

**CANBY CITY COUNCIL  
CITY COUNCIL WORK SESSION  
October 3, 2018**

**PRESIDING:** Mayor Brian Hodson.

**Council Present:** Tyler Smith, Greg Parker, Tim Dale, Tracie Heidt, and Sarah Spoon. Councilor Traci Hensley was absent.

**STAFF PRESENT:** Rick Robinson, City Administrator; Joseph Lindsay, City Attorney; and Kim Scheafer, City Recorder.

**OTHERS PRESENT:** None.

The Work Session was cancelled due the Executive Session running long.

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**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
October 3, 2018**

**PRESIDING:** Mayor Brian Hodson.

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

**STAFF PRESENT:** Rick Robinson, City Administrator; Joseph Lindsay, City Attorney; Jorge Tro, Police Lieutenant; Rod Grafe, Municipal Court Judge; Kathryn Heulscher, Police Officer; Irene Green, Library Director; Bryan Brown, Planning Director; and Kim Scheafer, City Recorder.

**OTHERS PRESENT:** Kyle Lang, Gregory Williams, Frank Cutsforth, Butch Busse, Bob Cambra, Kamet Sanders, Dennis Richey, Mike Grant, Mike Agee, Carol Rosen, Shawn Varwig, Pat Sisul, Walt Daniels, Scott & Teresa Sasse, Roland Iparraguirre, Kim & Betsy Redifer, Micki Paul, Roger Swanson, Bill Hill, Barb & Craig Carpenter, Kevin & Sarah Hayes, Keri & Gary Morris, Roger Swanson, Chris Waffle, Bill Fenton, Marjorie Stathes, Richard Montecucco, Roger Steinke, Kelsey Cordill, Jeff Waters, and Jason Montecucco.

**CALL TO ORDER:** Mayor Hodson called the Regular Meeting to order at 6:00 p.m. in the Willow Creek Conference Room.

**\*\*Councilor Dale moved to go into Executive Session pursuant to ORS 192.660(2)(h) Litigation. Motion was seconded by Councilor Heidt and passed 5-0.**

**OPENING CEREMONIES:** Mayor Hodson reconvened the Regular Meeting at 7:08 p.m. in the Council Chambers followed by the opening ceremonies.

Swearing in of Police Officer – Lieutenant Jorge Tro introduced Officer Kathryn Heulscher.

Officer Heulscher introduced her family and friends in attendance.

Lieutenant Tro spoke about Officer Heulscher's interests and background.

Rod Grafe, Municipal Court Judge, swore in Officer Kathryn Heulscher.

Walk and Bike to School Day Proclamation – Mayor Hodson read a proclamation proclaiming October 10, 2018 as Walk and Bike to School Day in Canby and presented it to Councilor Parker.

Manufacturing Day Proclamation – Mayor Hodson read a proclamation proclaiming October 5, 2018 as Manufacturing Day in Canby and presented it to Kyle Lang, Chamber Director.

Mr. Lang said Manufacturing Day brought local manufactures to the school and exposed students to the art of making in many different forms. This was an essential skill to the local economy. It also gave recognition to local manufacturers.

Mayor Hodson said Resolution 1298 was being moved up on the agenda.

**COMMUNICATIONS:** None.

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** Mike Grant, Oregon City resident, was running for Clackamas County Assessor in November. He explained how this office was one of the most important offices in the County and how he had experience and knowledge to serve in this role.

Mr. Lang said on October 22 from 5-7 p.m. there would be a Canby Civic Block community visioning session in partnership with the City, Chamber, and Hanlon Development. It would be located in the retail space of the Dahlia Building.

**MAYOR'S BUSINESS:** Mayor Hodson attended the League of Oregon Cities Conference last week. The County was done with their feasibility study regarding the Canby Ferry and would be doing a presentation at the first of the year.

**COUNCILOR COMMENTS & LIAISON REPORTS:** Councilor Spoon attended the League of Oregon Cities. She read a statement regarding sexual assault.

Councilor Heidt said the Library would be closed on October 8 so staff could attend training.

**CONSENT AGENDA: \*\*Councilor Dale moved to adopt the minutes of the September 19, 2018 City Council Work Session and Regular Meeting and a Change of Ownership Liquor License Application for FOB Taproom. Motion was seconded by Councilor Heidt and passed 5-0.**

Resolution 1298 – Greg Williams, Business and Community Services Deputy Director for Clackamas County, did a PowerPoint regarding amendments to the Library District Master Intergovernmental Agreement. The IGA was originally written anticipating that the City of Gladstone would construct and operate a library to serve patrons of the Oak Lodge and Gladstone service areas. These plans did not come to fruition and eventually became the subject of litigation between Clackamas County and the City of Gladstone. In October 2017, the County and Gladstone entered into a settlement agreement. The County agreed to construct and operate two new facilities, one in Gladstone and one in the Oak Lodge service area. In order to implement the agreement, changes had to be made to the IGA. He then described the proposed amendments. There would be no changes to the distribution formula or to the

current library service area boundaries. The amendments must be adopted by the Board of County Commissioners and City Councils of two-thirds of the library cities by October 31.

Councilor Heidt asked about the terms of the agreement being consistent with what the voters approved when they voted in the library district.

Mr. Williams said there were three documents, Ballot Measure 3-310, Master Order, and Master IGA. These amendments did not change the ballot measure or the Master Order. There were ambiguities and questions surrounding the use of funds and a task force was being assembled to look into these issues.

Councilor Spoon asked if he thought the current agreement was equitable to cities like Canby.

Mr. Williams thought the settlement agreement was equitable. The other task force would be looking at the equitable distributions of funds. They were working now on the composition of that task force, reporting procedures, and the charge of the group. He thought the Task Force would begin meeting in January.

Mayor Hodson asked how many cities had approved these amendments. Mr. Williams said seven as of today. If the Council passed this tonight, the County would meet the two-thirds requirement.

Councilor Smith said the Library Board had other changes they would like to see made to the document, and he asked why Canby should support this.

Mr. Williams said the way the IGA was written was that any amendments had to be passed by two-thirds of the library cities. He thought it would benefit all of the libraries in the district to provide library service to the residents in Gladstone and Oak Lodge who had been paying their library taxes and had not been receiving service. Raising the level of service in these branches would raise the level of service in all of the district.

Irene Green, Library Director, said Canby's library was strong with the LINCC cooperative and all the libraries watched out for each other. The Library Board wanted it known that they did not think the County should have settled with Gladstone.

Rick Robinson, City Administrator, said it was his recommendation to approve the resolution as it benefited the entire library system.

Councilor Spoon did not think the distribution was equitable and they were being asked to solve another city's problems with no guarantee that Canby's problems would be solved. She asked if Canby received any funds for construction or operation when they built the library.

Mr. Williams said yes, the City received \$1 million for construction.

Mr. Robinson said the City also received annual contributions for operation. They were supporting both City residents and non-City residents in their service area and those residents might use other libraries in the district as well. He cautioned about making a decision that would restrict another public agency from utilizing their discretionary funding in a manner that the agency thought would best serve their constituency.

Councilor Dale said Canby had received \$1 million from the County for a new library, and he wanted the County to know Canby had struggled to construct their library and had to be frugal and took on debt to do so. There was concern that there was disproportionate treatment for those cities who had constructed their own libraries and what the County was proposing to do for these two areas. He was also concerned about what it would mean for the County to be a library city in terms of voting power and compliance to standards. There was a perception that the County had a largess that Canby did not enjoy and would be able to fulfill the requirements with ease whereas Canby felt continual pressure to do more and to do better.

Mr. Williams said the County had similar budget constraints and had to decide what services they would provide with limited resources. There would be a fixed amount of money to operate the two branches proposed and he did not anticipate any extra money being allocated to those operations. They would be in the same position as every other library city.

Councilor Dale said he was also concerned about the County being on both sides, as a library city and member of the advisory committee and as the collector and disbursing officer of the funds. He would like the County Commission to know that their credibility was being questioned, especially in asking other cities to bail them out on a litigious matter that should have been handled differently.

There was discussion regarding where the funds would come from if the expense for operations exceeded what these two new branches would receive from the district.

Mr. Robinson explained the County could choose to either cut services or allocate a portion of the County's budget to supplement.

Councilor Heidt was in support because she thought it would benefit everyone in the district.

**\*\*Councilor Heidt moved to adopt Resolution 1298, A RESOLUTION ADOPTING AMENDMENT NO. 3 TO THE COOPERATIVE INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF CANBY (CITY) AND CLACKAMAS COUNTY LIBRARY DISTRICT AND MEMBER CITIES. Motion failed for lack of second.**

Councilor Smith said he was in support of the Library Board's recommendation.

**PUBLIC HEARINGS:** ANN 18-02/ZC 18-02 (Cutsforth) – Mayor Hodson read the Annexation Public Hearing Format.

#### **Conflict of Interest**

Councilor Smith – No conflict, plan to participate.  
Councilor Parker – 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 Dale – No contact.

Councilor Heidt – No contact.  
Councilor Spoon – No contact.  
Mayor Hodson – No contact.

**Staff Report:** Bryan Brown, Planning Director, said the intent of the application was to annex 9.55 acres into the City and rezone it from County RRFF5 to City R-1. No concept plan or development agreement was required for the annexation. He discussed the location of the property, which was adjacent to 99E and Territorial Road. The Comprehensive Plan designated the property as LDR, low density residential, which was consistent with the R-1 zone. This request did not include any development application, however the applicant submitted a tentative plat that showed how the property might be developed into 22 lots. The intent was to infill an area that was already surrounded by existing single family residential with stubbed streets already aimed at coming into this area. The applicant would be connecting to those existing streets to fill out the area. There was a deep ravine on the west end of the property that was undevelopable. There would be a connection to Territorial Road as well. The two existing homes would be preserved. Right-of-way for Territorial Road would be included in the annexation. He then discussed the review criteria. The applicant had submitted a three year projected lot inventory. Available platted lots and the expected consumption rate were used to determine the sufficient supply of available land. The City was nearing the three year buildable land supply that was the standard used. The annexation was logical and fit in with the character of the neighborhood. There were adequate facilities to serve the site. The Planning commission recommended approval of the application.

Mayor Hodson opened the public hearing at 8:25 p.m.

**Applicant:** Frank Cutsforth said he had been living on this property since 1984 and had purchased it in 1975. Since then, development had occurred all around the property. He had planned that it would be developed one day.

Pat Sisul, Sisul Engineering, said the property was an irregular boundary of the City. Annexation of the property would bring in the only piece left adjacent to Territorial Road that was not in the City and would square off the corner. The development of the nearby subdivisions had stubbed public streets and utilities to the site. Annexation would allow for the three dead-end streets to extend in a logical fashion through the development and looping of current dead-end water mains. Since this was only an annexation request, no trees would be cut down and no buildings would be demolished at this time. The deep ravine had water flowing through it and could not be developed. The trees that were in that area would be preserved and there could be other trees saved around the remainder of the property. However, it was too soon in the process to discuss specific trees. There would be 20 new lots on the site, and two existing lots would be preserved. That would be a 2-3 month supply of building lots in Canby. He discussed the buildable lands inventory analysis, and how it was unknown when and if some of the lots would be developed. He thought it made sense to bring this property in at this time. The proposed annexation was consistent with the Comprehensive Plan, there were adequate facilities and services, and the timing was right.

**Proponents:** None.

**Opponents:** None.

**Rebuttal:** None.

Mayor Hodson closed the public hearing at 8:38 p.m.

**\*\*Councilor Parker moved to approve the Cutsforth's Annexation and Zone Change File ANN 18-02/ZC 18-02 and upon annexation, the zoning of the subject properties to be designated as R-1, as indicated by the Canby Comprehensive Plan Map. Motion was seconded by Councilor Dale and passed 5-0.**

ZC 18-04 (Busse) – Mayor Hodson read the Public Hearing Format.

### **Conflict of Interest**

Councilor Smith – No conflict, plan to participate.

Councilor Parker – 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 – A resident called him, but he declined the call.

Councilor Parker – Drove by the site frequently.

Councilor Dale – Walked by the site regularly and lived by it. Received multiple contacts from neighbors.

Councilor Heidt – Was in contact with a Planning Commissioner after the Planning Commission meeting.

Councilor Spoon – Drove and walked by the site regularly and had spoken with neighbors and with people on both sides of the matter.

Mayor Hodson – No contact. Lived close to the site.

Joe Lindsay, City Attorney, asked if they could participate and judge the evidence fairly with the contacts they had made.

Councilors Dale and Spoon said yes, they could.

**Staff Report:** Mr. Brown said this was a request to rezone property located on the corner of SE 13<sup>th</sup> Avenue and S Ivy Street. It was 2.59 acres that was zoned R-1, low density residential, and the applicant proposed to rezone it to C-R, residential commercial. The most important criterion with any zone change was if it followed the Comprehensive Plan designation. In 2003, a Comprehensive Plan Map amendment rezoned the property to R-C. It was brought into the City as an Area of Special Concern K, explaining why they thought in 2003 that the R-C land use designation would be an appropriate use for the property. The only application before them was for a zone change, not development. The Planning Commission's recommendation was for denial as they thought the conditions in the area had changed in the last 15 years. After reviewing all of the documents, staff thought the C-R zone was an appropriate request for this property. There was a concurrent development application, but that was not being reviewed tonight. A retail commercial use would be one of the highest uses for the property and the property was by two of the busiest arterial streets in the community. A rezone did not require a traffic study and the Transportation Planning Rule analysis showed the Transportation System Plan took into account the proposed zoning of the property. Conditions of approval could be placed on the zone change, but staff had found no infrastructure deficits for the property.

Mayor Hodson asked why the property was designated as an area of special concern.

Mr. Brown said one of the primary reasons was the City was in Periodic Review where land use and the Comprehensive Plan were evaluated to make sure they were in alignment with state land use goals. In doing so, the City was looking for areas where a wider variety of housing types could be provided. This area was one of those properties with a willing property owner. The rezone did not accompany the change to the Comprehensive Plan map in order to give the property owner the flexibility to either develop with the R-1 zone or C-R zone. The R-C designation was a placeholder in the text of the Comprehensive Plan.

Mayor Hodson asked if the TSP took into account the worst case scenario for how the corner would be developed. Mr. Brown said it used a reasonable worst case scenario. There were a limited number of commercial uses that could go in, such as a daycare or assisted living facility.

Mayor Hodson asked if it took into account the development planned nearby.

Mr. Brown said the TSP looked at the Comprehensive Plan designations for all of the properties in the City and based their models on full development in a 20 year horizon.

Mayor Hodson asked if there was a deficit of facilities for that corner.

Mr. Brown said at the pre-application meeting the applicant did not think there was a problem with serving this use.

Councilor Smith asked if there was a development concept plan for this property.

Mr. Brown was not sure.

Councilor Smith did not think the C-R zone would fit on this property.

Mr. Brown said they would be small, personal services type of uses that would serve a neighborhood area. A convenience store or gas station would not be allowed in this zone.

Councilor Spoon asked about the conditions that could be placed on the zone change.

Mr. Brown said they could be sidewalk improvements or water or sewer line improvements.

Councilor Spoon asked about the reasons this was designated as an area of special concern.

Mr. Brown stated that the people at that time thought either residential or commercial would be appropriate for this property.

Councilor Spoon asked about the amount of industrial development when this property was designated an area of special concern.

Mr. Brown said most of the industrial development had happened in the last few years and people did not use 13<sup>th</sup> Avenue as much back then as it was used today.

Councilor Spoon asked if the language stating a zone change would be required from R-1 if the property was redeveloped obligated them to a particular zone change or was it stating a zone change would be required.

Mr. Lindsay said the way he read the Special Area “K” language was permissive to give a lot of flexibility. They were leaving it open as to what zone it could be changed to.

Councilor Smith thought that language meant that the redevelopment application should be submitted at the same time as the zone change so they would know what the use for the property would be.

Mr. Brown said it was indicated specifically that they wanted to give the property owner the flexibility to develop the property as it was currently zoned or allow them to rezone to the placeholder C-R zone.

It was clarified that the Council would be the ones to make the decision on which zoning designation this property should have.

Councilor Heidt clarified there was a lot of high density around town, but it was tied up right now in low density development. She wanted to know how that happened.

Mr. Brown explained it was a future designation for those properties. They had changed the Comprehensive Plan designations to meet state land use goals so that in the future property owners could transition to a different use. Those properties have not been rezoned, only the Comprehensive Plan designations were changed to indicate a future transition was appropriate. The state land use goals required a balance and a variety of housing types in the City.

Councilor Heidt said there was R-1.5 surrounding this property and the area would become higher density.

Councilor Dale asked if Clackamas County made a determination on access off of Ivy for this parcel.

Mr. Brown said yes, they had said the City’s driveway separation standard was to be used. There was not enough frontage on Ivy to meet that standard, but the County would allow an emergency access on Ivy which would help with the developability of the property.

Councilor Dale clarified there were not sidewalks on all sides in that area.

Mayor Hodson opened the public hearing at 9:26 p.m.

**Applicant:** Butch Busse had been a resident of Clackamas County for most of his life. Over the last 20 years his main focus had been rural communities. He was hoping to continue that relationship in Canby.

Roland Iparraguirre, attorney representing the applicant, stated the Planning Commission reviewed this application in September and recommended denial. He addressed the issues that had been raised by the Planning Commission. The first was traffic and parking. Several Commissioners and local residents thought the development proposal would generate too much traffic and possibly create congested or unsafe conditions on the roads. This application was not for development and the scope of the hearing was for a zone change only. A traffic study was performed in July and the engineers concluded that the zone change and development proposal would not degrade the service levels of the surrounding streets or create unsafe conditions. No off-site mitigation was recommended. He submitted a copy of the traffic

study into the record. The second issue was that times had changed since the 2003 Comprehensive Plan amendment and what might have been appropriate in 2003 no longer fit the neighborhood. He understood how people liked their neighborhood and did not want it to change. Staff had recommended approval of the zone change request basing the recommendation on aligning with future land use designation for the property as envisioned by the Comprehensive Plan. All necessary public services were available. The C-R land use designation for this property was assumed in the 2010 Transportation System Plan. The transportation parameters of state law were satisfied and the zone change was consistent with the TSP and Comprehensive Plan. The 2003 Comprehensive Plan text amendments sought out areas that could be C-R zones to satisfy the mandated state land use planning process. The City had officially operated and administered all activity related to the subject property as if the property was already zoned C-R. Nearby residents in Dinsmore Estates wanted to retain the R-1 zoning. Dinsmore Estates was built in 2005 and was adjacent to this property. When it was being developed, the property owner of this subject property had asked Dinsmore Estates for a full size access road between the two properties. Dinsmore Estates fought that request relying on the fact that the City had designated the property as C-R. The City sided with Dinsmore Estates because the subject property was zoned as C-R and a full access road was not required. Mr. Busse came to the City months ago with his plans to develop this property and the City guided him through the process using the C-R zoning. Shortly before the Planning Commission meeting, it was discovered that the property was not zoned C-R, but zoned R-1. The application complied with the Comprehensive Plan and statewide goals. Staff had recommended approval, and he requested approval tonight.

Councilor Smith asked how they had not known that this was zoned R-1.

Mr. Iparraguirre said the City had operated under the guise of it being C-R zoned for 15 years and processed applications as if it was C-R. Title companies had issued reports that had the designation of this property was C-R.

Commissioner Smith thought the area of special concern language stated that the zoning and development applications needed to be done simultaneously to match the zoning with the proposed use.

Mr. Iparraguirre agreed with staff that the language was meant to be a placeholder to provide flexibility for the property owner and future development of the property.

Mr. Busse said if someone spent a lot of money designing a development before the zone change was approved, it was putting a lot of effort and financing into the process before they knew they would be able to do that development. If the zone change was approved, they would be able to make the development fit the zoning of the property. The zone change was the first step.

Mr. Brown said the day of the Planning Commission meeting a long time resident contacted staff and said they never remembered the property being changed to the zone. Staff had never had a reason to suspect that the zoning maps were not correct. Staff went back and pulled the ordinances and Comprehensive Plan text amendments and found the zoning had never been changed. All of the other properties at the time had been changed except this one.

Mayor Hodson asked what they intended to build on the property.

Mr. Busse stated they wanted to build attached townhomes.

**Proponents:** Mike Agee, real estate agent representing the land owner, submitted notes from the pre-application meeting that was done by the land owner where staff had told him that the property was zoned C-R. This was the land owner from 2003 who was told that the property had been rezoned to C-R. He had listed the property many times and had verified the zoning through the City and title companies. Three hours before the Planning Commission meeting, they were notified that someone had brought to staff's attention that there was a problem. He had people interested in buying the property and they had all been told it was zoned C-R. The applicant bought the property after reviewing the pre-application meeting notes and wanted to do a townhome project and did the design for that project. That process had to be put on hold when they found out about the zoning issue, and they had to submit a zone change application. Decisions had been made on surrounding properties that affected the outcome of this property. These decisions had been made based on the zoning map that showed the property as C-R. The owner of the property was a co-applicant for this zone change and was asking for the zoning that had been granted to him in 2003.

**Opponents:** Dennis Richey, resident in Dinsmore Estates, had served as a Planning Commissioner and Public Safety Committee Chair in West Linn previously. He had problems with the intended use of the property. He thought the Council did not have all of the knowledge that the Planning Commission had when they made their decision to deny the application.

Janet Sanders had lived in Canby for 24 years and 2 ½ years ago moved to Dinsmore Estates. When she purchased that home, she was shown the stub streets and was told the adjacent property would be developed. She did not think the priority should be what a developer wanted to do with a property and the revenue they wanted to generate on the lot. She thought the area of special concern language was open to interpretation of what was needed by the City. Things had changed in 15 years. She did not think that because it had been wrong on the Comprehensive Plan map that it needed to be made right by creating another wrong.

Bob Cambra, Canby resident, opposed the request as it wasn't in the community's best interest. The zoning had not been changed in 2003 because the people at the time wanted present day officials to evaluate the request based on today's circumstances. Today a rezoning would open the opportunity for greater concentration of development and higher usage than R-1. This was one of the busiest intersections on the south side of town. There would be congestion, safety issues, and parking problems if the development went through. This was the wrong location for the concentrated usage. This development and those being built in the surrounding area would make the situation worse. He asked that the zoning remain as R-1.

An audience member asked what the Council was actually deciding. Mayor Hodson explained the application was for a zone change from R-1 to C-R.

Scott Sasse, Canby resident, said in 2003 Tom Schultz got a Conditional Use Permit to build greenhouses and sell retail. He sold the business to someone else who did the same thing. When the greenhouses were gone, it was supposed to go back to R-1. He questioned that this zoning was done in 2003. He didn't have a problem with development but wished it was different. There would be additional traffic and the traffic study shouldn't have been done in July when school was out.

Scott Sanders, Canby resident, thought the zone change should be based on the redevelopment application. The traffic study was done in July when traffic was lower. He had seen congestion and queuing issues in this area. When this was done in 2003, they thought development would occur to the

south, and it had actually gone north. The Council needed to look at the current situation when making this decision.

**Rebuttal:** Mr. Iparraguirre said this was only a request for a zone change, and there would be ample opportunity for the public to give input on the possible development of the property. There were ramifications to 15 years that they thought this was zoned C-R. He asked what the owner's rights were now that the property was R-1. There was potential for a dispute between this property and Dinsmore Estates for access. The owner should not be penalized because a mistake had been made. A lot of different uses were contemplated in the traffic study and all of them met the parameters.

Councilor Smith thought there was an access road off of SE 15<sup>th</sup> and SE 14<sup>th</sup>.

Mr. Iparraguirre was talking about an access road between the two properties. An argument was made that there should have been access as part of the Dinsmore development.

Mayor Hodson closed the public hearing at 10:17 p.m.

Councilor Heidt asked if an R-1.5 development was permissible under the C-R zone.

Mr. Lindsay explained there were outright permitted uses and conditional uses in the C-R zone and some of the outright permitted uses included what was outright permitted in the R-1.5 zone.

Councilor Spoon asked about the purpose of areas of special concern. Mr. Lindsay said it was used to call out the unique characteristics of an area and to place special requirements on the area to guide the development of these unique areas.

Councilor Smith read from the Area of Special Concern "K" language and discussed how he thought the C-R designation was already placed on the parcel. He thought at the time they realized putting a C-R zone in the middle of R-1, R-1.5, and School District might not be compatible. He thought this provision was written to require consideration of both the zone and the use at the same time.

Councilor Heidt said they knew what the applicant wanted to do with the property even though they were only addressing the zone change at this time.

Councilor Smith said they did not have all of the other requirements for the land use proposal in front of them.

Councilor Spoon said the intent of the area of special concern was to guide the development in a particular manner. She agreed that there needed to be a land use application along with the zone change to make sure the direction for this area was being followed. It was unlike most areas where a zone change was done first because it was an area of special concern. She empathized with the applicant's situation, but did not think that she was obligated to vote in a certain way due to the circumstances. She did not think C-R was the appropriate zoning for the site.

Mr. Lindsay thought the language of Area of Special Concern "K" left it open that the City might wish to have a development application along with the zone change. The language was permissive and did not require a development application. It was up to the Council whether or not to say it was necessary for their vote.

Councilor Heidt thought the language allowed both C-R and R-1.5 zoning. It could be residential or commercial.

Councilor Spoon said nowhere in the description did it indicate that was the intent.

Mr. Lindsay said the Council could interpret what the language meant today.

Councilor Parker thought the most appropriate zone for this property was R-1.

Councilor Dale said when he looked at the unique character of the area he saw a large retirement community, R-1 built to the boundaries, two schools, parks, and a busy intersection. The reality of today must be considered. He also agreed that a development proposal needed to be brought in with the zone change. He thought the highest, best, and most appropriate use for the property was R-1.

Councilor Smith agreed that R-1 was the most appropriate and compatible with the surrounding uses.

Councilor Heidt thought the City needed to take responsibility for the mistake that was made. They had promoted the C-R zone with the Dinsmore development and with this applicant. She thought the people in 2003 foresaw a lot of the development that had occurred and that C-R would fit in with the higher density in the area.

Councilor Smith did not think a mistake had been made. When he was Planning Commission Chair, he remembered discussing residential going in this area.

Councilor Spoon was not sure a mistake had been made. Some of the onus of due diligence was on the developer, not just on the City. A mistake should not obligate a public body to correct it by changing policy at the expense of the City that would last decades.

**\*\*Councilor Smith moved to deny ZC 18-04 (Busse) because this was an area of special concern that required a development application to be considered at the same time as the zone change request. This was a mandatory approval criterion in these circumstances. The application also did not meet Comprehensive Plan policies 1 and 6 because R-C in that area was not the most appropriate considering the nature of the surrounding uses of R-1, schools, and heavily traveled area and would be most compatible as an R-1 zone. Motion was seconded by Councilor Heidt and passed 5-0.**

#### **RESOLUTIONS & ORDINANCES:**

**Ordinance 1493 – \*\*Councilor Smith moved to approve Ordinance 1493, AN ORDINANCE, PROCLAIMING ANNEXATION INTO THE CITY OF CANBY, OREGON 9.55 ACRES INCLUDING 8.91 ACRES OF REAL PROPERTY DESCRIBED AS TAX LOTS 800 AND 900 OF PORTION OF SE ¼, SEC. 27, T.3S., R.1E., W.M. (TAX MAP 31E27DB); AND TAX LOT 601 OF PORTION OF SE ¼, SEC. 27, T.3S., R.1E., W.M. (TAX MAP 31E27AD); AND APPROX. 0.64 ACRES OF ADJACENT NE TERRITORIAL ROAD RIGHT-OF-WAY; AND AMENDING THE EXISTING COUNTY ZONING FROM RURAL RESIDENTIAL FARM FOREST FIVE ACRE (RRFF-5) TO CITY LOW DENSITY RESIDENTIAL (R-1) FOR THE ENTIRE AREA; AND SETTING THE BOUNDARIES OF THE PROPERTY TO BE INCLUDED WITHIN THE CANBY CITY LIMITS to come up for second reading on October 17, 2018. Motion was seconded by Councilor Spoon and passed 5-0 on first reading.**

Ordinance 1494 – This ordinance was not voted on since the zone change was not approved.

Ordinance 1495 – **\*\*Councilor Spoon moved to adopt Ordinance 1495, AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH PBS ENGINEERING & ENVIRONMENTAL, INC. FOR TRANSPORTATION ENGINEERING & TECHNICAL SERVICES OF NORTH QUIET ZONE IMPROVEMENTS (N ELM ST – N GRANT ST – N IVY ST); AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Heidt and passed 5-0 by roll call vote.**

**NEW BUSINESS:** Amendment to Employment Contracts with City Administrator, City Attorney, and Municipal Court Judge – Mayor Hodson said the Council had gone through a review process for these three positions. He described the compensation changes that were being proposed.

**\*\*Councilor Dale moved to adopt the amendment to employment contracts with the City Administrator, City Attorney, and Municipal Court Judge. Motion was seconded by Councilor Spoon and passed 5-0.**

Councilor Smith thought a new process needed to be developed for the Municipal Court Judge evaluation.

**ADMINISTRATOR’S BUSINESS & STAFF REPORTS:** Mr. Robinson thanked the Council for the wage increase.

**CITIZEN INPUT:** None.

**ACTION REVIEW:**

1. Approved the Consent Agenda.
2. Resolution 1298 failed for lack of second.
3. Approved Ordinance 1493 to come up for second reading on October 17, 2018.
4. Adopted Ordinance 1495.
5. Approved the amendment to employment contracts with the City Administrator, City Attorney, and Municipal Court Judge.

There was no Executive Session.

Mayor Hodson adjourned the Regular Meeting at 11:00 p.m.

Kimberly Scheafer, MMC  
City Recorder

Brian Hodson  
Mayor

Assisted with Preparation of Minutes - Susan Wood