

**MINUTES**  
**CANBY PLANNING COMMISSION**  
7:00 PM – Monday, April 23, 2018  
City Council Chambers – 222 NE 2<sup>nd</sup> Avenue

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**PRESENT:** Commissioners John Savory, Larry Boatright, John Serlet, Derrick Mottern, Tyler Hall, Shawn Varwig, and Andrey Chernishov

**ABSENT:** None

**STAFF:** Bryan Brown, Planning Director, and Laney Fouse, Recording Secretary

**OTHERS:** Clint Coleman, NJ Erickson, Susan Myers, Rick Givens, John Boyle, Judy Boyle, Jo & Eric Recht, Daniel Webb, Greg Penner, Lauren Robertson, Marty Moretty, Charlie Burden, Jay Spillum, Ronald McCord, Jim Boyle, Bobbie McCord, D. Berkner, Rosemary Hands, Ethan & Stephanie Manuel, Bob Cambra, Michael Robinson, and Darren Gusdorf.

Chair Savory called the meeting to order at 7 p.m.

**CITIZEN INPUT ON NON-AGENDA ITEMS** – None

**MINUTES**

- a. Approval of Planning Commission Minutes for March 12, 2018.

**Motion:** A motion was made by Commissioner Hall and seconded by Commissioner Varwig to approve the March 12, 2018 Planning Commission Minutes. Motion passed 7/0.

**NEW BUSINESS** – None

**PUBLIC HEARINGS**

*(To testify, please fill out a testimony/comment card and give to the Recording Secretary.)*

- a. Consider a request for an Annexation and Zone Change for properties located in an unincorporated area of Clackamas County on the north side of NE Territorial Road approximately 660 feet west of State Highway 99E and extending north to border on Willamette Wayside Park. **(DUPONT ANN 18-01/ZC 18-01)**

Chair Savory opened the public hearing and read the hearing statement. He asked if any Commissioner had conflicts of interest and ex parte contacts to declare.

Commissioner Serlet drove by the site all of the time. Chair Savory also drove by the site several times per week. Commissioner Cherishnov had visited the site.

Bryan Brown, Planning Director, entered his staff report into the record. This was a request for annexation of 2.64 acres and to rezone the property to R-1. The annexation included Spitz Road, which ended at the park property. The road was vacated by the County and given to the City to become City property when the park land was granted all along the river. The applicant planned to build a subdivision on the property, but this was only an annexation request before the Commission tonight. They could not hold the applicant to exactly what the subdivision concept plan was, although it was likely to be similar. He then reviewed the conceptual site plan for ten lots. The applicant had lined the streets up with the existing Vine St to be continued across Territorial. They also proposed that Spitz be built as a fully developed road to City standards which would also provide future access to the adjacent church property. There would be a turnaround utilized by the flag lot which had been approved by the Fire Marshall. Spitz Road would not have access onto Territorial, but there would be a pedestrian and bike pathway that would continue to Territorial. The Transportation Planning Rule analysis had

been done and it was found that the amount of traffic anticipated from this development was fully accounted for in the City's Transportation System Plan. A neighborhood meeting had been held on this application. Staff recommended approval with conditions. There was a development agreement associated with the application which would guarantee the road configurations as he had discussed.

Commissioner Serlet asked about the access for the driveways on lots 1 and 2. Mr. Brown clarified the driveways would not be allowed to access onto Territorial Road.

Applicant: Rick Givens, planning consultant with Icon Construction in Oregon City, was representing the applicant. The subdivision application would be very similar to the concept plan being proposed. All of the lots would meet the R-1 lot size requirements. There was a public need for more buildable land for single family homes in the City. The annexation would match the limits of the Urban Growth Boundary and would be consistent with the Comprehensive Plan. A neighborhood meeting had been held and he thought overall people understood that the application was consistent with the Comprehensive Plan.

Proponents: None

Opponents: Jay Spillum, Canby resident, lived west of the annexation area and also owned property on Territorial Place. He had a number of concerns regarding annexation including increased activity, noise, traffic, and degradation of the peaceful view. He thought the community was growing too fast and there was more crime. He hoped that the number of lots and size of the lots would not be changed when the subdivision application came through. He was also concerned about cut through traffic and a future parking lot and walking path for the park on Territorial Place. He thought a fence along the development should be put in as well. He would prefer this parcel not be annexed.

There was discussion regarding the confusion around the ownership of Territorial Place, and how the City had not been aware of its ownership previously.

Greg Penner, Canby resident, lived on Territorial Place. He was in agreement with Mr. Spillum's points. There was a connection between Spitz Road and Territorial Place and it formed a loop. There was a fair amount of traffic there to the park and he would like Territorial Place to become a dead end road so it did not become a park access road. He questioned how this annexation fit in with the Willamette Wayside Park development plan. Thought needed to be given as to where people would park. The plans had included a road that ran through his property, which he was not planning to annex and he had not been consulted about. He thought putting in 10 new homes in this area would take away from the rural feel of the neighborhood.

Lauren Robertson, Canby resident, also lived on Territorial Place. She had been involved in bringing community gardens to the City and she looked out for the greater good. She did not see the benefit of annexing this land that was surrounded by neighbors who were not intending to annex. It was incongruous to drop a housing development into a rural area and no one else had intentions of developing. She thought Territorial Place should be a dead end. She was against the annexation.

Mr. Brown clarified the parameters to allow the annexation and annexation criteria.

Ms. Robertson explained her concerns about her well being contaminated and septic system failing and finding herself in a situation where she would have to annex. Mr. Brown said there was an approved DEQ standard that protected wells and the applicant would have to follow that standard when they built the subdivision.

Ronald McCord, Canby resident, lived in a rental on Territorial Place. There had been a lot more traffic on the road since the park was established. The road was not being maintained by the City or County; he explained how he had been maintaining it. He thought development would change the environment of the area and ten homes were too many.

NJ Erickson, Canby resident, lived across from the annexation property. She submitted written comments for the record. She walked her dog in this area every day. The economy and character of Canby was agricultural based. For centuries this area had flooded and all of the area near the river was agriculturally rich. She did not take lightly the thought of paving it. She stated the Stone family had been maintaining the road for 20 years since the City did not know they owned it. She thought that meant the Stones would have a right-of-way by adverse possession. The people who had been accessing it for

their homes and maintaining it had a vested interest and ownership interest in the road. She thought development would change the character of the community.

Robert Cambra, Canby resident, referred to the traffic study and noted the table on page 3 that spelled out the number of trips that this development would generate was confusing. He questioned the national standards that they were using and thought it should be reviewed further. He was in favor of the requirement for sidewalks throughout the development.

Clint Coleman, Canby resident, wanted to make sure that any development maintained the quality of life for the neighborhood. He was concerned about the caliber of homes that would go in and if they would be consistent with the neighborhood. He was also concerned about maintaining the trees and if there would be a brick wall along Territorial. If sidewalks were being put in, there should be crosswalks as well. He recommended making this a private drive with a turnaround, a brick wall and trees along the front, putting in parking down by the proposed dog park area, and making the area a 25 mph speed limit.

Rebuttal: Mr. Givens explained the vacation process that took place and how the City owned Territorial Place and Spitz Road. He had no objection to closing off Territorial Place. Most of the comments related to the subdivision, which were not appropriate for this application. There was an urban church nearby and the Urban Growth Boundary was the northern boundary of this property. The neighbors who came to speak were in the Urban Growth Boundary. This was a planned development consistent with the City's Comprehensive Plan. It would provide for population growth without taking larger properties that were agricultural and expanding the Urban Growth Boundary. All of the details for the development would be brought back to the Commission in the subdivision application. He requested approval of the annexation.

Rosemary Hands, Canby resident, stated this was a rural piece of property that connected to a park and the river. There was a lot of wildlife in the area that would be impacted by the annexation. The property was not surrounded by the City except across the street. She thought Canby's character was being diminished. She did not think the annexation made sense.

Chair Savory closed the public hearing.

There was discussion regarding how the Planning Commission had to follow the code and decide whether the application met the criteria. They had to keep personal feelings out of the decision.

**Motion:** A motion was made by Commissioner Boatright and seconded by Commissioner Mottern to approve ANN 18-01/ZC 18-01 and that the development agreement be adopted and recorded with the property within seven days of the final approval of the annexation and rezoning application. Motion passed 7/0.

- b.** Consider the Council's Remand for Redwood Landing Subdivision to allow the Planning Commission to review a modification to address Council concerns and conformance with original approved criteria (**ICON SUB 17-06**)

Chair Savory opened the public hearing and read the hearing statement. He asked if any Commissioner had conflicts of interest or ex parte contacts to declare. There were none.

Mr. Brown entered his staff report into the record. This was a subdivision application that the Planning Commission saw once before. It was the same project and property. It was appealed to the City Council and the Council remanded it back to the Commission to address five specific concerns. Staff supported the modifications that the applicant made to address those concerns. He discussed the original preliminary plan and compared it to the revised plan. One change was the three extended stub streets to the north had been reduced to two stubs. That created some flag lots to more efficiently use the land. Another was the park area that was being dedicated had been shrunk. That meant there was less density transfers and clustering and the number of lots had been reduced from 89 to 82. Many of the lots were larger than they were in the previous plan. He would have the applicant clarify which drawing the Commission was approving, either the revised preliminary plan or the compromise draft plan. He discussed the stormwater drainage strategy for the public street run off and how the treatment facility would be located in the park which would be maintained by the City. He clarified which park areas were and were not counted towards the density transfers and explained the benefits of the density transfers. He then reviewed the future street plan that showed how the stubbed streets could be extended to serve the lots to the north while preserving the existing homes. The stubbed streets to the south had turnarounds that complied with the Council's

concern that they would count towards the minimum lot area. He discussed the concept plan which showed the property to the east of Willow Creek and a future cul-de-sac street as the only way to serve that area. He also discussed a picture that showed an existing driveway that went across the railroad tracks which would be a possible future emergency access route. He reviewed the overall street pattern and components of the natural resource area that was being dedicated. A traffic study was done with this application which identified a pedestrian crossing on 15<sup>th</sup> Avenue. Any development would add new traffic, but it was well within the boundaries of what N Redwood was intended to handle. The main concern was that only half of the street would be improved adjacent to the subdivision leaving the rest for future development or a City capital improvement project.

Commissioner Serlet asked about parks maintenance. Mr. Brown said the City had already been responsive to neighbor's concerns about the beavers in the area and a non-profit group had worked to plant native vegetation to enhance the wetlands. If the subdivision went through, it would be a City park and would be put on the list for maintenance. It would be maintained in its natural state and the only future improvement would be to put in a walkway and pedestrian bridge. He thought SDC funds would be used to create the walkway and bridge.

Mr. Brown said three documents had been submitted to the Commission tonight. One letter was from Carol Palmer who was concerned that the lots were still below the R-1 minimum of 7,000 square feet which she thought changed the character of the neighborhood and devalued property. She also mentioned that the entire process for the N Redwood Concept Plan was not clear enough for neighbors to understand what the transfer of density really meant and how it might be implemented and resulted in this size of lots. Another concern was not knowing what the SDC credit would be for the park land dedication. Mr. Brown clarified from staff's calculations, the developer would get credit for the first 49.7 homes built based on the value assigned to the Park land dedicated and Park SDC fees collected for the remainder. This is based on agreed upon buildable land value established with the Park dedication ordinance and the "non-developable" land with adoption of the North Redwood Plan. Another letter was from the applicant's attorney that proposed additional verbiage on how the applicant satisfied the Council's remand concerns. Also included were additional findings proposed for the Planning Commission to add. Staff recommended approval of the revised application.

Commissioner Chernishov asked about development on slopes greater than 25%. Mr. Brown said it became more expensive to develop a home when the slopes were greater than 25% and it was a good dividing point for what would be transferable for density. The code did not restrict development on slopes.

Chair Savory asked how many vehicle trips per day this development would add. Mr. Brown explained the calculation, which would be about 757 trips and a collector street could take up to 3,500 trips.

Applicant: Rick Givens, planning consultant with Icon Construction in Oregon City, clarified the plan they were asking for approval for was the revised preliminary plan. On that plan there was a shadow plat of the area to the east of Willow Creek which showed potentially how development in the future could occur. The plan had changed significantly in response to the neighbor's and Council's concerns. The biggest change was the layout of the roads. He noted the two stubbed streets to the north were on the common property line. Regarding the concern about the turnarounds for emergency vehicles being counted towards lot area, the applicant had given two calculations, one was counting them and one was not. Those lots met the 5,000 square foot lot standard. They had reduced the number of lots in the plan and the park size was the same as the concept plan indicated at 5.3 acres. The smallest lots were on the area to the south boundary where it abutted R-1.5. Most of the lots abutting neighboring properties were 6,000 square feet. They were transferring density, which was encouraged in the concept plan. There was no provision in the code that said they could not build on 25% slope. He had prepared a concept plan for how this site could be developed and achieve the same density of lots 7,000 square feet or larger. The concept plan showed that the density they were transferring could exist on this property.

Michael Robinson, land use attorney in Portland, said the applicant was making a good faith effort to address what the neighbors and Council had asked him to do when it was remanded back to the Planning Commission. The number of lots had been reduced and more evidence on how the density transfer was appropriate had been submitted. The streets to the north had been taken care of and the lots with the turnarounds had sufficient square footage. The Council had remanded the application to address parkland dedication, density transfer, temporary turnarounds, parkland value for SDCs, and future streets splitting parcel lines. These had all been addressed in the revised plan. They had tried to keep the larger lots closer to like size lots and smaller lots closer to like size lots as well. The code allowed lot size averaging and as long as there was an average size of 5,000 square feet, it was permissible in the N Redwood Development Concept Plan. The

Commission's charge was to apply the criteria. This was still an R-1 development. Through the Concept Plan they were allowed to reduce lot sizes through lot size averaging. They met the approval criteria and agreed with all of the previous conditions of approval. He had given additional findings to the Commission to demonstrate that the flexibility in the code was there. He requested approval of the application.

Commissioner Boatright asked Mr. Robinson to read the zoning ordinance sections on lot area exceptions and lot size averaging. Mr. Robinson read those sections. This was the basis for the 5,000 square foot lots. Mr. Givens clarified the average lot size in the development was 6,059 square feet. There was one large lot that contained Mr. Manuel's home and if that was taken out, the average lot size would be 5,900 square feet.

Proponents: Ethan Manuel, Canby resident, was in support of the application. The people who were a part of the development were part of the community and had been here for generations. They would continue to be part of the community. This was a well thought out plan that had been adjusted to address the concerns that had been raised. One of the biggest concerns was the density transfer and how they ended up with lots that were less than 7,000 square feet in an R-1 zone. It had been stated that these smaller lots were not in the spirit of the concept plan. He had participated in the development of the concept plan and he thought this was exactly what was intended. The property owners were asked to give more than they were required to give for the express purpose of securing the park land for everyone in the community to enjoy. Because of that, they could not develop as many lots on their land and that transferred over to the developable land. In total it was the same number of lots that they could get if they did not have to dedicate the park land. It was not benefitting him over anyone else. The property owners that did not have a portion of their property in the wetland were not required to dedicate land. It was intended to be an equitable situation while protecting the natural resource and was all discussed at the time the concept plan was created.

Chair Savory asked how he would define Canby 30 years ago. Mr. Manuel still viewed Canby as a farming community. He thought they had maintained the small town feel and people were moving here because it still had that feel. It was a matter of how they would grow, and he thought this development was in the spirit of the community. It would be a nice place for people to live.

Chair Savory was concerned about the traffic this would generate and changing the small town feel of the City.

Opponents: Susan Meyers, Canby resident, was the secretary for Postelwait Estates Homeowners Association. She spoke on some of the points that the president of the Association had made in a letter he submitted. She pointed out that the wrong code section had been used by the applicant, and that would need to be corrected in the findings. Postelwait Estates had 64 homes, and was involved in the concept plan process. The membership did not understand the level of the density transfer and questioned if it was in the spirit of the concept plan that had R-1 for this area. When 75 of the 82 lots, or 91% of the lots, were in essence R-1.5 due to the size of the lots, there was frustration because they thought the lot sizes would be bigger. They were concerned about the long term impact on their community when there were so many people living in a tight area. They thought the smaller lots to this degree was excessive and was more than anyone anticipated. They were asking to the extent the Commission had discretion to help increase the size of the lots. They also asked for a condition of approval for CC&Rs to be placed on the property to allow for an HOA. It would help with maintaining the fence, landscaping, and signage around the development. They also wondered since Postelwait Estates had to maintain their stormwater detention facility, why the facility for this development would be maintained by the City and not the neighborhood. If they had to accept this level of density, an HOA would assist in keeping property values up.

Erick and Jo Rect, Canby residents, owned one of the properties that would be surrounded by the new development. They were not opposed to development and participated in the concept plan process. They were concerned about how the plan was presented to the public. In the concept plan discussions, the density transfer was characterized as maybe adding an extra lot and not much would change. In reality it changed the density to medium rather than low density. They did not think it met the spirit of the concept plan. No one had anticipated this outcome. The public was not fully informed on what was going to happen and there had not been an opportunity for an honest conversation about what this really meant.

Daniel Webb, Canby resident, had represented the appellants in the appeal of this application. The applicant had for the most part addressed the issues that the appellant presented in the appeal and the City Council's concerns. However the density issue was still a problem. This area was supposed to be developed as R-1. The applicant had used the code and concept plan to their advantage in order to maximize their potential development, which was to be expected. Over the past few months, it was made apparent that the concept plan was flawed and the responsibility went to the Commission and

staff. The spirit of the plan was forgotten somewhere along the way. Many hours of citizen time had been invested in creating the concept plan and he thought they had all been misled. They were told the density transfer would make very little difference and the street plan could be changed to fit property owner's needs. He did not think this would be the last time the Commission would be addressing the density transfer and the other issues of this development. Commissioner Mottern asked if those he represented would be willing to have less park land instead of what was being proposed to be donated.

Mr. Webb thought the park would never be developed. It would not have mattered if they dedicated more or less park land, it would continue to be an unimproved wetland. The city had no funds for maintenance. The application was nothing like community members had envisioned.

Charles Burden was the property manager for Hazeldell LLC in Canby. His family were long-time residents of Canby. In the 1960s they had constructed an irrigation pond upstream from this development. He had always been told that they were not allowed to build any closer than 50 feet from the edge of the waterway. These homes looked like they were being built on the water's edge. It was a concern as they were upstream from this area. He wanted to make sure there was not a problem with rising water and flooding. He did not think it was good to build this close to a waterway.

Commissioner Chernishov asked how frequently they released water from the upstream pond. Mr. Burden explained the release used to be more prevalent than it was today. Approximately two years ago they released water. There was concern that there would be a liability if something failed with their dam. This year they had a blockage on the spillway that caused water to overflow the dam. They wanted to make sure everyone was safe downstream.

Rebuttal: Mr. Givens had reviewed the FEMA maps for this area and there were no lots in the 100 year floodplain. The hash pattern on the map was the wetlands boundary, not the stream boundary. There should be about a 50 foot separation between the stream and the rear yards of the lots. The lots would be built up in elevation and the homes would be built on the upper portion of the lots. He did not anticipate a problem with safety. The concept plan and code allowed for an average of 5,000 square foot lots, and the average for this development was 6,000 square feet. The density was consistent with R-1 zoning. He thought the design was consistent with the code. They had addressed the concerns of the neighbors and Council as much as they could. They could not reduce the density further without it hurting the property owners, which was not fair because they were being asked to give up a significant asset from their property.

Mr. Robinson submitted a new letter that addressed the typos that had been pointed out. This was an adopted concept plan, and the issue before the Commission was whether this application followed that plan. The plan could be amended but currently it was in effect as an acknowledged document and everyone was bound by it. He read from the list of remand items from the City Council. The Council did not say that they had to reduce the number of lots or that the lots had to be 7,000 square feet because that was not what the code stated. The code allowed less than 7,000 square foot lots as long as there was an average lot size of 5,000 square feet. They were not getting any more density than they would if they developed on Willow Creek. The Council wanted evidence that the calculations were accurate and reflected appropriately the density transfer provision in the code. He read from sections of the concept plan regarding Willow Creek and the density transfers and lot size averaging. It was a conscious choice to push density over to where it could be developed in return for dedicating Willow Creek as public park land. The code did not allow the Commission to require a Homeowners Association, however the applicant was willing to consider it. They asked for approval of the application.

Jim Boyle, Canby resident, had also attended the concept plan meetings and he thought the issues were made clear at those meetings. The material in the concept plan was also clear. Neighbors should have done their homework and raised these issues three years ago when the plan was being created.

Jo Rect had canvassed the neighborhood and went to community meetings and did not find one person who had a clear understanding on this issue. They had been paying attention.

Chair Savory closed the public hearing.

Commissioner Chernishov discussed the SDC credit estimate. The developable land was valued at \$100,000 per acre, and the undevelopable land was valued at \$87,000 per acre. He was concerned there was not enough difference between the two.

Councilor Varwig did not think this development with small lots fit the spirit of Canby. He wanted to maintain the small town feel. However, the developers met the code and he understood the need for the applicant to make the most of the development.

Commissioner Boatright stated the code did allow density transfers for the park land, however he thought the applicant was willing to donate the land because of the expense to try to build on it. In R-1 the lots were supposed to be 7,000 to 10,000 square feet and there were not enough of those lots in this development. The Council had remanded this back to the Commission and he thought the Council had wanted more done than what was proposed. They did not have to allow 5,000 square foot lots and he thought they made a mistake approving this application the first time.

Commissioner Varwig stated if this was approved, he highly recommended forming an HOA for the development.

Commissioner Hall said the Commission had approved it the first time with smaller lot sizes. All of the necessary changes were made, and he thought they had to approve it.

Commissioner Mottern agreed with Commissioner Hall. This was an adopted plan and he thought the application should be approved.

Commissioner Serlet thought there had been a bait and switch between what they thought the concept plan said and this development. He was concerned about the park being maintained, as the city could not maintain the current parks. The traffic impact on Territorial should have been addressed. He was opposed to this application.

Chair Savory said it came down to the spirit versus the law and they had to follow the law. The applicant had fulfilled his obligation under the law, and it was up to the Council to make the citizens of the neighborhood whole. He thought traffic issues had been neglected as well.

**Motion:** A motion was made by Commissioner Mottern and seconded by Commissioner Hall to approve SUB 17-06/APP 17-03 with staff's recommendations and the recommendations and typo corrections from Mr. Robinson. Motion passed 5/2 with Commissioners Serlet and Boatright opposed.

## **FINAL DECISIONS**

(Note: These are final, written versions of previous oral decisions. No public testimony.)

### **a. DUPONT ANN 18-01/ZC 18-01 Final Findings**

**Motion:** A motion was made by Commissioner Boatright and seconded by Commissioner Serlet to approve the final findings for DUPONG ANN 18-01/ZC 18-01. Motion passed 7/0.

### **b. ICON SUB 17-06/APP 17-03 Remand Final Findings**

**Motion:** A motion was made by Commissioner Mottern and seconded by Commissioner Hall to approve the final findings for ICON SUB 17-06/APP 17-03. Motion passed 6/1 with Commissioner Serlet opposed.

## **ITEMS OF INTEREST/REPORT FROM PLANNING STAFF**

- a. Next regularly scheduled Planning Commission meeting – Monday, May 14, 2018**
  - Site & Design Review/Conditional Use for two warehouse spaces in the Canby Pioneer Industrial Park.

## **ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION – None**

## **ADJOURNMENT**

Chair Savory adjourned the meeting at 10:15 pm.