

**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
January 17, 2018**

**PRESIDING:** Mayor Brian Hodson.

**COUNCIL PRESENT:** Tyler Smith, Greg Parker, Traci Hensley, Tim Dale, Tracie Heidt, and Sarah Spoon.

**STAFF PRESENT:** Rick Robinson, City Administrator; Joseph Lindsay, City Attorney; Bryan Brown, Planning Director; Laney Fouse, Office Specialist; and Kim Scheafer, City Recorder.

**OTHERS PRESENT:** Fire Chief Jim Davis, Jason Padden, Richard Mario, Tony Polito, Garrett Stephenson, Susan Myers, Elan Langridge, Michael McNichols, John Gunter, Michael Robinson, Scott Taylor, Doug Sprague, Kati Gault, John Middleton, Doug Popper, Joel Sprague, Phil & Sarah Seale, Rachel Seale, Vincent Andersen, Dale & Karen Culver, Jason & Staci Sprague, Ariana Van Houton, Paul Tooln, Danny Sprague, Keith & Corri Knutson, Kevin & Kelli Knutson, Scott Smith, Revaleen Smith, Paul Schmidt, Mike Brown, Lois Gustafson, Randi Gunter, Russ & Elan Langridge, Kathryn Henderson, Linda Peacock, Shawn Varwig, Richard Duncan, Mike Brown, Tyler Howell, Gina Taylor, Bill & Karyn Fenton, Larry Kromer, Todd Mobley, and Richard Duncan.

**CALL TO ORDER:** Mayor Hodson called the Regular Meeting to order at 7:30 p.m. in the Council Chambers followed by opening ceremonies.

**COMMUNICATIONS:** None.

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** Jason Padden, resident, thanked Mr. Robinson, the Mayor, and Curt McLeod for responding to his inquiry at the last City Council Meeting.

**MAYOR'S BUSINESS:** Mayor Hodson said the Clackamas County Coordinating Commission (C-4) was discussing regional transportation and upcoming potential bonding for housing and transportation. ODOT was doing a major retrofit of crosswalks and curb settings to be ADA compliant. This would also become a mandatory criterion for future projects. The State of the City Address would be held at the Chamber Lunch on February 6.

**COUNCILOR COMMENTS & LIAISON REPORTS:** Councilor Smith said the Planning Commission approved an annexation request between S Ivy and S Elm Streets.

Councilor Parker said the County Fair Board met with the County Commissioners at a retreat and came away with a unified vision for how to move ahead to be a self-sustaining fairground and event center and to build a multi-purpose facility.

Councilor Dale said Gary Potter had been reelected Chair of the Canby Utility Board. He thanked Canby Utility for donating green power to the City to light the parks and transit mall.

Councilor Heidt said the Friends of the Library annual meeting would be held on February 8. The Clackamas County Board of Commissioners would vote tomorrow on the Master Order for the County Library District. The library's adult winter reading program would begin in January and go to March. There would be a fine forgiveness program in February.

Councilor Spoon said the Canby Adult Center would be having AARP tax clinics and mental health first aid training. The Iwo Jima breakfast would be held on February 17. Clackamas County provided additional funding to use for classes, meals, and transportation. CTV5 would be looking at developing content and content partners. She wanted to remind everyone how important Martin Luther King Jr. was. She read one of his quotations.

**CONSENT AGENDA: \*\*Councilor Dale moved to adopt the minutes of the January 3, 2018 City Council Regular Meeting and reappointment of Jack Brito to the Canby Utility Board for a term to expire on February 28, 2021. Motion was seconded by Councilor Hensley and passed 6-0.**

**PUBLIC HEARING:** APP 17-02, Appeal of Planning Commission Decision for Seven Acres Subdivision (3500 N Maple Street) – Mayor Hodson read the public hearing statement.

**Conflict of Interest:**

Councilor Smith – No conflict, plan to participate.  
Councilor Parker – No conflict, plan to participate.  
Councilor Hensley – No conflict, plan to participate.  
Councilor Dale – No conflict, plan to participate.  
Councilor Heidt – No conflict, plan to participate.  
Councilor Spoon – No conflict, plan to participate.  
Mayor Hodson – No conflict, plan to participate.

**Ex Parte Contact:**

Councilor Smith – No contact.  
Councilor Parker – No contact.  
Councilor Hensley – No contact.  
Councilor Dale – No contact.  
Councilor Heidt – She ran and biked by the site several times per week. She lived close to the site and lived by Kati Gault. This application came up in a sustainability group meeting she attended a month ago, she posted it on her community Facebook page and there were a lot of comments and she responded to some of them, she also spoke with Tony Polito, Elan Langridge, and Scott Taylor, and had responded to several emails from Friends of Maple Street.  
Councilor Spoon – She biked down by Maple Street and the Logging Road near the property. Some community members had approached her at a restaurant and she had tea with someone who had submitted comments but they did not discuss the matter.  
Mayor Hodson – He had been by the site and had pictures sent to him. He had a conversation with a colleague who was a real estate agent in the neighborhood and the topic briefly came up.

Joseph Lindsay, City Attorney, asked if those with ex parte contacts could sit in judgment of the application and be fair and objective.

Mayor Hodson, Councilor Heidt, and Councilor Spoon responded yes.

Mayor Hodson said their role was to judge the application against the criteria in the code.

**Staff Report:** Bryan Brown, Planning Director, explained the submittals and items that were in the record. There were many comments that were made after the packet was prepared and they were posted on the web page and some photographs that were sent were included in his presentation. The meeting should be run like the Planning Commission meeting and follow the appeal process as outlined in the

code. The Planning Commission approved the application 7-0 and staff supported the Planning Commission's decision. The supplemental memorandum that was provided to Council talked about the Oregon Department of Fish and Wildlife Conservation Easement that might or might not apply. There was a Willamette Wayside Properties Master Plan that was adopted in 2004 that addressed emergency access and use of the Logging Road. In the plan it stated the Logging Road was intended to be improved for recreational use and restricted access to private vehicles, but retained access for emergency vehicles and maintenance vehicles. The Fire Marshall was satisfied with the Logging Road as an alternative emergency access if necessary. The Conservation Easement itself also allowed for emergency vehicles. He then explained the seven acre subdivision proposed site plan. There would be a circular street pattern and 22 lots that had access on N Maple. It had been documented throughout this process that there were 75 existing homes that only had access through N Maple. There was a provision in the code that they would not hold the standard of only 30 homes being allowed on a single street in these cases. They would still be held accountable for proper street widths and having an alternative means of emergency access. The property had been zoned R-1 since 1983. He discussed the street improvements required for the application, which were different in certain sections due to the road having both County and City jurisdictions. There was concern that the improvements were not being taken all the way to Territorial Road, but the traffic study indicated there were shoulders that allowed cars to park off of the road and the area did not have formal sidewalks. It was common to do half street improvements as long as two cars could pass each other on the road. The intent was when the adjacent property was developed they would finish the street improvements. Staff thought the application met the code requirements and standards. The subdivision could be built in phases or all at once. He showed the preliminary plat grading plan, utility sites, and phasing of the subdivision. There were historic floods in this area, but the subdivision was outside of the 100 year flood plain. He discussed the Maple Street trips with the new subdivision, and how there would be more traffic at the Country Club entrance than at the end of N Maple, however traffic exceeded 500 trips and they had to follow local street standards. There were no requirements for sidewalks on Maple Street when the Country Club was being built. He then showed photos of N Maple Street. The Council was making a decision based upon the same review criteria that the Planning Commission used.

There was discussion regarding the width of the road and pedestrian pathway, what was County owned and what was City owned on N Maple, issues raised at the Planning Commission hearing, and changing the number of lots.

Mayor Hodson clarified the Fire Marshall signed off on using the Logging Road Trail as emergency access. Mr. Brown said the conservation easement and Master Plan allowed that use, and the City owned the Logging Road and was agreeing to allow it as well. Mr. Lindsay said it was an alternative emergency access.

There was further discussion regarding the traffic studies that were done and ways to address speeding on N Maple.

Mayor Hodson clarified this subdivision did not violate the conservation easement. Mr. Brown said that was correct as the conservation easement was not on the subdivision property. The Oregon Department of Fish and Wildlife's concern was that the subdivision could possibly cause non-compliance with the provisions of the easement. There was a condition that the applicant would get approval from ODFW for any proposal that would occur in the conservation easement.

Mayor Hodson opened the public hearing at 9:07 p.m.

**Applicant:** Michael Robinson, attorney for the applicant, said there were three traffic studies and two traffic counts that were done. There was documentation in the record that showed how the data collection had been done appropriately. There were two pieces of evidence on the ability of the Logging Road being able to handle emergency vehicles. There was also evidence that Maple Street could also handle emergency vehicles.

Kati Gault, project manager for the development and daughter of the current property owner, gave a presentation on the application. The property was intended for residential development and the property owner had worked to keep the lots as large as City zoning standards allowed. The biggest neighborhood concern was off-site improvements on Maple Street. She clarified what the Planning Commission had approved for Maple Street. No existing Maple Street parking would be removed, there would be no sidewalk improvements constructed on the east side of Maple, and the neighbors on the east side of Maple would not be responsible for the cost of these improvements. The applicant agreed to pay all of the Maple Street improvements. The improvements met and exceeded the City's standards and fire code requirements. In consideration of the neighbors and in an effort to make this a subdivision they could be proud of, the applicant agreed to complete many more improvements on Maple than were recommended by the City's Traffic Engineer. The approximate value of the improvements approved by the Planning Commission was about \$236,000. She asked that the Council uphold the approval by the Planning Commission with conditions.

Mr. Robinson said the Planning Commission had listened to all of the testimony and approved the application 7-0. Planning staff had also recommended approval of the application. He thought all of the approval criteria had been met. They had asked for two exceptions, to make a couple of the lots bigger and to make the width of the lots near the cul-de-sac larger. The ODFW conservation easement had not been brought up at the Planning Commission meeting, but whatever the easement required, they would abide by it. Emergency vehicles were allowed on the Logging Road. There was no relevant criterion for animal movement. The wetland delineation was resolved in favor of the applicant. The fill dirt was not a relevant criterion and it was placed there by permission. The subdivision's stormwater plans met the standards in the code. The applicant was widening Maple Street and making improvements over what was required. Both traffic engineers said the same thing, that this road was capable of handling the extra vehicle trips from this subdivision without overtaxing it and without it being dangerous to pedestrians or bicyclists. They wanted to do about a third less density than was allowed. It was suitable for residential development and it would be the same type of dwellings than what was in the neighborhood. It was an appropriate development.

Doug Sprague, applicant, said the team did a great job of interpreting the code. In 1983 the property was zoned for residential development. The code was set to guide the growth the City needed. They needed new houses in the City and to continue to grow. This property was set aside for that purpose.

Richard Duncan, Oregon Department of Fish and Wildlife, said there was a conservation easement that they had contributed \$250,000 to purchase the property. They were concerned about violations of the easement. The biggest concern was the emergency access through Tract C and getting a vehicle from the Logging Road Trail to the development without creating a road. The easement said no new roads would be developed through the easement.

Mr. Robinson said this was why a condition of approval was added so the applicant could meet with Oregon Department of Fish and Wildlife to solve the problem.

Mr. Brown said there was a document submitted by Mr. McNichols on the night of the Planning Commission meeting that had been inadvertently left out of the packet.

Mr. Lindsay explained the process for allowing documents to be submitted that night.

Mr. Robinson said that the applicant would not extend the 120 day deadline.

Mayor Hodson recessed the meeting at 9:40 p.m. for 30 minutes to review the materials.

Mayor Hodson reconvened the meeting at 10:13 p.m.

**Proponents:** Garrett Stephenson was representing Susan Meyers from Montecucco Rentals. She was ill and could not be in attendance. Montecucco Rentals owned the property upon which Montecucco Farms operated. In approaching this project the two primary objectives were to make sure the existing drainage system was maintained and to make sure that access to its agricultural operations was retained. The applicant had been very good to work with to make sure both of those objectives were met. They were willing to provide an increased drainage facility that would increase the drainage capacity on the Montecucco's land. In return the Montecucco family agreed to dedicate a certain amount of right-of-way. The Montecuccos thought the project would provide better transportation and drainage than existed before. He agreed with Mr. Robinson's assessment of the Conservation Easement. The Montecuccos recommended the appeal be denied and to approve the project.

Joel Sprague, Canby resident, wanted to see this go through as it would be a nice addition to the town. There were a lot of people attending that were of the same mind set.

**Appellant:** Michael McNichols, Canby resident, discussed the lack of traffic control devices all the way to Territorial. There were varying street widths and pedestrians would be walking next to vehicular traffic on parts of the road. The traffic studies focused on vehicle traffic but not on pedestrian traffic. The Logging Road was an amenity and there were many pedestrians on the road. He was not against development, but it needed to be done in a safe manner and he did not see that in the application. He did not think they were compliant with the law. He thought the safety issues with vehicles and pedestrians was a liability the City did not need. He was not sure that the applicant had secured a legally binding alternative emergency access. He thought there should be sidewalks all the way down the street or some way to remove the pedestrians from the proximity of traffic. There should not be so many unresolved issues and questions remaining and he thought it was a disservice to go forward until they were fully addressed.

**Opponents:** Elan Langridge, Canby resident, said she represented the lower part of Maple Street. They saw a lot more traffic filtering in from several nearby streets. The street near her house was narrow and she too was concerned about pedestrian safety. There were a lot of emergencies on Maple Street due to the Country Club and the narrow street made it difficult for emergency vehicles to get through. She had taken a study at Eco Park and found that many people using the park did not live in Canby. They came for the beauty and wildlife. She thought this development would change her neighborhood.

Richard Mario, Canby resident, said the traffic counts were not done in the summer when there was more vehicular, pedestrian, and bicycle traffic on the street. The recent approval of the Country Club expansion which would add 70 trips to Maple Street were not included in the traffic study. Accurate traffic, pedestrian, and bicycle counts needed to be acquired before the Council could make an informed decision. The Conservation Easement had anticipated emergency vehicles for emergencies on the

easement area, not to run emergency vehicles to other public and private areas near the easement. The access point was narrow and vehicles would need to turn wide to get into the subdivision. He thought it would require significant construction. He did not think it was a legally binding emergency access as these issues had not been resolved. If they could not get that access, the project would have to be changed. He also thought the down-slope neighbors would become burdened with up-slope water. There was an issue now of water coming onto the properties on 34<sup>th</sup> Court.

Tony Polito, Canby resident, said he had been a resident since 1975. The photos that he sent to everyone told the story of a lack of pedestrian and bicycle safety on Maple. The applicant could develop fewer homes than proposed. He asked the Council to do the right thing for the neighborhood's quality of life. N Maple could end up like Territorial or 99E.

Scott Taylor, Canby resident, said he walked the road every night and biked it on a regular basis. He wore a reflective vest and a bright light and still needed to move out of the way of vehicles. He had been involved in public service for over 45 years. He attended the Planning Commission meeting and thought there had been a lack of communication and asking questions on the Commission's part. He complimented the Council for their process. He had worked hard on the Logging Road and the emergency access was for the Logging Road, not to take care of a variety of lots. There needed to be some sort of separation on Maple Street between pedestrians and vehicles for safety, like a bike lane.

**Rebuttal:** Todd Mobley, Lancaster Engineering, spoke about the date of the traffic counts, pedestrian and bicycle volumes, and safety of shared local street facilities. One study was done in the spring and one in the fall and the counts were close. He thought there was reliability in the numbers. The counts were done north to the access to the golf course. The traffic counts also measured volumes and speeds, but did not include pedestrian and bicycle counts. The safety of local streets was not governed by the volume of pedestrians and bicycles. The important factors were vehicle speed and volume and that was what was measured. The proposed facility with the striped pedestrian lane came from recommendations in a national design manual and this area fit the guidelines for that design. The traffic counts were way below the threshold where some other treatment would be necessary. By the standards, this was still a low volume, low speed residential street. The mitigation proposed met the applicable standards. He thought the width of the road allowed enough room for vehicles to move away from the pedestrian lane if there was a pedestrian or bicycle on the street. The Montecuccos were satisfied the farm equipment would be able to access the road safely.

Mr. Robinson clarified which code criteria applied to this application and which did not apply.

Ms. Gault said it was a recommendation in the original traffic study, not a requirement, to have a walkway for pedestrians. The applicant had agreed to do it because they wanted this to continue to be a safe place to walk.

Mr. Robinson said there was no requirement in the code that sidewalks had to be constructed and there was no evidence that the number of trips from this subdivision would cause the road to be unsafe.

Mr. Lindsay clarified that pedestrian and bicycle volumes were considered, but there had not been a specific count because it was not a relevant input for the study and the City did not require it.

Mr. Robinson confirmed the Fire Department accepted the Logging Road as an alternative emergency access and there was a condition of approval that the applicant would work with ODFW regarding the access.

Mr. Robinson said the applicant was concerned about bicycle and pedestrian safety. There was no evidence that it would be worsened by this application. He thought the only unresolved issue was the easement, but he did not think that would be a problem. The code did not require a traffic study that counted bicycles and pedestrians and did not require sidewalks. The traffic studies indicated the road could handle the traffic and the proposed improvements were adequate. The Council had to determine if the approval criteria had been met and he thought the application did meet the criteria. The appeal did not list any approval criteria that the application failed to meet. All of the issues in the appeal had been addressed. He asked for approval with conditions.

John Middleton, Ztek Engineers, explained the storm drainage improvements including a larger pipe that would tie into the existing public line and would go out to the river. This would improve the storm drainage for the farm, subdivision, and for those living south of the subdivision.

Mr. Sprague said there was concern that the fill caused water to run onto the neighboring properties. Drains had been installed for that water, and the subdivision would also have drains to ensure water did not run onto neighboring properties.

Mayor Hodson closed the public hearing at 11:30 p.m.

Mr. Brown said a traffic study was not done for the Country Club expansion, but the applicant had testified that membership would not increase but there would be additional traffic with the new amenities.

Mr. Rick Robinson said there was an agreement made in the 1970s with the City and Montecuccos regarding the drainage and discussed how this project would improve the overall drainage quality.

Councilor Spoon acknowledged that the neighborhood was used to a certain amount of traffic and that would be impacted by adding additional homes to the road. This was a land use issue and they could not just be the conscience of the community but had to determine whether or not an applicant met the requirements. She shared the concerns that had been raised, but thought the application met the requirements except for the emergency vehicle access. She was not clear if it was a legally binding alternative route and did not want to set a precedent that as a land use appeal board they could tell a developer they did not need to come with all the requirements but have a condition to rectify it later.

Councilor Smith said the subdivision was not in the easement and the easement would be an alternative emergency access. It would only be a violation if it was used without being authorized.

There was discussion regarding what was meant by double access road and how developments on N Maple were exempt from that requirement except to have an alternative fire access.

Councilor Smith said the two traffic studies were the evidence for traffic, however that didn't seem to be the reality as the road was more like a trail. The development would take away from the niceness of the trail road, but there would be more safety aspects added. The property would be developed at some time, however.

Councilor Dale asked if the offsite improvements would be done with phase one.

Mr. Brown said yes, the improvements would be done in phase one before the homes were developed.

Councilor Dale was empathetic to the traffic issue, but he thought the proposal would be a substantial improvement to the current conditions on N Maple and make it a lot safer street. He did not think there was compelling evidence to overturn the approval.

Councilor Hensley had not found any criteria that the application did not meet. She thought the Planning Commission made the correct decision. She thought the City should have known about the conservation easement and let the applicant know. The condition was a good compromise and she was in support of upholding the Planning Commission's decision.

There was discussion regarding whether or not to add conditions regarding the fire access on the Logging Road.

Councilor Parker would like pedestrian and bicycles to be counted and to require protected bike lanes. That was not part of the criteria, and he had not found enough evidence to overturn the approval.

Councilor Heidt was a neighbor of this area and this was the hardest decision she had to make since she had been on Council. She thought the criteria had been met and she would vote in favor of it even though she did not want to.

Councilor Spoon agreed that the Council's job was to decide if the application met the criteria not whether it was a development they would want in their neighborhood.

**\*\*Councilor Smith moved to uphold the decision of the Planning Commission and approve file no. SUB 17-05 seven acres subdivision located at 3500 N Maple Street with an additional condition that the applicant must comply with the Canby Landing Conservation Easement. Motion was seconded by Councilor Hensley and passed 6-0.**

**RESOLUTIONS & ORDINANCES: Ordinance 1469 - \*\*Councilor Dale moved to adopt Ordinance 1469, AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 16.110 BY CHANGING THE NAME OF THE HISTORIC REVIEW BOARD TO THE HERITAGE AND LANDMARK COMMISSION AND ADDING A NON-VOTING MEMBERSHIP POSITION OF A HIGH SCHOOL STUDENT RESIDING WITHIN THE CANBY SCHOOL DISTRICT BOUNDARY. Motion was seconded by Councilor Heidt and passed 6-0 by roll call vote.**

**NEW BUSINESS: Findings, Conclusion & Final Order TA 17-01, Changing the Name of the Historic Review Board to the Heritage and Landmark Commission and Adding a Non-Voting Membership Position of a High School Student Residing Within the Canby School District Boundary -**

**\*\*Councilor Hensley moved to adopt the Findings, Conclusion & Final Order for TA 17-01. Motion was seconded by Councilor Spoon and passed 6-0.**

**ADMINISTRATOR'S BUSINESS & STAFF REPORTS:** None.

**CITIZEN INPUT:** None.



**ACTION REVIEW:**

1. Approved the Consent Agenda.
2. Upheld the Planning Commission decision and approved File No. Sub 17-05.
3. Adopted Ordinance 1469.
4. Adopted the Findings, Conclusion & Final Order for TA 17-01.

There was no Executive Session.

Mayor Hodson adjourned the Regular Meeting at 12:15 a.m.

Kimberly Scheafer, MMC  
City Recorder

Brian Hodson  
Mayor

Assisted with Preparation of Minutes - Susan Wood