

CITY OF NEWBERG COUNCIL MINUTES
MAY 7, 2007
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING - TRAINING ROOM

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order.

II. ROLL CALL

Members

Present:	Mayor Bob Andrews	Robert Soppe	Bob Larson
	Roger Currier	Bart Riersen	Mike Boyes

Members

Absent:	Jeff Palmer
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Staff

Present:	James Bennett, City Manager
	Terrence Mahr, City Attorney
	Barton Brierley, Planning and Building Director
	Norma Alley, Deputy City Recorder
	Jennifer Nelson, Recording Secretary

Others

Present:	Darlyn Adams, Sandy Dormer, Sheryl Kelsh, Michael Miller, Edward Trompke, Robert Schroeter, Scott Holbrook
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III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

None.

V. COUNCIL APPOINTMENTS

None.

VI. PUBLIC COMMENTS

Darlyn Adams, representing the Newberg Animal Shelter Friends, announced net profit from their yard and plant as \$5,874.23 with expenses at 2.7% of gross. Total in building fund is \$253,067.71. She offered thanks to Councilor Palmer for attending. She said this week is Be Kind to Animals Week and they will be holding their coloring contest this week. The 3rd Annual Blessing of the Animals will be held on Saturday, June 9th at North Valley Friends Church from

1:00 to 2:00 pm. Their next meeting will be held on Thursday, May 31st at 7:30 pm (see official record for full report).

Sandy Dormer, approached the council with an issue concerning an article in the newspaper talking about a proposed development of acreage on Williamson Road by La Joice. Her concerns were traffic related.

Staff directed **Ms. Dormer** to contact the Yamhill County Planning Department.

VII. CONSENT CALENDAR

1. Consider a motion approving the City Council Regular Session Minutes for April 2, 2007.

MOTION: Larson/Soppe to approve the City Council Regular Session Minutes for April 2, 2007 as amended. (6 Yes/ 1 Absent [Palmer]) Motion carried.

2. Consider a motion approving a sound permit for the “Tunes on Tuesday” concert series.

Councilor Mike Boyes requested this item be pulled from the Consent Calendar for lack of information and wished to vote on it separately.

Jim Bennett, City Manager, informed council the permit was for a total of eight concerts in July and August that would be held between 6:30 and 8:30 pm on the Central School site behind Rotary Centennial Park. They will have live bands and the event was well attended last year. He noted that Sheryl Kelsh was the contact and that she was present that evening. Supervision will be provided. Food vendors will be present and alcohol will be served. The staff recommendation is for approval of the permit.

Councilor Robert Soppe asked if there were any significant number of complaints from last year.

Mr. Bennett replied he did not recall any from the previous year.

Councilor Currier asked when the sound ordinance would be approved, so council would know where to stand on items such as this.

Mr. Bennett responded they were currently working on the sound ordinance now and plans are to have it before the council shortly. The delay was due to Mr. Duple being unavailable.

Councilor Bob Larson inquired if alcohol was served last year and questioned why it was being served this year.

Sheryl Kelsh, Executive Director of Chehalem Valley Chamber of Commerce, replied the Chamber members who came last year thought it would be nice to have glass of wine during the concerts. J’s Restaurant will be serving wine by the glass.

Mayor Andrews asked if alcohol would be served in a controlled environment or specific area.

Ms. Kelsh replied they would have to follow the confines of the liquor permit.

Councilor Soppe stated the council should remain focused on the approval of the sound permit since they have not been asked to approve the sale of alcoholic beverages. He wondered, however, what the procedure is for that since he did not believe a sound permit was the appropriate method.

Mr. Bennett responded the procedure was determined by whether the event was on city property or private. Since this is private property, there are other requirements they must meet. Only the approval of the sound permit is under consideration by the council, not the alcohol sales.

Ms. Kelsh offered to furnish a copy of the informational letter sent to residents and noted they received no negative comments. The sale of alcohol was not discussed in the letter.

MOTION: Soppe/Currier to approve a sound permit for the “Tunes on Tuesday” concert series. (5 Yes/ 1 No [Larson] / 1 Absent [Palmer]) Motion carried.

3. Consider a motion approving a sound permit for Word of Faith Center Worship Concert.

Mr. Bennett announced that this was a similar request to the previous sound permit. The applicant is asking for permission to hold a worship concert. There will be about 30 individuals attending with free admission and no alcohol. The recommendation of the police department is to approve this permit.

Discussion followed concerning the group charges of \$52.00, the list of rules, and the prohibition of alcohol that comes with use of this park. Comments were made about it being unfair that applied to some and not to others. There were several discrepancies concerning the length of time for the event but the pastor of Newberg Word of Faith Church, **Michael Miller**, clarified the use would be from 11:00 am to 2:00 pm.

MOTION: Soppe/Currier to approve a sound permit for Word of Faith Center Worship Concert. (6 Yes/ 0 No/ 1 Absent [Palmer]) Motion carried.

VIII. PUBLIC HEARING

1. Consider a motion approving **Ordinance No. 2007-2670** amending the Newberg Development Code to prohibit gates on private drives or private streets serving as primary access to more than one dwelling except as by variance.

Legislative

Mayor Andrews introduced the ordinance and asked if the council members had any conflicts of interest. When none appeared, he called for the staff report.

Barton Brierley, Planning and Building Director, presented the staff report and supported the adoption of the ordinance (see official record for full report).

Councilor Currier asked if the City would expect properties like The Greens or the Young's property where the gate is not closed to remove them.

Mr. Brierley stated they would be grandfathered and they could remain as they are.

Councilor Soppe asked if we would provide guidelines.

Mr. Brierley explained the development code has criteria established.

Discussion followed concerning the reasons not to allow gates, namely safety issues with police and fire access, as well as the concept of exclusivity in Newberg and sending the message it is not a safe place. There was also concern about the guidelines and the property owners' legal rights.

Councilor Currier wondered if the ordinance was written in a way that can be easily amended. He was concerned about the planning commission approving condominiums on private drives. Since the next meeting is a presentation on access for condominiums, he thought this approval would be ahead of the game.

Mr. Brierley replied this is a stand alone ordinance; but street standards and driveway standards are not proposed to be amended, it is focused specifically on the issue of gates.

Mayor Andrews opened the floor to public testimony. No one appeared to testify so public testimony was closed.

Mr. Brierley stated staff supported approval of the ordinance.

MOTION: Larson/Rierson to adopt **Ordinance No. 2007-2670** amending the Newberg Development Code to prohibit gates on private drives or private streets serving as primary access to more than one dwelling except as by variance.

Councilor Soppe argued that, although he does not like gates, he does have a problem with the City telling someone what they can and cannot do on private property. He asked if we have a reasonable stance to justify this.

Councilor Currier agreed. Considering the planning commission has not come to terms yet with the access issue, he believed this ordinance could be pushing things a little quickly. He thought there should be some guidelines in place for gates with aesthetic purposes only.

Mayor Andrews asked if there was a difference between gates for ornamental purposes and not to limit access.

Mr. Brierley replied there was a difference as long as the gate does not and cannot block the street.

Discussion continued on how to address this issue. Staff stated the proposed ordinance states that private driveways shall not be gated and they could amend it by adding "to limit access". Therefore, any gate (even for ornamental purposes) would be prohibited if it limited access, even partially.

VOTE: To approve **Ordinance No. 2007-2670** amending the Newberg Development Code to prohibit gates that limit access on private drives or private streets serving as primary access to more than one dwelling except as by variance, as amended. (5 Yes/ 1 No [Soppe] / 1 Absent [Palmer]) Motion carried.

2. Consider a motion approving **Order No. 2007-0006** finding no compensation is warranted under ORS 197.352 for a claim filed by Shilo Inn Newberg, LLC.

Quasi-Judicial

Mayor Andrews asked if there were any objections, biases, or conflicts of interest from council.

Councilor Currier mentioned he managed property adjacent to this complex.

Councilor Soppe stated he has driven down that street and seen the property but he has not seen anything of significance to affect his vote this evening.

Terrence Mahr, City Attorney, clarified that a site visit is only needs to be mentioned if it was for fact-collecting purposes. Merely driving by is fine as long as it is not used to deliberate. He made his required announcements about quasi-judicial public hearings, explaining details of the process and criteria to be aware of during the proceedings and after closing.

Mr. Brierley presented the staff report and recommended council continue the deliberations to next the meeting (see official record for full report).

Discussion took place among the council to decide whether or not to accept the extra material submitted past the deadline. There were concerns about not having enough time to consider the material this evening as well as if the applicant can continue to keep the hearing open by submitting more and more material. The only thing to prevent this would be closing the public record. A suggestion was made to hold the hearing tonight and then close the record and consider the item later. Mention was made of the 180 day deadline and deferring to May 21st as well to hold an executive session to discuss potential liability of the city. It was determined a decision would need to be made by the end of the month. Clarifications added that discussion could take place after the public record was closed, but that could give rise to a request to present additional testimony.

Mayor Andrews called for public testimony

Edward Trompke, Attorney from Jordan Schrader firm representing the Shilo Inn, stated that property rights are important to everyone and that he takes a common sense approach to Measure 37 claims. His client, Christopher Campbell, the Chief Executive of the Shilo Inn, asked for a continuance. He mentioned that an affidavit was prepared but unsigned and asked that the council accept the signed one when it is received. He stated his client does not want to go to court and does not believe in wasting city resources; but he also has duties to his lenders and he has to protect to those folks as well. If a short hearing was needed after June 1st, his client would be okay with that. He discussed how recent court decisions have changed how people are looking at Measure 37 and the definitions of interest. His second issue is with the loss of value. The setback changes have caused loss of parking spaces and in turn loss of value. He brought

up the issue of the hotel being “redeveloped” and the new regulations being factored in. His client would like to sit and talk with the City about the legal ramifications of nuances of your code. There is no redevelopment currently planned for the property; but if a fire were to occur or if there was a need for a new roof, then any work would be subject to the new codes and they are concerned there will be loss of spaces and therefore value.

Mayor Andrews asked him to clarify what he was asking of council.

Mr. Trompke replied he was asking council to allow the later submission of the signed affidavit once it was signed and to direct staff to talk to a representative of the claimant.

Councilor Bart Rierson asked how he considered the potential loss of parking spaces the City’s fault.

Mr. Trompke replied if redevelopment were to occur then under current code, fifteen parking spaces would not be allowed to be left in place because a ten foot setback does not include those spaces where the twenty foot setback did.

Councilor Currier questioned why he was asking for compensation in excess of \$126,000 for a hypothetical situation that has not taken place and there are no plans to do this currently.

Mr. Trompke responded that is what Measure 37 requires him to do.

Councilor Soppe expressed some concern over the fair market value stated on page 73 and wondered where the calculations for the 2.67 million dollars came from and if it was documented anywhere else.

Mr. Trompke believed it to be a recalculation of the assessor but he was unsure if it was the true estimated current value.

Councilor Larson stated he felt there has been sufficient time since November 26th for the claim to be reviewed and staff has made their decision.

Mr. Trompke responded his intention had been to submit the new court cases that were not decided back then and he just got those this Friday.

Further discussion continued concerning the setback and loss of parking spaces, the requirement of landscaping, and asking for an amount of money for estimated loss of value.

Mayor Andrews called for opponents. There were none present and no rebuttal was necessary. He closed the public testimony.

MOTION: Soppe/Currier to accept the unsigned draft of the affidavit of the Chief Financial Officer and Executive Officer of Shilo Management Corporation into the record and allow the signed original to be submitted later. (6 Yes/ 1 Absent [Palmer]) Motion carried

MOTION: Soppe/Rierson to accept the new staff report and document material submitted at the beginning of the hearing into the record. (6 Yes/ 1 Absent [Palmer]) Motion carried

Councilor Boyes asked for a time frame on receiving the completed affidavit.

Mr. Trompke replied it would be submitted before the end of the week.

MOTION: Soppe/Rierson to continue the matter to the next meeting on May 21st deferring a decision for purposes of deliberation on new testimony submitted. (6 Yes/ 1 Absent [Palmer]) Motion carried.

Mr. Mahr added the 180 day deadline would be up on May 29th.

Mr. Trompke waived his right to make further changes.

Mayor Andrews called for a five minute recess at 9:13 pm and reconvened at 9:18 pm.

IX. CONTINUED BUSINESS

1. Consider a motion approving **Ordinance No. 2007-2668** granting a non-exclusive franchise to Verizon for a fiber optic television system.
Legislative

Mr. Bennett presented the staff report and noted all changes (see official record for full report).

Councilor Currier clarified his declaration at the last meeting concerning a potential conflict with his son doing work for Verizon. He was working with the underground wiring for three days. He worked for a subcontractor hired by Verizon. He was not paid straight from Verizon, but was three contractors removed from them.

Mayor Andrews stated we closed the hearing last time and Comcast asked for additional time to testify again this evening.

MOTION: Soppe/Currier to reopen the public hearing for **Ordinance No. 2007-2668** granting a non-exclusive franchise to Verizon for a fiber optic television system. (6 Yes/ 1 Absent [Palmer]) Motion carried.

Robert Schroeter, Director of Government Affairs for Comcast Cable, began with noting some items that do not appear in the revised franchise agreement claiming it does not identify issues with density and incentive payments or early termination. Verizon is able to walk out after three years. His larger issues are with customer service standards, specifically telephone answering standards and the allowance of automated voice response for Verizon. He declares there is still a difference in standards for both companies. He also discussed issues highlighted in a letter on April 12th regarding how gross revenue is determined and, with the franchise fee of 5% coming back to the city, what terms of income are included in the bill.

Councilor Soppe agreed he made some good points that the franchise requirements are not exactly the same. But he believes they are approaching being equitable.

Discussion followed on how incidental payments factor in. The \$10,000 paid per year by Comcast is not being requested of Verizon, but has nothing to do with the current franchise only

the prior one. Verizon customer service requirements are different, but Comcast can drop their customer services requirements altogether if a competing franchise is approved.

Scott Holbrook, Manager of Cable Franchising for Verizon, was given the opportunity to respond and he jumped on the claim that their company was “cherry-picking” areas of city. He said his company plans to serve the entire city and they look forward to providing competition in the City.

Councilor Soppe asked for clarification on service bundling and that stated discounts cannot apply to cell phones because of tariffs and wanted more information as to how they take that into account.

Mr. Holbrook read a statement from page twelve of the franchise agreement stating that wireless does not fall under that because it is measured for services by a long distance rate that cannot be reduced. They pay per use. Basic service rates are regulated, such as call waiting, and they have flexibility with that. But certain things that have a tariff cannot be changed.

Mayor Andrews closed public testimony and the public hearing.

Mr. Bennett offered the staff recommendation to approve the ordinance as revised.

MOTION: Larson/Soppe to approve **Ordinance No. 2007-2668** granting a non-exclusive franchise to Verizon for a fiber optic television system by title only as amended. (6 Yes/ 1 Absent [Palmer]) Motion carried.

X. NEW BUSINESS

1. Consider a motion approving **Ordinance No. 2007-2669** revising the Newberg Municipal Code to require training for newly appointed and re-appointed Planning Commissioners.
Legislative

Mr. Brierley presented staff report (see official record for full report).

Councilor Larson asked where the one day training session is usually held, if the City would pay the expenses, and if this includes the student commissioner as well.

Mr. Brierley responded there are various locations around the state, such as Lincoln City, Salem, and Portland. He also said the training already occurred with the student commissioner.

Discussion began concerning the difference between training in house and sending commissioners out of town. Staff explained that the initial training was done in house to ensure the elected commissioners are educated on how our City runs the meetings so they are knowledgeable enough to participate. The difference between newly appointed and re-appointed commissioner training was also highlighted. Staff stressed the importance of having training in house only within the first 30 days to ensure city specific rules and regulations were understood.

MOTION: Andrews/ Rierson to change the language for flexibility to have either in house or out of house training. Second withdrawn. Motion failed.

MOTION: Soppe/Currier to change the language on page 183 to reflect that training for reappointed commissioners may include either one hour from staff or be offered by the city. (6 Yes/ 1 Absent [Palmer]) Motion carried.

MOTION: Currier/Soppe to approve **Ordinance No. 2007-2669** revising the Newberg Municipal Code to require training for newly appointed and re-appointed Planning Commissioners as amended. (6 Yes/ 1 Absent [Palmer]) Motion carried.

XI. COUNCIL BUSINESS

Councilor Rierson asked if there was an ordinance for city councilors to receive the same training.

Norma Alley, Deputy City Recorder, replied the ethics commission requires us to instruct councilors on conflicts of interest.

Councilor Soppe discussed the need for a change in current regulations that allow contracts to be signed and executed by the City Manager without any input from Council. He does not want it to be a matter of council approval, but would like to consider a waiting period before contracts are executed so that council can be informed and respond if desired. Or maybe require notification of the Council if the dollar amount of a contract is above a certain limit.

Mayor Andrews announced results of a survey on public access cable and that he was considering establishing a council subcommittee to determine a specific policy regarding public access cable. He has selected **Councilor Larson** to chair the subcommittee and **Councilor Boyes** to serve on the subcommittee along with the Mayor. He intends to start within the next seven days.

XII. EXECUTIVE SESSION

None.

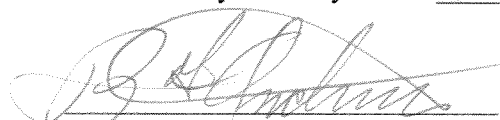
XIII. ADJOURNMENT

MOTION: Currier/Soppe to adjourn at 10:34 pm (6 Yes/ 1 Absent [Palmer]) Motion carried.

ADOPTED by the Newberg City Council this 4th day of June, 2007.


James H. Bennett, City Recorder

ATTEST by the Mayor this 7th day of June, 2007.


Bob Andrews, Mayor