resolved at the time and it is something that everybody will be aware of.

Councilman Westcott - I think the Attorney was going to answer a question here after Beauford's time.

Mayor Rapp - Okay. Do you recall the question?

Wade Bettis - I do.

Mayor Rapp - Proceed please.

Wade Bettis - The question was asked concerning what steps could be taken to insure against pollution or undesirable uses that might develop at a later date. And there is no need to worry or fret now about what might occur because only those uses can be developed within the zone which are permitted or permitted as conditional uses with the approval of the Planning Commission. And if one of those permitted or conditional uses develops or creates a problem, then the City has inherent powers, under the laws of this state, the constitution, and the charter, and ordinances, to abate, terminate, or cease and desist from such conditions that are harmful to the health, peace, safety, and general welfare of the City. So you have to wait until you are faced with such problem, if you are, then we handle it at that time.

Mayor Rapp - I will ask one question and then hopefully, we can move on. Is the staff satisfied with their concerns about the water intake and a sanitary sewer covered by the statement these gentlemen will sign covering what they will allow in their development?

Ken Ferguson - At the present time, I would say yes, but I would be a little concerned about the statement Mr. Bettis just made. It's a lot harder to abate a nuisance than it is to prevent it. I think we ran into this just since the time I've been here. And if you start polluting the --- well, a good example is DEQ's Title "Wachang", the proceeding goes on and on. It's a lot harder to abate a nuisance than it is to prevent it. That would be my only concern.

Wade Bettis - True, but not entirely. These experiences have been failures to initiate actions to abate and it is simply because the Council hasn't been able to agree to tell me to go ahead and file suit. Now there were two instances before this Council when they were concerned enough about mobile homes, and Howard was here, and it only took about 10 minutes at a Council Meeting and two hours of my time the next day to call the injunction. A suit was filed and an injunction was issued. So it is not that difficult, once the Council makes a decision.

Councilman Taylor - But, the thing that gets me is the Council is the last body that ever hears anything --- You know, you are depending on the Planning Commission to make their decisions and that whole list of businesses that they are going to allow in there and if one of them goes haywire, then it comes to the Council and we're the ones that are the dirty dogs that have to settle this thing.

Wade Bettis - Why don't you amend the motion to show that a copy of the development pattern also is to be furnished to you? I would still leave the Planning Commission initially responsible, so you don't besmirch their power.

Mayor Rapp - That is their job.

Wade Bettis - Which is their job, but to answer your question, keep you advised.

Councilman Taylor - Also, I think that Council is entitled to be notified of what is going on in an area, especially where we are making a decision as to whether it is going to be granted or not.

Wade Bettis - Like subdivision plats. They are filed with the Planning Commission and 99 out of 100 you don't know.

Councilman Taylor - That's right. We don't see a damn one of them.

Wade Bettis - The ordinance could be changed easily if I am told to do it.

Councilman Taylor - I think that would be something that would bear looking into.

Mayor Rapp - We have a motion on the floor. Is there any further discussion.

Councilman Giger - I call for the question.

Wade Bettis - Before you vote, I need to address one more matter because Mr. O'Donnell raised a question and he is laying groundwork for a test case. I being a little facetious. He questioned my judgement in so hastily concurring that Councilmen Westcott and Nichols should disqualify themselves because of their brief statements. So I suggest this; that if he and his clients are agreeable that each Councilman Nichols and Councilman Westcott may be further

more detailed statements of what might constitute their conflict of interests and if he and his client would then agree that such statements do not in their opinion cause justification for them to disqualify themselves and that Mr. O'Donnell and his clients would agree that they would never raise, now or hereafter, any challenge to their participation and decision on this matter, then I would agree that those two men could, if they wanted to, return to the Council to participate in the vote, both having been present to hear the discussion. Did you understand me, Mark?

Mark O'Donnell - Yes, I understand. I would hope, and I know you are being facetious. First, I want to get an industrial park built for these people. Second thing is, if the two gentlemen, firstly if I didn't raise it, I never could raise it again.

Wade Bettis - True. I would have done the same if I were you.

Mark O'Donnell - If they don't want too, if they have personal feelings, I don't want to interfere with their personal feelings and I would never raise it. Number two, if they do feel they can be fair and impartial, then I surely have no objection and I would waive any right to their ever serving on it, regardless of how they ever voted.

Wade Bettis - Okay. That's fair enough.

Mayor Rapp - Do you gentlemen, at this time, wish to give a more detailed statement as to your reasons for possible disqualification and not participate?

Councilman Nichols - My firm is presently is employed by Mr. Clark handling other property, which I expect to be paid for for services from that. Not in connection with this property.

Wade Bettis - Anything else? Closely connected that might cause a prejudice? Do you agree that you can fairly consider what has been said, submitted, heard, and done without regards to that matter you just mentioned?

Councilman Nichols - Yes, I don't think the two are connected. The connection was that I am currently employed by Mr. Clark to handle other property.

Wade Bettis - Do you feel you can act fairly based ---

Councilman Nichols - That created a possibility for an objection from someone. I don't personally feel that it would be, but there is that possibility.

Wade Bettis - Mr. O'Donnell, do you feel from what has been said you would have any objections to Mr. Nichols in participating in the decision?

Mark O'Donnell - We ought to put you on the Circuit Court Bench. No, the gentleman has stated that he can be fair and impartial. He could consider the evidence. I have no objections to his serving.

Wade Bettis - What he's concerned about, I agree with, it takes four to pass this, and if two are disqualified and three vote yes and one votes no, they are down the tube.

Mayor Rapp - I know how it is.

Councilman Nichols - May I ask that same question of Mr. Cibula?

Wade Bettis - Councilman Nichols wants to know if Mr. Cibula has any concern or objection or reasons why Mr. Nichols could not or should not enter into the decision on this as a member of the Council?

Al Cibula - Absolutely not. I feel that he can be fair.

Wade Bettis - Well then -- and Councilman Westcott, who I know has heard everything, do you still voluntarily want to disqualify yourself?

Councilman Westcott - My initial statement was for determination. Rather than for me to make the determination. I am currently, as of today, negotiating for a parcel of this property at such time it may come available. However, there is no property available at this time. It does not have a zone change. It does not have a PUD. There is not even a size of parcel being discussed in the location which is within this park. I'm trying to obtain some property for my business.

Wade Bettis - And it's your opinion that that property conditioned upon this zone change be approved?

Councilman Westcott - I would have no interest in the property if there was no zone change.

Wade Bettis - That is a different situation. I think, there is no doubt, that Councilman Westcott should remain disqualified. That's my feeling and that's because of the challenge that may be raised later by someone else on a writ of review even though you gentlemen would say we're entirely satisfied. That is my feeling.

Mark O'Donnell - I would agree with that. The only other question; would there be anyone in the audience that would have objection to Mr. Nichols serving?

Wade Bettis - That is a good question.

Mayor Rapp - If there is, let them speak now. Okay.

Mayor Rapp - Hope somebody says question again.

Councilman Swayze - Question.

Councilman Knight - I'd like to hear the motion again.

Wade Bettis - I move to accept the findings of the Planning Commission at a Special Meeting of April 26, 1978 and the applicants statements of justi-

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fication as filed with the Planning Commission as the findings of the City Council and that the requested zone change from R-1 to M-1 for Tax Lots 800 and 801 in Section 32, T3S R1E W.M. except 9 acres of Tax Lot 801 which lies in the flood plain be approved subject to submittal to the Planning Commission of an overall development pattern for the property prior to the issuance of permits; that the applicants furnish, if required, legal descriptions of each parcel which is the subject of their application for zone change and that an appropriate ordinance be prepared for first reading as soon as it can be prepared by the City Attorney.

Mayor Rapp - You have heard the motion. All those in favor, say aye.

Council - Aye

Mayor Rapp - Those opposed?

Wade Bettis - I think you may call a poll of the Council on this matter.

Councilman Swayze - I'll ask for a roll call vote, Mr. Mayor.

Mayor Rapp - Will the clerk call the roll?

Nancy Boggs - Councilman Knight - Yes, Councilman Nichols, Yes,
Councilman Giger - Yes, Councilman Taylor, Yes, Councilman Swayze - Yes.

Mayor Rapp - The motion is carried 5 to 0.

Mayor Rapp called a five minute recess at 9:49 p.m.

Public Hearing - Zone Change from R-1 to R-2
Applicant - Anderson-Ritter Realty

Mayor Rapp called for the Public Hearing on the Zone Change from R-1 to R-2 by asking Ken Ferguson to give a recap on the proceeding this far. Mr. Ferguson then gave a staff report from the office of Eldon Edwards, Planning Consultant as requested by the Mayor.

Mayor then called for the applicant, David Anderson to speak in his own behalf at which time he did.

Mayor then called for proponents, other than the applicant at which time there were none. Mayor called for opponents and hearing none, asked if anyone in the audience would like to speak for or against the zone change. There were none.

Mayor Rapp closed the public hearing at 10:09 p.m.

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Councilman Taylor moved to accept the findings of the Planning Commission at a Special Meeting of April 26, 1978 and the applicant's statement of justification as filed with the Planning Commission and the findings of the City Council and that the requested zone change from R-1 to R-2 on a portion of Tax Lot 2100 consisting of approximately 32,670 square feet in Section 33DD, T3S, R1E of the Willamette Green, in Canby, Clackamas County, Oregon be approved and that the applicant furnish the required legal description of the subject property and that an appropriate ordinance be prepared for first reading as soon as it can be prepared by the City Attorney, seconded by Councilman Knight. Discussion followed. The motion was passed by roll call vote with 4 ayes and Councilman Swayze voting nay.

Next on the agenda was the Change Order on Tennis Court bids which Ken Ferguson presented to the Council. This matter will be held over until the second reading of the ordinance.

Next was the Accounts Payable. Councilman Knight moved the Accounts Payable in the amount of \$99,864.81 be paid, seconded by Councilman Swayze. The motion carried by roll call vote with 5 ayes and 0 nays.

Next was a report from Ken Ferguson on South Fir Street Improvement which was read by Mr. Ferguson. Discussion followed. Councilman Westcott moved that we excavate and oil mat the half-street in front of Mr. Baker's and Mr. Roth's house on South Fir and that the Staff be directed to prepare in next year's budget (79-80) funding for full depth asphalt, seconded by Councilman Taylor. The motion passed with Councilman Swayze voting no. Mayor then instructed staff work up a proper motion for either the Book of Policy or ordinance or whichever would be the proper instrument to take care of the half-street problem and present it to the Council. Staff will also notify the people involved the action which was taken tonight.

Mayor Rapp then asked the City Attorney if we were prepared for the discussion on the parking for the merchants. Due to two signatures being needed, the matter will be held over.

Administrator Wyman then read the affidavit of the canvas of the ballot of the election on May 23, 1978 as follows:

536 Yes
793 No

Councilman Taylor moved that we accept the Certification from the County Elections Department, the results of the primary election, as to the results of the City Budget Election held in conjunction with the statewide primary election as the Council's canvas of the election ballot, seconded by Councilman Swayze. The motion was passed unanimously.

Mayor Rapp then stated the Council Meeting on Wednesday, June 21, 1978 will begin at 9:00 p.m. due to the City Budget Election.

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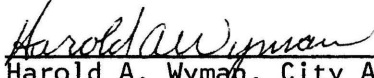
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Mayor then announced the Council will hold a workshop with the Charter Revision Committee, Tuesday, June 13, 1978 at 7:30 p.m. in the Canby Utility Board building. There will be no Special Meeting.

The meeting adjourned at 10:39 p.m.



Robert E. Rapp, Mayor



Harold A. Wyma, City Administrator