

**MINUTES OF NEWBERG CITY COUNCIL
MONDAY, SEPTEMBER 16, 1996
7:00 P.M.
NEWBERG PUBLIC LIBRARY**

I. CALL MEETING TO ORDER

Mayor Proctor called the meeting to order at 7:00 p.m. The pledge of allegiance was performed.

II. ROLL CALL

Charles B. Cox (CBC)
Roger Currier (RC)
Deborah Sumner (DS)

Alan Halstead (AH)
Donna McCain (DM)
F. Robert Weaver (RW)

ABSENT: Dave McMullen (DMc)

T. Dan Wollam (TDW)

STAFF

PRESENT: Duane R. Cole, City Manager (DRC)
Terrence D. Mahr, City Attorney (TDM)
Katherine Tri, Finance Director
John Knight, Planning Manager
Chuck Liebert, Utility Manager
Larry Anderson, Engineering Manager
Rick Faus, Special Counsel (Stream Corridor)
Peggy R. Hall, Assistant City Recorder

OTHERS

PRESENT: Joshua Nauman (Videographer), Lisa Thomas, Sharon Caldwell, Pat Haight,
Nadine Windsor, Mart Storm

Mayor Proctor stated that T. Dan Wollam and Dave McMullen are excused from the meeting.

III. CONSENT CALENDAR

None.

IV. PUBLIC HEARING

None.

V. CONTINUED BUSINESS

1. **Resolution No. 96-2002** resolving issues regarding the Second Street, Third Street and Everest Street Local Improvement District.

DRC stated that Councilor DS would be summarizing the ad hoc meeting held on August 26, 1996. Councilor DS chaired the meeting. The purpose of the meeting was to have some understanding as to the costs of the LID. Councilor DS summarized the meeting as follows: The facts as was known was that the LID was formed. Notices were mailed to the property owners. However, some of the property owners did not live in the area. Cost overruns occurred and therefore, the assessments changed (increased). The purpose of the meeting was for the members of the adhoc committee to provide information/testimony and disclose what options were available. One member from the Emery Orchard area did not appear which showed a negative message. Councilor DS further stated that she feels compelled to lower some of the costs in order to arrive at a complete agreement. The Committee was not to discuss how to deal with the problems, but to come up with a method to resolve the issues and improve communications. Councilor DS stated that it shows from February, 1992 GTE phone records that the City did receive a facsimile copy of the Waiver of Rights to Remonstrance.

Councilor DS stated that the Council should consider deleting the cost of the intersection (\$62,000) and the Third Street improvement costs (additional rock in that area to complete Third Street). That amount would be a reduction of about \$100,000.

Ms. Lisa Thomas, 200 Arduus Drive, Newberg, stated that she felt that some statements made were not correct. Councilor DS stated that it was made clear at the adhoc meeting that the matter should be concluded and put to rest. Ms. Thomas further stated that she did not receive any paperwork on Councilor Sumner's statements. Ms. Thomas stated that Mr. Aust was not contacted prior to the meeting. Ms. Thomas stated that there was only one meeting. Ms. Thomas presented a video on the public meeting held at George Fox University on June 27th. Ms. Thomas also discussed misrepresentations involving the City and NSP Development dating back to November, 1995. Ms. Thomas stated that the City must take on the responsibility of providing for proper notice of meetings. Ms. Thomas also discussed Kathy Tri's statements made at the June 27th meeting.

Discussion was held concerning property owners who do not live in the area, or property in which the ownership has changed. Ms. Thomas stated that she reviewed the June 4, 1994 City Council video tape involving the LID costs and system development charges (SDC). Ms. Thomas stated that the Newberg LID Ordinance is not constitutional and should be redone.

Discussion was held concerning the methodology of system development charges. Ms.

Tri noted that the City's portion would be financed through the sale of bonds. Ms. Thomas questioned the behavior of some City staff members and what should be done.

Mr. Mart Storm, NSP Development, 560 Parks Road, Dundee, stated that he was part of the adhoc committee representing NSP Development and was trying to understand what Councilor DS' proposal was. Councilor DS referenced her memo. Discussion was held concerning the 43 ft. frontage assessments.

Mr. Storm indicated that he would probably support the proposal based upon the adhoc committee's report. Discussion was held concerning making all property owners pay for the frontage. Mr. Storm also stated that he had questions concerning Ms. Staley's frontage assessment. Mr. Storm also asked that all property owners be assessed fairly. He supports Councilor DS's report but did not want it to drag on. Further discussion was held concerning the storm drain being necessary on Second Street.

Mr. Larry Anderson, City Engineering Manager, stated that NSP's design on Phase I would have taken care of the storm drain problems. Mr. Anderson explained the situation concerning the Second Street storm drain situation. Mr. Anderson stated that he has 20 years' experience in engineering and design. Mr. Anderson reviewed with the Council the culvert extension and the risk of flooding. DRC added that the City assumed the engineering calculations were done correctly. Mr. Anderson stated that the developer provides the engineering designs.

Mayor Proctor stated that for the people who signed up, the Council had made it clear that they only wanted input from the adhoc committee, not from residents of Emery Orchard. The adhoc committee provided a summarization of the committee meeting.

Mr. Mart Storm presented information concerning the storm drain in Emery Orchard being designed adequately to handle the development. Mr. Storm indicated that an engineer and the City reviewed the plans and approved the design. Mr. Storm stated that he agreed with adhoc committee's findings/conclusion except that he wanted to make it clear that the committee was using the actual footage of the lots in the calculations (43.8 feet rather than 56.0 feet).

Discussion was held concerning Burton Engineering providing engineering assistance. Councilor RW said that he wished to thank the committee for their help. The committee was to come to a resolution and the Council would make a decision on the entire matter.

Ms. Lisa Thomas expressed her concerns about the committee's resolution and findings. Ms. Thomas stated that she did not receive a copy. Ms. Thomas further stated that there were other issues still unresolved (street lights, etc.). DRC noted that the street light issue is being projected for completion within the next three years.

Councilor AH expressed his opposition in taking out the intersection and deleting that cost from the LID. Councilor RC stated that he too agrees with the issues raised by Councilor AH. Third Street is beneficial to the subdivision. Discussion was held concerning giving a 50% deferral to the property owners south of Third Street at a later time. Councilor RC stated that he disagrees with discounting the entire amount. Councilor DM stated that when discussions arose concerning Third Street, explanations were provided (fences to be built, street widths, etc.) Councilor DM stated that she feels that there should be some credit due to some property owners, but the intersections should be part of the City public costs.

MOTION: DS/RW to adopt **Resolution No. 96-2002** with the deletion of the amounts contained in the memo distributed by Councilor DS on her findings.

Councilor RW stated that he feels that Councilor DS' summary really resolves the issues and congratulated Councilor DS and the adhoc committee in working toward this resolution.

Councilor RC provided additional testimony concerning Third Street improvements and the possible reduction in the amount due involving frontage issues.

Councilor DS called for the question.

ROLL CALL ON MOTION: (3 Yes (DM/DS/RW)/3 No (CBC/RC/AH)/2 Absent (DMc/TDW). **TIE VOTE.** Mayor Proctor broke the tie and voted "no". Motion failed.

MOTION: AH/RC to adopt **Resolution No. 96-2002** as presented. (4 Yes/2 No(RW/DS)/2 Absent (DMc/TDW). Motion carried.

2. **Resolution No. 96-2004** authorizing the City Manager to reimburse developers for oversizing costs.

MOTION: RW/AH to approve **Resolution No. 96-2004.** (6 Yes/2 Absent (DMc/TDW). Motion carried.

3. Workshop on Stream Corridor Final Ordinance. **(No public testimony)**

City Attorney TDM stated that he would abstain from providing the Council and the City legal advice due to a conflict of interest. He has property in the stream corridor.

Councilor DS stated that she too has property in the stream corridor, but was advised that it would be acceptable for her to vote on the issue.

City Attorney TDM introduced Rick Faus, City Attorney for Gresham, who will be handling the legal advice for the stream corridor issue. Mr. Faus is a former City Attorney for the City of Newberg.

Mr. John Knight, Planning Manager, stated that the stream corridor issue came up quite a while ago - an ordinance protecting the stream corridor. Many study sessions evolved concerning this issue. Mr. Knight reviewed his staff report and provided overhead information concerning staff's findings (purpose, grading, physical improvements, exemptions, Type I process, restoration standards, Type II process, public utilities, etc.) and how some issues will be reviewed by the Planning Commission and the Council.

Mr. Faus stated that this process is a fairly unusual one which gives up the power of eminent domain in the planning context. The purpose of the ordinance is not to create public trails and pathways. The purpose is outlined in the first page of the ordinance.

Councilor DM addressed concerns about potential issues arising from persons entering on the private property of others. Mr. Faus reiterated that it does not create any public areas or access to other persons in the stream corridor. Discussion was held concerning adjacent property and public pathways and the City potentially purchasing additional property. Further discussion was held concerning waterways and the availability of persons to use those in obtaining access from one place to another. Mr. Faus indicated that the creeks referenced in the stream corridor are not navigable. Discussion was held concerning pending initiatives (Measure 38) before the State requiring that certain property be fenced. Mr. Knight continued to review the information presented and the minor adjustments and editorial changes.

Mr. Knight addressed various concerns and issues that George Fox University has made in dealing with new development. Mr. Knight then added that the next step would be to return the Ordinance to the Council for public hearing and testimony with any additional changes. Mr. Knight stated that the interest of the citizens has been varied, but staff is attempting to address their concerns. Mr. Knight stated that he had a letter from Keith Hay which encouraged that written comments be made.

4. **Resolution No. 96-2001** amending the Newberg City Charter as amended by the electorate of the City of Newberg at the May 21, 1996 Primary Election.

MOTION: (6 Yes/2 Absent (DMc/TDW). Motion carried.

5. Recommendation to table Refuse Derived Fuel Facility issue.

Councilor AH abstained from discussion due to prior declared conflicts of interest and left the room. DRC stated that the City did not have a complete agreement signed by the applicants. There is a timeline for reconsideration of an annexation issue. The issue was remanded back to the City by the Land Use Board of Appeals (LUBA). DRC added that the City could place a 30 day time frame for the applicant to submit a completed agreement to the City which would probably be the first meeting in November. TDM added that the matter should be tabled for the meeting closest to the 30 day deadline - second meeting in October.

MOTION: RC/DM to table indefinitely the Refuse Derived Fuel Facility issue for 30 days to October 21, 1996. (6 Yes/2 Absent (DMc/TDW). Motion carried.

TDM stated that he will notify the parties/applicants' respective counsel (Brad Littlefield - Anita Schneider's attorney) and Mark Cottle (Marvin Schneider's attorney).

Councilor AH returned to the meeting.

VI. NEW BUSINESS

1. **Resolution No. 96-2003** authorizing the City Manager to hire a consultant regarding odor complaints for the Wastewater Treatment Plant facilities.

Discussion was held concerning the consultant's purpose and the process by which the consultant would be hired.

Ms. Pat Haight, 501 E. Illinois Street, Newberg, Oregon, expressed her concerns. Ms. Haight indicated that she feels that City staff should be able to provide this service. Councilor RC stated that sometimes the City does need experts and it may not cost as much as projected. Mayor Proctor reviewed with the Council the contacts she has received from citizens concerning the odors. Mayor Proctor also advised that there are chemicals involved in which City staff are not trained to diagnose or test which requires different types of treatment. Councilor RW further added that City staff is not expected to be experts in every field. If the City needs experts in certain areas, they need to hire them.

MOTION: AH/DS to approve **Resolution No. 96-2003**. (6 Yes/2 Absent (DMc/TDW). Motion carried.

VII. REPORTS FROM CITY MANAGER AND OTHER AGENCIES

City Manager DRC reviewed with the Council the occurrence over the weekend of the overturned triple trailer truck which carried hazardous materials. City personnel (public works, police, fire) as well as the Oregon Department of Transportation (ODOT), Yamhill County Sheriffs, Tualatin Valley Fire & Rescue and Hazmat response teams were on the scene. They are still investigating the incident, but wanted to recognize the good job everyone did in which they all worked together. Discussion was held concerning recovery of costs incurred by the City. DRC and TDM added that the truck owner's insurance company would be contacted and a statement sent to them for payment of costs.

MOTION: AH/RW to provide a letter of commendation to the other agencies and City staff involved in responding to the potentially hazardous incident. (6 Yes/2 Absent (DMc/TDW). Motion carried.

City Manager DRC reviewed the City's loss time report. DRC stated that the City has applied for an award through the League of Oregon Cities. DRC said that he was proud of City staff for their conscientious attitude.

VIII. COMMUNICATIONS FROM THE FLOOR

Ms. Pat Haight, 501 E. Illinois Street, Newberg, Oregon, commented on the truck incident. Ms. Haight indicated that there were some areas in which the City could have improved on the situation.

Ms. Haight then addressed the City's water supply and condition. Ms. Haight provided information she obtained concerning the City's well fields (also addressing the Sumitomo issue). Ms. Haight also stated concerns involving source, peak flows, water quality, availability of well fields to provide constant high quality of water, and the operation of existing wells. Ms. Haight indicated that a major concern is the aquifer and available drinking water. Ms. Haight then read statements from various reports concerning City water, Well No. 2 and No. 6.

Ms. Haight then stated that she has information from Marion County that the Dority's plan to protect their property rights and that they will appeal at every level. Discussion was held concerning production of some wells being at 30% capacity and the use of City reservoirs. Discussion was also held concerning the iron content in the City's water.

City Manager reviewed with the Council the process for obtaining water rights through the Marion County Water Advisory Committee and the connection between the City's water master plan, storage, efficiencies of wells, summer flow, ability to keep up with community needs, potential curtailment of agricultural processes, etc. DRC further reviewed the

Committee's process and the City's right to appeal any denial by the Committee.

Ms. Haight stated that she has talked with Mr. Sterling Anderson from Marion County concerning the City's water application. Discussion was held concerning holding a workshop on these issues and having guests to explain the process. Ms. Haight added that the Sumitomo report reflected summer peak demands at 5 million gallons per day which leaves only 2 million gallons per day to serve the future residential demands.

MOTION: RC/RW to adjourn into executive session at 9:50 p.m. pursuant to ORS 192.660(1)(a)(h). (6 Yes/2 Absent (DMc/TDW). Motion carried.


IX. EXECUTIVE SESSION

1. Executive Session Pursuant to ORS 192.660(1)(a) relating to personnel matters - Review of City Manager and City Attorney
2. Executive Session Pursuant to ORS 192.660(1)(h) relating to pending litigation.

X. ADJOURNMENT


MOTION: AH/RW to adjourn at 10:40 p.m. (6 Yes/2 Absent (DMc/TDW). Motion carried.

ADOPTED by the Newberg City Council this 6th day of January, 1997.



Duane R. Cole, City Recorder

ATTEST by the Mayor this 8 day of January, 1997.



Donna Proctor, Mayor