MINUTES OF NEWBERG CITY COUNCIL
MONDAY, JUNE 3, 1996
7:00 P.M. MEETING
NEWBERG PUBLIC LIBRARY

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

The pledge of allegiance was performed.

II. ROLL CALL

Charles B. Cox (CBC)
Alan Halstead (AH)
Deborah Sumner (DS)
T. Dan Wollam (TDW)
Roger Currier (RC)
Donna McCain (DM)
F. Robert Weaver (RW)

ABSENT: Dave McMullen (DMc)

STAFF PRESENT:
Duane R. Cole, City Manager (DRC)
Terrence D. Mahr, City Attorney (TDM)
Greg Scoles, Community Development Director
Katherine Tri, Finance Director
Peggy R. Hall, Assistant City Recorder

OTHERS PRESENT: Josh Nauman (Videographer), Sid Friedman, Pat Haight, Jim Morrison, Steve Pfeiffer (Attorney for Austin's), Pati Seitz, Nadine Windsor, Johann May, Gary Allen (Graphic), William C. Cox (attorney for Ron Manning), David Kinney (Community Development Consultant - Visitor Center), Annie Navetta, Bryan O'Brien, Ann Pesola (Newberg Area Chamber of Commerce)

Mayor Proctor thanked Roger Veatch (Coldwell Banker) for providing flags around houses on Memorial Day.

III. CONSENT CALENDAR

1. Approve minutes from Work Session and Regular Meeting of the City Council held on May 20, 1996.

Mayor Proctor indicated that Pat Haight had corrections to the minutes of May 20, 1996. Ms. Haight stated that she wished the Council would review the tape and minutes prior to approving the minutes as typed. The minutes contained errors. Councilor RC also noted that there should be a clarification or correction pertaining to the well site and location from the river. Further discussion was held concerning the minutes. Peggy Hall indicated that she would review with Ms. Haight her findings and revise the minutes accordingly.

MOTION: RC/RW to postpone approving the minutes of May 20, 1996 until the errors and corrections have been done.

Discussion was held concerning the content of the minutes being a summary of the events that occurred. Councilor TDW said that without the aid of a court reporter, it is difficult to get verbatim minutes.

ROLL CALL ON MOTION: (7 Yes/1 Absent (DMc). Motion carried.

2. Approve Proclamation declaring National Flag Day - June 14, 1996, **"Pause for the Pledge of Allegiance".**

MOTION: RW/RC to approve the proclamation. (7 Yes/1 Absent(DMc). Motion carried.

Councilor RW stated that he feels that the proclamation is excellent (freedom of religion). All Americans should not be required to perform the pledge of allegiance. Mayor Proctor stated that the proclamation came from the White House. Discussion was held concerning Eastern Daylight Time (EDT).

MOTION: AH/DM to approve the remaining portions of the Consent Calendar. (7 Yes/1 Absent (DMc). Motion carried.

IV. PUBLIC HEARING

LEGISLATIVE 1A. Resolution No. 96-1973 declaring that the effective date of the amendment to the Newberg City Charter requiring a vote of the City electorate to approve any annexation of property into the corporate limits of the City of Newberg (Measure No. 36-37) to be the date of the Mayor's proclamation of the adoption of such amendment. (Legislative Public Hearing)

Mayor Proctor opened the public hearing. TDM stated that it is not necessary to declare ex parte contacts, but abstentions, objections to jurisdiction or conflicts of interest must be declared. Discussion was held concerning the City's Charter amendment. Appropriate declarations and postings were done. The Council adopted ordinances and resolutions on May 20, 1996 (the day before the primary election). Annexation applications adopted on June 3, 1996 are subject to the Charter amendment wherein they are to be placed before the electorate of the City. Mayor Proctor stated that there would be a three (3) minute time limit to speak on the subject.

Mr. Sid Friedman, 31909 NE Corral Creek Road, Newberg, Oregon, stated that if the Council adopts the resolution, the proclamation by the Mayor should have the effect of the Charter amendment. Mr. Friedman urged the Council to adopt the resolution. Discussion was held concerning the City going forward on annexations that were adopted on May 20th (day before primary election).

Ms. Ann Navetta, 709 E. Sheridan, Newberg, Oregon, questioned the date the annexations would become law. Mayor Proctor stated that she signed the proclamation today around 4:00 p.m. Ms. Navetta indicated that she also urged the Council to implement the annexation amendment as soon as possible.

Ms. Nadine Windsor, 2902 E. Second Street, #28, Newberg, Oregon, stated that she was puzzled on when the annexations would take effect. Mayor Proctor reviewed with the audience that she signed the proclamation at approximately 4:00 p.m. today. The City Elections Officer (Peggy Hall) canvassed the votes received from the Yamhill County Elections Department.

Discussion was held concerning **Resolution No. 96-1973** and its proposed enactment. TDM further noted that the Council was not changing the "goal post".

Ms. Windsor further read her statement indicating that she has been a resident of the City for most of her 80 years and was a chief petitioner on the initiative. Ms. Windsor stated that she requested that the record remain open for 7 days on the annexations before the Council this meeting.

Mr. William Cox, Attorney-at-Law, 0244 SW California Street, Portland, Oregon, 97219, stated for the record that he is not related to Charles Cox, City Council member. Mr. Cox represents Ron Manning on his application for annexation which was originally approved by the Planning Commission. Mr. Manning's application is one that has fallen into the limbo area where everyone is trying to struggle with what is the law. Mr. Cox stated that it is his belief that the City should fall back on the State Statutes and Oregon Constitution (Article 21). Discussion was held concerning equal protection under the law and the ability of a certain group of people preventing others from coming into the City and enjoying the same protection and rights that others have is unfair. It leaves the door open for discrimination.

Discussion was held concerning the case Stewart v. City of Corvallis (1980 case). Mr. Cox cited ORS 222.125 and ORS 222.120 dealing with annexation and election issues.

Mr. Steve Pfeiffer, attorney for Ken and Joan Austin, discussed his opinion on whether or not the annexations passed on May 20, 1996 should go to the vote of the people. Mr. Pfeiffer stated that the annexations were approved by the City Council prior to the primary election vote. The only act that remains is the filing of the annexation with the Secretary of State. Mr. Pfeiffer also provided his thoughts on the constitutionality of the acts. Mr. Pfeiffer stated that the Stewart case is flawed (13 years old). There is new case law with various decisions out of the Court of Appeals.

Councilor TDW stated that **Resolution No. 96-1973** is intended to determine the effective date of an annexation. Mr. Pfeiffer stated that he concurs with City Attorney Mahr's interpretation. Mayor Proctor called for further questions from the Council.

Mr. Ryan McPike, land developer consultant, discussed his views on the Ron Manning annexation. Mr. McPike stated that he has never run into this type of situation where applications have been submitted and then go under different rules that are in effect at the time the matter is concluded. Mr. McPike also noted that it leads to discrimination and will impact development. The City should take responsibility to protect everyone, including the minority.

Mayor Proctor closed the public hearing and asked for the recommendation from staff. TDM stated that staff recommends adoption of **Resolution No. 96-1973**.

MOTION: AH/DS to adopt **Resolution No. 96-1973**.

Councilor RC stated that he wished to comment that he does not have a problem with adopting the amendment but wondered what affect it would have on other City Charter amendments, the constitutionality or fairness. Councilor RC stated that he concurs with TDM's analysis.

Councilor TDW noted that he was not sure about the need for the resolution and the discretion that the Council has in determining the effective date. TDM stated that when operating under local legislation, some deference by the Court with reference to the City's rulings. In the event of litigation, it may be another argument. Further discussion was held concerning the interpretation of the effective date. The effective date was the date of approval. The effective date is the date of the proclamation.

Discussion was held concerning ex-o-factor laws and the final decision. Councilor RW called for the question.

ROLL CALL ON MOTION: 6 Yes/1 No(TDW)/1 Absent(DMc). Motion carried.

QUASI-JUDICIAL

1. Public Hearing regarding annexation of a .34 acre site, (zone change from County AF-10 to City R-2 and withdrawal from the Newberg Rural Fire Protection District)
Applicant: Ron Manning
Location: 11th Street 150 feet east of Pacific Street
Tax Lot No.: 3220CD-500
ANX-11-96
Ordinance No. 96-2440

Mayor Proctor opened the public hearing and asked for abstentions, conflicts of interest or objections to jurisdiction, or ex parte contacts.

DRC stated that this is a small annexation and the staff's recommendation at the end of the public hearing process would be to approve the annexation and refer it to the vote of the people at the November election. The September special election would be a cost to the City. Discussion was held concerning the implications of approving the annexation request and not referring the matter to the vote of the people. This particular annexation is not covered under the 120 day rule. DRC stated that it is further recommended that the Council table the issue for one month until we have a better grip on the issues and then proceed on the process.

MOTION: RC/DS to table **Ordinance No. 96-2440** for one month. (7 Yes/1 Absent (DMc). Motion carried.

Mr. William Cox, attorney for Ron Manning, stated that he feels that we are all struggling because we are not sure what the limits are as far as what we are to discuss. There are two issues; land use issue (they are in agreement with the Planning Commission and City staff report that they meet the City's Comprehensive Plan and land use regulations). The other issue is the annexation question. Not sure if the vote earlier tonight controls the ex-o-facto position. Mr. Cox stated that he believes that the State's laws over-ride whatever is voted. Discussion was held concerning the cost of the election. Mr. Cox also noted that he feels that the Council violated his client's rights in changing the playing field. Mr. Cox reviewed the various cases that concur with his beliefs. Discussion was held concerning waiving land use rights. TDM stated that the Council is not changing the goal posts. Mr. Cox stated that one person (Nadine Windsor) previously asked for a 7 day extension. Mr. Cox stated that he is not asking for an extension. Mr. Cox stated that he feels that he and his client merely do not want to wait.

Mayor Proctor stated that the whole issue is very frustrating for everyone because it is something new and procedures have not been established. Mr. Cox stated that he compliments the Council for their time. TDM stated that there is a motion on the floor to continue this matter to a time certain (July 1, 1996 - 7:00 p.m.). The applicant was asked to agree to such postponement. Discussion was held concerning the 120 day rule application and whether the matter should be left open for 7 days. If the record is closed and then reopened, the applicant would have time to file a rebuttal statement and meet the 120 day rule.

MOTION: RW/ to take both **Ordinance No. 96-2440 and Ordinance No. 96-2441** and table both of them for the July 1, 1996 Council meeting. (Motion failed for lack of second).

TDM stated that the two ordinances should be taken separately. Councilor AH asked what the application date was for the second application. Community Development Director Greg Scoles stated that they had the same date. TDM stated that the Council should continue the matters, not postpone. Councilor AH called for the question.

MOTION (restated): RC/CBC to continue the hearing to July 1, 1996 at 7:00 p.m. (7 Yes/1 Absent(DMc). Motion carried.

QUASI-JUDICIAL

2. Public Hearing regarding annexation of an 8 acre site, (zone change from County VLDR-1 to ***City R-1 and R-1/GH***, and withdrawal from the Newberg Rural Fire Protection District)
Applicant: Ron Manning
Location: West of Main Street South of Pinehurst Court
Tax Lot No.: 3218AC-1700, -1800, -1900, -2000
ANX-12-96
Ordinance No. 96-2441

Mayor Proctor opened the public hearing and called for abstentions, ex parte contacts, objections to jurisdictions or conflicts of interest. Councilor RC stated that this property is located three blocks from his house. DRC stated that the same applies to this parcel of property owned by Mr. Manning. It is staff's recommendation to continue the public hearing to July 1, 1996 at 7:00 p.m.

MOTION: AH/RW to continue the matter to the July 1, 1996 City Council meeting (7:00 p.m.) noting the concerns of the applicant (or his attorney) as stated in the previous public hearing). (7 Yes/1 Absent (DMc). Motion carried.

TABLED

3. Public Hearing regarding annexation of a 10 acre site, (zone change from County to City zoning and withdrawal from the Newberg Rural Fire Protection District.)
Applicant: Marvin Schneider
Location: 2808 S. Wynooski Street
Tax Lot No: 3228-1800
Ordinance No. 96-2442
(Letter dated May 29, 1996 from Mark O. Cottle, attorney for Marvin Schneider, has been received tabling the annexation application pending the reconsideration issue.

Mr. Scoles stated that the matter was tabled and not withdrawn. TDM stated that he received a letter requesting the continuance.

MOTION: AH/RC to continue the matter pursuant to the letter from Mr. Cottle. (7 Yes/1 Absent(DMc). Motion carried.

Mr. Cottle stated that he agreed that the matter should be tabled and not withdrawn. Mr. Cottle requested that the City Council reconsider tabling the matter indefinitely and having notice to bring it back up at a later time. **(Note: This request was asked after the budget review. It is placed in this section of the minutes for reference only.)**

MOTION: AH/RW to table the matter indefinitely. (6 Yes/1 No(RC)/1 Absent (DMc). Motion carried.

MOTION: AH/DS to table indefinitely **Ordinance No. 96-2442.** (7 Yes/1 Absent (DMc). Motion carried. **Note: This motion was addressed after the budget review. It is placed in this section of the minutes for reference only.**

4. Public hearing on the use of state revenue sharing.

Finance Director Katherine Tri reviewed with the Council the issues involving capital expenses, police and other safety related services in order to receive money. The budget resolution provides for the authorization.

5. Public Hearing and adoption of the ***Revised*** 1996-97 City Budget as presented in **Resolution No. 96-1966.**

Discussion was held concerning the 1996-97 City budget, bonds, debt service, insurance increases, payroll, negotiations with unions, adjustment for fire serial levy, etc. Councilor RC had concerns about the City Hall bonds being in a separate capital fund. Ms. Tri stated that the City sells bonds and invests the proceeds. The City needs to isolate the expense and any investments and the best way to do this is by a separate fund (City Hall facilities bond fund). Discussion was held concerning the Hospital fund.

Ms. Pat Haight, addressed concerns that she had concerning the City budget, in particular the dechlorination system update. Ms. Haight stated that she had contacted DEQ and was told that the City has never been in violation. Ms. Haight questioned why the City was budgeting $50-$55,000 for chlorination system that it does not need.

Mr. Scoles provided an explanation of the process and the studies generated. Mr. Scoles stated that it is budgeted each year because it is unknown when it will be needed. DEQ has not come up with the results of the mixing zone study.

Ms. Haight said that the City's assets is a major item of the City's budget. Ms. Haight had concerns about the reduction of the City's assets. Ms. Tri stated that the City invests money throughout the year until it is needed. Ms. Tri further added that each month the City's Finance Committee reviews the City's investments and how they are divided. Ms. Tri explained the City's process in receiving revenue from property taxes in November.

Further discussion was held concerning the City's budget (capital projects, debt service, cash flow, investments, cash on hand and liability of the City).

Ms. Tri explained the City's receipt of property taxes and how different funds are used and how they fluctuate. Discussion was held concerning the City borrowing $195,000. Ms. Tri stated that the Statutes allow the City to borrow internally from one fund to another which saves interest and costs less for the City to borrow funds from other funds. Ms. Haight questioned the carry-over amounts of $1.9 million.

Councilor TDW stated that it appears that the Council is getting off track and the Council needs to stay focused on the budget and move on.

Mr. Johann May, 312 N. Edwards Street, Newberg, stated that he wished to commend the Mayor on her action concerning the proclamation. Mr. May reviewed with the Council his concerns on the budget which involve basic human services (social services) realizing that many retirees have made Newberg their place, the City appears to have no money to provide senior services. DRC added that the Senior Center project is completed. Chehalem Park & Recreation District (CPRD) built the facility with grant funds provided by the City. Mr. May also inquired about the increase in EDRLF funds for the development of business opportunities and more new jobs in Newberg. Mr. May said that he feels that the visitor center should not be part of the City's budget. DRC said that the City partnerships with banks on grant projects. The visitor center is funded through the transient room tax. Discussion was held concerning the City assisting in many social service agencies (Ned's Place, Senior Center, Newberg Human Resource Center, etc.). Discussion was also held concerning the purchase of the VFW building. Les Beecroft stated that he and DRC did discuss the City purchasing the building, but nothing permanent.

Mr. Les Beecroft, Trustee for VFW, said that he has talked with the City purchasing the building. VFW representatives did not want to maintain the historic building due to the extensive repairs. Councilor RW inquired when the first time Mr. Beecroft was aware that the City may be interested in the VFW building. Mr. Beecroft stated that it was when former Community Development Director Bert Teitzel came to town.

Mayor Proctor closed the public hearing.

MOTION: TDW/AH to approve **Resolution No. 96-1966** approving the revised 1996-97 City Budget. (6 Yes/1 No(RC)1 Absent (DMc). Motion carried. Mayor Proctor announced that the 1996-97 City of Newberg budget has been adopted.

6. Public Hearing on the vacation of a street right-of-way that is a 30 foot wide portion of Fourth Street bisecting Memorial Park
Applicant: City of Newberg
Location: Between Blaine and Howard, Third and Fourth
Tax Lot No.: Abutting 3219AC-100, -200-, -600
VAC-5-96
Ordinance No. 96-2443

Mayor Proctor read the description of **Ordinance No. 96-2443**. Mayor Proctor called for abstentions, conflicts of interest, objections to jurisdictions or ex parte contacts. DRC presented a staff report which included discussions about the pavilion project. DRC also stated that the City does not intend to use the subject property for street purposes in the future. Discussion was held concerning the removal of bark chips. DRC said that CPRD would be contacted. Mayor Proctor closed the public hearing.

MOTION: AH/TDW to read **Ordinance No. 96-2443** by title only. (7 Yes/1 Absent (DMc). Motion carried. Mayor Proctor read **Ordinance No. 96-2443** by title only. **ROLL CALL:** (7 Yes/1 Absent (DMc). Motion carried.

V. CONTINUED BUSINESS

None.

VI. NEW BUSINESS

1. **Resolution No. 96-1967** transferring and reappropriating fund in the General Fund.

Ms. Tri stated that this is a transfer of $20,000 from the contingency fund (special services) allowing the City's building inspection budget to be in line (revenue is available to cover expenses).

MOTION: AH/TDW to adopt **Resolution No. 96-1967**. (7 Yes/1 Absent (DMc). Motion carried.

2. **Ordinance No. 96-2444** providing for the creation of Local Improvement Districts to comply with Article XI, Section 11 b of the Oregon Constitution, ORS 223, repealing Ordinance No. 1348 and declaring an emergency. **Resolution No. 96-1968** establishing a loan origination fee and billing fee in accordance with Section 11 (I) of Ordinance No. 96-2444.

Mayor Proctor reviewed the Ordinance description with the Council and audience. DRC stated that the proposed Ordinance and Resolution would establish and further clarify the LID policy for the City that affects the public financing policy. DRC noted that Kathy Tri, Finance Director, should be commended for taking on this project and working with the City's bond counsel.

MOTION: RC/DS to read **Ordinance No. 96-2444** by title only. (7 Yes/1 Absent(DMc). Motion carried. Mayor Proctor read **Ordinance No. 96-2444** by title only. (7 Yes/1 Absent (DMc). Motion carried.

MOTION: AH/RW to adopt **Resolution No. 96-1968**.

Councilor TDW questioned the language of Section 1 pertaining to the loan origination fee and whether or not it was a one time billing fee or semi-annual fee. DRC stated that it is each semi-annual period. Further discussion was held concerning clarification as to the frequency and amounts. Finance Director Kathy Tri stated that she would add "per billing" to make it more clear.

AMENDMENT: Councilor AH stated that the motion should be amended to include the correction of the words "added per billing". Seconded by Councilor RW.
ROLL CALL ON MOTION AS AMENDED: (7 Yes/1 Absent(DMc). Motion carried.

3. **Resolution No. 96-1970** authorizing the City Manager to enter into an agreement with the Newberg Area Chamber of Commerce to provide Visitor Information Services from July 1, 1996 through June 30, 1999.

Mr. David Kinney asked to speak on this subject. He is the former City Manager for the City of Stayton and was actively involved with their downtown development organization. DRC asked him to review the Newberg Area Chamber of Commerce proposal with the following things in mind: (1) determine if the proposal met the basic requirements - yes it did; (2) try and identify recommendations to incorporate into a contract for Chamber visitor services; and (3) spend time visiting the Chamber offices and with the Director. How could the Chamber improve its quality of services. Mr. Kinney stated that he would recommend that the Council approve the Chamber's proposal. Mr. Kinney stated that it is important to recognize that the City does provide funding for the visitor center and it would be appropriate that the City be mentioned as contributing to the funding of the visitor center.

Discussion was held concerning having signs or banners made to provide for more visibility of the visitor center. Discussion was also held concerning a two year contract rather than a three year contract. Councilor TDW stated that the intent is clear that the visitor center would be servicing the City. It is important that the process go through. A three year term is appropriate for this type of contractual arrangement.

MOTION: TDW /AH to adopt **Resolution No. 96-1970.**

Discussion was held concerning donating 50% of the revenue from the transient room tax to fund the visitor center. Discussion was also held concerning expenses incurred in operating the visitor center. DRC stated that he will finalize the contract. Ms. Haight asked how often the performance of the Chamber in operating the visitor center would be monitored. Mayor Proctor stated that reports would be submitted to the City Council. Councilor AH stated that the reporting is listed in the contract as being quarterly reports. Councilor RW called for the question.

ROLL CALL ON MOTION: (6 Yes/1 No (RC)/1 Absent (DMc). Motion carried.

4. **Resolution No. 96-1971** establishing a formal position on the Yamhill County Zone Change - Newberg Garbage Service (PAZ-07-96) for property located southwest of the intersection of Wynooski Road and St. Paul Highway (Tax Lot No. 3228-1200), Newberg, Oregon.

Mayor Proctor stated that the matter was tabled to the June 17, 1996 City Council meeting.

5. **Resolution No. 96-1972** establishing a formal position regarding development in Urban Reserve Areas.

DRC stated that it is staff's recommendation to postpone action until the City and Yamhill County can have a dialogue about the issues.

MOTION: TDW/AH to table **Resolution No. 96-1971 and Resolution No. 96-1972** indefinitely until the City has received adequate information and have met with the parties. (7 Yes/1 Absent(DMc). Motion carried.

6. **Resolution No. 96-1974** authorizing the City Manager to award a contract for the Wynooski Street Overlay project to the lowest bidder, within 10% of the engineer's estimate of $40,000.

Mayor Proctor stated that this matter has also been tabled to the June 17, 1996 City Council meeting.

VII. REPORTS FROM CITY MANAGER AND OTHER AGENCIES

1. Third Quarter from the Visitor Information Center.

Councilor RW asked that he be allowed to make a comment concerning the visitor information center. Councilor RW stated that he has always been impressed with the operation of the visitor center and they should be complimented. Ms. Ann Pesola, Newberg Area Chamber of Commerce Director thanked Councilor RW for his comments and did not have anything else to add to the report.

VIII. COMMUNICATIONS FROM THE FLOOR

Ms. Pat Haight, 501 E. Illinois Street, Newberg, Oregon, reviewed the February 26, 1996 Finance Committee minutes concerning remodeling Central School. Ms. Haight expressed her concerns that others in the community have an attachment or memories associated with Central School. Ms. Haight further expressed her concerns about the VFW building being demolished.

Mayor Proctor stated that various committees have reviewed the City Hall facilities. Discussions with CPRD has also been held concerning their interests. Councilor RC added that he has attended several meetings since being on the City Council concerning this project. Extensive discussion was held before it would be placed on the ballot. Discussion was held on the costs of the project.

Mayor Proctor asked Mr. Jim Morrison if he had anything else to add to the discussions. Mr. Morrison stated that he was in attendance to answer any questions the Council may have concerning the initiatives.

MOTION: DS/AH to adjourn at 9:50 p.m. (7 Yes/1 Absent (DMc). Motion carried.

ADOPTED by the Newberg City Council this 3rd day of September, 1996.

Duane R. Cole

Duane R. Cole, City Recorder

ATTEST by the Mayor this 3 day of September, 1996.

Donna Proctor

Donna Proctor, Mayor