

**CANBY CITY COUNCIL
REGULAR MEETING MINUTES
October 16, 2019**

PRESIDING: Mayor Brian Hodson

COUNCIL PRESENT: Tim Dale, Shawn Varwig, Sarah Spoon, Greg Parker, Trygve Berge, and Traci Hensley

STAFF PRESENT: Scott McClure, City Administrator; Joseph Lindsay, City Attorney; Melissa Bisset, City Recorder; Bryan Brown, Planning Director; Ryan Potter, Associate Planner; Jerry Nelzen, Public Works Lead

OTHERS PRESENT: Greg Perez, John Gunter, Doug Poppen, Scott Taylor, Ken Buckles, Virginia Weller

CALL TO ORDER: Mayor Hodson called the Regular Meeting to order at 7:00 p.m. in the Council Chambers followed by the opening ceremonies.

Hometown Hero Presentation – Mayor Hodson presented the Hometown Hero Award to Greg Perez recognizing his community leadership.

Councilor Hensley read the nomination for Greg Perez. Mayor Hodson read the other nomination letters.

Mr. Perez thanked everyone for the honor.

COMMUNICATIONS: None

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS: John Gunter, Canby resident, spoke on the seven acre subdivision application on Maple Street that was approved by the Planning Commission and had been appealed to the City Council. He had spoken at the City Council hearing on the appeal in January 2018. At that time the Council upheld the Planning Commission's decision with the addition of one condition of approval. That condition was the applicant must comply with all of the conditions of the Canby Landing Conservation Easement. The condition could not be met because Oregon Department of Fish and Wildlife would not permit the construction of water/sewer lines in the conservation easement area. He thought the project should not go forward and the applicant should resubmit or withdraw the application.

Scott Taylor, Canby resident, had testified both at the Planning Commission and City Council hearings about the subdivision on Maple Street. He expressed concern about the process and lack of communication with the residents on Maple Street. He questioned if the process had been transparent. The agreement with ODFW and Bonneville had taken years to negotiate. It was set up so the City could purchase the old logging road on the property. The rerouting of the water/sewer lines was a critical shift in the conditions of approval and the conditions were not followed. He asked that the decision be reconsidered to make sure the plans still made sense. He thought SDCs, not tax money, should be used for any roadwork and new sizing of pipes if 34th Place was dug up.

Doug Poppen, Canby resident, stated that at least two of the conditions of approval for the subdivision on Maple Street were not being met for the water and sewer lines. He questioned why no one from the

City or Council knew about the Master Plan and conservation easement during the application process. In the Master Plan this site was proposed to be a future park. He thought the application would have been denied if someone had brought up the Master Plan and conservation easement. He was concerned about the lack of communication from the Planning Department to the residents on Maple Street.

Mayor Hodson asked that the City Administrator and the Planning Department work together to address the concerns.

Councilor Parker asked if staff could look at the systems in place for letting the Planning Commission and Council know when adjustments were made to approved land use decisions.

Joe Lindsay, City Attorney, said this application was appealed to LUBA and LUBA upheld the decision for approval made by the Planning Commission and Council. It was up to the applicant to work with ODFW on this issue and the City was not a party to that. If the applicant could not use the conservation easement area, they would have to get an easement from a private property owner or go through the public right-of-way on 34th Place.

There was discussion regarding the process for getting permits and bringing utilities to the property.

Mr. Taylor asked about the intent and if it was to tear up 34th Place to put in the lines for the development. He did not think tax payers should have to pay for that.

Mr. Gunter said the Council added a condition to this application and if the condition could not be met, the application was not approved.

Mayor Hodson agreed that was what he understood. If the developer could not meet the conditions of approval, then they would need to reapply with the changes. He asked staff to bring back an update on this project and he would make sure that information was passed on to the residents on Maple Street.

Greg Perez, Canby resident, stated that there would be a November 11th Veterans Day celebration at the Vietnam Memorial Park and there would be a flyover.

Ken Buckles, Canby resident, shared a story about a Vietnam vet that he met who was from New Zealand and how in 2008 New Zealand had a national Vietnam Veteran Apology Day. He commented on what Vietnam vets had done to help other veterans as they returned from service and how he had gone out to the Canby community to get support for a Canby Vietnam Veteran Apology Day. He encouraged everyone to wear a special apology t-shirt on November 11 to show support for this idea.

MAYOR'S BUSINESS: Mayor Hodson shared that there were six Committee/Board openings. He reported on the Clackamas County Coordinating Committee where the Burnside Bridge replacement design and costs were discussed. This would retrofit the bridge to withstand the Cascadia earthquake. They also discussed the Strategic Investment Fund guidelines for the Vehicle Registration Fee. Region 1 Area Commission on Transportation had an update from the Autonomous Vehicle Task Force. He expressed to that Commission the displeasure of not being included in the congestion pricing conversation. They also had discrimination and harassment training. At the Parks and Recreation Advisory Board meeting, they had a discussion with the CAPRD Board future park planning. He had a conversation with the Molalla State Park Ranger and Regional State Park Supervisor about master planning Molalla State Park. They would be focusing on preservation and restoration.

COUNCILOR COMMENTS & LIAISON REPORTS: Councilor Spoon said the Bridging Cultures' Thanksgiving Dinner was on November 23. On Halloween there would be the Downtown Spooktacular. CTV5 was hosting an event at the library on November 14. First Thursday would be on November 7. Scarecrows were beginning to go up downtown and voting would be available on the Hot Rod Dreamworks website.

CONSENT AGENDA: **Councilor Dale moved to adopt the minutes of the October 2, 2019 City Council Regular Meeting and approve the limited on-premises liquor license application for Canby Pioneer Chapel. Motion was seconded by Councilor Hensley and passed 6-0.

PUBLIC HEARING: Appeal (City File NO. APP 19-01) of Planning Commission Decision for Applications DR 19-01/ CUP 19-01/ VAR 19-02 – AT&T Wireless Communications Facility (Stealth Monopole Tower) – Mayor Hodson read the public hearing format.

Conflict of Interest

Councilor Berge – No conflict, plan to participate.
Councilor Parker – Was an AT&T customer, plan to participate.
Councilor Hensley – No conflict, plan to participate.
Councilor Dale – No conflict, plan to participate.
Councilor Varwig – No conflict, plan to participate.
Councilor Spoon – No conflict, plan to participate.
Mayor Hodson – No conflict, plan to participate.

Ex Parte Contact

Councilor Berge – None.
Councilor Parker – None.
Councilor Hensley – None.
Councilor Dale – None.
Councilor Varwig – None.
Councilor Spoon – Drove by the site daily. She had a couple people tell her they got poor cell service.
Mayor Hodson – No contact, drove by the site a couple of times.

Staff Report: Ryan Potter, Associate Planner, presented the staff report. This was an appeal of a Planning Commission decision to deny approval of an AT&T telecommunications facility. He explained the proposed project which included site and design review, a Conditional Use Permit, and a major variance. He discussed the proposed location for the monopole tower, timeline of the application process, new site plan with additional dimensions, and public comments that had been received. The Council could reject the appeal and confirm the Planning Commission's decision, overturn the Planning Commission's decision and approve the project, or remand the decision back to the Planning Commission. He reviewed the staff report that was presented to the Planning Commission including the applicable criteria, existing conditions, proposed facility, renderings, target search ring, projected new coverage, applicable criteria, proposed site plan, conditions of approval, correspondence received, and staff's recommendation for approval.

Mayor Hodson asked about the reasons it was turned down. Mr. Potter responded that the Planning Commission had concerns regarding health effects associated with this type of technology especially since it was near the high school, the close proximity of the pole to the gas pumps on the site and safety if the pole broke and fell on the pumps, and whether or not a different site could be available to accommodate this facility.

Councilor Hensley asked about the fall height and distances from the pumps and how the minutes from the Planning Commission meeting said it was a different distance than what was presented tonight. Mr. Potter noted that they did not have a detailed diagram of the dimensions for the Planning Commission meeting. It was an estimate, and since then the applicant had submitted the exact dimensions.

Councilor Berge asked about the search for another location especially a truck sales business on 99E. Mr. Potter said the applicant had talked to other properties owners in the area and there was no one willing.

Mayor Hodson opened the public hearing.

Applicant: Sara Springer, representing the applicant, stated the applicant had appealed because they thought there was a missed opportunity to have a greater amount of discourse and exchange of information with the Planning Commission. There were three concerns posed by the Planning Commission: alternative sites, setbacks, and environmental considerations. They had continued to look at alternative sites after the Planning Commission meeting and had reached out to the truck sales property owner as well as other property owners. It was confirmed that none of them were interested in pursuing a wireless facility on their property. There were no properties in the targeted search area that was necessary for this facility that would meet the setback requirements. In this application they requested two changes to the setbacks from property lines. Even without the breakpoint technology of the tower, the oil tanks were outside of the fall zone. The breakpoint did not have to be at the midpoint of the tower, and it could break at 80 or 90 feet depending on what the fall zone radius was. The breakpoint for this facility could be 65 feet which would avoid falling on any uses on the property. The structural analysis for the building permit would be stamped by an engineer to guarantee the breakpoint design. Federal law did not allow local jurisdictions from making decisions on an application based on health or environmental concerns if the applicant chose to meet FCC requirements. They were far below the FCC EF emissions standards for the facility. They were happy to provide more information and educational material related to how these facilities operated.

Councilor Varwig asked how often a tower collapsed. Ms. Springer did not have that information. She explained that the tower would have a rigorous design and it would be built to code. The breakpoint technology was rarely used in this area because they did not have the weather conditions as in other parts of the country.

Councilor Berge asked if a geotechnical report had been done. Ms. Springer said that was not a requirement for the application.

Proponents: None

Opponents: Virginia Weller, Canby resident, thought the tower was unattractive and very ugly. She stated that these types of towers that were made to look like trees did not look real or natural and this tower would stick out obtrusively. They should find a placement that was not visible from 99E. She thought that the Planning Commission's decision should be upheld.

Rebuttal: Ms. Springer stated that aesthetics should not be considered as that was not one of the reasons for the Planning Commission's decision. She understood that they could never please everyone and agreed it was not a real tree. The design was based on the Code requirements for a stealth facility. The applicant had worked with staff on the design to make it look more tree-like and aesthetically pleasing.

Mayor Hodson closed the public hearing at 8:43 p.m.

Councilor Spoon suggested an additional condition that the breakpoint be at a certain point so it would not hit anything on the site.

Councilor Dale asked if the 130 foot setback was a local requirement or a federal standard. Mr. Potter said it was a local requirement in the Code.

Councilor Dale said safety was not one of the requirements in the City's Code, but did it need to be since public safety was always an overriding concern of a municipality. Joe Lindsay, City Attorney, stated safety was a Comprehensive Plan policy of the City and was an overarching goal. It would always be a consideration.

Councilor Dale asked about the legal obligation when it came to granting variances. Mr. Lindsay said variances were requests for things outside of what the Code allowed outright. It was permissive, not a shall but a may, and there were conditions that the applicant had to meet. They had to make sure it was not an undue burden to meet the conditions. Mr. Potter clarified any site in this area would require a variance to the 130 foot setback. This request was a major variance as it was a 90% variance. It was up to the Council to determine if that was reasonable.

Councilor Spoon stated there was a neighborhood meeting where the setbacks could be discussed, but no one attended that meeting. Since then, had there been any objection from neighboring properties? Mr. Potter said no.

Councilor Hensley said with the new information about the distances and the breakpoint technology, she thought the safety issues brought up by the Planning Commission had been addressed. They had been told the health effects could not be considered. She appreciated the comments made about the aesthetics, but she thought the criteria had been met and was in favor of overturning the Planning Commission's denial.

Councilor Spoon agreed they could not consider health effects and the measurements submitted resolved the proximity to the gas pumps. She would like to add a condition that the breakpoint be at a height where they would not hit the pumps. The applicant had done the work to find other locations, but no property owners were willing. There were worse locations, and she did not think it would be as noticeable on this site. She understood the aesthetic issue, but she thought a stealth pole was preferable to a regular pole. Adding the cell tower was a net public benefit. She also was in support of overturning the Planning Commission's decision.

Councilor Varwig concurred that the Planning Commission's denial should be overturned. He understood the health and aesthetic concerns, but they could not judge this application on those items. He thought it would be a benefit to the community to have better cell coverage.

Councilor Dale did not think the setbacks were an issue. He was not persuaded that there was a procedural failing by the Planning Commission to justify not granting the variance because it was a permissive granting. He did not think the City was obligated to accommodate the optimal desires of the applicant for a location. He was not persuaded that this was the one and only site and all the alternatives had been looked into. He thought the Planning Commission's position on the radiation safety concerns was untenable, but it was not pivotal to their decision. He thought that the Planning Commission's decision should be upheld.

Councilor Parker thought that the setback was reasonably addressed. There was no evidence that granting the major variance would have a negative effect. They had a limited scope in what they could look at for approval.

Councilor Berge agreed with the Planning Commission's standpoint on the location and safety risks. There were other locations where the pole could be located. It would also hinder any future development on the property. Even though it would be stamped by an engineer, they did not know if the breakpoint technology would work. He was concerned about the safety of the kids walking to and from school. Giving the applicant their prime location was not the City's job and granting a major variance was not their job if the Planning Commission was opposed to it. He would vote to uphold the Planning Commission's denial.

Councilor Spoon noted that this was something the land owner had agreed to do on his property. She asked about the testing of the breakpoint technology.

Ms. Springer clarified that the breakpoint technology would be stamped by an engineer to verify it would operate correctly. She did not know what kind of testing was done. There would be a geotech report for this site as part of the building permit process.

****Councilor Spoon moved to overturn the Planning Commission's denial of the request based on one or more of the findings listed above, amending Condition #8 to add language that ensured the breakpoint disallowed any contact with the nearest pump in the event of a break, and including the original conditions of the approval offered in the staff report at the Planning Commission. Motion was seconded by Councilor Parker and passed 4-2 with Councilors Dale and Berge opposed.**

RESOLUTIONS & ORDINANCES: Resolution 1323 – Bryan Brown, Planning Director, explained that one of the conditions of the grant application was that the governing body should pass a resolution in support of the grant application. This was for development of an Economic Opportunities Analysis.

****Councilor Hensley moved to adopt Resolution 1323, supporting the submission of a technical assistance grant to the Department of Land Conservation and Development. Motion was seconded by Councilor Varwig and passed 6-0.**

CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS: Scott McClure, City Administrator, stated that he had been very busy meeting key players and projects. He had also been having meetings with Department Directors and community groups.

CITIZEN INPUT: Ms. Weller thought that neighbors should have been notified in person of the cell tower application. She did not think that they knew and would not be happy about the decision.

Mayor Hodson explained the process and noted that neighbors within 500 feet of the property were noticed of the public hearing.

Ms. Springer stated that staff had been great to work with and thanked the Council for being healthy, professional, and functional.

ACTION REVIEW:

1. Approved the Consent Agenda.
2. Overturned the Planning Commission's denial of the request for a stealth monopole tower.
3. Adopted Resolution 1323.

There was no Executive Session.

Mayor Hodson adjourned the Regular Meeting at 9:29 p.m.



Melissa Bisset
City Recorder



Brian Hodson
Mayor

Assisted with Preparation of Minutes - Susan Wood