

**CITY OF NEWBERG
COUNCIL AGENDA
MONDAY, MARCH 1, 1999
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING - TRAINING ROOM**

I. CALL MEETING TO ORDER

Mayor Cox called the meeting to order.

II. ROLL CALL

Roger Currier (RC)	Donna McCain (DM)
F. Robert Weaver (RW)	Lisa Helikson (LH)
Brett Veatch (BV)	

Absent: Fred Howe (FH)

Staff Present: Duane R. Cole, City Manager (DRC)
Terrence D. Mahr, City Attorney (TDM)
John T. Mercer, Municipal Court Judge
Mike Soderquist, Community Development Director
Barton Brierley, Planning Manager
Peggy Nicholas, Recording Secretary

III. PLEDGE OF ALLEGIANCE

The pledge of allegiance was performed.

IV. COMMUNICATIONS FROM THE FLOOR

City Attorney TDM presented information concerning the incorrect date of the deed recorded by the title company (erroneously dated January 3, 1999), which in effect, the January date was not removed and replaced with the month of February. TDM discussed the matter with the title company and a correction deed was going to be immediately recorded. TDM said that an affidavit was provided by the title company.

Ms. Kelli Highley, 619 S. River Street, Newberg, Oregon 97132, said she was not satisfied with the answer. Ms. Highley presented information from a request for Council action dated September, 1998 and the subsequent documents which were signed by Mr. Bunn. Ms. Highley questioned staff not being cognizant of the error. Ms. Highley also addressed the appraisals which were not addressed.

TDM said the warranty deed has not been received by the City because the title insurance policy was not issued. The original is being held in the title company's McMinnville office awaiting title insurance.

Ms. Pat Haight, 501 E. Illinois, #12, Newberg, Oregon, said she went to the County tax collector noting the date of January 3, 1999. Mr. Bunn has allowed himself to be involved in the venture, allowing him 5 years to relocate his water hook ons (pecuniary interest ORS 162.651), and is a violation of law.

Ms. Haight questioned the appropriateness of the transfer of property. Ms. Haight reviewed other laws and discussed the surplus funds - where did the funds come from.

DRC said the funds are taken from a short term note and will be financed with certificates which is budgeted.

Ms. Virginia Jungwirth, 410 S. School Street, Newberg, asked where the City has tested the water. DRC said that he has not yet received the information but will provide the information to Ms. Jungwirth upon its receipt. Ms. Jungwirth then inquired about the animal control property and what the City intends to do with the property and animal shelter facility. Ms. Jungwirth said there is an issue of reclaiming animals due to the weekend and City staff not available to retrieve the animals.

Mayor Cox said the City is reviewing the animal control facilities provided by the County and is working with the County toward resolving issues.

Ms. Nadine Windsor, 2902 E. Second Street, Newberg, asked about the latest status on the asphalt plant. TDM said the oral argument is set for March 25, 1999 before the Land Use Board of Appeals (LUBA).

Councilor RW said he received a phone call from a citizen who advised him that the City was entering into negotiations to purchase other property in the City in an attempt to trade that property for other property (wastewater treatment plant). TDM said there were earlier discussions on this issue, but they had taken place before the LUBA brief was filed.

Mayor Cox said the recorded deed will be provided to the Council. TDM said he would provide this information.

V. CONSENT CALENDAR

1. Approve proclamation declaring the month of March as American Red Cross Month.

Jose Montoya and Olivia Gonzales appeared before the Council on behalf of the American Red Cross.

VI. PUBLIC HEARING

1. Public hearing amending the Newberg Development Code and Comprehensive Plan restricting the use of private streets. **Ordinance No. 99-2507.**

Mr. Richard Egnell, 29295 NE Worden Hill Road, Newberg, read a prepared statement. Mr. Egnell said the property owners worked with City staff on complying with the City's requirements. To deny the approval at this stage would be a sign of "bad faith". Mr. Egnell said the date of January 1, 1999 would make the amendments retroactive if the date is taken as noted (which is the date of the application and not the approval). Mr. Egnell said a policy would need to have exemption provisions whereby the proposed street requirement would not be in the best interest of the community. Some provisions for variances would help the City plan more effectively. Other projects that have worked with the City have met the requirements and should not be penalized.

Mr. Mike Soderquist said the City Council and Planning Commission have been concerned with private streets since they sometimes limit access in some emergency situations. In response to their requests, the City developed an interim policy. The Planning Commission deliberated and decided that private streets should be prohibited. The impact of the decision would be increased maintenance costs for

the City. In the long term, maintenance costs will decrease and all new streets will be built to public street standards. The interim policy developed by the City Manager would prohibit the creation of new private streets (3 or more lots sharing one common access). Existing private streets provide that no additional dwellings can come off existing private streets except for those projects which are already approved. Mr. Soderquist provided overheads on examples of dwelling units served by private streets. Mr. Soderquist also provided samples of approved projects involving service driveways. Discussion was held concerning manufactured homes and mobile homes. Mr. Soderquist reviewed page 11 referencing changing Section 6 (4)(B)(c) with the new date of January 1, 1999 to July 1, 1999.

City Attorney TDM discussed the Planning Commission's November, 1998 recommendation. If the Council gives a six month window, effective July, 1999, there may be some developers who may take advantage and immediately apply for development.

Councilor RC said he does not have a problem with passing the Ordinance, but questioned Mr. Egnell's statements concerning approval of certain portions of development.

Mr. Brierley said the Council may consider the creation of a new private street, or use an existing street and subject the lots located on the street to the enforcement of the Ordinance which becomes effective 30 days after passage. The applicant could not create new dwelling units. Mr. Brierley said the applicant has applied and paid for the first two developments. He has yet to complete the applications for the others.

Mr. Egnell clarified the process. It is clear that a serial partition is not approved in advance. He had to develop all six parcels (street length, utilities, etc.) Before applying for first minor partition. Mr. Soderquist said that staff is sympathetic to Mr. Egnell and would recommend moving the date referenced above to July 1, 1999.

Councilor RC expressed comments concerning changing the date to March 1, 1999 and extension of serial partition where his utilities are located which are being developed. TDM discussed vested rights in the partition. He did not apply for the third development. Discussion was held concerning the application for variances. The earliest vested interest would be the date of the application. TDM said it would not be appropriate to discuss tonight with the a variance, being considered in a quasi-judicial hearing forum. Staff should draft the changes and return a draft with a procedure. Mr. Brierley said that going with July 1, 1999 would cover it.

Councilor RW said the intentions of the City and applicant are honorable and he would like to draw draft it in a way that would cover the situation and then adopt the ordinance.

Councilor LH said it is important to note, there will be other situations and people affected. There appears to be a need to have a variance procedure.

Councilor RC asked if it was possible if the exception to the ordinance would be addressed by installing all necessary services pursuant to specifications as of the date of the Ordinance. Discussion was held concerning a variance process.

Councilor BV discussed a conditional use or variance process for properties that have special circumstances. Mr. Brierley said not for properties on a private street. There is a provision for a public street for 3-6 lots. The Planning Commission would have to approve the matter as a conditional use. A conditional use permit fee is \$1000 application fee. Secondly, it would prohibit anything that would be above two parcels (sharing one common drive). What was the determination to limit it to two? Mr. Brierley said the Planning Commission had strong feelings to not allow anything which resembled a private street (3 or 5 lots). It was a judgment call to draw the line. Councilor BV said he is looking at the need for a conditional use or variance application process to be considered. Discussion was held concerning

large parcels being restricted to partition down. If certain criteria is met, safety standards are met, they could stand to be approved. TDM said that Councilor BV does not appear to have a direct conflict, but as a developer and real estate agent, he may have a potential conflict in the future.

Councilor RC said that a developer or real estate agent would approve of this type of policy. The Council, in the past, have often declared that they wish not to have private streets.

Councilor BV said he disagreed with Councilor RC's statement. The City needs to provide a mechanism for special circumstances. If there is a review procedure, it would help to process and to review particular situations, not just an open door policy, but a mechanism for allowing special exceptions.

Councilor DM said this has occurred often times and the streets are not being maintained. Either the City has set a policy or standards one way or the other.

Councilor RC said one of the big issues is sweeping private streets that the homeowners association declared a double jeopardy, illegal parking on private streets, etc. Discussion was held concerning homeowner associations no longer being in existence and causing the streets to be deeded back to the City. He would support the passage of the ordinance as it is proposed. Councilor RC said he cannot accept the July 1, 1999 date revision.

MOTION: RC/DM to table the discussion to later this evening and let staff look at the proper wording to make the exception into the ordinance and come back and vote on it later. Discussion was held concerning other properties in the same situation.

Councilor RW asked for clarification of grand fathering provisions for existing private streets with more than 2 lots.

ROLL CALL: (Unanimous). Motion carried.

VII. CONTINUED BUSINESS

None.

VIII. NEW BUSINESS

2. **Resolution No. 99-2166** approving the goals for the Municipal Court Judges.

Mr. John Mercer and Mr. Steve Palmer were in attendance to answer any questions. TDM said the evaluation process would be reviewed on March 15, 1999. The 18 month period of appointment is up on April 1, 1999.

Mr. John Mercer said that on behalf of he and Mr. Palmer, they welcome the evaluation process for improvement purposes and for suggestions on being more effective in the roles they play for the City. They support the evaluation process.

Councilor RC asked for comments concerning the new public safety facility being more accommodating to the staff.

Councilor LH said she appreciated receiving the letter that the judges feel are areas to be considered.

Councilor DM discussed peer court procedures which the City may consider. Mr. Mercer said they are being operated on a criminal case which does not come in front of the Municipal Court. He is supportive of the concept, but is not sure a Municipal Court is the best use.

MOTION: RC/LH to approve 90-2166. (5 Yes/1 Absent).

Discussion was held concerning evaluation of performance of judges and the goals they have set for themselves. The Council could provide input for what they needed. TDM said he would provide copies of the job descriptions, comments from the District Attorney and the Police Chief.

DRC reviewed the procedural changes in the ordinance and that it will require 4 affirmative votes to approve.

Mayor Cox called for a five minute break at 8:20 p.m. The meeting reconvened at 8:30 p.m.

City Attorney TDM said he owns property in the City with access for a private street/private road off a public street and will be cautious in giving legal advice to the Council which may have an affect on his property.

Mr. Brierley reviewed the language staff recommended for revision which was contained in the staff report.

MOTION: RC/LH to read Ordinance No. 99-2507 by title only. Councilor DM asked for clarification, Mr. Brierley re-read the statements he made concerning the specific changes. (Motion carried unanimously). City Attorney TDM read the ordinance by title only, with the amendments noted by Mr. Brierley. (5 yes/1 No [BV]/1 Absent [FH]). Motion carried.

1. **Resolution No. 99-2165** approving a recommendation of City to Yamhill County regarding a partition and property line adjustment request.

Mr. Barton Brierley, Planning Manager, stated that the property is partially located in the City and partially in the URA. Mr. Brierley presented a map for the Council to review. Discussion was held concerning providing for a property line adjustment to address a drainage issue. The second step would be a three part partition. The property contains land in the existing stream corridor. Under the agreement with the County, some minor development would occur in the URA, but larger scale development would not be allowed. Mr. Brierley reviewed the criteria used in determining compliance. There is ability to allow future development of the property and the criteria is met and recommend to the County that they approve the application.

Councilor DM discussed access to the industrial property as well as the back property. Discussion was held concerning the standards of driveway and local streets. Councilor RC addressed right-of-way issues and the placement of a public street.

Mr. Alvin Elbert, ARE Manufacturing, 704 S. Springbrook Road, Newberg, reviewed the recommendation and indicated that he has complied with most of the criteria. He addressed opposition to annexing to the City prior to development. His future use of the property indicated that he does not plan to develop parcel number 2 which has the machine shop in front of the parcel is his business. Any additional development would be an extension on the business.

Discussion was held concerning condition #1 (protect future urbanization into the City - annexation). Under the partition, it does allow some development with less specific city standards. A future property owner could come in and ask for development (such as mini-storage which would not require sewer and water). The purpose of #1 was to allow the building of a house, but anything should

come into the house before it is approved.

Councilor LH said it does not eliminate the development, but allows for the recommendation of the City. Mr. Brierley said the answer would be not unless it is annexed. Mr. Brierley said it is a recommendation to the County.

City Manager DRC discussed lack of control in the growth of land in the UGB.

MOTION: RC to approve Rel 99-2565 as stated (LH) seconded. (5 Yes/1 Absent).

IX. EXECUTIVE SESSION

1. Executive Session pursuant to ORS 192.660(1)(a) Relating to Employment Agreement with the City Manager.

Postpone to date uncertain due to time constraints (probably April, 1999).

X. ADJOURNMENT


MOTION: RC/DM to adjourn at 8:55 p.m. (Unanimous). Motion carried.

ADOPTED this 2nd day of August, 1999.



Duane R. Cole, City Recorder

ATTEST by the Mayor this 2nd day of August, 1999.



Charles B. Cox, Mayor