

MINUTES OF THE NEWBERG CITY COUNCIL
NOVEMBER 3, 2003
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING - TRAINING ROOM

I. CALL MEETING TO ORDER

Mayor Stewart called the meeting to order.

II. ROLL CALL

Bob Andrews	Roger Currier
Bob Larson	Mike McBride
Doug Pugsley	Robert Soppe

III. PLEDGE OF ALLEGIANCE

The pledge of allegiance was administered.

PUBLIC MEETING SECTION

IV. PUBLIC COMMENTS

Darlyn Adams, 131 Johanna Court, Newberg, Oregon, represented the Newberg Animal Shelter Friends and gave the monthly report. They are embarking on a new campaign with a \$10 per year membership including a newsletter, gift certificates and other merchandise. They have 14 members. Their Christmas open house is moving along. The donation total is \$95,527.55 now. They are looking at reaching \$100,000 by year end. Ms. Adams reviewed the donation containers. Ms. Adams said she joined the Chamber and was charged \$75 for the remainder of this year and all of next year. Ms. Adams said she thought it appropriate to join the City organization.

V. CONSENT CALENDAR

1. Approve minutes from Regular Council meeting held on September 15, 2003

MOTION: Larson/McBride to approve. (Unanimous). Motion carried.

VI. PUBLIC HEARING

1. Public Hearing on the adoption of **Ordinance No. 2003-2590** amending the Newberg Development Code regarding appeals of Planning Commission decisions and modification of applications. Adoption of **Resolution No. 2003-2466** revising the Permit Center Fee Schedule regarding fees for modification of applications.
(Legislative Hearing).

Mayor Stewart announced there were no objections or abstentions.

City Planner Barton Brierley presented the staff report:

1. Allow the record of a Planning Commission hearing to include minutes in lieu of a transcript.
2. Define procedures for giving argument at a City Council record hearing. The proposal would allow written argument from parties who testified at the previous Planning Commission hearing. No other testimony or argument would be allowed. It is difficult dealing with lay people defining oral and verbal testimony from oral argument. It would limit argument or testimony to the participants who appeared at the Planning Commission.
3. Allow an applicant to modify his application after a Planning Commission hearing and request reconsideration at the Planning Commission. Discussion was held concerning modifying the proposal and allow a new hearing at the Planning Commission to amend their application. The application would stay and remain active.
4. Create procedures for modification of applications after decisions. Define "major modifications" and "minor modifications". Once approved, if the applicant wants to change the proposal it would require anything after 5% modification would have to be returned to the Planning Commission and renoticed (same as lot line adjustments, or adding/reducing by 5%, anything more, it would be a major modification and the process would be detailed).
5. Create fees for modifications.

Councilor Soppe asked about type 1, 2 and 3 decisions. Mr. Brierley said type 1 is administrative with no notice; type 2 requires notice to property owners within 500 feet and written comments; type 3 is a Planning Commission decision and requires notice to property owners within 500 feet and a public hearing. Some type 3 decisions can require City Council approval, such as an ordinance.

Councilor Soppe asked about the appeal process to the Planning Commission only and not to the Council. Transcripts have not been made. On page 21, who will make determination for written arguments and how is it determined whether it is new testimony? Mr. Brierley said it would be staff's recommendation. What about discussion about whether the testimony is new or not? City Manager Bennett said legal counsel would make such a determination. Discussion was held on the director approving major modifications for type 2 procedures. Discussion was held concerning

public notice requirements. Mr. Brierley said the development code defines the director as the Community Development Director.

Councilor Andrews addressed oral argument and who would determine written argument or written testimony being allowed. Discussion was held concerning the standard that would be used - subjective or objective. Discussion was held concerning each case being unique. City Attorney Mahr said that some citizens do not understand the difference between argument and new testimony. When hearing something on the record, new testimony has to be disregarded. Often they bring in items such as new photos that have been created after the original hearing. Discussion was held concerning providing a template for hearings. Mr. Mahr said that most ordinances involving land use issues have new hearings. Mr. Brierley said that the number of appeals is about 1 a year.

Councilor Currier talked about minutes vs. transcripts. How can it be a true and accurate record if all of the pertinent information is not included in the minutes? There is no guarantee. Does the public have an opportunity to review the minutes? Mr. Brierley said the Planning Commission minutes are approved by the Planning Commission. They are in the packet available for review and are part of the meeting information. The public can comment on the minutes. The Planning Commission did consider going to transcripts in their discussions. However, it was not a controversial issue and there was not much discussion.

Councilor Soppe asked if page 34 (Exhibit A) was what the Planning Commission approved? Mr. Brierley replied that it was.

Councilor Pugsley asked if there were any attorneys at the Planning Commission? Mr. Brierley said there were not.

Councilor Soppe asked about submitting written arguments at the Council meeting and allowing the City Attorney to review them at the hearing. Mr. Brierley said it was assumed that all written arguments would be approved and reviewed by a certain date. Mr. Mahr said it would be a significant issue to receive into the hearing a written document or allow oral testimony. Discussion was held concerning deadlines to be provided prior to the hearing outside the ordinance language. Mr. Bennett said that he is concerned about asking the City Attorney to determine at a hearing whether a new document reflects what was in the minutes. Only a transcript can do this and, as a rule, the cost of preparing a written transcript is prohibitive. If the developer wishes, the transcript cost would be borne by the developer. Councilor Soppe said that Type 3 actions are reviewed by the City Council with a new hearing (some of which require an ordinance to be adopted). The Planning Commission is just making a recommendation.

Councilor Andrews said that, if someone is concerned about an error in the minutes, they can pay for a copy of the tape and review it.

Tape 1 - Side 2:

Mr. Roger Grahn, 23287 LaSalle, Sherwood, Oregon, said there could be problems with using minutes instead of transcripts, but he took no position. He is opposed to limiting testimony of any

kind. The City is skating on thin ice constitutionally if they do so. He said that courts often overturn this. He supports allowing modification of applications and said it is a good move that simplifies things for everyone.

Councilor Soppe addressed the limitation of people not being able to raise things at a city council level which were not raised at a planning commission hearing. If there is a major issue, the City could be asking for trouble.

Mayor Stewart closed the public hearing. Mr. Brierley said the staff's recommendation is to approve.

MOTION: Larson/Andrews to read by title only **Ordinance No. 2003-2590** amending the Newberg Development Code regarding appeals of Planning Commission decisions and modification of applications.

Councilor Currier said that the big issue is oral and written testimony. Some people cannot communicate well either orally or through writing. He said there are some borderline cases concerning new vs. old testimony that require a legal call. He would like to see the process more open and to move away from oral testimony. But he is against it as it is written. There has been little talk about the staff being able to change things. There are things that happen at the staff level and he hesitates to give up more power to the Planning Commission and the staff in instances such as this. We need to keep it on the record and maybe change what they are going to allow staff to make modifications to.

Councilor Andrews said that the appeal process does not take additional testimony. It does hear arguments. They would make a decision on the record. No further testimony at the Council level is what should prevail. Oral argument at the Council level is questionable. Mr. Mahr said that he is concerned about allowing oral argument at the Council level because it is confusing to citizens who do not know what an oral argument is. It was putting the Council in a position to tell the citizen "that is not in the record - you cannot say that now". It is an awkward issue.

Councilor Currier addressed modification to plans which would be returned to the Planning Commission.

Councilor Soppe said that he was against written argument being brought in at the Council level. Councilor Andrews said he was not against written arguments being brought in. He is against oral argument. Councilor Soppe said that it should be returned to the Planning Commission and people need to be aware that there may be new issues raised. At the Planning Commission level at an evidentiary hearing they have 7 days to submit rebuttal evidence after the conclusion of the hearing. If there is new evidence that results in an adverse decision, the applicant can come back and modify the application. Councilor Soppe discussed the provision allowing the director to approve a major modification under a Type II procedure. Discussion was held concerning items not coming back to the body that approved it (Council). Mr. Bennett clarified the director's authority for modifications

Councilor Pugsley said that with a 50% modification under Type III, it would have to go back to the Planning Commission.

Mr. Bennett said the Council could modify paragraph 2.

AMENDMENT TO MOTION: Soppe/Pugsley to amend Section 4, paragraph 2 to delete “The director may approve a major modifications under a Type II procedure” and add “Major modifications may be approved using the same procedure as the original application”. (Unanimous).

Councilor Currier addressed the statement that a hearing on the record for an appeal is generally only held once a year. Why not go ahead and take testimony? We are losing accountability to the people. Mayor Stewart said they have a chance to give their testimony at the public hearing and should not give further testimony on appeals.

Councilor Pugsley said the appeal process must be there. The modification process allows people to take into consideration adjustments and written arguments are essential.

Mayor Stewart asked Mr. Grahn if the developer would prefer to deal with the staff. Mr. Grahn said that, if the process goes smoothly, the simpler the better.

ROLL CALL ON MOTION AS AMENDED: City Attorney Mahr read the ordinance by title only with the amendment. (5 yes/1 No [Currier]). Motion carried.

MOTION: Pugsley/McBride to adopt **Resolution No. 2003-2466** revising the Permit Center Fee Schedule regarding fees for modification of applications. (Unanimous). Motion carried.

2. Public Hearing on the adoption of **Resolution No. 2003-2471** authorizing a loan from the Oregon Economic and Community Development Department for three wastewater projects (College Street interceptor and the WWTP composter and headworks).

Mayor Stewart called for abstentions, conflicts of interest or objections to jurisdiction. There were none.

Finance Director Katherine Tri presented the staff report. Ms. Tri reviewed the OECD process and the bonding policies which save the rate payers some money. Bonds should raise about \$2.81 million. The existing rate structure would cover the annual payment costs. The OECD's bond counsel drafts the documents. Discussion was held concerning savings that would be realized in our not having to issue the bonds - about \$100,000 is being saved in pre-issuance costs.

Councilor Andrews asked if the bond would require increased sewer rates. Ms. Tri said that they are pledging sewer revenues to pay for the bond and the costs should not cause rates to increase. Councilor Andrews addressed pre-issuance costs reimbursement. Ms. Tri said that often there are costs associated with the project which occur prior to the bond sale. This section allows the City to be reimbursed for these expenses. The City already has a prior resolution that allows for this. The bond sale is set for December. Discussion was held concerning the City selling its own bonds and possibly saving even more money. Ms. Tri said the City would not be saving money by selling its own bonds.

Ms. Tri said it was staff's recommendation to adopt Resolution No. 2003-2471.

MOTION: Currier/Andrews to adopt **Resolution No. 2003-2471** authorizing a loan from the Oregon Economic and Community Development Department for three wastewater projects (College Street interceptor and the WWTP composter and headworks). (Unanimous). Motion carried.

BUSINESS MEETING SECTION

VII. CONTINUED BUSINESS

None.

VIII. NEW BUSINESS

None.

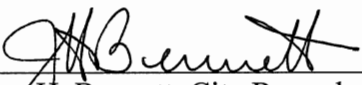
IX. EXECUTIVE SESSION

None.

X. ADJOURNMENT

MOTION: Mayor Stewart adjourned the meeting at 8:25 p.m.

ADOPTED by the Newberg City Council this 20th day of January, 2004.



James H. Bennett, City Recorder

ATTEST by the Mayor this 22 day of January, 2004.



Bob Stewart, Mayor