CITY OF NEWBERG COUNCIL MINUTES
JULY 2, 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 Rierson	Mike Boyes
	Jeff Palmer		
Staff Present:	James Bennett, City Manager		
	Terrence Mahr, City Attorney		
	Barton Brierley, Planning and Building Director		
	Norma Alley, City Recorder		
	Jennifer Nelson, Recording Secretary		
Others Present:	Steve Abel, Dotti Smits, Charles McClure, Ellen McClure		

III. *PLEDGE OF ALLEGIANCE*

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

None.

V. COUNCIL APPOINTMENTS

None.

VI. PUBLIC COMMENTS

None.

VII. CONSENT CALENDAR

1. Consider a motion approving the City Council Regular Session Minutes for June 4, 2007.

2. Consider a motion approving a sound permit for Newberg Friends Church outdoor worship service.

3. Consider a motion approving a sound permit for a private party hosted by Newberg resident Steve Plaster.

4. Consider a motion approving **Resolution No. 2007-2719** authorizing the acceptance of the canvass of votes for the May 15, 2007, Local Election.

MOTION: Larson/Rierson to approve the Consent Calendar, including the Regular Session Minutes for June 4, 2007 as corrected. (Unanimous) Motion carried.

VIII. PUBLIC HEARING

None.

IX. CONTINUED BUSINESS

Consider a motion approving **Resolution No. 2007-2716** approving the Engineer's Report for the East Greens Advance Financing of Public Improvements and setting the reimbursement amounts onto the intervening properties.

Barton Brierley, Planning and Building Director, passed out information given to him directly before the meeting by the applicant. He noted they agreed to the accrual of the 9% interest to begin at the time of annexation (page 108). (See official record for full report)

Mayor Andrews recessed the meeting briefly at 7:05 PM in order to give the council time to review the new material. He reconvened the meeting at 7:07 PM. He asked staff about the reference to a modified staff report and what that was.

Mr. Brierley replied the modification would be the material he passed around being included as an exhibit to the resolution and the 9% interest starting at the time the property is annexed, whereas for the other affected properties the interest begins upon filing.

Councilor Robert Soppe directed a question to the city attorney about the word "remonstrance" being used twice on the first page and whether or not it had the same meaning as is used with Local Improvement Districts (LID). He wanted to know if it clearly fit here and the city attorney concluded that it did not fit. (Note: the document should state that "the party did not object." The document was not written by the City.)

MOTION: Currier/Larson to consider approving **Resolution No. 2007-2716** approving the Engineer's Report for the East Greens Advance Financing of Public Improvements and setting the reimbursement amounts onto the intervening properties as modified.

Councilor Soppe mentioned there had previously been one party in objection and the council asked the developer to meet with them and resolve the matter. He was informed this matter had been resolved.

VOTE: To approve **Resolution No. 2007-2716.** (Unanimous) Motion carried.

X. NEW BUSINESS

1. 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.

Mr. Brierley reported that this matter came before the city council on June 4, 2007 when there was a motion to deny it which passed. Then on June 18, 2007 there was a motion to reconsider which is why we are here again tonight. He said the only change to the development agreement since then is to require installation of a pre-built sewer system to allow residents to connect to city sewer services when they become available.

Mr. Bennett noted that a number of changes to the development agreement had been suggested at the June 4th meeting and asked if those changes are included here as well. Staff replied those changes were included.

Councilor Bart Rierson referred to the letter received from Deborah Soderquist asking if the current rates charged really reflect actual costs. He said she also wrote that the city is giving away a precious resource, suggesting the city would be giving away water. He stated it was his impression the Citizens Rate Review Committee does review this on a regular basis and he was not aware of any of the hidden costs Ms. Soderquist referred to. He asked if it would cost us more to provide water than we would be charging.

Mr. Brierley stated his belief that the city would come close to recovering the costs considering they would be charged the out of city rate which covers some extra expenses. He said he believed we would be covering our costs as much as for other properties within the city.

Councilor Jeff Palmer stated that out of city residents are paying 50% more for the water rate and asked if they also pay additional System Development Charges (SDCs).

Mr. Brierley replied there were no additional costs for repair maintenance or SDCs.

Councilor Soppe stated he was not clear what the rates are paying for and wondered if the costs of drilling more wells, maintenance, and all the items listed in the letter were addressed through the water fund. Staff replied that all of the items were covered by the water fund.

Mr. Bennett added that another claim that the Planning Department reviewed or planned for water expansion was also incorrect.

Councilor Soppe asked if a percentage of the water fund partly funds the city manager and city attorney salaries.

Mr. Bennett replied that it does.

Mayor Andrews mentioned the agreement speaks to the fee charged for out of city water, which is 150%. He also wondered if there was a provision in the agreement for out of city sewer service. He asked when sewer services are provided to the property, which could be as early as when it is included in the Urban Growth Boundary (UGB), what would the fees for out of city sewer service be.

Mr. Bennett replied the city did not currently have a fee structure for this and would have to create something. A customer class would have to be created for out of city sewer recipients.

Mayor Andrews expressed concern the agreement did not address this at all.

Mr. Brierley referred to page 8 of agreement.

Discussion followed concerning language referring to sewer and water connections and SDCs being paid in accordance with the fee schedule after annexation. If there is a possibility of sewer being connected, then language needs to be included in the agreement, even if we are creating a new situation to have out of city sewer services.

Councilor Soppe asked if adding the words "and sewer" to "water connection" on the third line from the bottom of the page in section 7 would clarify this issue.

Mayor Andrews agreed that would be fine. He then referred to page 2 in the ordinance and asked the city attorney to explain paragraph three.

Terrence Mahr, City Attorney, discussed state law requirements that land must be contiguous, or inside the Newberg Urban Reserve Area (URA) prior to the inclusion on the UGB.

Mayor Andrews discussed a recent state requirement in a Beaverton case where the court appeared to indicate a road could not be used to accomplish a contiguous boundary.

Mr. Mahr replied that it was a case of an island annexation where only a portion of it was annexed. He said new annexation legislation is going to say you cannot use a road touching property to say that an island is contiguous.

Mayor Andrews asked if the city moves out with annexation and becomes adjacent, not contiguous, would the new legislation apply to Benjamin Road.

Mr. Mahr stated on the other side of road it would be city property and in the court case it was only the road. So the property would be contiguous.

Mayor Andrews referred to page 4 and asked about the appropriateness of the fifteen year operation of septic systems if a "dry sewer" system will already be in place.

Mr. Brierley the applicant requested this as part of the agreement because if they pay the expense to do this they want to advertise that fact.

Mayor Andrews asked what the required width of residential streets is.

Mr. Brierley stated it was thirty-two feet for a local residential street.

Councilor Soppe moved back to the discussion on the septic systems being used for fifteen years of operation after annexation. He thought, especially with the "dry sewage" system in place, the only cost that would be avoided is sewer rates. He asked if it has to be "pre-built" and when.

Mr. Brierley stated it must be pre-built at time of development of the subdivision.

Discussed this item briefly and determined that being pre-built "at the time of development of the subdivision" should be an amendment. Practically it was assumed it would be put in at the time of the other utilities.

Councilor Soppe said he was concerned about allowing fifteen years of use for a septic system while in the city.

Mr. Mahr replied when the sewer is available, the city can ask them to hook it up.

Councilor Soppe asked if the property were to be annexed in two to three years would they be expected to connect as soon as sewer connections were available.

Mr. Mahr stated annexed property is usually not already developed and not as much is invested. He referred to Aspen Estates and noted there was a concern of when to work this out.

Councilor Soppe wondered if we can demand they hook up when and if the city extends sewer at the time of annexation. Can we expect to have sewer available then?

Mr. Mahr replied we do not have the resources to do this ourselves. Development usually dictates when service becomes available.

Councilor Soppe stated that we have option to require them to connect, but we are not requiring that here. He also recommended a language change on page 8 of the agreement concerning the fee schedule at the time of construction and felt "construction" should be changed to "connection". Staff agreed to that language amendment. He also discussed item two, annexation, and was concerned about the language compelling future councils to put this on the ballot. He also brought up the issue of resubmitting annexations and the policies being made around that.

Mr. Mahr suggested changes to give broad discretion, changing the second sentence under annexation on page 4 "the city shall consider the application, and if the city council [so elects]" and to strike "to annex the Property". They also changed the last sentence, "if annexation vote is not approved, city [in accordance with city policies applicable at that time] may resubmit..."

Councilor Palmer stated at the June 18th meeting, council approved the Americans with Disabilities Act (ADA) bicycle and pedestrian sidewalk plan and asked if staff has reviewed this plan and compared it to the plans for this development.

Mr. Brierley replied none of the ADA listed priorities for improvements are in this area and in general it would comply with the standards.

Councilor Soppe still felt the issue of the fifteen years concerning sewer services was unresolved.

Mr. Brierley noted that even if it was twenty years before annexation, they still could not connect to city sewer if they are still outside of the UGB.

Councilor Soppe also discussed changes that should be made on pages 4 and 5. On page 4 changing the last sentence to "allowed to remain on such private septic systems for a period of fifteen (15) years following [construction of such system]" striking out "annexation". On page 5, the sentence starting with "Owners reserve the option…" should be changed to "Owners shall prebuild sanitary sewer infrastructure on the Property [at the time of construction of the subdivision infrastructure] on the Property…"

Mr. Brierley stated that would be fine if acceptable to the applicant. The applicants accepted the amendment.

Councilor Roger Currier noted he liked the idea of hook ups starting from construction dates.

Councilor Rierson asked if it was safe to assume the Newberg Urban Area Management Commission (NUAMC) might bring this into the URA before all this development occurs so there may never be the cost of building the septic system.

Councilor Soppe replied that NUAMC has not made a final recommendation yet. It has been recommended include this in the URA, but it must be in the UGB for sewer services to be connected and NUAMC has not discussed that yet.

Mayor Andrews reminded the council that public testimony was closed on June 4th and there are two people requesting to comment on the deliberations tonight. He asked if it was the council's pleasure to reopen the record.

Councilor Soppe also mentioned we got a letter that was received after the closing date of June 28th that was discussed tonight and we can decide whether or not to include that, too.

MOTION: Rierson/Palmer to reopen the record for **Ordinance No. 2007-2671** to include further public testimony, both written and verbal. (Unanimous) Motion carried.

Mayor Andrews opened public testimony.

Steven W. Abel, Attorney from Stoel Rives representing the McClure family, stated he listened to the discussion and the proposed amendments are acceptable.

Dotti Smits had questions concerning the water and sewer services and where they are coming from if or when this property becomes part of the city. She mentioned problems in past with city water because of the Willamette River which is not very clean. She also was concerned about the sewer system with the population growing and with new housing; she asked how we are going to take care of the sewer system.

Mr. Bennett replied the water system that the city provides drinking water from comes from the city well field across the Willamette River in Marion County. There is potential for additional wells to be drilled and water is pumped either over the river or under it going out to residents; it does not come directly from the Willamette River. The water is processed in the water treatment plant and sent out all over. As the city grows, we have a master plan to expand the treatment facility to provide more water.

Ms. Smits asked what the water treatment process consists of.

Mr. Bennett answered there are special filters that pull out bio-debris, bacteria, and heavy metals; it is then chlorinated and released into regular distribution.

Ms. Smits asked why we need to use chlorine if it is harmful to plants and humans.

Mr. Bennett replied it is a state requirement to treat community water systems this way.

Ms. Smits asked if it was the same for private systems.

Mr. Bennett replied for under three connections you do not have to do this. He added the sewer treatment works the same way down on Wynooski Road and there is a master plan to expand that too. He said part is released into the Willamette River and now there is treatment for reuse of sewer water for irrigation only, not drinking water.

Ms. Smits asked if we can afford the new housing and where is the money coming from.

Mr. Bennett replied the pipes are paid for by the development as it comes into the city. The water is paid for by the consumers.

Discussion continued resulting in a request to tour the plant from Ms. Smits and the mention the latest water report was on the city website.

Mayor Andrews closed the public testimony.

Mr. Brierley stated the applicant agreed to the changes made and their recommendation is to adopt the ordinance with the amendments discussed.

Councilor Currier stated he was not satisfied with staff comments that the 150% water fee "should cover costs" and that the plan "in general" adheres to ADA guidelines. He feels the city has not gained anything in this development agreement and he sees nothing we would not get upon annexation since we would receive SDCs for water and sewer no matter what when annexed. He said the streets will never be brought up to the City's thirty-two foot standard, even when it is annexed, so we have gained nothing. He felt this would be one step backwards concerning the ADA compliance plan just passed. He added it may be beautiful but it is a direct violation of code, it is not in the URA, we are gaining nothing and we are getting no control.

Councilor Soppe argued there are things the city gains such as control over when annexation occurs, which we do not have with others. He added ADA asked for compliance for services, not facilities; and we get the possibility of avoiding drilling wells and having septic systems.

Councilor Rierson added if we do not provide water and sewer it will not change anything and they will not do full width roads or sidewalks whether we provide water or not. Either way, we will face the same issues and we should not punish them because of that. This provides an opportunity for less storm water run off, it is more appropriate for a rural situation, and nice walking paths will be provided for a lot of foot traffic that would otherwise be dangerous on

Benjamin Road. He stated his confidence that charging one and a half times the regular rate for water will more than recover the cost for providing it and he sees more positive than negative points. He believes there will be a benefit to the applicant, the neighborhood, and the city to not have 37 more wells and septic systems draining into the ground water

Mayor Andrews discussed the twenty-two foot wide street situation with the total of fifty feet of public right of way. He felt if there was no parking in those areas other than in the recommended pull off areas, then the twenty-two feet is reasonable. If parking is allowed on both sides, it would have to be widened to thirty-two feet.

Mr. Brierley agreed that was appropriate and it would have to meet fire standards and the applicants are comfortable with that. Code requires twenty-eight feet with eight feet for parking; in the twenty-two foot areas, there would be no parking allowed.

Councilor Currier also pointed out that applying to annex does not guarantee it will be.

Councilor Soppe replied that they still have to go through the process if we request it.

Councilor Currier mentioned having a conversation with another developer outside of the city that is close to the city and now wants to have water. He felt if we approve this we will be setting precedence for others now.

Mr. Mahr replied this approval is not an obligation to furnish water to others outside of the city. This particular case is a Measure 37 situation and they will develop without our water. This does not say that the council must make the same decision with every proposition. Each case would be reviewed at that time, with both advantages and disadvantages being considered for a decision. This person is talking of getting a circuit court ruling, but we cannot be ordered to do anything. This ordinance has unique and special circumstances and we are not authorizing extending water to anyone else. He believed the city would be legally covered.

Councilor Bob Larson stated he would like to see this annexed as soon as possible and these residents would be his constituents and he would be able to live with voting for approval now.

MOTION: Soppe/Palmer to consider 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 as amended and read by title only.

Mr. Mahr read the ordinance by title only including the amendments made above during deliberations.

MOTION: Rierson/Soppe to amend the motion to include authorization for the City Manager to act as the council's agent in any non-substantial changes to the agreement. (6 Yes/1 No [Currier]) Motion carried.

Councilor Mike Boyes expressed concerns about the septic tanks and drainage onto Otis Springs.

Discussions continued about the requirement to be contiguous. Could it meet the requirement by going across 99W to be contiguous? If that area was brought into the UGB, then it would be contiguous to the city as well.

Councilor Palmer stated his appreciation to the McClure family and their attorney for making the agreement more attractive for the city.

Mayor Andrews stated his concerns have not changed, but he did like cleaning up the language and the dry sewer system being added.

VOTE: To approve **Ordinance No. 2007-2671** adopting a Development Agreement with Charles and Ellen McClure allowing municipal water service connection and setting forth terms for annexation as amended and authorizing the City Manager to act as the council's agent in any non-substantial changes to the agreement as amended . (6 Yes/1 No [Currier]) Motion carried.

Mayor Andrews recessed the meeting for a short break at 8:38 PM and reconvened at 8:44 PM.

2. Consider a motion approving **Resolution No. 2007-2720** supporting a grant application for financial assistance to improve Second Street, which will support the expansion of Climax Portable Machine Tools; and request the transfer of jurisdiction of Second Street from Yamhill County to the City of Newberg.

Mr. Mahr mentioned Councilor Rierson needed to declare a potential conflict since he works for Climax Portable Machine Tools. He said he does not need to be excused, but the conflict is with the fact he is associated with a business that could have a potential gain.

Councilor Rierson declared the potential conflict of interest because he works at Climax Portable Machine Tools.

Councilor Larson also noted a potential conflict because he owns a home there on 2nd Street and may profit from improvements to the street. .

Mr. Brierley presented the staff report and recommended approval (see official record for full report).

Councilor Larson suggested another source of funds to help with repairs could be to contact homeowners of the mobile home parks to get some help with improvements to sidewalks and bicycle paths for those people.

Councilor Palmer asked how many units there were.

Councilor Larson said there are 114 where he lives and 129 units on the other side of the street.

Councilor Boyes asked if the state highway and the turn there would be affected.

Mr. Brierley stated it depends on the conditions of the grant and the timing of the ODOT project to improve 219 with a traffic signal.

Discussion followed that asking the land owners rather than the homeowners would be more appropriate and that the city does not want to be responsible for the costs. Questions were raised about an LID being proposed which did not appear to be needed yet. Staff discussed there will also be improvements needed later on and thought it may be appropriate to wait for those improvements before requiring an LID. The level of development was discussed for this project and the fact that we are just looking for a grant at this time. If property owners are contributing, it may reduce the amount of the grant, which is 50%.

Mr. Bennett stated we are looking at saving half of what we are estimating since the TSP calls for $200,000 of SDCs to improve this street. With this grant, we can use that money elsewhere on another project. An LID could be created later for property owners to contribute to the cost of the traffic improvements on Springbrook Road.

Mr. Brierley also added there is County money from the pedestrian/bike fund that would also be taken away if homeowners contributed and there would be some transfers of jurisdiction from the County.

Mayor Andrews asked about the estimated cost of city staff time for grant process application and management.

Mr. Brierley stated it was $5,000 to $10,000 for staff time involved, which is included in the project management costs within the total estimate.

Mr. Bennett added this was typical for any grant.

MOTION: Palmer/Rierson to consider approving **Resolution No. 2007-2720** supporting a grant application for financial assistance to improve Second Street, which will support the expansion of Climax Portable Machine Tools; and request the transfer of jurisdiction of Second Street from Yamhill County to the City of Newberg.

Councilor Soppe asked, if the grants are not received, would we still move ahead with the transfers of jurisdiction. Staff indicated they would not.

VOTE: To approve **Resolution No. 2007-2720**. (Unanimous) Motion carried.

XI. COUNCIL BUSINESS

Mayor Andrews asked how soon we will see the four-way stop at Fernwood Road and Springbrook Road on the agenda.

Mr. Bennett said he talked with public works and the Traffic Safety Commission had already done that. He said the council made a motion approving rumble strips, but it would be appropriate to have council ratify the action taken by the Chief of Police to install the stop signs. He will schedule it for consideration by the Council.

Councilor Boyes brought up discussion from last week concerning Lauren Court and missing street signs asking who is responsible for that.

Discussion commenced about it being a private street and they would be responsible for maintenance, so they must pay for missing signage, not the city.

Councilor Soppe mentioned some meetings from last week were not on the calendar on the website and although there is some other legal posting elsewhere he felt it was important that people can always find this information on the city website.

Mr. Bennett replied there were issues with turn around time since those meetings were set in only a couple of days.

Councilor Soppe felt it should not take a lot of time to put it up and if it does then we need to address that.

Councilor Palmer added we want more not less citizen participation, and if we cannot stay on top of them then maybe we should state on the calendar that it may not be up to date.

Councilor Soppe said he was asked if the city was trying to hide these meetings, and although he knows that is not the case, we need to be careful how this might be seen by the public. He also announced his decision to end his council term early so the recruitment process can get started. He still has some items he would like to complete first and he will announce a more definite date as he gets closer to accomplishing some of his goals.

Councilor Boyes asked how much more time was left in his term.

Councilor Soppe replied his term runs until the end of next year which gives everyone a year to decide if they are a good person to elect.

XII. EXECUTIVE SESSION

None.

XIII. ADJOURNMENT

MOTION: Larson/Palmer to adjourn at 9:18 PM (Unanimous) Motion carried.

ADOPTED by the Newberg City Council this 6th day of August, 2007.

Norma I. Alley

Norma I. Alley, City Recorder

ATTEST by the Council President this 8th day of August, 2007.

Robert Soppe

Robert Soppe, Council President