



MEETING MINUTES

**CITY OF NEWBERG / YAMHILL COUNTY
NEWBERG URBAN AREA MANAGEMENT COMMISSION
Newberg Public Safety Bldg. - 401 E. Third Street, Newberg, OR
Wednesday, December 12, 2007, 7:00 PM**

I. ROLL CALL

Members

Present: Michael Sherwood (Acting Chair) Roger Currier Sally Dallas
Warren Parrish Alan Halstead Leslie Lewis
Phil Smith (substitute for Matson Haug)

Members

Absent: Matson Haug (excused)

Staff

Present: Barton Brierley, City of Newberg Planning and Building Director
Elaine Taylor, Associate Planner
Ken Friday, Yamhill County Planning
Jennifer Nelson, Recording Secretary

Others

Present: John Bridges, Krista Maerz, Curtis Walker, Michael Ard, Robert Roholt,
Gary Shuler, Grace Schaad

II. CONSENT CALENDAR

1. Minutes of the August 21, 2007 meeting.

Commissioner Phil Smith, City of Newberg Planning Commissioner, made note that he was present for this meeting as a substitute for Matson Haug, but was not shown as present in the minutes (arrived late).

Commissioner Roger Currier, City of Newberg City Councilor, noted he would abstain from approving the minutes because he was not present for the meeting.

MOTION #1: Halstead/Lewis to approve the NUAMC minutes from August 21, 2007 as amended. (6 Yes/0 No/1 Abstention [Currier]). Motion carried.

Commissioner Warren Parrish inquired how to make changes to previous minutes that have already been approved.

Discussion followed as to the best process to make corrections. Staff felt it would be best to make the statements tonight as an amendment to the previously approved minutes rather than bringing the approved minutes back for reconsideration.

Commissioner Warren Parrish made two corrections to previous statements for the meeting held at George Fox University. He corrected his statement that there had never been a pedestrian accident in the 23 years he worked for Providence Hospital to state there had been two accidents within that period with no injury on the property. He also added his employment ceased in 1993 (which he omitted previously) and to this day, there are no over-head walkways or pedestrian sky bridges located at Providence St. Vincent's Hospital.

MOTION #2: Halstead/Currier to accept the corrections in this evening's record. (6 Yes/0 No/1 Abstention [Parrish]). Motion carried.

III. COMMUNICATIONS FROM THE FLOOR

Eleven citizens were present at the beginning of the meeting, and they were offered the opportunity to speak on issues not on the agenda. No additional items were brought forth.

IV. LEGISLATIVE PUBLIC HEARING

APPLICANT:	JDC Homes, LLC
REQUEST:	Designate a 10.16 acre site as a URA
LOCATION:	11220 NE Fettig Lane
FILE:	CPA-07-001

Acting Chair Michael Sherwood introduced the hearing and made the required legal statements for quasi-judicial hearings. He also called for any biases, abstentions, ex parte contact, and conflicts of interest.

Commissioner Alan Halstead noted he saw an article on the subject in The Newberg Graphic but he had not read the article and it would not affect his decision this evening.

Staff Report:

Associate Planner Elaine Taylor presented the staff report. Handouts of the Power-Point presentation were provided which are available for public review (see official record for full report).

Commissioner Parrish asked about the property boundaries and if the houses would be located right next to the golf course. Staff replied they would be.

Public testimony opened.

Proponents:

John Bridges, attorney representing the applicant, introduced the parameters of the application and familiarized the audience with the ten-acre parcel of land. He spoke of the Maerz property obligations to an advance financing agreement, the property's integration with the City based on the surroundings, and the consistencies between the Urban Reserve Area (URA) process and this application.

Krista Maerz said that she had received only three days' notice of the hearing for making her property subject to the Advance Financing Agreement for street, water and sewer improvements for The Greens (Resolution 2007-2694). She declared she did not feel she had a choice in the matter to have her property assessed and a lien placed on it to pay for infrastructure she would benefit from some time in the future. She said it had never occurred to her that she would have to pay any money since she was not located within City limits. She spoke of the City referring to her property as a "special" case since it was the only property outside of the City limits to be included along with The Greens project. She felt the City needed to honor her property as a "special" case and approve her request to move forward independently. She also submitted letters from neighbors supporting her application.

Commissioner Leslie Lewis expressed concern with the City trying to force people to come into the URA and annex. She said she was stunned that this had occurred and that a lien had been placed on a County resident.

Barton Brierley, City of Newberg Planning and Building Director, replied the advance financing agreement does not constitute a lien on the property and there is no obligation to pay unless the property is annexed and developed.

Commissioner Lewis wondered why notices were given to a County resident now, instead of when they want to annex. She also said that although private conversations cannot be verified she does not see how City staff would tell the resident that she would be brought into the City in exchange for signing the agreement.

Barton Brierley said that these statements were not true and there is no way the City would have approved this property being brought in independently. The property is part of the recommendation to be brought into the URA during the legislative process.

Krista Maerz replied the City's support was implied.

Ken Friday, Yamhill County Planning, asked if there were other agreements like this with other County residents. He had never heard of someone obligating himself or herself ahead of time and asked if this was common.

Barton Brierley replied the agreement is with the developer as a way to be fair. If the developer installs improvements and those improvements benefit properties other than his own, they need to have a way to be reimbursed.

Ken Friday asked if other County residents have experienced this type of agreement.

Barton Brierley replied Crater Lane was a good example. A water line was installed to serve the elementary school and part of it was in the County. When the property went

into the City and the owners started to use the water line, they paid the school district back.

Commissioner Lewis asked if notices were sent to the property owners ahead of time. Staff replied that letters were sent.

Councilor Currier agreed that this occurred and that some property owners came to the meeting and spoke, agreements were made, and the interest was not waived or anything.

Commissioner Lewis asked if the City routinely assessed County property.

Barton Brierley replied that the City does not assess the property and the time limit for the agreement is ten years. If they develop within ten years, they have to reimburse the developer in order to connect to the facility.

Commissioner Smith thanked Krista Maerz for testifying and asked if she had paid any money to the developer. She replied she had not. He explained she will not have to pay until the land is developed and annexed and if it is not developed within the ten-year period, the agreement would be void and she would not be required to pay anything. She confirmed this.

Commissioner Currier said that the City has the option of taking over the contract after 10 years.

Commissioner Halstead mentioned a similar case in Washington County involving a church and a ten-inch water line upgrade. The period was fifteen or sixteen years where anyone hooking up to the facility had to reimburse the church and after the time period was up, the church was out that money.

Commissioner Lewis said she could understand this being included as part of the fee for annexing into the City as a way to pay the developer back, but she did not understand why this would not be handled at the time of development, rather than scaring the County resident and adding a 9% interest charge.

Krista Maerz stated that the document had been re-recorded to show that the interest had been waived.

Curtis Walker, JDC Homes, LLC, related his prior experience and intention to build forty homes on this site, in the 2500 sq ft to 3000 sq ft range. He spoke of estimated timelines for annexation (11/09), plat approval (2010), and groundbreaking by 2011, with completion by 2014. Waiting for the legislative process would put the project back several years. For example, McMinnville and Woodburn have been taking 10 and 12 years, and are not finished yet. His intended timeline is why they have started the process now. He spoke of the ten-acre plot being contiguous with the City and utilities and spoke of the advance financing agreement already in place. He stated he was confused and upset to find the City's intent to deny the application and did not know why the quasi-judicial process was not acceptable.

Commissioner Smith explained the required process with the URA expansion and the Department of Land Conservation and Development (DLCD) mandates to take in certain land categories before others.

Curtis Walker replied he could understand this when there are several hundred acres in question, but this piece of property is only ten acres, contiguous with the City and there was an implication of support from the City, as well.

Commissioner Smith asked if he had a solution for how the City could get the rest of the properties they need first in order to accept this property. He did not have one.

Discussion followed as to the process for first bringing land into the URA, then into the UGB, and finally through annexation into the City. Timelines were discussed as well as The Greens not being in the UGB because it was annexed before the concepts of URA/UGB.

Commissioner Smith spoke of Curtis Walker's plans to bring the Maerz site into the UGB after it gets into the URA and, then to get it annexed. He asked if there were any rules regulating how fast the process can move.

Barton Brierley replied the process could go as quickly as the process will allow. The only limiting factor is the required twenty-year supply in UGB, which would not allow land to be brought in if that supply would be exceeded.

Commissioner Lewis asked if the City has ever done a URA quasi-judicially before.

Barton Brierley replied there had been one request and it was turned down. One has never been approved.

Commissioner Lewis spoke of using the URA as a loophole or fast track to the UGB and annexation. If a property is brought into the URA, it does not have to go through the goal exception process to be accepted into the UGB and be annexed. She felt that this was what was being asked, to leapfrog over the legislative process by approving the URA quasi-judicially.

Discussion followed concerning other cities that have a URA process and a previous request similar to this one.

Commissioner Parrish referred to a letter from an adjacent property owner on Corral Creek Road and a previous hearing with Chehalem Park and Recreation District (CPRD) where it was said there would never be residential property on the golf course.

Curtis Walker stated there was a thirty-foot strip of land that could not be developed and CPRD would not develop it.

Michael Ard, Lancaster Engineering, presented a traffic impact study that focused on bringing the Maerz property into the rest of the Newberg Southeast Transportation Plan. He spoke of trip generation by future development being fifty trips in the evening peak hour, 80% heading west on Fernwood Road and 20% heading east toward Renne Road and Corral Creek Road. He reported the numbers would be similar with or without de-

velopment at the Maerz site, and that a traffic light would be needed at the Fernwood and Springbrook Road intersection whether or not this property develops, as well as improvements at Fernwood and Brucher and a right-in, right-out intersection at Corral Creek Road and 99W.

He felt that it is reasonably feasible to provide adequate transportation facilities for this proposal either with or without the development of the rest of the southeast area, and this property can be developed in the context of the greater Southeast Transportation Plan.

He said that the staff report comment that Renne Road was inadequate was true in the context of the entire southeast area. The staff report comment that the 99W/Corral Creek Road intersection was dangerous was not substantiated by a high level of accident history, but that the proponents would be happy to participate in future improvements at that intersection.

Commissioner Currier asked if the crossroad between Providence Road and Corral Creek Road was taken into consideration, as well as the anticipated traffic generated by the future expansion to the golf course.

Michael Ard replied the East-West connector would not benefit this site. He also stated that the analysis did not consider the golf course expansion, since traffic generation is not usually a concern for a golf course expansion.

He estimated that development of 45 houses on this site would generate about 50 trips at peak hour.

Commissioner Parrish argued he did not agree with the trip generations for peak hour based on the forty-five intended homes.

Michael Ard further explained the origin of the numbers and the standard industry practices, noting there were more retail trips in the evening and after-school activities, not just commuters coming home from work.

Commissioner Halstead agreed somewhat with the evening peak hours, admitted they may be off somewhat, but the consistency of the data over the entire spectrum had to be taken as a whole.

John Bridges testified that there was currently about a 10-year land supply in the Newberg UGB. He said that the City's legislative URA time line has already slipped, and estimated that even if there is only one remand, and only one appeal process, the legislative process is likely to go up to the Supreme Court due to lack of existing case law, and a decision is not likely until 2014. He cited the legislative UGB expansion experience of McMinnville (13 years) and Woodburn (10 years). Meanwhile, however, those cities have continued to process quasi-judicial applications.

Commissioner Lewis pointed out that the difference is that all those quasi-judicial applications had to go through a goal exception process. In this case, we're being asked to bring a piece of agricultural land into the URA without taking the extra step of either a goal exception or a legislative process. Bringing land into the URA is being used to short-cut the goal exception process.

John Bridges argued there was no nefarious plan and state regulations require the applicant to take this step. Any property has to come into the URA first, before the UGB and annexation. He argued approval here would be consistent with the previous legislative approval and the advance financing agreement according to case law. He mentioned this application would go on to the DLCD too and they could vote against it there.

Commissioner Parrish asked staff if there was any doubt this property will be included in the URA.

John Bridges agreed there would be approval at some point, but they are trying to get a step farther down the road in the process.

Discussion followed concerning the number of years currently in the UGB supply being at 17.4 and other state laws concerning this matter.

Opponents:

Robert Roholt said he supports the staff recommendation to deny because of two issues: transportation and exception land issues. He spoke of travel conditions on Corral Creek Road and Fernwood Drive and did not feel the roads were designed to handle the cars on there now, let alone more. As suburban traffic increases, the nature of the traffic is an issue, as well as the quantity. Also, exception lands need to be brought into the URA in the proper sequence. He felt it would be prudent to hold off and put the entire Southeast Transportation Plan and URA through the process together in the proper time frame.

Gary Shuler said he was opposed to bringing in the site piecemeal. It is included in the overall plan for the entire southeast section and it does not make sense to bring things in one at a time. If it comes into the URA, he hopes that the City can take control of the road and control speeds. He felt the problem on the road was bigger vehicles and felt the traffic had tripled in the last two or three years.

Grace Schaad agreed that traffic had tripled, and walking had become unsafe on Corral Creek Road. She is opposed bringing an individual property into the URA prior to the other properties in the southeast. She said these are resource lands and are last priority and it is unreasonable to expect the City to defend this to the DLCD. She said the URA is meant for future land development, not immediate. She added there is currently no shortage of housing in Newberg, there are serious mobility and safety problems concerning transportation already, and new development would only contribute more to that problem. She asked the City not to allow them to escape their fair share of transportation improvements.

Written testimony from Lewis Schaad was also read in opposition to the application (see official record for full report).

Barton Brierley addressed comments about property owners not having to pay their fair share if brought in early and said they will still have to pay the System Development Charges (SDCs) like everyone else.

John Bridges' rebuttal included arguments that some of the numbers concerning the UGB supply were incorrect and there was less than the required twenty years.

Closed Public Testimony

**** Ten Minute recess allowed by the Vice-Chair ****

Final Comments from Staff:

Barton Brierley stated there was no objection to including this property other than timing, since State land priority requires exception land to be taken first. He affirmed the staff recommendation to deny the application.

Ken Friday added that the proposal circumvents the priority scheme and there was the potential for grid locking the Southeast Transportation Plan with the DCLD. He said it would not go in front of the Land Conservation and Development Commission because it is not over fifty acres, but his concern is it does not meet the priority list and this would potentially set precedence for other property owners in the area with ten to fifteen acre parcels.

Ken Friday submitted a written amendment to his final comments and stated the following. As I understand the argument, the applicant wants us looking at the big picture – and that big picture shows that rural residential land will not be enough to satisfy the residential land needs of the city's 2040 URA plan. The argument is also, "Because exception land won't satisfy the need – resource land must be taken in – so why not take in this land?" Unfortunately, that is not the test. The question focuses on 10-acres of land – not on the entire Urban Reserve Area that was reviewed in the legislative process. First priority goes to exception land. The legal question is whether there is 10-acres of exception land that could accommodate the use. The clear answer to that question is yes. If ten acres of exception land is available to satisfy the need, then agricultural land cannot be taken in. Based on the State Administrative Rules, I recommend denial of the request. Now, having said this, I do personally believe this property will eventually be in the Urban Reserve and Developed. The question may arise, "if it will be done eventually, why not just do it now?" The problem with approving this request is that by doing so it does and end-run around the priority list. If you approve this request then it seems to me you would also be required to approve the 60-acres brought to you by Pacific Lifestyles.

Deliberation:

Commissioner Parrish agreed with the staff recommendation.

Commissioner Halstead agreed that in a quasi-judicial process for a ten acre site, the proposal does not meet state priorities. He is sympathetic to the developer and property owner, but it is third on the list of priorities and will be brought in eventually.

Commissioner Lewis entertained the idea of approving the application and sending it on to DLCD. She expressed concern for the property owner and that she may have been pressured; she does not agree with the process. She hoped that City staff would carry her concern regarding what happened to the Maerzes back to the City Manager and other

staff. Ultimately, however, she agreed with staff that the application did not meet the criteria, and she could not support its approval.

Acting Chair Sherwood believed it would set precedence and did not qualify for approval.

Commissioner Currier agreed with staff that it belongs with the legislative process.

Commissioner Smith said that based on the rules for the quasi-judicial process, this should not come in. A Commissioner cannot base a quasi-judicial decision on his legislative intent.

Commissioner Sally Dallas agreed with the staff recommendation.

MOTION #3: Halstead/Currier to accept the staff recommendation to deny approval of file CPA-07-001 from JDC Homes, LLC to designate a 10.16 acre parcel at 11220 NE Fettig Lane as an Urban Reserve Area.

VOTE #3: (Unanimous). Motion carried.

V. ITEMS FROM STAFF:

None.

VI. ITEMS FROM COMMISSIONERS:

None.

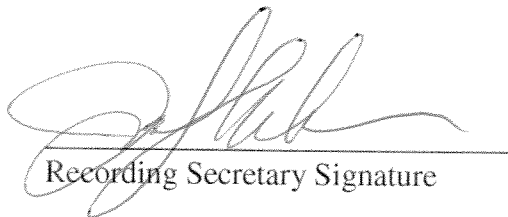
VII. ADJOURN

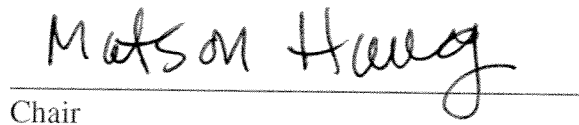
Vice-Chair Sherwood adjourned the meeting at 10:29 PM.

Passed by the Newberg Urban Area Management Commission this 30 day of Sept 2008.

AYES: 7 NO: 0 ABSTAIN: 0 (list names) ABSENT: 1

ATTEST:


Recording Secretary Signature


Chair