MINUTES OF THE NEWBERG CITY COUNCIL
MONDAY, FEBRUARY 5, 1996
7:00 P.M. MEETING
NEWBERG PUBLIC LIBRARY

I. CALL MEETING TO ORDER *(Pledge of Allegiance)*

Mayor Proctor called the meeting to order. The pledge of allegiance was performed.

II. ROLL CALL

Roger Currier (RC)
Donna McCain (DM)
Deborah Sumner (DS)
Don Wright (DW)
Alan Halstead (AH)
Dave McMullen (DMc)
F. Robert Weaver (RW)
T. Dan Wollam (TDW)

CITY STAFF: Duane R. Cole, City Manager (DRC)
Terrence D. Mahr, City Attorney (TDM)
Robert Tardiff, Police Chief
Greg Scoles, Community Development Director
John Knight, Planning Director
Katherine Tri, Finance Director
Michael Sherman, Fire Chief
Peggy R. Hall, Assistant City Recorder

OTHERS PRESENT: Bill Larson, Marvin Schneider, Mark Cottle, Rick Whitlow, Beth Whitlow, Pat Haight, Clayton Brown, Nathan Conant, Sid Friedman, Don Hundley, Johann May, Darren Placek, Mat Haug

1. Special Presentation from Zion Lutheran Church to the Chaplain Funds of the Police and Fire Department.

Peggy Dent presented the Police Chief, Fire Chief and Chaplain Bill Larson with a check for $250 for their participation.

III. CONSENT CALENDAR

1. Approve minutes from work session and regular meeting held on January 2, 1996; work session minutes from January 8, 1996 and January 16, 1996.

MOTION: AH/RC to approve the minutes with the changes noted. (Unanimous). Motion carried.

IV. PUBLIC HEARING

1. Continue public hearing the appeal of the Refuse Derived Fuel Facility use permit. File No. CUP-2-95
   Resolution No. 96-1954 approving a use permit (CUP-2-95) to operate a fuel facility for property located at 2808 S. Wynooski Road, Yamhill County Tax Lot 3228-1800. This resolution overturns the Planning Commissions motion which denied the use permit request.

DRC stated that **Resolution No. 96-1954** would over turn the Planning Commission's motion for denial of the conditional use permit request.

Councilor AH abstained and left the room.

DRC stated that the matter first came before the Council at the November, 1995 public hearing meeting. The matter was postponed due to the annexation issue until the December 4, 1995 meeting. DRC advised at the December, 1995 meeting that the matter should be split as to the annexation and the conditional use with certain conditions to be met. The hearing was then scheduled for the January 2, 1996 City Council meeting but was again postponed until the February 5th meeting. There was a considerable number of conditions to be imposed upon the property. Ordinance No. 95-2423 approved the annexation. The discussion at this point is on the conditional use application and development agreement. The application requires the City Council's approval which has some aspects that are beyond the scope of the conditional use permit. The applicant will go through design review consideration in more detail as outlined in the staff report located on page 17 of the Council packet as follows:

1. **Composting.** No composting of solid waste, green-waste, mixed waste, source-separated or otherwise, shall occur on the subject property.

2. **Raw Garbage.** No "raw garbage" shall be delivered to the site. All material delivered to the site shall be source separated. No putrescible waste, hazardous waste, or household hazardous waste shall be delivered to or processed at the site.

3. **Waste Limit.** No more than 150 tons of garbage may be processed at the facility per day during the first year of operation. After successful completion of a one year review by the Planning Commission, the Commission may approve an increase in the maximum tonnage up to 300 tons per day.

4. **Storage.** No storage of waste shall take place outside of the enclosed processing facility or outside of closed container semi-trailers. Neither the pre-sorted or post-processed product may come into contact with the weather.

5. **Screening.** Screening shall be provided at the rear of the site and may be accomplished through a combination of fencing and evergreen trees. A landscape plan indicating the screening shall be provided as part of the Design Review application.

ADDITIONAL PROCESSING: A requirement of the ordinance annexing the subject property is that the applicant receive approval of a Development Agreement between the City and the applicant. The Development Agreement requires Council approval and may include conditions and requirements that are typically beyond the scope of a use permit. This agreement will need to be approved by the City Council in order for the annexation to become effective. The applicant will also be required to go through the design review process which will consider the construction aspects of the site in more detail (i.e., location of the building, driveway access, roadway improvements, landscaping, parking, building coverage, building materials, lighting, etc.).

Mayor Proctor indicated that there were persons wishing to speak on the matter. Mr. Nathan Conant indicated that he wished not to speak. Mr. Marvin Schneider also stated that he had no comment at that time.

Mr. Mark Cottle, Attorney-at-Law, attorney for the applicant, PO Box 1124, Sherwood, Oregon. Mr. Cottle indicated that he supplied the City with the analysis on the transportation of the product. The waste product is now going to the landfills. Mr. Cottle indicated that he wished to provide additional language to the City's existing conditions. The applicant is happy with the screening requirements. The applicant has no problem with that. The applicant has concerns with only the conditions to refine and wished to discuss in more detail those conditions. Mr. Cottle added that it may very well be in everyone's interest that this facility accept Newberg's garbage the same as the transfer station does. The garbage would be delivered to the land fill and machinery would have to sort out and shred what it could. This would require the applicant to purchase expensive machinery in order to do this just to deliver it "next door". It would be a duplication of efforts. Mr. Cottle further stated that the raw garbage condition would be continued for the RFD facility outside Newberg. Newberg would be the only City in this area that would have this type of operation. The facility would take 150 tons the first year, with a review in six months, and if satisfactory, would request an allowance to increase it to 300 tons. The matter would be appealable to the Planning Commission and/or the City Council. There could be additional limitations as to yearly reviews.

Mr. Cottle indicated that another condition would be a meeting with Duane Cole, Greg Scoles and John Knight concerning the limitations on employee's actions in the operation of the facility. In reviewing the staff report, Item No. 10 (**Employees:** The maximum number of employees allowed at the site shall be no more than fifteen (15) at one time). Mr. Cottle indicated that this condition should be taken out. Issues concerning pick-up and delivery at the facility should provide "when other necessity exists".
Mr. Cottle indicated that the applicant wholly accepts all conditions as outlined.

Councilor RC inquired whether the applicant had the sorting and shredding equipment to sort out raw garbage. Mr. Cottle stated that the product would already be sorted and shredded, but that a further refinement would be needed. Most of which would be done through a magnet to get the metals out that could not be recycled anyway. The process for this could be worked out in the Development Agreement previously discussed.

Councilor RC also inquired about the traffic study prepared by Kittleson & Associates. Mr. Cottle stated that he was not a traffic expert, but believe that there would not be much change from 1995 to 1996.

Councilor RC inquired about a co-generation facility. Mr. Cottle stated that the facility would not be burning anything, it is an RDF plant. Mr. Cottle stated that part of the Development Agreement would be the requirement to have a contract in place with the Newberg Transfer Station.

Discussion was held concerning the doors being left open for an extended period of time. Mr. Cottle stated that it could be limited, but sometimes they would be left open to "clean the place out". Items could be further defined in the Development Agreement. A list of do's and don't's can be discussed and resolved (i.e., noise and odor issues). The property would stay inside the City zoning requirements as well.

Discussion was held concerning the projected 300 tons of garbage a day being transferred to Newberg which would allow 10-15 trucks. Mr. Cottle stated that the staff has already indicated a maximum (Condition No. 10:**Vehicle Trips:** Trucks entering and exiting the site shall not exceed twenty-five (25) deliveries and twenty-five (25) pick-ups per day). Further discussion was also held concerning trips on Hwy. 99W and other routes of the City. Mr. Cottle stated that he could not confirm the routes that would be used, but surmised that it would most probably use Hwy. 99W.

Mayor Proctor called upon the opponents. Mr. Rick Whitlow and Ms. Beth Whitlow indicated that they had no comments at this time. Mayor Proctor indicated that there were no other letters. Mayor Proctor closed the public hearing.

Councilor DMc stated that it appears that it is the "right thing to do - recycling and all that", but there should be limitations on the amount of garbage taken and received. It would be nice to have Newberg's garbage taken care of and recycled rather than fill up the landfill. Councilor DMc stated that he had questions concerning the odor and noise generated from the facility.

Councilor DW stated that he too would like additional information. Shredding should be done on site or at least at the Newberg Transfer Station. Mr. Cottle stated that either the applicant or Newberg Transfer can do the process indoors. The Council can control the process. Councilor DMc stated that if the Development Agreement outlined the process and conditions it would help him understand the process more.
Mr. Cottle added that the Development Agreement can tie down certain issues that are not clear. The Council already annexed the property. The conditional use permit would involve the Development Agreement. Discussion was held concerning bonding the Development Agreement which provide for a "pool" of money for clean-up, etc.

MOTION : RW/DS to approve **Resolution No. 96-1954.**

Councilor DW indicated that the Resolution does not discuss the Development Agreement. Mr. Cottle indicated that Item No. 13 of the City's conditions discusses the Development Agreement (**Development Agreement:** Prior to issuance of building permit, a development agreement shall be signed by the applicant and the City in accordance with the Urban Growth Boundary Amendment requirements. The agreement will allow only waste reduction and fuel processing activities on the subject property. The purpose of this provision is to assure that any lands added to the UGB for a specific need will be used only for that need. If not, then the property will be considered for removal from the UGB).

Councilor TDW stated that he feels uncomfortable with proceeding and taking steps, perhaps misleading the applicant and others. If the City does not have all the information to see if this is a good project, then the matter should be postponed. Councilor TDW stated that he does not feel comfortable supporting the Resolution without a draft of the development agreement.

Discussion was held concerning the viability of the company (applicant) being able to stay in business and whether the City would be liable for the damages, and what would the City's financial obligations be (possible litigation?). City Attorney Terrence Mahr stated that these problems would be addressed in the Development Agreement. Security in the form of insurance bonds, etc. would take care of problems such as this.

Councilor DW stated that he understands the concerns of the other Council members, but he is unclear as to what other information would be needed at this time. Councilor DW indicated that he feels comfortable with the step by step process outlined in the staff report (page 17 of the staff report as well as the additional conditions outlined on page 17 of the Council packet).

Councilor TDW stated that he would like to amend the motion to postpone the matter and have it presented in the form of the development agreement (one document). Councilor DW stated that the process would be to agree on the items tonight and address other concerns in a single document. Councilor TDW stated that it appears that every meeting there is additional information presented (facts and conditions).

Councilor RW called for the question to vote on the Resolution. The conditions and changes in the staff report are not in the Resolution, however.

MOTION/AMENDMENT to Amend Resolution No. 96-1954: DW/RW to amend Resolution No. 96-1954 to add the five conditions outlined in the staff report dated January 23, 1996 (page 17 of Council packet) will be included in the Development Agreement and the additional proposals and comments received tonight by the applicant will also be included along with the Final Conditions of Approval for CUP-2-95 (Fuel Facility). (6 Yes/1 No(TDW)/1 Abstain(AH). Motion carried.

ROLL CALL ON ORIGINAL MOTION AS AMENDED: (6 Yes/1 No (TDW)/1 Abstain (AH). Motion carried. Mayor Proctor declared Resolution No.96-1954 has passed.

2. Hearing on the vacation request of a fourteen (14) foot wide alley located in Block 3 City Park Addition, bounded by Willamette Street, Chehalem Street, Ninth Street, and Tenth Street (Placek Vacation) File No. VAC-5-95.
   Ordinance No. 96-2431 vacating the east-west right-of-way between Yamhill County Tax Lots 3220CC-200 through 3220CC-700 within the corporate City limits of Newberg, Oregon.

Mayor Proctor called for abstentions, conflicts of interest and ex parte contacts. Mayor Proctor also called for objections for jurisdictions. DRC noted that it was staff's recommendation to adopt the vacation request.

Mayor Proctor called upon Mr. Clayton Brown - no comment.

Mayor Proctor called upon Mr. Nathan Conant - no comment.

Mayor Proctor called upon Mr. Don Hundley. Mr. Hundley, 921 S. Willamette Street, Newberg, Oregon, stated that he is one of six property owners who has no objections to removing the alley. He had questions concerning the drawings. Mr. Hundley noted that there were other issues that should be known to the Council (screens have been cut on houses in the area, garages have been painted with graffitti). The owners of the alley have done best to remove these nuisances. Mr. Hundley stated that he strongly suggests that the Council approve the vacation and give the alley to the property owners.

Mayor Proctor closed the public hearing.

MOTION: AH/DW to read **Ordinance No. 96-2431** by title only. (Unanimous). Mayor Proctor read the Ordinance by title only. (Unanimous). Motion carried.

V. CONTINUED BUSINESS

1. Motion to approve the City of Newberg City Council Goals and Work Plan for 1996.

Mayor Proctor stated that a motion is in order to approve.

MOTION: AH/DMC approve the City Council Goals and Work Plan for 1996. (Unanimous). Motion carried.

2. **Ordinance No. 96-2427** repealing Ordinance No. 93-2354 which established the Newberg Traffic Safety Commission by making more clear the appellate process, the authority of the commission, procedure to be used by the commission, the appellate process, and bringing the commission into consistency with other committees and commissions of the City Council that are established by Ordinance.

MOTION: RC/DS to adopt **Ordinance No. 96-2427** by title only. (Unanimous). Mayor Proctor read the Ordinance by title only. (Unanimous). Motion carried.

VI. NEW BUSINESS

1. Presentation and discussion of Stream Corridor Recommendation from the Planning Commission File No. CPA-1-95

Mr. John Knight prepared a brief presentation. City Attorney Terrence D. Mahr stated that he is a property owner that owns property that borders on Hess Creek (stream corridor). TDM noted that he would be affected by the setback ordinance and will not be providing legal advice to the City Council on this matter.

Councilor DS commended the Planning Commission in working out the details and is stated that she is also a property owner that has property which is in the area and will be **abstaining.**

Mr. Knight furthered the staff report and a brief history of the project. The Planning Commission formed a subcommittee to address the concerns of the City as well as the property owners. The existing general hazard ordinance did not take care of issues raised in this area. The City received a $20,000 grant for assistance in drafting maps and investigations. In conjunction with the State's Goal 5 rules and regulations, the City must conserve open spaces, scenic and historic areas and natural resources. Mr. Knight provided overheads to the audience detailing problem areas including 20% slope as being the major problem. Open space goes further than general hazard due to the zoning designation. Discussion was held concerning daylight basements. Additional issues were discussed in accordance with the findings of the Planning Commission study session on October 5, 1995:

1. Inventory. Provide clear inventory of where the streams are and what the value of the resource is to the community.

2. Minimum standard. Establish standard for protection.

3. Mapping. Adjust mapping errors and provide consistency with the Comp Plan.

4. Flexibility. Provide flexibility for existing homeowners to allow expansion of their residences over the creek area.

5. Density. Provide density transfer provisions to allow density to be transferred out of the creek area to flatter areas.

6. Formatting. Adjust the ordinance to fit the new Development Code.

7. Amendments. Provide a way to make adjustments to lines.

Councilor DMc stated what we need to do from here is to iron things out and recommend that the staff be involved in the process. Possibly return the matter to the staff to clarify some areas. DRC stated that in the Council agenda (page 97) it refers to the Council reconsidering the recommendation of the Planning Commission again and work out the details. The Council may not want to send it back to the Planning Commission.

Mr. Matson Haug, 1524 Hess Creek Court, Newberg, Oregon, who is a property owner and member of the Planning Commission, stated that he would like the Council to return it to the Planning Commission. Mr. Haug stated that there are new members on the Planning Commission that could provide valuable "new" input. The request would be to direct staff to obtain input from citizens and then return it to the Planning Commission. Mr. Haug stated that he feels that it is the job of the Planning Commission to take another look at it and believes that on behalf of the Planning Commission, they would accept the responsibility. Councilor DW inquired whether Mr. Haug was accurate in knowing that the Planning Commission as a group would want to revisit the project. Mr. Haug stated that he feels comfortable in making that statement due to the process the subcommittee and the Planning Commission went through to arrive at what the City Council is viewing at this meeting. Discussion was held concerning the Austin and George Fox College property.

MOTION: DW/RC to return the project to staff for further investigation of the issues and concerns expressed and that the Planning Commission as a whole (members present) can work on it as well (if they wish).

Councilor RW called for the question. Councilor TDW stated that he agrees with the statements made by Councilor DW and supports his feelings, but feels uncomfortable going back and remanding a decision of the Planning Commission. Councilor DW stated that he wished that if the Planning Commission decided as a whole to review the project, then they could, but they would not be forced to do so.

Councilor RW called for the question.

ROLL CALL ON MOTION: (7 Yes/1 Abstain (DS)). Motion carried.

2. **Ordinance No. 96-2429** repealing Ordinances Nos. 1643 and 91-2311, setting forth new fees and allowing Municipal Court Judge to issue general orders and provide guidelines concerning Court appointed counsel.

MOTION: AH/DW to read **Ordinance No. 96-2439** by title only. Mayor Proctor read the ordinance by title only. (Unanimous). Motion carried.

3. **Ordinance No. 96-2430** amending Ordinance No. 2194 relating to the preservation and destruction of the records of the City of Newberg, by adopting the Oregon State Archives City records retention schedule.

MOTION: AH/TDW to read **Ordinance No. 96-2430** by title only. Councilor RC asked for clarification and possible correction.

Ms. Pat Haight, 501 E. Illinois, Newberg, Oregon, stated that she has requested copies of the video tapes for the January, 1996 meetings which are not available at the Library. Mayor Proctor directed Peggy Hall to check the whereabouts of those tapes. Ms. Hall noted that the tapes are retrieved from the TCI studio on Friday mornings and are routed to the Library. Ms. Haight stated that she was advised by Library personnel that the tapes are destroyed after one year (retention schedule). Ms. Haight also noted that she believes that some tapes were altered by City staff and she has witnesses. DRC stated adamantly that the tapes are not edited by City staff. The State's present retention calls for one year retention of audio and video tapes unless otherwise directed. The Council could amend that to two years if that is their wish. Discussion was held concerning the historical reasons for retaining the tapes. Councilor DW asked Ms. Haight that if she had witnesses that could back up the allegations of tape editing, he would like to know about it and if she could not come up with the witnesses, that she should not make such statements. Ms. Haight stated that she could get that information for him.

MOTION: RC/DS moved to amend the Ordinance to reflect that video tapes of the City Council meetings be retained for two years.

Councilor TDW stated that historically, the tapes could be retained permanently. Councilor TDW state stated that he does not see a need to retain them longer than one year, however.

ROLL CALL ON MOTION: (Unanimous). Motion carried.

4. **Ordinance No. 96-2432** granting a non-exclusive gas utility franchise to Northwest Natural Gas Company, and fixing terms, conditions and compensation of such franchise and repealing Ordinance No. 1806.

MOTION: AH/RC to read **Ordinance No. 96-2432** by title only. Mayor Proctor read the ordinance by title only. (Unanimous). Motion carried.

5. **Resolution No. 96-1953** authorizing the City Manager to enter into agreements for Municipal Court Collection Services of debts owed to the City of Newberg.

MOTION: AH/DW to adopt **Resolution No. 96-1953**.

Discussion was held concerning variable rates of 4%-7% in collection/billing services. Discussion was also held concerning providing more collection activity. TDM reviewed the collection process with the Council. TDM further added that the City cannot access LEDS or DMV for collection activity without obtaining an ID number through DMV which costs approximately $2 per item. TDM further added that increased collection activity by City staff is not an option. DRC stated that he calculated that each citation takes approximately 18 minutes from start to finish to go through the process (this amount of time does not include trial settings, motion hearings, etc.). A lot of courts are hiring outside collection agencies. TDM added that the City Manager is authorized to go with the best agency with the best service and price.

ROLL CALL ON MOTION: (7 Yes/1 No (RC)). Motion carried.

VII. REPORTS FROM CITY MANAGER AND OTHER AGENCIES

None.

VIII. COMMUNICATIONS FROM THE FLOOR

Mayor Proctor called upon Sid Friedman. Mr. Friedman stated that his comments referred to the open space discussion and that he had no further comments.

Mr. Johann May - no comment at this time.

Ms. Pat Haight, 501 E. Illinois, Newberg, Oregon, asked for clarification on material that is considered "confidential". She was advised that a matter that was considered "confidential" was the open space issue which should be public. TDM noted that probably that they were items in a legal bulletin produced by the Legal Department. Ms. Haight stated that it was not Councilor Roer Currier that advised her of this "confidential/non-confidential" issue. TDM stated that he gives legal advice which is sometimes not a matter of public record. Councilor RC stated that what he received was marked confidential. Discussion was held concerning various items that would be confidential (i.e. labor negotiations).

Ms. Haight further added that she wished to discuss the financial management of the City funds and provided copies of information she felt were discrepancies in the Fire Department funds. (Ms. Haight's handouts are part of the Council agenda packet for February 5, 1996).

Discussion was held concerning the City's accounting practices being in line and similar to other cities which are not similar to regular business accounting. Ms. Haight was directed by the Council to meet with Kathy Tri, Finance Director, to go through her concerns. Ms. Haight stated that she talked with the Fire Chief about these discrepancies.

MOTION: DMc/DS to direct staff to prepare a Resolution or Ordinance for the next City Council meeting, providing for 50% of the motel/hotel tax revenue to fund a visitor information center.

Discussion was held concerning variable amounts depending upon the number of hotels/motels in the City. The City fees would be increased due to Newberg's continued growth. Councilor DMc stated that the motion is to ask staff to prepare a Resolution or Ordinance and the matter could be discussed at the next meeting. Councilor RW stated that he would support the motion if the amount of 50% was not included. Other funds should be available for developing the downtown corridor.

Kathy Tri indicated that the City received $42-43,000 in revenue from the hotel/motel tax last year.

AMENDMENT TO MOTION: DW/RC to amend the motion to have it placed on the ballot to go before the voters and see what the voters want to do.

Councilor RW stated that the Council members are elected by the people and therefore, the citizens rely upon the Council members to make such adjustments.

Discussion was held concerning Council members bringing up issues to all Council members and not to a select few. Mayor Proctor stated that the Council needs to work as a group. Further discussion was held concerning the Budget Committee's input on financial matters and then the City Council can make amendments. The matter was reported in the City Manager's "Snapshot" report. It was noted that the Budget Committee refused to provide funding for a pavilion in the park but the City Council over-ruled their decision. Discussion was held concerning the downtown corridor revitalization.

It was also noted that the Budget Committee reviews the financial picture of the City and makes recommendations for the adoption of the budget. Councilor TDW stated that he was not opposed to the vote of the people on items that are significant. This appears to be a minor item in the budget. Councilor DW stated that the public gives input through the Budget Committee. This creates animosity for the Committee and the Council for a $5 per month per Chamber of Commerce member could pay which would relieve the City from having to deal with this issue. Discussion was held concerning the importance of this project versus other projects.

Councilor DS called for the question.

ROLL CALL ON AMENDED MOTION: (3/Yes (RC/DW/RW)/6 No). Motion failed.

Discussion was held concerning who the recipient of the 50% funds would be? At this time, it would probably be directed to the Chamber of Commerce.

Councilor DS called for the question.

ROLL CALL ON ORIGINAL MOTION: (5 Yes/3 NO (DW/RC/RW)). Motion carried.

Mayor Proctor stated that the matter would be before the Budget Committee at a later time. DRC clarified that the money would not go directly to the Chamber of Commerce. The motion approved the Ordinance change.

Councilor AH inquired whether the City staff had seen the materials presented by Ms. Pat Haight. DRC stated that no that he did not receive a copy.

MOTION: AH/DMc to direct the staff to respond to Ms. Haight's comments at the March 4, 1996 City Council meeting. (Unanimous). Motion carried.

DRC stated that wished to comment on the study of Central School. If the Council did not wish to comment or want to hear, it could be postponed to another meeting.

MOTION: RW/RC to adjourn at 9:54 p.m. (Unanimous).

ADOPTED by the Newberg City Council this 6th day of May, 1996.

Duane R. Cole

Duane R. Cole, City Recorder

ATTEST by the Mayor this 6th day of May, 1996.

Donna Proctor

Donna Proctor, Mayor