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

I. CALL MEETING TO ORDER

Mayor Bob Stewart called the meeting to order.

II. ROLL CALL

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

Others Present:

James H. Bennett, City Manager
Terrence D. Mahr, City Attorney
Michael Soderquist, Community Development Director
Barton Brierley, Planning Manager
Dan Danicic, Engineering Manager

III. *PLEDGE OF ALLEGIANCE*

The pledge of allegiance was administered.

Mayor Stewart asked for a moment of silence in memory of the Columbia space shuttle tragedy of February 1, 2003.

City Manager James Bennett presented an award from the National Oceanic and Atmospheric Administration in recognition for the 25 years of participation by the city as a weather observation site. Mike Soderquist accepted the award on behalf of the City and the service the City provides to the federal government.

Mr. David Paxton said that on October 26, 2002, he attended a presentation at the school on the proposed utility fees(storm water management and street maintenance) and stated his belief that a public vote was required for passage of such utilities. He has appeared before the City Council before, raised the same issue and has not yet received an answer. Mr. Paxton asked the Council to address this.

Councilor Soppe said that no decision has been made and that there is another public meeting scheduled for February 11th. Mr. Paxton said the City has expended funds to develop these fees and questioned the City's interpretation of the Charter and its applicability.

Councilor Currier said that the Council has not accepted the fee and they are expecting a turn-out on the 11th and the matter may be addressed at the public hearing. Discussion was held concerning anticipated challenges by citizens. Mayor Stewart said that the Council has not made a decision. Councilor Soppe addressed the City Charter on utilities requiring a vote of the public. Discussion was held concerning the establishment of the fees and the expense of developing them. Mr. Paxton reviewed the language of Section 4.3 of the Charter and the consent of the electors of the City to allow the fees. Mr. Paxton reviewed the City's storm and street drainage and public utility fees. Mr. Bennett said that no utilities were being created. Fees were being proposed for existing utilities. The City Charter does not apply.

PUBLIC MEETING SECTION

V. PUBLIC COMMENTS

None.

IX. CONSENT CALENDAR

1. Approve minutes from regular Council meeting held on January 6, 2003.

Councilor Andrews noted that the minutes (page 2,V.) should be corrected to reflect that it was the City of Sandy and not the City of Gresham that adopted a gas tax recently. This was confirmed by Councilor Currier. Duly noted by Recording Secretary Peggy Hall.

MOTION: Larson/Puglsey to adopt the Consent Calendar as amended. (Unanimous). Motion carried.

VI. PUBLIC HEARING

None.

BUSINESS MEETING SECTION

VII. CONTINUED BUSINESS

None.

VIII. NEW BUSINESS

1. Appoint citizens to fill three vacancies on the Traffic Safety Commission, one term to expire 12/31/2003 and two terms to expire on 12/31/2004:

   Michael R. Simpson
   Paul R. Thompson
   Joyce Vergets

Larson/Currier nominated Michael R. Simpson to fill the position expiring December 31, 2004. (Unanimous). Motion carried.

Andrews/Currier nominated Paul R. Thompson to fill the position expiring December 31, 2003.

(Unanimous). Motion carried.

Andrews/Currier nominated Joyce Vergets to fill the position expiring December 31, 2003.to (Unanimous). Motion carried.

Mike Simpson said he retired from Tualatin Valley Fire, moved to Sitka Avenue and he is very interested in traffic safety.

Ms. Joyce Vergets thanked the Council for the appointment

Paul Thompson thanked the Council for the opportunity. He drives school buses for the School District and he would like to make a difference.

Councilor Andrews thanked the candidates for giving their time to the community.

2. Make two appointments to the Newberg Urban Area Management Commission (NUAMC): One Newberg Planning Commission member and one City Council representative.

Mr. Barton Brierley said the Council needs to appoint two members to NUAMC (joint commission with the County).

Matson Haug, 1524 Hess Creek Court, Newberg, said he has been on the Planning Commission for 8 or 9 years. He has experience with many planning issues. He would be a team player and work in a cooperative way. He would also communicate back the activities of NUAMC to the Planning Commission.

Robert Soppe said he would like to see a wholesale review of the City's planning activities and a more comprehensive look at its boundaries.

Mr. Haug said he is also an engineer. He said we are about to enter periodic review and need to look at the URA, UGB and industrial property needs. Mr. Haug reviewed the City's infrastructure needs. The utility fees should be adopted without a public vote. He is on the Citizens Rate Review Committee and Transportation Task Force. The vast majority of the Planning Commission's decisions have been pretty consistent. He said it was essential that people participate and supports public involvement.

Louis Larson is also a member of the Planning Commission and would like to continue his public service. He believes in a strong commitment to attend all meetings. His approach to issues is a common sense approach. His interest is in protecting the public interest and working to satisfy all concerns.

Dwayne Brittell, Planning Commission member, resides at 602 N. Main Street and has been an architect and planner for over 30 years. His interest in planning is at the local, county and state wide level. He has previous experience with the Planning Commission for the City of Forest Grove. Discussion was held concerning land use planning goals and the comprehensive plan. His family (7 children and 11 grandchildren) lives in Newberg.

Larson/Soppe nominated Louis Larson (2 votes).
Soppe/Puglsey nominated Matson Haug (2 votes).
McBride/Soppe nominated Dwayne Brittell (2 votes)

Mayor Stewart called for a five minute break at 8:47 p.m. The meeting reconvened at 8:52 p.m.

Mayor Stewart discussed arriving at a decision by majority vote. City Attorney Terry Mahr reviewed the requirement for four affirmative votes (a majority of the Council) similar to that for the passage of ordinances. Discussion was held concerning run-off and elimination voting procedures. Section 21 of the Charter requires the concurrence of a majority of the Council on any "question before the Council".

Mayor Stewart said he would reopen the nominations due to the previous tie vote:

Currier/Soppe nominated Matson Haug - (3 votes)
Larson/Soppe nominated Louis Larson (1 vote)
McBride/Currier nominated Brittell (2 votes)

Mayor Stewart announced the two top vote getters and the Council revoted:

Matson Haug - (4 votes)
Dwayne Brittell - (2 votes)

Matson Haug was appointed as the Planning Commission NUAMC member.

Tape 1 - Side 2:

Councilor Currier commented that NUAMC is important. The City Council takes their recommendations very seriously. It is made up of members of the City and the County to deal with the controlled growth of the City and the surrounding area.

Larson/Pugsley to nominate Robert Soppe as the City Council representative to NUAMC. (Unanimous). Mayor Stewart declared that Councilor Robert Soppe was appointed as the new NUAMC City Council representative.

3. **Resolution No. 2003-2419** authorizing the Newberg Downtown Revitalization Committee and its by-laws.

Mr. Barton Brierley reviewed the staff report and noted the work done to date on the downtown vision, the new parking lot, period street lights and the bulb outs. There is much interest in the downtown area improvements. Discussion was held concerning investment alternatives/funding sources for improvements. The Committee could prioritize improvements and make recommendations as to what sort of funding sources should be used for those improvements, such as business taxes or LID's. The Committee would not compete with the Downtown Association already in existence that already has its plate full with business recruitment and plays a vital role in promoting the downtown. The recommendation is for 7 members who would meet monthly. The Council would solicit volunteers.

Councilor Andrews asked if the committee was modeled after other city committees, such as the Planning Commission? In looking at this, did staff consider ex-officio/non-voting members? Mr. Brierley said they did consider it and the Council could appoint a liaison for the committee. Mr. Brierley said the initial terms would be two members for one year terms, two members for two year terms and three members for three year terms. There followed some clarification of the initial terms of office.

MOTION: Currier/Larson to adopt **Resolution No. 2003-2419** authorizing the Newberg Downtown Revitalization Committee and its by-laws as amended: initial terms would be two members for the remainder of calendar 2003 year, two members for two year terms and three members for a three year term. (Unanimous). Motion carried.

Councilor Soppe addressed the intent of the language of the residency requirement and property ownership. He would like consistent requirements for all 7 members. At least 3 members should reside within the City.

Councilor Currier said that we should delete the words "At least three of the members. . ." in Section 2. (3) and replace them with "The remaining three members . . .". Councilor Currier said he agrees with Councilor Soppe.

City Manager Jim Bennett said this would provide the maximum flexibility for appointment of the committee.

Councilor McBride asked about those who have a Newberg address being allowed to participate in the downtown revitalization program, even if they do not live in town, but still have the desire to help.

AMENDMENT TO MOTION: Soppe/Currier to amend the language in Section 2. (3) to delete the words "At least three of the members . . ." in Section 2. (3) and replace them with "The remaining three. members . . ." (Unanimous). Motion carried.

Councilor Soppe asked about the Committee's role, staffing requirements (consultant services) and costs. Mr. Brierley said Planning staff would facilitate the meetings. There are some budget funds available. The money to do the minutes would come from the EDRLF or planning department budgets.

Councilor Pugsley compared the Urban Renewal Agency Committee function with the downtown revitalization committee function.

Councilor Larson said he is fearful that the committee would become more of a social club and hopes that it will not detract from the work of the Downtown Association.

MOTION: Currier/Larson to adopt **Resolution No. 2003-2419** authorizing the Newberg Downtown Revitalization Committee and its by-laws as amended (Unanimous). Motion carried.

4. **Resolution No. 2003-2423** authorizing the City Manager to enter into a professional services agreement with Brown and Caldwell to provide construction phase and start-up services for the Wastewater Treatment Plant Composter Odor Control Project in the amount of $34,820.00.

Mike Soderquist and Dan Danicic gave a history of the project. Newberg chose an unusual process for solids treatment (composter) and was given the final EPA grant available in the Pacific Northwest. About $13 million dollars of a $20 million dollar project. The WWT process has not been used extensively in the United States. Consultants visited other European communities. The plant was designed in a standard fashion except for the composter. The City did not want to design three different composter facilities. The City was involved in a legal entanglement for approximately 9 years. Once the money was available, the Council at the time allowed for additional funding for completion of the project.

Mr. Dan Danicic reviewed the time-line for the process. In May, 2000, after reviewing the proposals, the City entered into a contract with Jeddeloh Hays, Inc. (JHI) and Brown and Caldwell as contractors. The project was postponed due to insurance problems. Discussion was held concerning the City taking on the errors and omissions expense of $21,000. The contract expired in August, 2001. Alternate funding sources were not viable. The project then went out to bid. Because errors and omissions insurance was not available, they asked Brown and Caldwell to become the main contractor. The revised contract has JHI at 181 hours and Brown and Caldwell at 151 for a total of $34,733. JHI's hours have gone up because their original contract in May, 2000, underestimated the construction phase of the contract. Brown and Caldwell hours are up because they have taken up project management. They would like to take a better look at the odor control system. They will provide errors and omissions insurance and will have the same team continue on with the project. Importantly, in the two years since completion of design, there have been changes in odor technology. There were originally steel roofs over the composting facility that they would like to change to cloth covers.

Mr. Soderquist said he would like the same team carrying through to the end in order to provide continuity.

Councilor McBride said he was concerned with a company that does not carry errors and omission that should. He said that Brown and Caldwell has done a good job to shore things up but would like to see it put out to bid for someone else due to the lack of consistency and coverage. Mr. Soderquist said they prequalify firms and make sure they have experience. The increase is 1% of the total amount of the project.

Councilor Larson commented regarding a termination date for the project on or before January 15, 2004. Mr. Danicic said that to do the improvements, they must be made during the driest months. There is a potential with a new selection that they would not be able to meet the January deadline.

Councilor Currier said staff needs to clarify what they are doing (not building - but fixing the odor problem).

Tape 2- Side 1 -

Discussion was held concerning the bond sale funding process and the award of bids.

Councilor Larson asked if the $34,800 was part of the $1.6 million budget for the project. Mr. Soderquist said the City already has $900,000 in the funding already. Discussion was held concerning issuance of bonds and combining with other projects which may require bonding for a total bonding amount. The fund has also been acquiring interest.

Councilor Soppe addressed funding for the project and how bonding would be paid for, i.e. sewer rates or SDCs. There was discussion on the impact of JHIs lack of insurance on the project time line (original contract had a deadline which was extended by the City). There was also discussion of the contractors' hourly rates. JHI originally charged $98/hr and now it is $85. Brown & Caldwell has increased their hourly rate. Discussion was held concerning the additional hours for the project. Mr. Soderquist said that in general, the average hourly rate of JHI went down and Brown and Caldwell went up. Councilor Soppe said the estimated hours increased from 172 to 300+ hours. Mr. Soderquist said that the original estimate was apparently low. Councilor McBride said that he would like to see the cost of time/materials be more predictable. City Attorney Terrence D. Mahr said that the contract has a "not to exceed" cost provision. Mr. Danicic said the Council should consider the spreadsheet contained in the staff report contained on page 36 of the packet.

Councilor McBride asked if the project was under a tight time frame and how much it would slow the process down if we could somehow find another firm that could look at the schematics and do it for the same amount as before. Mayor Stewart said the Council can send it out for bid but the longer we wait, expenses could increase (project has gone on too long).

Councilor Currier said the previous Council approved pre-qualified consultants without the bid process being extensive. He asked about the funds received from the settlement of the original composter design. The funds were supposed to be used for fixing these problems and was concerned about the amount that has been spent to date. He addressed the recommendation for fabric over metal which would deteriorate. He too would like to see this go out for bid.

Councilor Soppe said we need to see that we get our money's worth and that it is well spent. If we are not happy with the services, we should consider whether or not to use them again. He said there is great value in staying with the original consultants if we can work with them. He is not comfortable with how the numbers have doubled. He would like to see why the costs have doubled.

Mr. Soderquist said the project was advertised in the Daily Journal of Commerce and was open to everyone. Mr. Danicic addressed the doubling of costs and the small incremental increases.

City Attorney Terrence D. Mahr said that when the consultants are prequalified, the City does not just pick the consultant and go ahead. Competitive quotes are required as well as findings of fact to waive the competitive bidding rules. Projects over $35,000 require competitive quotes and are approved according to the City's bidding procedure. The Council needs to adopt findings of fact to vary from this procedure to show the benefit of staying with the original contractors. Councilor Soppe said that they would go with the same team for continuity and long term benefits.

Councilor Andrews addressed the value of the remaining work of $18,000 which was previously approved but not spent.. In order to complete work an additional amount of $16,834.20 is required. We are not approving anything over $35,000.

City Attorney Terrence D. Mahr said it would be appropriate to approve the findings in a resolution to be brought back to the Council rather than approve it at this meeting.

MOTION: Larson/Pugsley to adopt **Resolution No. 2003-2423** authorizing the City Manager to enter into a professional services agreement with Brown and Caldwell to provide construction phase and start-up services for the Wastewater Treatment Plant Composter Odor Control Project in the amount of $34,820.00 without findings. (1 Yes [Larson]/5 No). Motion failed.

Discussion was held on the necessary finding of fact. City Manager James Bennett suggested the following language:

- The City Council decides to waive the competitive quote requirement due to the efficiency, project continuity and long term benefit of staying with the original contractors for the project.

MOTION: Pugsley/Andrews moved to adopt **Resolution No. 2003-2423** authorizing the City Manager to enter into a professional services agreement with Brown and Caldwell to provide construction phase and start-up services for the Wastewater Treatment Plant Composter Odor Control Project in the amount of $34,820.00 adopting findings of fact to waive the competitive quote requirement due to the efficiency, project continuity and long term benefit of staying with the original contractors for the project. (4 Yes/2 No [McBride/Currier]). Motion carried.

5. **Resolution No. 2003-2424** authorizing the City Manager to amend the professional services agreement with MWH Americas for the Water Treatment Plan Improvement Project in the additional amount of $10,000 for a total cost of $253,110.00.

Community Development Director Michael Soderquist reviewed the staff report. Mr. Dan Danicic reviewed the City's water treatment facility and the four filters (sand based system and clarifier). The water treatment plant is landlocked. Very little room for expansion. Plan to use the plant for the next 15 years. They are upgrading the filters and improving the quality of the water by removing iron oxide. The contractor has discovered that the as-built drawings for the water treatment plant are not accurate and this requires some redesign of the plant upgrade at an additional cost of $10,000.

Councilor Soppe noted that page 2 was missing from the staff packet. He inquired how the $10,000 comes about without knowing all the details. Is the $10,000 a "safe" high estimate? Mr. Danicic said the estimate is on a time/materials basis. Mr. Bennett said there is further explanation on page 2 of the packet materials. Mayor Stewart asked that staff gets page 2 to the Council.

Councilor Currier addressed the landlocked issue and lack of room for expansion. Councilor Currier addressed previous discussions of land swaps with Smurfit to provide an area to expand into and that nothing has come of those. The City should have been looking for less expensive alternatives. Mr. Soderquist said that a couple of months ago the City Manager and he met with

SP Newsprint to discuss the land swap idea again.

MOTION: Larson/Pugsley to adopt **Resolution No. 2003-2424** authorizing the City Manager to amend the professional services agreement with MWH Americas for the Water Treatment Plan Improvement Project in the additional amount of $10,000 for a total cost of $253,110.00. (Unanimous). Motion carried.

Tape 2- Side 2:

6. Approve submission of a grant application and letter of support to the State of Oregon's Community Incentive Fund for the construction of pedestrian/bicycle enhancement in the downtown area along First Street.

Mr. Brierley said the previous grant application for this project was denied. The new grant application would be for bulb-outs and street furniture on First Street. Oregon Motor Vehicle Code does not allow parking within 20 feet of crosswalks. Mr. Brierley reviewed upgrades to trash receptacles, benches, bike racks and estimated the cost to be $130,847. They are requesting under $120,000 with balance of $11,450 being a match from in-house engineering of the project. This is part of the on-going efforts to revitalize the downtown area.

Mayor Stewart asked about the location of the bulb outs that would be constructed under the grant and about the benches. He said that when they started putting benches in the downtown area, he observed many citizens using the benches.

Councilor Soppe said the Council would be approving applying for the grant and not specifically the use of the funds. That would come later.

Councilor Currier said he questioned the need for trash cans throughout the whole downtown area because everyone pulls up and uses them to dump their personal trash and the City has to pay for staff to empty them. The trash cans should be located near businesses that do something with food, coffee. He wonders if we should be asking those businesses to help with the pick-up of the trash in front of their businesses. Discussion was held concerning the location of the trash receptacles and the frequency of trash pick up.

Councilor Soppe said he shared concerns about collecting trash. He would have a hard time charging the downtown business owners and not the businesses outside downtown. He would like to see someone else pay for it, but it would probably not be successful. He would like to see the cost of collecting the trash .

Councilor Andrews asked for clarification on the prior grant being rejected. The grant application in December was turned down. Another grant application including bulb-outs is still pending. If both grants are funded, will the city spend both grants, and if so, will staff be able to provide in-kind services for both without being negatively impacted? Mr. Brierley said they would spend both of them and the work load would be spread around.

Dan Danicic said that the Engineering Department would approach the need for in-kind services in much the same way by prioritizing projects and spreading out the work load.

MOTION: Larson/Soppe to approve the submission of a grant application and letter of support to the State of Oregon's Community Incentive Fund for the construction of pedestrian/bicycle enhancements in the downtown area along First Street; staff to provide information concerning costs associated with collection of trash and other related costs associated with the grant proposal. (Unanimous). Motion carried.

Mayor Stewart asked about encouraging comments to the Council through use of the suggestion boxes.

Mr. Bennett said the boxes have been ordered and will be installed with appropriate signage per the Council's guidelines. Mayor Stewart asked that the information be included in the next packet.

Councilor Currier addressed problems he is having with his city email access and how it is tying up his computer and having his emails printed out and placed in his box.

City Attorney Terrence D. Mahr said the legal description on the Anderson property has been corrected. He talked with County Counsel concerning the width of the road from 40 to 60 feet. The Council is writing a legal opinion to support 60 feet.

Barton Brierley said that the City may not need the property owner's consent in order to annex Fernwood Road. He is sure that Yamhill County got the property by dedication. He talked with Mr. Anderson's wife concerning his consent to the dedication and hopefully it will be resolved by the time annexation comes around. They are trying to reach some mutually acceptable agreement with Mr. Anderson.

X. EXECUTIVE SESSION

1. Executive Session pursuant to ORS 192.660(1)(i) relating to review and evaluation of employment related to the performance of the City Attorney

XI. ADJOURNMENT

MOTION: to adjourn at 8:45 p.m. Motion carried.

ADOPTED by the Newberg City Council this 17th day of March, 2003.

J H Bennett

James H. Bennett, City Recorder

ATTEST by the Mayor this 25 day of March, 2003.

Bob Stewart

Bob Stewart, Mayor