

CITY OF NEWBERG COUNCIL MINUTES
JUNE 4, 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
	Jeff Palmer		

Staff

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

Others

Present:	Steven W. Abel, Lee D. Leighton, Charles McClure, Ellen McClure
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III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

James Bennett, City Manager, stated that in mid-July the Public Works department will be bringing two major documents up for review: the waste water treatment plant facility plan and the waste water collection system master plan. These documents will map out what the future needs will be for the expansion of plant operations as well as for additional facilities. These will be big documents and it will take time to go over them so the Council agenda is being cleared for the mid-July meeting. Prior to that hearing, within the next month or so, we would like to arrange a tour of the WWTP for council. It would be an evening affair, a special meeting of council to see the operations and what we are talking about for additional areas for expansion and specifics on how we might change certain things.

Councilor Robert Soppe agreed that would be a wonderful idea, but he also said he would prefer to get something sent to him before hand that gives him an idea about what is being discussed before we go see it.

Mr. Bennett replied an executive summary would be provided and he will move forward with that and scheduling a time to meet for a tour.

V. COUNCIL APPOINTMENTS

None.

VI. PUBLIC COMMENTS

None.

VII. CONSENT CALENDAR

1. Consider a motion approving the City Council Regular Session Minutes for May 7, 2007.
2. Consider a motion approving a proclamation for Reserve Officer Ron Enkelis for his years of service as security at Council meetings.

MOTION: Palmer/Larson to approve the two items on the Consent Calendar including the City Council Regular Session Minutes for May 7, 2007 and a proclamation for Reserve Officer Ron Enkelis for his years of service as security at Council meetings. (Unanimous) Motion carried.

Mayor Andrews called forward **Ron Enkelis** and **Police Chief Brian Casey**.

Mr. Bennett read the proclamation recognizing Mr. Enkelis (see official record for full report).

Mr. Enkelis added in the nine years he has served, coming to two meetings month he feels like an eighth council member. He said maybe one day everyone might see him on the other side of the table. He wishes he could stay here. He has really enjoyed his time spent here. It has been great.

IX. CONTINUED BUSINESS

Mayor Andrews altered the original meeting agenda to address continued business before the public hearing. This item was heard out of agenda order.

Consider a motion approving **Ordinance No. 2007-2671** adopting a development agreement with Charles and Ellen McClure allowing municipal water service connection and setting forth terms for annexation.

Terrence Mahr, City Attorney, reminded the council the record and testimony had been closed at the end of the last meeting. Since then they have received an updated agreement and two letters (see official record for full report). He said that the council would need to re-open the record to receive those items. The applicants are also available to discuss the development agreement. He recommended a motion to open record to receive the updated agreement and the two letters.

Councilor Soppe stated his belief that if the record was opened to accept material we should also open it to additional public testimony as well.

Mr. Mahr replied the council could address this matter.

Discussion followed as to whether or not to open public testimony as well as the record or not to accept the new material at all.

MOTION: Soppe/Rierson to open the record for **Ordinance No. 2007-2671** to accept the new material presented. (Unanimous) Motion carried.

Mayor Andrews re-opened for the record for public testimony and called for any abstentions or conflicts of interest. None appeared.

Barton Brierley, Planning and Building Director, presented the staff report noting all changes suggested and amendments (see official record for full report).

Councilor Soppe referred to page four of the agreement on item two concerning annexation. He was concerned with binding future councils and did not think it was proper to do so.

Mr. Brierley replied the intention is to come to council for a hearing to decide if applicable criteria have been met and it can be determined to send it to the voters.

Councilor Soppe thought some language should be added to make sure those two issues are separated. He suggested changing the language to give council the prerogative. He also referred to the bottom of item three concerning city utility services, suggesting the language “or until service is available to the property” be added after “fifteen years following annexation”. He was concerned that, if they can get sewer sooner, they should not wait the fifteen years to convert the septic systems.

Mayor Andrews added this would be important, particularly if they piggyback onto the Urban Growth Boundary (UGB).

Councilor Soppe suggested a language change on page 5 in item three, third to last line, to add “pre-built” before the word “system”. He referred to the top of page seven and noted it should read “inclusion into the URA” not the URS. He expressed discomfort with the development of the retirement parcel within five years and asked if measure 37 gives the authority to do this and wanted to make sure the city was not giving them anything they cannot do under measure 37 already. He also referred to page eight concerning the utility rates for customers outside of the city. He spoke of being optimistic for sewer to be provided, but since we do not charge sewer outside of the city, we need to come up with whatever those rates will be if we are providing that sewer service, like the 150% we charge for water

Councilor Roger Currier spoke about the hook up for sewer and the need for a pump station and asked who pays for it and determines how it is to be constructed, because of the lowland factor. He saw nothing addressing that. He also spoke about the change on page eight that they are public roads now and asked if they are still only doing sidewalks on one side with no curbs or gutters.

Mr. Brierley said there would be curbs.

Councilor Currier replied they would still not be up to code later.

Councilor Bart Rierson said the proposal was for a full width street but asked if they would have to expand it, tear up one side, and add a new curb once it came into city limits.

Mr. Brierley replied the anticipation is that would not be required.

Councilor Rierson countered that with the American Disability Act (ADA), we might be required to do that.

Councilor Soppe said the assumption is that they will develop anyway. He also asked how to interpret the term and what is needed to accomplish a common law vested interest in this development.

Mr. Mahr replied the County looks at that and they said if they have septic systems or drainage fields that would for sure be a vested interest; but, if they had a subdivision plat that is approved or were putting in improvements, that would also be considered a vested interest.

Councilor Soppe asked how close they were to having an approved plat or if they have it already.

Mr. Brierley stated they have applied for it from the County but he has not seen an approval yet. He expects it probably will be within a couple of weeks.

Steven W. Abel, Attorney from Stoel Rives representing the McClure family, stated the timing is accurate and they expect approval on preliminary plat in next week or two. There will be some construction during that time and by end of summer should have the final approval. We are moving as rapid as we can to exercise the rights of the measure 37 claim.

Councilor Soppe asked if that will be as much as they will have accomplished by the November vote.

Mr. Abel replied that was as much as could be possibly done by then and that meets common law for invested rights. There are certain factors of when that vested interest is met by how much money has been spent and how much you have moved forward towards physical improvements. Although there is no point in time when the vested interest law has ripened, we are moving forward to make sure that we meet this level and have gotten enough into it. It is certainly a great risk.

Mr. Mahr asked if we agreed with this development agreement and the Measure 37 initiative passed in the elections, but they did not have the vested interest, would you be allowed to develop in the county regardless of our decision here.

Mr. Abel said the rights would be taken away 30 days after vote if they did not have a vested interest.

Mr. Mahr confirmed they must still meet the vested interest before they can work under our development agreement.

Councilor Soppe asked why we want to skip the requirement of going into the UGB before annexation.

Mr. Brierley replied they have the option to go in that direction. There might be an advantage if home construction occurred within the city and, if more development occurred after annexation, the advantage would be to have the properties under city building codes and the SDCs would be paid at that time.

Councilor Soppe asked if it was possible to speed up that process so our rules apply rather than the County's.

Mayor Andrews asked about pages four to eight concerning the fees and charges and asked if we are looking at receiving all of our SDCs or only those from water and sewer.

Mr. Brierley stated all SDCs would be paid by annexation.

Mayor Andrews opened the floor to proponents and opponents. None appeared.

Mr. Abel stated he had no objections to the several amendments suggested this evening. He clarified that the suggestions on the timing of the fifteen years should refer to availability to the property so the sewer services could actually be used. He showed the council photos of a street profile from another area as an example of what they intend for this property. He concluded that 22 feet in the street section made good sense under the circumstances of this unique property's character and one acre lots.

Councilor Soppe argued that the city does have street standards too and he expects the reason they do not want to do it that way is because of the cost.

Mr. Abel disagreed stating that, although there may be a cost reduction, it is both for the environment it is contained within and for those buying the homes. The narrower streets meet criteria for fire and connectivity. Parking standards are a good thing for an urban area but this is more for aesthetic purposes as well as environmental since it is taking up less space. It will also slow traffic.

Councilor Soppe agreed and he would not mind seeing this all over town but he asked if he was suggesting that sidewalk on the other side of the street would impact the environment.

Lee D. Leighton, AICP from Westlake Consultants, Inc., stated the idea is to bring the street along side the landscape to provide homes with green areas on one side with fairly mature landscape.

Mayor Andrews asked if the pavement would be asphalt or concrete.

Mr. Leighton replied there would be an asphalt road and a concrete curb. Sidewalks would be on one side and also separated paths for walkways. He stated these plans are not substandard; they are just a different design approach for these kinds of one acre lots.

Councilor Soppe asked if parking was allowed or not allowed on any sides.

Mr. Leighton replied parking needed to be managed. Not being able to have a commanding view of the curving street would encourage people not to over-drive as would making them as narrow as possible. Areas could be widened or carved out for parallel parking, but he does not see a demand for parking with only 36 homes. He thought widening the streets for parking anywhere was not needed.

Councilor Soppe remarked that if it is annexed it will be our problem.

Mr. Leighton wanted to be clear, stating that in their conversations with the county these were proposed as private streets. They should be in the public right of way but maintenance is to be done by the property owners. We asked to approve this as a 50 foot wide public right of way corridor with this design; with the twenty-two feet it is not appropriate to have parking. But, if we were to widen certain areas, it will still be in the public right of way at those certain locations that bulb out to provide pockets, but there would be no parking in the twenty-two foot wide areas.

Councilor Soppe replied that basically County standards would prevail as far as the width requirements and we would have to ensure this is carried out because the City does not want to inherit a parking problem.

Mr. Abel said the subdivision will be governed by Conditions, Covenants & Restrictions, and the rules for parking as a private matter would be administered by the subdivision.

Councilor Currier replied that CCNRs do not govern the public if they want to park their car and go for a walk. He asked if owners will be made aware that down the road they may have to give up 50 foot right of way after annexation and be required to have sidewalks.

Mr. Abel stated the property will be sold according to requirements on the plat.

Councilor Currier asked if the designers were aware that pavers do not constitute sidewalks.

Mr. Leighton replied that he was not trying to suggest this design meets Newberg's standards. The non-sidewalk paths are not public right of way and there are two ways a pedestrian can walk through: the curbside sidewalk or an alternate set of paths.

Councilor Currier also asked if he was aware a public street would have to have public signage because the pictures did not show that and he asked how they are maintaining elevations for ADA requirement for wheelchairs.

Mr. Leighton replied he was aware there would need to be public signage and that the ADA does not have a requirement for elevation, other than within a range of 10-11%, but no requirement existed for ramps to defy gravity. He said the slope of the roadway simply does not allow compliance along the center line.

Councilor Mike Boyes asked if there are drains in those streets.

Mr. Leighton replied there was a combination. Drainage would flow along the curb to be diverted into a drainage ditch and there would also be some intersection locations where it is not appropriate to have storm water across the intersection so man holes would be in place for safety purposes. There would be two separate storm water detention facilities where water is treated

and released into natural areas. There would be six inch high square curbs adjacent to the sidewalk on the other side.

Mayor Andrews asked if they were not proposing mountable curbs.

Mr. Leighton replied they were not.

Councilor Soppe referred back to the sidewalks being in public right of way and wondered, if these other trails on the greenway are not in the public right of way, would there be something in the CCNRs about the general public having a legal right to walk on them.

Mr. Abel stated that can be on the plat, which is not uncommon. The paths can be available, but not the greenways necessarily.

Mayor Andrews closed the public testimony and the record and asked for any further staff comments.

Mr. Brierley recommended adopting the ordinance in conjunction with the number of changes in wording that were made.

Councilor Rierson stated he was in favor of the approach although he has heard overwhelming opposition from the neighbors and from the voters considering how the last annexations went. He still believes the best solution is to provide water and, if it is brought into the UGB, to provide sewer. It is best for the neighbors although there is not much support. He felt if it was not approved, the neighbors will be upset when the wells run dry and there are other septic water problems, but he did not think it was up to him to decide what is best. He said he likes the way the development is set up because it is not a city environment and it is appropriate for the neighborhood. If it is annexed, it will be a problem in future to bring it up to city code. It may be a nice development, but he is inclined to vote against it.

Councilor Soppe stated it was important to focus on the decision at hand. Personally he would rather not have any of this, but the question is whether we are going to provide water or not. One of the objections is that we are giving away water, but in fact we are charging a rate of 150% while they are outside the city. He wondered how not providing water would resolve any of the objections he has heard so far, since the bulk of the problems will exist no matter what they decide. He said we are not proposing annexation, just a path to it. But the voters are still in control. He is supporting this because the owners can get a vested interest and will be able to get it accomplished anyway

Councilor Currier talked about when the time comes to ask for annexation that the council will require all of this to be brought to city standards before bringing it to ballot and he does not think there is any requirement to put it on the ballot at any given time. Listening to the developers he is not hearing they even think that can happen. He stated they were "passing the buck" onto the new owners of the property instead. He thinks it is wrong to think of annexing the property before the UGB option and there is a possibility of subdivision at some point to less than one acre lots. He said there are a lot of things that can make traffic worse here and although it is beautiful it does not fit the goals of the city and sets a poor example as far as what we require of any other developers.

Councilor Boyes expressed concerns about watering lawns and the strains on the water system by development of the property. If the other property had been annexed it may have been a different thing, but now we would be skipping over that property to provide water here. He felt it was a bad situation and the council needs to look out for the others invested in this community. He believes this property will be a burden on police and fire because they are so close to the city.

Councilor Bob Larson stated he had heard nothing to change his mind. He is against giving water to that many residents. If this were an emergency situation, it would be different. He did not think the city should supply 36 homes in this area with water until it was annexed. He did conclude that if the builder would build the development to city code, he may be inclined to change his mind though.

Councilor Soppe responded to some points made by the other councilors. He stated that the owners will pay SDCs when they hook up to water and if we provide sewer they will pay SDCs then just the same as anyone else. Concerning the burden on police and fire, if we do not provide them water, that is not going to change. Concerning the subdivision traffic problems, this also will not change. If we do not give them water, they will not have fewer cars because of it. He also asked staff when a traffic study was required before annexation and if they could divide lots into less than one acre.

Mr. Brierley replied it had to be over 40 homes for a study to be required and, as far as dividing the lots, the agreement does not allow it and the council would have to approve an amendment.

Councilor Soppe also brought up the retirement home and the traffic issues that will come from that. He pointed out they have the authority to build that today and not giving them water would not take that away. He thought we should be careful how far we push our side of agreement. As far as the burden being on the future owners, he agrees this is an issue too; but it is still not affected by the decision to provide water or not.

MOTION: Currier/Larson to deny the adoption of Ordinance No. 2007-2671, a development agreement with Charles and Ellen McClure allowing municipal water service connection and setting forth terms for annexation.

Mayor Andrews stated we are really only talking about the extension of water. There will be development out there and he felt the only thing we can do to protect the aquifer and get at least some standards met is to have a hand in the development agreement. He said he is also concerned about transportation, but he said we are not talking about annexation right now.

Councilor Boyes asked if the city would or would not pay for the water.

Councilor Soppe answered that any house built in last 5 years pays SDCs for capacity improvement projects, which is what this developer will do as well as paying 150% on the water.

Councilor Boyes expressed concern that they do not pay city taxes.

Councilor Soppe said that did not matter because taxes do not go towards water.

Discussion followed concerning water usage rates in the summer vs. the winter and how rates are based on actual use. Concern was expressed for the retirement home plus the other thirty-six

homes taking so much water out of the area that runs towards Otis Springs. There was also talk about prohibiting one couple from using water outside of the home, but allowing this group of homes to have full use at 150% charge.

Mayor Andrews asked if we have a prohibition for domestic purposes only.

Mr. Brierley replied there is a prohibition for use outside of the home in the case of a water hardship. He also stated that domestic purposes do include lawn watering. What it is really meant for is to prohibit use for agricultural purposes.

Councilor Currier reminded the council that we have a tendency to forget what we are doing today. He thinks we should let them do what they are going to do because the county is going to let them and, if they require a hardship case for water later, then we can require that all improvements take place.

VOTE: To deny the adoption of **Ordinance No. 2007-2671**. (4 Yes/ 3 No [Palmer, Soppe, Andrews]) Motion carried.

VIII. PUBLIC HEARING

Consider a motion approving **Ordinance No. 2007-2672** amending the Newberg City Code relating to Noise.

Legislative

Mayor Andrews introduced this item stating it was not a public hearing as shown on the agenda, but should be considered new business.

Mr. Bennett stated this comes after months of work by himself, the council and the city attorney. The result is a noise ordinance based upon objective standards. They did this by adding measurement standards for noise using noise meters to measure decibels. He noted that pages 181-2 represented an analysis of suggested changes to the ordinance. In light of recent actions at the local court level, some areas were deemed as unconstitutional by limiting freedom of speech; the city attorney was prompted to look at the ordinance again. The city attorney suggests using a portion of the model used by the League of Oregon Cities within our code. He stated this is a good ordinance and believes it will meet legal tests in future since it provides a better and more objective way to measure noise.

Mr. Mahr stated he posted this in the legal bulletin this past Friday, June 1, 2007. He offered a little background on how the issue came about stating a juvenile challenged the ordinance as unconstitutional and a judge agreed stating the language was too vague since “unnecessary” did not offer a reasonable standard by which to measure. He said they developed measurements with objective standards that are less likely to be challenged and changed the language to include the “reasonable person standard” which means “unnecessary” is changed to “unreasonable” noise. The problem comes with enforcement, but the measurements should help because it will be a scientific standard. He recommended adopting the new ordinance.

Complete packets were distributed to those council members who did not receive the update and discussion followed concerning the language changes section by section.

Mr. Mahr added that “unnecessary” as a term does not live up to court standards, but the “unreasonable” person standard does.

Councilor Rierson said he was concerned that “unreasonable” is again a subjective term as well and thought we would have to rely on the officer measuring sound decibels.

Councilor Soppe asked if the term “unreasonably” loud has some legal standing.

Mr. Mahr replied it did and agreed it is still subjective and susceptible to attack; however, it has more legal standing because the court recognizes the term more. This is what LOC recommended in their model ordinance and any appeal would be based on that. We would call in the LOC if a judge still found this term constitutionally vague. He said that courts are constantly fighting, but they have litigated this term. He said he did not know where the language came from originally but he noted that McMinnville also had the same term “unnecessary”.

Councilor Soppe asked about standards of noise measurement and whether it was lab standard or industrial.

Mr. Bennett stated he could not say either way but it is his understanding the meters are authorized to be used and are all self-calibrating, although they can be manually calibrated as well.

Mayor Andrews asked if the measurements will be made using a tool.

Councilor Soppe confirmed this and also clarified the abbreviation for decibels as dBA. He also referred to page five, item three, concerning if the noise carries to more than one zone, the more restrictive zone shall govern. He asked if that meant noise from an industrial zone would have residential numbers applied to it

Mr. Bennett confirmed this and clarified that if there was a conflict, then the noise level has to be lowered on the industrial side to mitigate the impact on the residential zone.

Councilor Currier asked about timing differences under what is permissible; one stated 8 am until dusk and another 8 am until 5 pm. He was concerned about having to complete lawn work before dusk, especially if someone had lights and wanted to work after dusk.

Mr. Bennett replied that when it is dark you do not want to hear your neighbor doing this kind of work even if they do have lights.

Councilor Jeff Palmer referred back to the language conflict in E3 concerning the more restrictive zone. He thought it would be better, although redundant, to say “when a noise source can be measured from more than on zone, the more restrictive zone shall govern [in the more restrictive zone]”.

Mr. Mahr added it is better to focus on the noise rather than what the noise is being caused by.

Councilor Boyes asked about fines and guidelines for those running something loud for more than fifteen minutes and wanted to know where to find that.

Mr. Mahr stated it is not under this code provision, but it is in the chapter itself.

Mr. Bennett added it was under the ordinance for public nuisances.

Councilor Boyes wanted to know how things like the old fashioned festival, football games, the cancer walk, baseball games, and PA systems going late were covered.

Mr. Bennett said those issues came up in a work session and are listed in the exemptions section. The chart on page 183 can be used to help measure by example, but the police will have a meter.

The amendments were reviewed as discussed above.

MOTION: Soppe/ Larson to consider a motion approving **Ordinance No. 2007-2672** amending the Newberg City Code relating to Noise as amended and read by title only. (6 Yes/ 1 No [Currier])

X. NEW BUSINESS

1. Consider a motion approving **Resolution No. 2007-2713** accepting financing from the Oregon Economic and Community Development Department for an effluent reuse system.

Mayor Andrews pulled this item from the agenda and postponed it until June 18th.

2. Consider a motion approving **Resolution No. 2007-2714** authorizing the City Manager to enter into a contract with the Pall Corporation Water Processing Division for filter packages to be used in the new reuse water system.

Mayor Andrews pulled this item from the agenda and postponed it until June 18th.

XI. COUNCIL BUSINESS

Councilor Rierson brought up his concerns with Yoyo's and the fact there should be some sort of standards for mobile food vendors since it is beginning to appear worse as vehicles and makeshift items are added.

Staff mentioned getting the planning commission to come up with appropriate standards for consistency.

Councilor Soppe thought there should be a debriefing prior to bringing it before the Planning Commission so we could be clear about what is wanted and what is not.

Councilor Boyes felt the trailers coming into town not only hurts how the town looks but that they also are taking away business and money from other competing permanent restaurants that are required to pay taxes and adhere to health guidelines.

Councilor Currier thought the temporary vendor permit should be revisited to make sure all criteria are being met and thought the City needed to take a look at the commercial aspect of having them.

Mr. Bennett stated there should be a work session with **Barton Brierley** to talk about current permit criteria and to explore this issue farther.

Councilor Rierson also mentioned an email from a citizen having a problem with her neighbor's cat defecating in her yard and she wants an ordinance about cats having to be on a leash.

Councilor Currier suggested she buy cayenne pepper to spread in her yard to prevent the cats from defecating in her yard.

Mr. Mahr stated he could place this issue on the Oregon city attorneys' bulletin to see what other cities do about this.

Councilor Palmer thanked Councilor Soppe for the questions for the animal shelter subcommittee and asked for other Councilors to submit their questions if they had any.

Councilor Larson announced the Cable TV subcommittee is meeting tomorrow at 3 pm.

XII. EXECUTIVE SESSION

None.

XIII. ADJOURNMENT

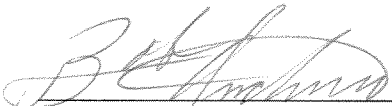
MOTION: Larson/Palmer to adjourn at 9:52 pm (Unanimous) Motion carried.
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ADOPTED by the Newberg City Council this 2nd day of July, 2007.



James H. Bennett, City Recorder

ATTEST by the Mayor this 5th day of July, 2007.



Bob Andrews, Mayor