MINUTES OF THE NEWBERG CITY COUNCIL
JUNE 17, 1996
7:00 P.M.

PROVIDENCE NEWBERG HOSPITAL CONFERENCE ROOMS 4 & 5

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

II. ROLL CALL

Charles B. Cox (CBC)
Alan Halstead (AH)
Deborah Sumner (DS)
Roger Currier (RC)
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)
Greg Scoles, Community Development Director
Katherine Tri, Finance Director
Peggy R. Hall, Assistant City Recorder

OTHERS PRESENT: Josh Nauman (Videographer), Charles Stern (Yamhill County Clerk), ODOT: Mark Shippen, Dave Bishop, Tom Arnold, Leslie Lewis, Mart Storm, Tony Wilson, Sharon Caldwell, Mark Wilcuts, Jack Graham, Sid Friedman, Pat Haight, Jim Morrison, Nadine Windsor, Johann May, Gary Allen (Graphic), William C. Cox (attorney for Ron Manning), Lisa Thomas, Thomas Rickert, Ken Altman

III. CONSENT CALENDAR:

None.

Resolution No. 96-1977 requesting the recount of the votes cast in the May 21, 1996 primary election for the following City Measures:

Measure 36-36 - Fire Fee
Measure 36-37 - Annexation
Measure 36-38 - Council Districting

Mayor Proctor read the description of **Resolution No. 96-1977.**

Mayor Proctor announced that she would take the issue of **Resolution No. 96-1977** at this time. This Resolution requests the recount of the votes cast in the May 21, 1996 primary election for the following City Measures:

Measure 36-36 - Fire Fee
Measure 36-37 - Annexation
Measure 36-38 - Council Districting

Mr. Charles Stern, Yamhill County Clerk, said that he was available for questions that the Council had concerning the recount. Mr. Stern stated that it was identified that there was a recount was held for one of the measures, but found problems with the votes cast in that particular measure not being consistent with their computer records. Mr. Stern said that he suggested that the other City measures be counted as well. Chehalem Park & Recreation District (CPRD) has requested a recount as well. If the City and CPRD would not voluntarily request the recount, Mr. Stern indicated that he would seek a Circuit Court order allowing him to do so.

MOTION: CBC/AH to adopt **Resolution No. 96-1977.** (6 Yes/2 Absent (DMc/TDW). Motion carried.

Councilor RC questioned that when the County realized there was an error, it would have called for an automatic recount. Mr. Stern confirmed that he did not have the authority to hold a recount based on "error found".

Discussion was held concerning the intent of the City to proclaim the results of the election as it pertains to the annexation and Council districting issues. Mr. Stern stated that the certified results provided to the City stand until the recount is concluded. Mr. Stern stated that there are certain assumptions, based upon calculations and analysis, that the figures would be adjusted. Discussion was held concerning the City's proclamation of the election results being premature which was not based on true count and the validity during the recount process.

City Attorney TDM stated that if the Council wished to address the issue of rescinding the Mayor's proclamation of the votes cast, they would need to ask the Mayor to do so and the Mayor could consider rescinding her proclamation. As Mr. Stern indicated, the certification previously submitted to the City by Charles Stern still stands until the formal recount figures are filed. Discussion was held concerning precedence and the other properties that were annexed prior to the primary election.

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

IV. PUBLIC HEARINGS:

1. **Resolution No. 96-1963** denying the package store liquor license renewal application of Nafisa Mahmood for the business known as H-Market #2 (also known as Everybody's Market), located at 2113 Portland Road, Newberg, Oregon.

Mayor Proctor called for declarations of conflicts of interest, ex parte contacts, objections to jurisdiction and abstentions. TDM announced that ex parte contacts do not preclude a Council member from voting on a matter.

City Attorney TDM gave a staff report on the package store license application. TDM noted that every liquor license (including beer and wine licenses) needs to be endorsed by the City. A recommendation as to whether or not that liquor license should be renewed is reviewed. The present license is held by Ms. Nafisa Mahmood. Questions have risen concerning hidden ownership or other parties owning an interest in the business. An OLCC hearing is being scheduled on the renewal application. OLCC considers the local government's involvement as an important part of the application process.

Mr. Thomas Rickert, said that he has gone into the business and has not witnessed kids loitering and noticed that the clerks have asked for two pieces of identification when purchasing cigarettes. Mr. Rickert added that he has seen a good thing going on in the store.

Ms. Pat Haight, 501 E. Illinois Street, Newberg, indicated that she was originally an opponent and believed that their license should be revoked. She did watch drug sales and a lot of alcohol being taken out of store. Ms. Haight stated that she has concerns for the young people. Ms. Haight added that she has frequented the store on several occasions and has observed the parking lot activity. There has not been such a gathering of kids in the parking lot. They have cleaned up the store and appear to be making an effort to do the job right. The Council has to consider the fact that a few years ago the City had another place of business that sold alcohol to minors. Through recommendations from the City, they gave the business the opportunity to clean up their act. Ms. Haight said that she has seen a real difference with the store and its surroundings.

Councilor RC commented that he would like to clarify something with the proponents. Most of the discussions last year was for the illegal sales and activity going on with the business, the loitering - gathering place for kids and questions concerning who was the legal owner of the business. In addition, it was noted previously that one of the applicants for new a new license was not eligible to come onto the property according to OLCC. Further discussion was held concerning the hidden ownership of the business.

City Attorney TDM advised that OLCC has already held some hearings on the hidden ownership issue. OLCC has indicated that the proposed new owners and Nafisa Mahmood have not provided adequate information to OLCC to satisfy their inquiry.

Councilor DS stated that she feels sorry for the two prospective buyers (Fakeer Rahim and Nabib Nasire) and is obligated to say no until the ownership situation is cleared. Mayor Proctor closed the public hearing.

MOTION: AH/RC to adopt **Resolution No. 96-1963** denying the package store liquor license renewal application of Nafisa Mahmood for the business known as H-Market #2 (also known as Everybody's Market), located at 2113 Portland Road, Newberg, Oregon. (6 Yes/2 Absent (TDW/DMc). Motion carried.

V. CONTINUED BUSINESS

1. Update of Brutscher to Main Street Project.

Mayor Proctor stated that this issue would have a one hour time limit. This is an informal briefing. DRC added that Mark Shippen from ODOT would be providing a presentation. Mayor Proctor also stated that ODOT would be coming back to Newberg next week for an additional meeting.

Mr. Mark Shippen, Project Manager, ODOT, provided hand-outs and a presentation on the project:

- Project to be moved to 1999 (pending environmental assessment).
- A public hearing will be held sometime in the fall (October or November). After that hearing, a final decision can be made on alternatives (acquiring the right of way and funding issues are considered).
- Another public hearing will be held in which public testimony will be taken for the record. The record will also consist of advisory recommendations. This advisory and development meeting would be held in January, or earlier, and the project team will make its final decisions.
- ODOT wants the City Council's opinion as well as the opinions of the citizens involved. Mr. Shippen stated that he would like to have each one of the Council members review the published findings, studies and information available.

Discussion was held concerning the closure of driveways along Portland Road (Hwy. 99W) and the potential loss of revenue from the business owners in the area. Mr. Shippen provided copies of reports and requested the City Council's opinion. Councilor RC stated that he did not want to downplay the costs of accidents or life, but questioned the closing of business driveways and raising medians. Councilor RC inquired about surveys dealing with business owners reporting loss in revenue from the change overs. Mr. Shippen stated that it is a difficult question to answer. He does have reports that indicate this type of problem. The reports are not conclusive because they are not of a specific area, but an accumulation of information from all over the country. Discussion was held concerning moving traffic through more rapidly and the use of additional traffic lights. Mr. Shippen stated that it would be beneficial to move vehicles through with limited stops, without increasing speed in certain areas. He would like to see more bike paths. Councilor RC stated that he would like to see the roads paved as they now exist, straighten out the corner from Hwy. 99W to Hancock Street. Further discussion was held concerning Hwy. 99W. Changes will be made (curbs, better sidewalks, building bike paths and sidewalks to conform to state codes and ADA standards). Driveways will be reconstructed in an attempt to reduce congestion. Discussion was held concerning compensating property/business owners and cross easements.

Councilor AH mentioned the Lincoln Beach report which shows a significant drop in business where median occurs. Work done has had an economic impact on the businesses in the area. Discussion was held concerning what the City could do now (Villa Road intersection) or other "A" priority issues. Mr. Shippen stated that they are already about six months behind schedule. Environmental impact studies will be done and meetings with local governments and citizens are being scheduled. Mr. Shippen stated that he is seeking the City Council's support in assisting in their process.

Discussion was held concerning the project being on the back burner - now until 1999. Councilor DM stated that she believes that it is true that there are a number of priorities throughout the State that may be more important than Newberg, but the State must consider that Hwy. 99W is one of the most travelled roads in the State, and it keeps getting pushed aside. Mr. Shippen stated that he agrees and is trying to keep the project moving. There is a large region to cover and many priorities. It was moved to 1998/99 for funding reasons. Councilor RW added that it appears that the squeakiest gates get most oil - maybe we need to squeak. Mr. Shippen further noted that it is a priority to ODOT and the problems associated with maintaining the pavement in a good condition. Representative Leslie Lewis who was in the audience stated that she would look into the matter.

Mr. Tom Arnold - Region II Location Manager, ODOT, stated that he is responsible for the survey and design, and he is currently in the process of making some initial looks at the project (new on board) which will be offered for construction in 1998 - 2001. Community involvement, funding and related issues are factors in the completion of the project. Mr. Arnold noted the reduction in federal funds available for highway construction has met with a real problem in the plans of ODOT's Transportation Improvement Program (TIP). ODOT's programs are combined with federal revenues for completing projects. ODOT has been looking at what projects are needed and what can be handled during a period of time. Mr. Arnold stated that there is approximately $61 million available for projects, which is about $8 million short of what they need to have to complete the projects. Many projects will be accomplished and accommodated by stages. Brutscher to Everest Street is targeted for completion. ODOT is looking at rescheduling other projects to determine the most important projects to do will be given the go ahead.

Discussion was held concerning the improvements made for Region II (area around Spirit Mountain) as well as the Hwy. 217 problem. Mr. Arnold stated that the Spirit Mountain project was funded by the tribe - they built their own interchange. It is also a state highway. The Hwy 217 issue was a very complex interchange involving a pavement design. Hwy 217 is in Region I. Mr. Arnold added that it was a very complicated project.

Further discussion was held concerning the bypass and how it would be linked to the project. Mr. Arnold stated that the State is also looking at private funding or toll roads. Mr. Arnold noted that the projects referred to at this meeting are very close to being realized but must meet the design standards. Mr. Arnold encouraged the community to work with the City Council in coordinating their needs. Discussion was held concerning the federal government providing funds for federal roads in which Hwy. 99W may be considered a federal road. Mr. Arnold stated that the Clinton administration's "ice tea" funds are handled through the local transportation process which can be applied to highway projects but has stipulations or regulations concerning the project. Questions arose involving federal projects having higher priority than state ones. Federal funds must be spent on federal highways. Discussion was held concerning the storm damage sustained by areas throughout the state. Mr. Arnold stated that, of course, emergency areas are handled first. There was extensive damage to the coastal areas. Councilor RC stated that he believes that there were five areas in Albany that were being done at the same time. Councilor RC asked Mr. Arnold how many other projects have been on the list for completion similar to Newberg? Mr. Arnold stated that some projects have been on the list for 20 years. Newberg's plan has been on the list for some time as well - 20/30 years? Other projects that have similar history will not even make the next program.

Mr. Dave Bishop, ODOT, said that he is working with Yamhill, Polk and Marion County. He resides in McMinnville and feels that he has close ties with Newberg and its transportation problems with Hwy 99W. He agrees that the project has taken a long time to come to this point and further agrees that the roads are getting worse each day. Mr. Bishop stated that he is the area manager for Polk, Marion and Yamhill counties. Mr. Bishop reviewed his views on getting projects moving along in the ODOT process. Mr. Bishop further stated that things get bogged down with processes and it takes a combined effort from ODOT, counties, cities and citizen involvement to complete the projects. These are the decision making bodies that help facilitate the problems and he encouraged citizens to work with the local governments to help the process get back on track.

Mr. Tony Wilson, NAPA Auto Parts, 2010 Crater Lane (business located at 1908 Portland Road). Mr. Wilson reviewed his concerns not just traffic, but how ODOT plans to accommodate the business owners in redesigning Portland Road. Mr. Wilson stated that people coming to Newberg are not just stopping and then moving on, they are shopping and bringing supplies to businesses. The area around Villa Road and Hwy. 99W is a major interchange. A raised median will have a big impact on the businesses. Mr. Wilson stated that accidents occur but are minimal. Some businesses will be losing valuable parking spaces in providing landscaping areas that must be done to be in compliance with the City codes. Councilor CBC said that there is already a problem as it is difficult to get across the road. Mr. Wilson added that most business people want a bypass. Mr. Wilson stated that there is no advantage in putting in a raised median. Discussion was held concerning putting in three signal lights and bicycle paths.

City Manager DRC stated that appraisals would be done on property to compensate property owners for any loss. Any additional City compliance required would also be worked out between the property owner and the City. It would be a variance to the requirements and not a conditional use issue. TDM stated that the fact is that ODOT would be taking property away from the property owners. It is not part of the standards and criteria that is used to allow variances. The questions would be addressed to ODOT at the appropriate time. Councilor RC further added that if the State paved the road rather than provide a raised median, it would be better for those concerned. Discussion was held concerning making concessions with property owners concerning parking space requirements. The variance would be for the property and not specifically to any property owner. Discussion was held concerning the property owner meeting the requirements at the time the property is built, provided adequate parking, but with the State changing the road and possibly shortening the parking lot, the City would work with the property owner in negotiating a settlement.

Mayor Proctor thanked the ODOT representatives for their presentation.

2. **Resolution No. 96-1971** affirming the deferred improvement and reimbursement agreement and waiver of the rights of remonstrance involving Newberg Garbage Service and repealing Resolution No. 95-1942.
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 briefly reviewed the topic of discussion. Councilor AH indicated that he wished to abstain from hearing or voting on the matter. His family has property near the subject property. Councilor AH removed himself from the meeting.

Councilor RC stated that he has been happy with the negotiations and agreement between the City and the applicant. TDM noted that concerns with URA have been addressed. The parties are willing to participate in street improvements (including utility costs) when the surrounding property is developed.

MOTION: RW/DM to adopt **Resolution No. 96-1971** as amended affirming the deferred improvement and reimbursement agreement and waiver of rights to remonstrance involving the Newberg Garbage Service, and repealing Resolution No. 95-1942. 5 Yes/1 Abstain (AH)/2 Absent (DMc/ TDW). Motion carried.

Councilor AH returned to the meeting.

VI. NEW BUSINESS

1. **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 read the description of **Resolution No. 96-1974.**

MOTION: AH/DS to adopt **Resolution No. 96-1974.** (6 Yes/ 2 Absent (DMc/TDW). Motion carried.

2. **Resolution No. 96-1975** recognizing and appropriating a residential needs grant from the Land Conservation and Development Department and transferring and re-appropriating funds in the General Fund.

MOTION: CBC/AH to adopt **Resolution No. 96-1975.** (6 Yes/2 Absent (DMc/TDW). Motion carried.

VII. REPORTS FROM OTHER AGENCIES AND CITY MANAGER

None.

VIII. COMMUNICATIONS FROM THE FLOOR:

Mayor Proctor stated that there are persons in the audience that wished to speak on the Everest Road/Second Street LID issue. TDM stated that he received word from Robert Simon, attorney representing NSP Development. Mr. Jerry Brown has also requested information and indicated that he represents a number of property owners in the area. This matter is requested to be placed before the Council by various property owners concerning the assessment and related problems.

Ms. Sharon Caldwell, 201 Bina, Newberg, said that she was astounded that her group is the only one that has issues involving the construction of Third Street. Ms. Caldwell said that she wanted to resolve the problems and that a letter to the *Newberg Graphic* and other media was going to be submitted concerning their problems.

Mr. Jack Graham, 205 Meredith, Newberg, said that he believes that mistakes were made that has cost everyone money. Agreements have been broken between the developer and the property owners. They are to suffer through the construction process which includes shoddy workmanship and the projection completion dates being extended. Mr. Graham stated that the City should take their concerns more seriously. It was the City Council's decision to proceed with the project. Discussion was held concerning everyone paying their fair share of the cost.

Ms. Lisa Thomas, 201 Ardus Drive, Newberg, feels that her rights have been taken away with regard to the fact that people are afraid to speak. A waiver was signed before buying the houses. Correspondence from Larry Anderson dated July 23, 1993 addresses concerns which are not consistent with what is going on. Discussion was held concerning requests for LID funding information and how the assessments were calculated. Ms. Thomas stated that they have held subdivision meetings in which the property owners feel united in their concerns. Issues relating to Third Street were also discussed.

Mr. Mark Willcuts, realtor, stated that the whole project has been a fiasco from the start. He feels that the City should consider the issues brought to their attention.

Mr. Mart Storm, NSP Development, 560 Parks Road, Dundee, said that he too had questions concerning the assessment and how it was to be assessed. He has received telephone calls from homeowners requesting reassessment and how the calculations were done. DRC stated that he should have been aware due to their bid on the project. Mr. Storm stated that there was a great deal of changes made so that the bid amount was not the correct amount to calculate (project was reduced). Mr. Storm noted that he had some concerns as well. Discussion was held concerning fire, emergency and garbage truck access which involved the Third Street portion.

Mr. Storm stated that in Phase I, Third Street was not even requested. It was mandated that the LID be requested. Mr. Storm stated that he feels that the City Planning Department blind-sided NSP and that is why he and the property owners are coming before the Council. Mr. Storm said that if an agreement was not reached, they could not begin Phase II. Councilor DM asked that City staff look into this issue. Ms. Thomas said that she has copies of alot of agreements. DRC said that the agreements indicated that NSP would be responsible for payment of assessments over $4,000. Mr. Storm stated that if it had been assessed fairly, yes, NSP would live up to their agreement. DRC inquired what was the time line for satisfaction - thirty days? Mr. Storm said that he could not swear to the time frame date. Councilor DS said that she feels that the City Council needs to have further information on the problems and issues presented. Was City staff aware of the problems going on? DRC suggested that City staff can meet with the City Council and a few others to talk about the assessment (numbers) and make it clearer for everyone. Mayor Proctor stated that a meeting will be held to discuss these concerns and hopefully reach a solution to the problem.

Discussion was held concerning what the original application represented and what was modified. Mr. Storm stated that City staff changed requirements and they complied. Mr. Storm stated that Mr. Bert Teitzel (former City Public Works Director) stated that he could not figure out why Third Street needed to be built either. Mr. Storm also said that he remembers a lot of political things going on at that time. Mr. Storm stated that he was told by Mr. Teitzel that the project would be done within 2-3 years and would not go over the $4,000 per property assessment. Discussion was held concerning the information being available for the July 1, 1996 City Council meeting. DRC said that the City extended the deadline for property owners to sign up for the assessment. Discussion was held concerning the assessments for First Baptist Church and St. Michaels Church. Councilor DM stated that churches also pay for street improvements.

Councilor DS stated that she was very apathetic and understands the concerns of the property owners.

Mr. Kenneth Altman, Manager at the Colonial Village Apartments, expressed his concerns over the assessment. Mr. Altman urged the Council to reconsider the assessments.

Mr. Thomas Rickert, 801 Pinehurst, Newberg, Oregon, inquired about the City Hall facilities measure that failed and how it impacted the City's 1996-97 budget. DRC noted that the City can only levy what is legally allowed to budget. This figure was omitted at this time but may be brought back up to the voters at some time in the near future.

Ms. Pat Haight, 501 E. Illinois Street, Newberg, noted that the City approved the budget and if it changed, it should be corrected. Councilor RC stated that at the budget hearings, it was presented with two budgets, one with the City Hall facilities measure passing, and the other without.

Ms. Haight stated that she had concerns about the City's water situation in light of the 300 acres the City annexed recently. Ms. Haight asked for an update, in particular Well No. 7. DRC said that he is in touch with the process through attendance at meetings and has been kept informed by City staff. DRC said that Greg Scoles, Community Development Director has attended the meetings. Ms. Haight further noted that she has concerns about the money the City paid for the wells. Mr. Haight also stated that she talked with Sterling Anderson from Marion County and he sent a letter to her about the status of the City of Newberg wells. Ms. Haight stated that she would provide a copy for the Council. Councilor RW asked that copies of the letter or any other information be sent to the City Attorney for a response and asked that additional copies be sent to the City Council members.

Discussion was held concerning the various interactions between agencies and the steps involved. Ms. Haight stated that she was concerned that the City showed no respect to Marion County and went to the State directly. Further discussion was held concerning Well #7.

Ms. Lisa Thomas stated that she gave the City Attorney copies of 15 letters from homeowners concerning the Emery Orchard issue.

MOTION: DM/CBC to adjourn at 9:50 p.m. (6 Yes/2 Absent (DMc/TDW). 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