CITY OF NEWBERG COUNCIL MINUTES
AUGUST 4, 2008
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET

Work Session was held prior to this meeting. A discussion occurred about daytime curfews. No decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:06 PM.

II. ROLL CALL

Members Present:	Mayor Bob Andrews	Mike Boyes	Roger Currier	Bob Larson
	Jeff Palmer	Bart Rierson		
Members Absent:	Marc Shelton (excused)			

Staff Present:	Daniel J. Danicic, City Manager	Terrence Mahr, City Attorney
	Howard Hamilton, Public Works Director	Jessica Nunley, Assistant Planner
	Barton Brierley, Planning and Building Director	Norma I. Alley, City Recorder
	Jennifer Nelson, Recording Secretary	
Others Present:	Kimberly Dunn, Brian Dunn, Matt W. Keller, John D. Trudel, Stan Kern, Thomas Barnes, Vicki Shepherd, Tim Speakman	

III. *PLEDGE OF ALLEGIANCE*

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel J. Danicic, City Manager, gave updates on the Public Works Director recruitment and the upcoming recruitment for a new Fire Chief.

V. PUBLIC COMMENTS

None.

VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2008-2803** approving the reinstate of the Intergovernmental Agreement for Telecommunications Financial Review Services.

2. Consider a motion approving the Chehalem Valley Visitor Information Center 2007-2008 3rd and 4th quarter report.

3. Consider a motion approving City Council Minutes for July 7, 2008, and July 14, 2008.

MOTION: **Larson/Currier** to approve the Consent Calendar including **Resolution No. 2008-2803**, the Chehalem Valley Visitor Information Center 2007-2008 3rd and 4th quarter report, and the City Council Minutes for July 7, 2008 as amended. (6 Yes/0 No/1 Absent [Shelton]) Motion carried.

VII. PUBLIC HEARING

1. Consider a motion approving **Order No. 2008-0013** finding the proposed annexation and zoning map amendment meet the applicable Newberg Development Code criteria and approving **Ordinance No. 2008-2700** annexing property located at 4505 E. Portland Road, subject to a public vote on the November 4, 2008 general election.

TIME – 7:09 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. He stated for the record he has had discussions with the owners of the Gueldner property, but there have been no commitments made on his part, and he will allow the record heard tonight to guide his decision. Mr. Terrence Mahr, City Attorney, made statements required by law for quasi-judicial hearing process.

Ms. Jessica Nunley, Assistant Planner, presented the staff report (see meeting packet for full report) and submitted correspondence from the public to be entered into he record.

Councilor Roger Currier asked about solutions for the failed intersection at Benjamin Road and 99W. Staff spoke of additional lanes and massive redesign as options with improvement costs being shared by adjacent property owners.

Discussions followed concerning Council discretion for placing annexations on particular ballots and the requests for the Gish, Kimball, and Thomas properties to be placed on the November 4, 2008, election ballot. Further discussion continued as to the role of the Transportation Impact Studies (TIS), their coordination with the Transportation System Plan (TSP) with or without the planned Newberg-Dundee Bypass, and correspondence between the City and the Oregon Department of Transportation (ODOT).

Proponents:

Ms. Kimberly Dunn represented her father and owner of the property. She spoke of a house and a few buildings currently on the property, the support and interest of Coyote Homes for development in the future, the inclusion into the Urban Growth Boundary (UGB), and the intention for integrated retail development. She ensured the Six-party agreement would be respected and future development would be sensitive to appearance and compatibility with the City goals (see meeting packet for full statement).

Mr. Brian Dunn, Dunn Traffic Engineering, addressed comments and assumptions surrounding the traffic analysis of Benjamin Road access to 99W and the proposed removal and realignment of that intersection in the future. Analysis was given for the "worst-case-scenario" if that removal did not occur.

Mr. John Trudel, representing the Oxberg Lake Homeowners Board, offered a neutral testimony because of a lack of a designated developer for the property. He reinforced the desire for the conditions of the Five-Party agreement to be upheld, including the continuation of the sound wall as designed for the Gueldner property. He also wished to have the zoning and current codes "grandfathered" into the annexation to be applied at the time of development (see meeting packet for full statement).

Mr. Stan Kern, representative of the Oxberg Lake Homeowners Board, agreed with Mr. Trudel's testimony with concerns that zoning changes not be designated back through the Planning Commission as a Type 2 decision and emphasized the desire for the zoning to remain as is. He is trusting the plans agreed upon will be upheld when development occurs.

Discussion followed as to the limitations of elected officials to assume a favorable or unfavorable position concerning annexations and the advertising that can occur via the City staff. It was emphasized that non-elected officials were prohibited from presenting anything other than neutral facts.

Opponents:

Mr. Thomas Barnes, City of Newberg Planning Commissioner, stated his opposition to the proposed annexation being placed on the November ballot. He felt the ability to meet the given criteria for annexation does not address the current state of crisis concerning Newberg's sewer system. He felt the additional stress to the system created by new development was not prudent at this time. He also argued about the impact to the traffic system, especially in the intersections at 99W, and the surplus of R-1 (low density residential) areas in Newberg as additional reasons why this annexation should be postponed to a later election date.

Ms. Vicki Shepherd opposed the annexation of this property and encouraged the Council to become environmental stewards of the land. She expressed concerns for wetlands and stream corridors on the land proposed for annexation and stressed the importance of protecting Goal 5 resources. She discussed the Newberg Comprehensive Plan and the provision to provide adequate land for open spaces, protecting natural scenic and historic areas. She referred to a letter from the Oregon Department of State Lands dated on February 4, 2008, which she stated was not included in the record. She did not have a copy to support this statement (see meeting packet for full statement).

Councilor Jeff Palmer asked staff about the letter mentioned in Ms. Shepherd's testimony. Staff was unaware of this correspondence and stated the wetlands on this land were not found to be a Goal 5 resource.

Applicant Rebuttal:

Ms. Dunn described what they referred to as ditches on the property and the misinterpretation that may have occurred in believing it was a stream corridor. She assured all that water used to flow there in the summer months because of water running off from the cannery, which is no longer in operation, leaving this area dry at least six months of the year. She also spoke of visible stream water year round about thirty feet from the highway and explained that was not part of the property. She assured they were in agreement with federal wetland standards and buffer standards for an intermittent creek. Addressing transportation concerns, she stated their willingness to find the best solution working with the Planning Commission, adding their understanding of this land as an important part of the City's entrance.

Mr. Dunn addressed concerns for the Springbrook Road and 99W intersection which would be exceeding operation standards without the Bypass. The plans are to share the costs according to impact, the same as the hospital and other areas that send traffic to this area.

Councilor Currier asked legal counsel if the record could be considered complete without the mentioned correspondence from the Oregon Department of State Lands. The City Attorney felt there was no requirement to search for this letter since the citizen providing the testimony did not produce the apparent missing document.

The Council agreed to accept written testimony submitted into the record. Mayor Andrews closed the public testimony portion of the hearing.

Ms. Dunn waived the right to address the closed record with further written testimony.

Ms. Nunley made final comments and recommendations. She addressed concerns brought up during public testimony stating all zone changes had to go through the City Council and future development would go through the Planning Commission as it will be classified as Type 3, not Type 2. She reiterated the onsite wetlands were not Goal 5 resources and stated the condition to extend the sound wall as agreed upon could be added.

Mayor Andrews closed the public hearing.

Councilor Palmer asked staff to address the pump station concerns. Staff stated new rates will help finance the project and they will soon be in the design phase. The development and the improvements should be very close together and the necessary capacity will be there. The upgrades are planned even if the annexation does not occur.

Mayor Andrews asked what percentage was residential and commercial. Staff stated fifty-seven percent was commercial.

Mr. Trudel briefly addressed the Council again to provide history of the buffer zones between the commercial portion and the residential neighbors and why they would not like to see this forced into high density residential areas to accommodate affordable housing goals.

Discussions followed about the possibility of residential quarters being built up off of the commercial establishments and the parking requirements for those types of dwellings.

MOTION: **Rierson/Larson** to approve **Order No. 2008-0013** finding the proposed annexation and zoning map amendment meet the applicable Newberg Development Code criteria read by title only with the additional condition to coordinate a sound wall with the design of the one on the adjacent Gueldner property. (5 Yes/0 No/1 Abstain [Currier]/1 Absent [Shelton]) Motion carried.

MOTION: **Palmer/Larson** to approve **Ordinance No. 2008-2700** annexing property located at 4505 E. Portland Road, subject to a public vote on the November 4, 2008, general election read by title only. (5 Yes/1 No [Currier]/1 Absent [Shelton]) Motion carried.

Mayor Andrews called for a five-minute break at 8:50 PM.

2. Consider a motion approving **Order No. 2008-0014** finding the proposed annexation and zoning map amendment meet the applicable Newberg Development Code criteria and approving **Ordinance No. 2008-2701** annexing property located at 4813 E. Portland Road, subject to a public vote on the November 4, 2008 general election.

TIME – 8:57 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated. Mr. Mahr made statements required by law for quasi-judicial hearing process.

Ms. Nunley presented the staff report (see meeting packet for full report) and stated the written public testimony submitted into the previous annexation record also applies to this record.

Mayor Andrews stated a correction needed to be made within the background portion of the staff report to include the veterinary clinic as well as the existing home on the Kimball property. Staff agreed to the change. Public testimony was opened.

Proponents:

Mr. Tim Speakman stated he was aware this property would not be able to be annexed unless the Gish property comes in first according to the criteria to be contiguous. He expressed his reasoning for placing all annexations on the November ballot since it is an election year and the voter turn-out would be higher. He stated that residential building on top of commercial buildings would cause a problem when it comes to providing space for the required parking. He felt there would be a minimal impact on the Springbrook and 99W intersection.

Mr. Trudel stated he and the homeowners he represents are much more comfortable with the involvement of professional developers with City staff to ensure conditions will be met. He encouraged a focus on water protection and a reliance on best practices.

Opponents:

Mr. Barnes opposing comments from the previous annexation also applies to this one.

Ms. Shepherd argued the annexation must be contiguous to the City limits and should not be based on a "what if" situation. She felt the Gish property was the only parcel meeting this standard and questioned the legality of placing the other two parcels on the ballot in November and worried that the City would go to such lengths to save developer money (see meeting packet for full statement).

Applicant Rebuttal:

Mr. Speakman replied the comments about cost savings based on staff recommendations were taken out of context and the staff recommended a May, 2010, special election. He stated he would be disappointed to see the annexation placed on the ballot in 2009 because of smaller voter turn-out.

Mayor Andrews closed the public testimony and the applicant waived their right to address the closed record.

MOTION: **Palmer/Larson** to approve **Order No. 2008-0014** finding the proposed annexation and zoning map amendment meet the applicable Newberg Development Code criteria with the additional condition to coordinate a sound wall with the design of the one on the adjacent Gueldner property, add clinic to the existing home in the background and recitals.

Councilor Currier stated he could not support another annexation. He felt the City was growing too fast and taking in too much developable acreage before infrastructure has been brought up to speed.

Councilor Bart Rierson stated he could support all three annexations because of the potential to hook up sewer lines to the McClure property and he felt it would be appropriate to let the citizens decide. He added commercial property, with additional tax revenue and less population demand, would provide a benefit to the City and their quest for affordable housing.

VOTE: To approve **Order No. 2008-0014** as amended. (5 Yes/1 No [Currier]/1 Absent [Shelton]) Motion carried.

MOTION: **Rierson/Palmer** to approve **Ordinance No. 2008-2701** annexing property located at 4813 E. Portland Road, subject to a public vote on the November 4, 2008, general election read by title only. (6 Yes/0 No/1 Absent [Shelton]) Motion carried.

MOTION: **Andrews/Boyes** to amend **Ordinance No. 2008-2701** annexing property located at 4813 E. Portland Road, subject to a public vote on the March 10, 2009, election.

Councilor Rierson felt the applicant should be able to choose the date, but he would not support the amendment either way.

Councilor Palmer supported the annexations being on the same ballot so the public could be educated on what the whole development would look like. He opposed the piece-meal approach.

Councilor Bob Larson felt all annexations should be placed on the November ballot and the citizens should be allowed to decide.

VOTE: To amend **Ordinance No. 2008-2701**. (3 Yes [Andrews, Boyes, Currier]/3 No [Larson, Palmer, Rierson]/1 Absent [Shelton]) Motion failed for lack of a majority.

VOTE: To approve **Ordinance No. 2008-2701**. (3 Yes [Larson, Palmer, Rierson]/3 No [Andrews, Boyes, Currier]/1 Absent [Shelton]) Motion failed for lack of a majority.

MOTION: To table **Ordinance No. 2008-2701** until August 18, 2008. (5 Yes/1 No [Palmer]/1 Absent [Shelton]) Motion carried.

3. Consider a motion approving **Order No. 2008-0015** finding the proposed annexation and zoning map amendment meet the applicable Newberg Development Code criteria and approving **Ordinance No. 2008-2702** annexing property located at 4821 & 4825 E. Portland Road, subject to a public vote on the November 4, 2008, general election.

TIME – 9:49 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated. Mr. Mahr made statements required by law for quasi-judicial hearing process.

Ms. Nunley presented the staff report (see meeting packet for full report) and stated the written public testimony submitted into the previous annexation record also applies to this record.

Mayor Andrews opened public testimony.

Mr. Trudel offered his support but had nothing new to contribute on his previous statements.

Mr. Barnes remained in opposition for this annexation as well.

Ms. Shepherd asked that her testimony from the prior annexations of the Gish and Kimball properties be included here as well as her concerns for the development impact on Renne Road and Springbrook Creek (see meeting packet for full statement).

Mayor Andrews closed the public testimony. Since the applicant for this property was not present to waive his write to submit written testimony to the closed record, deliberation could not continue.

MOTION: Palmer/Boyes to table **Order No. 2008-0015** and **Ordinance No. 2008-2702** until August 18, 2008. (6 Yes/0 No/1 Absent [Shelton]) Motion carried.

Mayor Andrews called for a five minute break at 10:07 PM.

4. Consider a motion approving **Resolution No. 2008-2776** establishing a new customer rate class within the water rate structure to be effective July 1, 2008.

TIME – 10:12 PM

Mr. Mahr handed out an amended resolution, which includes findings for the option of phasing (see meeting packet for full report).

Councilor Currier argued the City did not give its citizens four years to phase in new rates for water utilities and he did not think it would be fair to do so for individuals outside of the City.

Mayor Andrews inquired about provisions for a future date and a "sun-setting" relationship with current springs users if city water becomes available to them. Staff stated this kind of situation was beyond the scope of the twenty year window for planning and water can only be extended to someone within the Urban Growth Boundary (UGB).

Mr. Mahr stated the special agreement to provide a certain amount of free water to springs users is no longer applicable since the entire City does not benefit from the use of those springs, which would be a policy decision.

MOTION: Larson/Palmer to approve **Resolution No. 2008-2776** as presented by the City Attorney establishing a new customer rate class within the water rate structure to be effective September 1, 2008.

Councilor Palmer expressed long term liability for the City and felt there had been a fair history of consideration for the residents; however he felt it is time to look forward.

Mayor Andrews supports the motion because of the need to divest from springs. Although it may not be appropriate, new sources are appearing and the groundwork for future discussions should be started. He asked if the City Attorney felt the City was legally defensible with this action.

Mr. Mahr stated he felt comfortable.

VOTE: To approve **Resolution No. 2008-2776**. (5 Yes/1 No [Currier]/1 Absent [Shelton]) Motion carried.

MOTION: **Palmer/Currier** to direct staff to prepare a transition plan for the springs to no longer be under City jurisdiction. (6 Yes/0 No/1 Absent [Shelton]) Motion carried.

VIII. CONTINUED BUSINESS

None.

IX. NEW BUSINESS

None.

X. COUNCIL BUSINESS

TIME – 10:41 PM

Councilor Palmer notified the Council that a check for $40,000 was received from the trust endowed to the Newberg Animal Shelter Friends and gave the times for the next animal shelter sub-committee. He also stated he has enjoyed serving as a member of the Council as this will be his last meeting before moving to Texas.

XI. EXECUTIVE SESSION

None.

XII. ADJOURNMENT

MOTION: **Palmer/Currier** to adjourn at 10:43 PM (6 Yes/0 No/1 Absent [Shelton]) Motion carried.

ADOPTED by the Newberg City Council this 2nd day of September 2008.

Daniel Danicic, City Recorder

ATTEST by the Mayor this 4th day of September 2008.

Bob Andrews, Mayor