

**CITY OF NEWBERG CITY COUNCIL MINUTES
DECEMBER 15, 2008
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET**

Work Session was held prior to the meeting. Executive Session was held. No decisions were made.

I. CALL MEETING TO ORDER

Mayor Andrews called the meeting to order at 7:08 PM.

II. ROLL CALL

Members

Present:	Mayor Bob Andrews	Mike Boyes	Roger Currier
	Bob Larson	Bart Rierson	Marc Shelton

Staff

Present:	Daniel Danicic, City Manager	Terrence D. Mahr, City Attorney
	Barton Brierley, Planning and Building Director	Norma Alley, City Recorder
	Howard Hamilton, Public Works Director	Jennifer Nelson, Recording Secretary

Others

Present: Steven Clay, Donald Urban, Neal Klein, Stephen McKinney, Lon Wall, Robert Soppe, Stanley Shirts, Pamela Shirts

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

Mayor Andrews recognized Councilor Mike Boyes and Councilor Roger Currier for there services to the Newberg City Council.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, spoke of Portland Community College's intentions to make Newberg there first project for a new campus facility to open in 2010; a first meeting will be held on January 15, 2009, to meet with the local community to provide a forum for goals and expectations to be discussed. He also updated the Council on the progress of the Fire Chief recruitment.

V. COUNCIL APPOINTMENTS

1. Consider a motion to appoint the most qualified candidate to the vacant City Council District #5 position.

TIME – 7:24 PM

Mr. Steven Clay introduced himself to the Council and spoke of living and working in Newberg and his interest in the position. He stated he has set aside time with his job and looked forward to the challenge

at this stage in his life. He wished to give back to his community and to see Newberg grow and prosper for his family.

Councilor Marc Shelton asked what he saw as the major challenge in front of Newberg for the upcoming years and if he had any solutions. He also asked what organizations he has volunteered for in the last few years.

Mr. Clay identified the current economic situation and its effect on the local businesses as the major challenge and his focus would be on what the City could do to help the downtown businesses out. He stated he has not done any recent volunteer work, but has coordinated company vehicles for the Old Fashioned Festival and worked closely with County and City law enforcement for undercover vehicles.

Councilor Bob Larson asked if he has attended any City Council or Commission meetings before.

Mr. Clay stated the last council meeting was the first one he attended.

Councilor Roger Currier asked how he thought the City Council can stay more involved with and how to communicate better with the community to draw them in.

Mr. Clay felt councilors should make more efforts to knock on constituents' doors and meet them face to face to hear about their concerns and get them involved.

Councilor Bart Rierson asked if he was aware of the Council packets distributed and the time involved to prepare for the numerous meetings and subcommittees. He wanted to ensure he was aware of the time commitment.

Mr. Clay stated he received the letter about the vacancy he first went to his employer to discuss the time commitment and he has their full support to give him the necessary time to complete the duties.

Councilor Mike Boyes asked if he could do only one thing for the City of Newberg what would that be.

Mr. Clay stated if he were given a blank check he would put it towards improvements to make Newberg more pedestrian friendly and safe.

Mr. Donald R. Urban stated he has lived in Newberg for four years since he moved here from Ohio. He has visited family here for a number of years and his concerns were about City planning and its vision for the future; he wanted to be a part of that. He also cited the need to become more pedestrian friendly. He spoke of his degree in business and his over thirty years of work in administration for the Department of Agriculture. He is interested in the environment and the pragmatic utilization of resources. He spoke of his ability to commit to the position and his recent efforts to continue his education, stating his background would be useful and he would be willing and happy to be of service. As the Council repeated their same questions his answers were summarized as follows. He cited long range planning and sidewalk improvement as his major concerns. He suggested bringing high school students in to help spread the word and bring neighborhoods in for discussions. He has not attended any previous Council or Commission meetings due to a large commitment with his work on a building and grounds committee. He spoke of previous five years experience on a planning commission and his support of the philosophy of infilling rather than spreading out and keeping services concentrated.

Mr. James M. Harney was called to approach the Council for questions and he was not present.

Mr. Neal S. Klein stated he studied at George Fox University (GFU) for a degree in Biology; he has lived here since 1982. He has worked for a fire department for 13 years and went through the ranks. He developed proposals to change the rescue program, volunteered on Newberg ambulance and became a paramedic. He is currently employed as fire lieutenant and paramedic for Lake Oswego. He listed many improvement groups and committees he has served on for issues surrounding fire and paramedic services. He was hesitant to suggest a reader board as a way of communicating with the public because of the limited population passing by and the danger to drivers reading while driving. He felt the Code Red system, the City website, and email contact were great tools and thought more direct councilor contact to constituents through a periodic email list or quarterly newsletter would be best to educate the public and increase attendance. Direct mailings could be used to address those not included in an email database. He could not agree that he would have 100% attendance for all the necessary meetings, but that he felt he had a good degree of flexibility options with advance notice. He stated his volunteer work with the fire department prevented him from attending previous Council meetings because of a conflict on Monday nights, but that is no longer an issue; he has also volunteered through church and through the United Cerebral Palsy organization because of his son. His areas of interest and concern are centered on public safety and infrastructure improvement.

Mr. Stephen J. McKinney said he came to Newberg in 1973 with some high school students from a Friends Church in California and decided it was a great place. He resigned from his ministry there and signed up for a semester at George Fox University. He spent most of his adult life in ministry and served on a civic level in many ways such as school and district planning. He served as a president of the board for Spalding Oaks and has participated as an active member of the Chamber of Commerce. Being recently laid off from his job at the Astor House he felt he has sufficient time available to commit to the position. He felt the major focus in Newberg for the next few years would be the economy, he also felt the need to create a healthy environment for all citizens, and to see Newberg develop a specific personality in comparison to other cities. He also felt pedestrian safety would be one thing to commit too. He felt the best way to communicate with the public is not during the council meetings but outside of the meetings to keep them engaged. He felt the internet would be the best avenue to create a robust image for Newberg but also suggested a free newspaper or publication to pass information along, knowing that the direct mailing is also very effective. He felt it was most important to have councilors develop a face to face relationship with community groups and professionals as well.

Mayor Andrews asked the Council if they still wished to consider the applicant who was not present this evening; it was decided he should not be included in the nomination. He also reminded everyone about the two candidates who were interviewed at the last meeting. He explained that all applicants interviewed would be nominated and the narrowed down to one candidate based on a majority vote and a process of elimination. The elected applicant will be sworn in on January 5, 2009.

MOTION: **Larson/Shelton** nominated all of the following applicants for consideration as the most qualified candidate to the vacant City Council District #5 position. Neil S. Klein, Stephen J. McKinney, Donald R. Urban, Tod A. Looney, Connie Looney, and Steven Clay.

VOTE #1: To determine the most qualified nominees to fulfill the vacant City Council District #5 position:

Neil S. Klein	2 Yes [Boyes, Rierson]/0 No/1 Vacant
Stephen J. McKinney	3 Yes [Andrews, Larson, Shelton]/0 No/1 Vacant
Donald R. Urban	0 Yes/0 No/1 Vacant
Tod A. Looney	1 Yes [Currier]/0 No/1 Vacant

Connie Looney	0 Yes/0 No/1 Vacant
Steven Clay	0 Yes/0 No/1 Vacant

Neil S. Klein and Stephen J. McKinney received the majority of the votes and were selected as the top two nominees to be voted on for appointment.

VOTE #2: To appoint either Neil S. Klein or Stephen J. McKinney as the most qualified nominee to the vacant City Council District #5 position:

Neil S. Klein	3 Yes [Boyes, Rierson, Currier]/0 No/1 Vacant
Stephen J. McKinney	3 Yes [Andrews, Larson, Shelton]/0 No/1 Vacant

Failed for lack of a majority.

Mayor Andrews called Mr. Klein and Mr. McKinney forward to answer some additional questions from the Council before voting again.

Councilor Rierson asked if the nominees had a suggestion for a mechanism to help meet funding gaps for road maintenance.

Mr. McKinney spoke of prioritizing and giving the public a clear picture of goals and asking smaller associations to contribute towards the goal.

Mr. Klein suggested increasing the hotel tax as a funding source since Newberg does charge as much as other cities. He also mentioned a developing a sponsorship program where businesses can help improve and maintain certain roads and a sign could be posted in recognition.

Councilor Currier discussed different fees which are tacked onto the water utility bill and the fact they are paid before the bill is paid. He asked how the nominees would feel about changing that.

Mr. Klein agreed with having certain fees on the water bill because you can get a greater number of people who maybe are not paying taxes to support public safety or transportation but are helping to use those services. He felt every citizen has a right to disagree with those fees but it is the majority that rules and it is for the greater good of the community. He would be against letting people abstain from paying the fees because those services will eventually be needed, but objections should be brought forth if the Council can help come to an agreement or better solution.

Mr. McKinney felt Council should be careful to not lose its integrity by hiding taxes as fees on the water bill in order to generate more money. He felt these sorts of things should be legitimized by offering a course of action that gives citizens the ability to react. He felt transparency was necessary.

Councilor Currier asked how they felt about asking non-profit agencies to contribute as a donation to public safety programs since they do not contribute by taxation.

Mr. McKinney stated as a pastor he has answered this question before and clarified it is the members of the church who do pay taxes and also make donations to run the church so they feel like they are being double taxed. He stated it would be better served to gather the non-profit agencies together to discuss goals and let them help to come up with solutions to meet those goals, giving them ownership as well. He also suggested using Civics students from GFU to help raise funds for items.

Mayor Andrews asked each nominee to state why they would be a better candidate to fill this position.

Mr. Klein noted his years of experience working in cities and his discussions with former Councilors who think he has what it takes. He spoke of difficult situations he has been put into in the past and how he got passed them.

Mr. McKinney stated he was already familiar with the constituents in district 5 and felt it is a major advantage to know the people you are representing. He also gravitates towards leadership positions and knows how to make hard decisions. He spoke of breaking budgets into incremental and achievable goals and getting support from the public. He also stated he was very available at this point in his life and has received a lot of support to apply for this position.

Councilor Rierson felt both candidates would do a fine job but he was concerned for Mr. Klein's obligations to the Lake Oswego fire department and the impact his job requirements may have on the time commitment of a Councilor.

Councilor Shelton supported Mr. McKinney because of his availability, background, and experience. He does not feel the timing is as right for Mr. Klein.

Mayor Andrews agreed that although Mr. McKinney may not have a familiarity with tax laws and other details, his schedule availability will offer him more of a chance to hit the ground running to get up to speed.

VOTE #3: To appoint either Neil S. Klein or Stephen J. McKinney as the most qualified nominee to the vacant City Council District #5 position:

Neil S. Klein	2 Yes [Boyes, Currier]/0 No/1 Vacant
Stephen J. McKinney	4 Yes [Andrews, Larson, Rierson, Shelton]/0 No/1 Vacant

Mr. Stephen J. McKinney was appointed to the vacant District #5 position.

2. Consider a motion to appoint Kris Horn and John Bridges to the Newberg Downtown Revitalization Committee for terms ending December 31, 2011.

MOTION: **Larson/Rierson** to appoint Kris Horn and John Bridges to the Newberg Downtown Revitalization Committee for terms ending December 31, 2011. (6 Yes/0 No/1 Vacant) Motion carried.

3. Consider a motion to appoint Cathy Stuhr and Philip Smith to the Planning Commission for terms ending December 31, 2011.

MOTION: **Larson/Boyes** to appoint Cathy Stuhr and Philip Smith to the Planning Commission for terms ending December 31, 2011. (6 Yes/0 No/1 Vacant) Motion carried.

4. Consider a motion to appoint Lon Wall and Jack Reardon to the Budget Committee for terms ending December 31, 2011.

MOTION: Currier/Boyes to appoint Lon Wall and Jack Reardon to the Budget Committee for terms ending December 31, 2011. (6 Yes/0 No/1 Vacant) Motion carried.

5. Consider a motion to appoint Doris Brandt and Ronald Sult to the Traffic Safety Commission for terms ending December 31, 2011.

MOTION: Larson/Shelton to appoint Doris Brandt and Ronald Sult to the Traffic Safety Commission for terms ending December 31, 2011. (6 Yes/0 No/1 Vacant) Motion carried.

VI. PUBLIC COMMENTS

Mr. Lon Wall spoke of his first experience with Councilor Roger Currier as a private citizen and commended him for a job well done and for getting him started. He stated he appreciated Councilor Currier for his sixteen years of service.

Mr. Robert Soppe publicly thanked Councilor Mike Boyes and Councilor Roger Currier for the time and work they have put into the City Council. He stated he has worked with both men on City Council and Budget Committee. He was impressed by Councilor Currier's honesty and wished them both well.

Mayor Andrews recessed at 8:42 PM to share a celebration dessert. He reconvened at 8:54 PM.

VII. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2008-2821** authorizing the city manager to enter into a contract with The Saunders Company for the construction of the River Bank Erosion Repair Project.
2. Consider a motion approving **Resolution No. 2008-2822** purchasing property at 305 West Illinois Street for construction of a pump station.
3. Consider a motion approving **Resolution No. 2008-2823** authorizing the city manager to enter into a contract with Emery and Sons Construction for the purchase and install of a dehydration unit at the Wastewater Treatment Plant.
4. Consider a motion approving **Resolution No. 2008-2824** authorizing the city manager to execute an amendment to the agreement with Brown and Caldwell Environmental Engineers in the amount of \$77,664.00.
5. Consider a motion approving **Resolution No. 2008-2825** accepting the canvass of votes for the November 4, 2008, Biennial General Election.
6. Consider a motion approving City Council Minutes for November 17, 2008.

MOTION: Rierson/Larson to approve the Consent Calendar including **Resolution No. 2008-2821, Resolution No. 2008-2822, Resolution No. 2008-2824, Resolution No. 2008-2825**, City Council Minutes for November 17, 2008 and removing item 3 **Resolution No. 2008-2823** from the Consent Calendar with a request for staff to come back with a report at the meeting on January 20, 2009. (6 Yes/0 No/1 Vacant) Motion carried.

VIII. PUBLIC HEARING

Consider a motion approving **Order No. 2008-0017** declaring a German Shepherd, known as Shadow, to be a nuisance pursuant to the Newberg City Code.

TIME – 9:29 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated.

Mr. Terrence Mahr, City Attorney, presented the staff report (see official meeting packet for full report).

Councilor Rierson asked how the City could be assured the dog will not end up at the property again. Staff replied the dog will be seized and taken into custody or put down if necessary.

Councilor Boyes asked how long the dog has been off the property and if it has returned since. Staff replied it was removed to a relative's farm after the incident on August 22, 008 and the neighbors have not reported seeing the dog since.

Mr. Stanley Shirts approached the Council to defend his dog's disposition stating it was unfortunate what happened but the gate was left unlatched by a babysitter and the dog that was killed actually made a larger advance towards the confrontation than Shadow did. He claimed his dog of eight and a half years is just a "big baby" and not a vicious dog when he is around other animals all the time. He felt the dog was judge on hearsay and he wished it had been handled a little differently. He said he also has statements from other neighbors that have good things to say about Shadow.

Ms. Pamela Shirts restated the circumstances that resulted in Shadow becoming uncontained and mentioned the dog was around her three grandchildren that live there and there was never concern for the children.

Councilor Shelton asked if they know the people on the farm who agreed to take Shadow.

Mr. Shirts stated the people who have Shadow may not be able to keep him because they have an older dog and a little girl.

Ms. Shirts added Shadow had to be relocated out of Carlton because the people keeping him at the farm had health issues and Shadow is not currently in a rural area.

Discussions followed about testimonies from staff and the police chief as well as neighbors which were included in the written testimony. The Shirts continued to argue the other dog was confrontational as well and defended previous incidents concerning Shadow and the police department involvement. References were made to past and present accounts to Shadow's aggressive behavior

Mr. Mahr stated he had spoken to the Shirts attorney and was told they did not want to contest. He was assured they would not be present this evening and he did not therefore prepare himself with the intended evidence and five witness testimonies this evening. He gave details of previous events showing Shadow as an aggressive dog and details of the attack and death of the other dog. He stated the Shirts were not playing by the rules because they came tonight to make excuses for a dog that runs at large and bothers people when they agree through their lawyer they would not contest.

Mr. Shirts stated he did not agree to a "no contest", he just did not want to pay for the lawyer to attend this evening.

Councilor Currier asked if the City's leash law had ever been enforced with this dog. Staff did not believe the Shirts had been ticketed, but the police did warn them on different occasions. Councilor Currier expressed displeasure at not following through to cite the owners and a record could have been made against this dog to remove it before this happened. As it stands now, he felt he could only support what information was before the Council tonight.

Councilor Boyes said he has a dog and mentioned an incident with his own dog and a German shepherd. He felt this was a bad situation but the owners have to do what is right and play along with the consequences now.

Mayor Andrews said he was truly sorry they were not able to pursue this on a full hearing basis and he felt there was a little misleading or misinformation given to the City staff. He intends to approve the order because he believes people need to be responsible for their animals.

Councilor Rierson empathized with the Shirts love for their dog but felt they were in denial. He felt this situation should have been taken care of at an earlier date to prevent the incident that ended with another dog's death. He was disappointed the Shirts tried to defend the dog this evening and added the owners of the dog that died will also not be able to spend time with their dog any more either. He felt they needed to take responsibility for their part in what happened.

Councilor Shelton stated if the dog was in violation of the leash law the first time and only warned, not ticketed it was a chance to not have it happen the second time and they should have been ticketed then. But the Shirts stated Shadow had gotten out at least eight times before in over five years and it was their responsibility to maintain control over the dog, especially if it was aggressive towards other animals and people.

Mr. Mahr recommended passing the order to recognize Shadow as a nuisance.

MOTION: Larson/Rierson to adopt **Order No. 2008-0017** declaring a German Shepherd, known as Shadow, to be a nuisance pursuant to the Newberg City Code. (6 Yes/0 No/1 Vacant) Motion carried.

IX. CONTINUED BUSINESS

1. Consider a motion denying **Ordinance No. 2008-2686** establishing the Columbia Drive Local Improvement District Group A and considering is resolved.

TIME – 10:10 PM

Mr. Danicic presented the staff report (see official meeting packet for full report).

Councilor Boyes asked if this can be brought up again if the property changes owners. Staff replied it passed the six month period and it was not appropriate to proceed at this time.

MOTION: Currier/Shelton to deny **Ordinance No. 2008-2686** establishing the Columbia Drive Local Improvement District Group A and considering it resolved with grammatical changes. (6 Yes/0 No/1 Vacant) Motion carried.

2. Consider a motion approving **Ordinance No. 2008-2703** establishing provisions for utility access to and use of rights-of-way.

TIME – 10:15 PM

Mr. Mahr presented the staff report with Ms. Nancy Werner, Attorney for Beery, Elsner, & Hammond, LLP, via conference call (see official record for full report).

Councilor Shelton asked to verify that this ordinance would allow the City the mechanism through a privilege tax to protect our revenue for new infrastructure in the right of way.

Ms. Werner said this is not just revenue, but it would protect the right of way by requiring permits. It would not apply to wireless because they do not have anything in the right of way. They would have the attachment fee if they put an antenna on a pole, but would not receive the gross revenue charges. It is limited to customers within the City.

Councilor Rierson asked what mechanism the City has to make utility companies follow through with work in a timely manner or repairs made to damages caused by installation or maintenance.

Mr. Mahr stated it offered the City the ability to cite the utility to municipal court, fining them for each day they fail to comply with the ordinance in a timely manner.

Councilor Currier asked if this covered voice over IP services.

Ms. Werner stated federal law prevents a tax on internet access services and a variance is being discussed as to whether this is a telecommunication or information service. Only if it is determined on the federal level to be a telecommunications service will it be subject to this ordinance. The definition on page 92 is broad enough to allow the City to tax this under the privilege tax of federal law permits.

Mayor Andrews asked for an explanation of questions on page 102. Staff explained this was to make sure a franchise would not pay twice under the franchise fee and the privilege tax. Details were discussed as well as the request from Northwest Natural Gas for additional exemptions.

Mayor Andrews asked if this ordinance does not preclude the City from entering into future franchise agreements. Staff stated this would be correct.

MOTION: Currier/Rierson to approve **Ordinance No. 2008-2703** establishing provisions for utility access to and use of rights-of-way, read by title only. (6 Yes/0 No/1 Vacant) Motion carried.

Councilor Shelton asked about the best way to communicate this decision to the public, so there are not several interpretations being given.

Councilor Rierson suggested a press release in the Newberg Graphic to post a link and to include information in the next utility bill.

Mr. Mahr stated he could email each Councilor a statement to emphasize better protection of the right of way and keeping the roads can be in the best possible conditions; and that there are no new taxes and no taxes to wireless services at all.

X. NEW BUSINESS

Consider a motion approving **Resolution No. 2008-2826** accepting the city manager's six month evaluation.

TIME – 11:01 PM

MOTION: Currier/Rierson to approve **Resolution No. 2008-2826** accepting the city manager's six month evaluation. (6 Yes/0 No/1 Vacant) Motion carried.

XI. COUNCIL BUSINESS

Mr. Mahr discussed contract amendments about retirement accounts. The attorney handling this recommends approval with an amendment to make sure the City Manager and the City Attorney contracts comply with federal regulations. The authority can be delegated to the Mayor to approve these amendments.

MOTION: Shelton/Larson to delegate authority to the Mayor to approve changes in the City Manager and City Attorney contracts. (5 Yes/0 No/1 Abstain [Andrews]/1 Vacant) Motion carried.

XII. EXECUTIVE SESSION

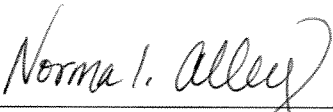
Executive Session pursuant to ORS 192.660(2) (I) relating to performance review of the city attorney.

Executive Session was held during Work Session. No decisions were made.

XIII. ADJOURNMENT

MOTION: Larson/Shelton to adjourn at 11:17 PM (6 Yes/0 No/1 Vacant) Motion carried.

ADOPTED by the Newberg City Council this 20th day of January, 2009.



Norma I. Alley, City Recorder

ATTEST by the Mayor this 22nd day of January, 2009.



Bob Andrews, Mayor