

## PLANNING COMMISSION MINUTES

Newberg Public Safety Building - Newberg, Oregon

THURSDAY, AUGUST 10, 2000, AT 7 P.M.

Approved at the October 12, 2000, Planning Commission Meeting

### I. PLANNING COMMISSION ROLL CALL

#### Planning Commission Members Present:

Steve Hannum

Louis Larson

Warren Parrish

Bart Rierson

Rob Molzahn

Lon Wall, Chair

#### Staff Present:

Barbara Mingay, Planning Technician

David Beam, Economic Development Coordinator/Planner

Diane Nave, Recording Secretary

### II. OPEN MEETING

**Chair Wall** opened the meeting at 7:05 p.m. He announced the procedure of testimony. Citizens must fill out a public comment registration form to speak at the meeting.

Commissioner Molzahn entered the meeting at 7:14 p.m.

### III. CONSENT CALENDAR

1. Approval of the June 8, 2000, Planning Commission Minutes

**Commissioner Parrish** requested a change in June 8, 2000 minutes, changing the words "commissioner" to "commission" on Page 4, paragraph #6.

<b>Motion #1:</b>	<b>Hannum/Larson</b> voted to approve the consent calendar items, approving the minutes of the June 8, 2000, Planning Commission Meeting.
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<b>Vote on Motion #1:</b>	The Motion carried (6 yes) (1 absent - Haug)
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### IV. COMMUNICATIONS FROM THE FLOOR (five minute maximum per person)

None

### V. QUASI-JUDICIAL PUBLIC HEARINGS

1. **APPLICANT:** City of Newberg  
**REQUEST:** Amendments to the Newberg Development Code  
**LOCATION:** City Wide  
**TAX LOT:** City Wide  
**FILE NO.:** G-53-99 Misc Code Amendments **RESOLUTION NO.:** 2000-131  
**TOPICS:** Cellular communications towers, exterior lighting, underground utility installation, property line adjustments, group care facilities, conditional zone changes, yards, home occupations, and multiple single family homes on one lot.  
**CRITERIA:** Newberg Comprehensive Plan Goals and Policies

## **OPEN FOR PUBLIC HEARING:**

**Chair Wall** entered ORS 197, relating to the Public Hearing process into the record, and opened the Public Hearing.

**Staff Report and Preliminary Staff Recommendation:** **Barb Mingay** presented the staff report and recommended adoption of Resolution 2000-131, approving the amendments. She asked the Commission if she could read the entire resolution, reviewing each item individually.

**Commissioner Parrish** agreed with the idea to review each issue separately.

**Barb Mingay** reported she had just received some last minute information. She said there was not much time for review, and asked the commissioners if they wished to include it in the deliberations of the meeting.

**Commissioner Parrish** reported he didn't like accepting information at the last minute without adequate time for review.

**Commissioner Larson** concurred.

**Barb Mingay** said that she would distribute the material after the meeting so adequate review and discussion could occur at a later date.

### **RESOLUTION NO. 2000-131, TOPIC: Cellular Communications Towers**

**Barb Mingay** went over the written changes as noted in Exhibit B. She discussed the more specific changes of the codes use list for telecommunications and zones. She relayed information gathered from several local cell company representatives clarifying item 4C on page 26 and the stance of the FCC on that issue. Some jurisdictions allow for a copy of a license in lieu of the aforementioned requirement and staff concurred with that. Ms. Mingay went over the changes in item #5 A&B, regarding the number of towers per lot, and that the "clustered" section did not pertain and should be deleted.

**Commissioner Rierson** asked for clarifications on a cluster when more than one property is involved.

**Barb Mingay** responded to his question by saying that the proposed code limited the tower spacing to 2000 feet unless a Conditional Use Permit was approved. The issue was reviewed with the tower distributor, he said although our regulations were more specific than some, they could be easily met.

**Commissioner Rierson** asked for clarification on Item 5, line item A, regarding whether it is any of the Commissions concern what charges are levied by another competitor.

**Barb Mingay** said the issues are covered under item B. If charges become excessive and exceed standards, then that becomes the business of the Commission.

**Chair Wall** asked if Barb Mingay had received any legal guidance on that issue.

**Barb Mingay** indicated she had not.

**Chair Wall** expressed the same concern as that of Commissioner Rierson, wanting to make sure some realistic mechanism was in place so there would be a way of answering to the possibility of something being priced out of the market.

**Commissioner Parrish** indicated a need to put that language in now. Because fees have been established for everything else, setting a standard for that doesn't seem out of line.

**Chair Wall** said even though it's a quasi-private organization, the Commission still has an interest. He said the Commission can't negotiate up, so we should put correct language in now.

**Commissioner Parrish** wondered if fair market value language could be included as to avoid problems later.

**Barb Mingay** said she would look into it.

**Commissioner Parrish** asked what the tower height was at the cemetery. He wondered what the height of cell towers are in the state of Oregon; if there is an average or maximum height? He believes there should be a standard.

**Barb Mingay** did not know. However, she indicated that there are height restrictions as part of the airport overlay.

**David Beam** reported that it most likely depends on where the cell tower is located. More height is needed in some areas than others, depending on the towers ability to transmit.

**Commissioner Parrish** asked Ms. Mingay if she had any knowledge of frequency problems to people who live in the areas of satellites, cable, towers, etc. He wondered if any health hazards have been reported.

**Barb Mingay** said that in reviewing codes there has been much discussion regarding the health issues. It was her understanding that there are a variety of limited waves in transmission levels, and band widths are different depending on what is being transmitted. She didn't see too much of an interference with already established transmissions.

**Chair Wall** said he feels comfortable with what we have. Most of the language is taken from the City of Portland code, with some fine tuning. It seems specific and protective but there are no guarantees. Another application for a cell tower was submitted, and he would like to move quickly on this issue.

**Commissioner Parrish** asked for clarification of cell tower applications; Type 2 verses Type 3 etc.

**Barb Mingay** said it depends on which options are selected. To select language as all inclusive, then cell towers that are free standing would require a Conditional Use Permit.

**Commissioner Parrish** asked questions regarding cell tower height in comparison with existing structures.

**Barb Mingay** reviewed existing tower locations and indicated several local sites which had similar heights.

**Commissioner Parrish** asked if that was clarified in the City of Portland code.

**Barb Mingay** answered no, it was not.

**Commissioner Parrish** wondered if there was any language pertaining to cell tower owners being required to keep up the landscaping, garbage picked up, etc. after their construction.

**Barb Mingay** said that existing code requirements are in place that should cover that.

**Hearing Closed.**

**Motion #2**

**Hannum/Molzahn** to accept language under option one, pertaining to the cell tower issue (RESOLUTION 2000-131).

**Commission Deliberation:**

**Commission Parrish** requested clarification regarding residential areas. Are cells only in residential areas attached and under 18' in height.

**Barb Mingay** indicated they may be attached to an existing utility pole. A Conditional Use Permit would be required to place them on a structure in a residential zone. No free standing cell towers in R1, R2, R3 zones would be allowed.

**Commissioner Larson** asked if language could be included regarding 18' height on existing poles. He expressed concern about having an 18' pole on top of a top hat. He also hoped to close the door on that in residential areas.

**Commissioner Parrish** liked that idea. He previously had bad personal experiences with cell tower companies, and wants to be careful. He suggested that any cell tower installation come before a Type 3 hearing in any zone.

**Commissioner Rierson** believed cell tower companies would be apt to do what is required if there are guidelines. Encourage them to put in appropriate types of installation by making it more cost effective, and time friendly, and they will be more likely to comply.

**Commissioner Hannum** thought if they were to go through the same review process on a short tower as for a 20 mile tower, they may put in a larger one because the cost and time are the same.

**Commissioner Parrish** asked Commissioner Hannum if he had knowledge of this argument being valid.

**Chair Wall** said he sides with Commissioner Parrish on this. He thinks the applicant wants an automatic system in place. The financial difference between 18' tower and a larger tower looked like quite a lot. Type 2 or Type 3 hearing costs are negligible. He wondered if the type of hearing would make a difference. He also believed that regardless of the rules, they're still going to build what they think they need economically. The only way we'll have any say is to be as reasonably restrictive as possible.

**Commissioner Larson** concurred saying this is an area where public interest needs to be considered. He felt the Newberg public needs to have opportunity to have open forum even if it slows down communication installation.

**Chair Wall** thought that if communication companies know there is a Type 3 hearing, they will be more interested in providing more palatable towers. He reported that 80% of our negotiating power is gone because of the Supreme Court and we should take advantage for the remaining 20%.

**Commissioner Parrish** wanted to recommend the language be amended to that effect. He was still concerned over local statutes regarding upkeep and appearance. He suggested adding language that the company is responsible for the tower site and will be required to properly maintain the site in accordance with statutes.

**Chair Wall** asked who has jurisdiction over the property of a tower site when the tower is in the City.

**Barb Mingay** said it depends. The towers at the high school are owned by the School District so they are on private property. Other cell towers are located on leased land on an existing parcel with a mini storage. Its concrete, and a no debris collection area. The third one coming through is also on private

property. The City has jurisdiction to enforce city code, but cannot walk on property to cut the grass. She asked if it was the desire of Commissioner Parrish that at each location where a cellular communication facility was proposed that it becomes a Conditional Use Permit even if the facility was incorporated into an existing structure.

**Commissioner Parrish** said yes, that was his intent. He agreed with Commissioner Larson that the public needs opportunity for input.

**Chair Wall** asked if Barb Mingay felt if all applications had to go Type 3, is it realistic that public communication companies would have any more propensity to build towers.

**Barb Mingay** replied that certain ranges are required for a customer base. Companies would do what it takes to make it work. Type 2 is quicker for them. There is a public notice, opportunity for the public to comment and developers prefer to not have to apply for Type 3 in which there is a public forum, also requiring a longer time for noticing and processing. Cell tower applications may be put into conditional use in any location. FCC only mandates that you can't stop cell towers.

**Commissioner Parrish** asked what kind of public notification is needed on Type 3.

**Barb Mingay** said there is a property posting and a mailed notice to residences within 300 feet.

**Commissioner Molzahn** said he tends to agree with staff. Don't be too restrictive, but review every application, allowing them as long as it fits within the established guidelines.

**Commissioner Hannum** said he was surprised when he went driving looking for cell towers and found them. He doesn't really want them and said the smaller units on existing facilities were okay and were preferred.

**Commissioner Parrish** asked staff what was envisioned in our community neighborhoods.

**Barb Mingay** said that depended on technology. However, there is a tendency to hide eyesores.

**Commissioner Parrish** said he still worries and believes that there won't be so many if Type 3 applications are required. How many other companies will come in behind them. Will residential poles have competition.

**Chair Wall** said he would like to suggest Type 3 for residential, and Type 2 and 3 for all other zones, most concerned with residential.

**Barb Mingay** confirmed with the commissioners that they wish to modify the language to read that R1 zones require conditional use permits; and to add the reference that towers "not extend 18 feet above" and that; "further top hat construction be prohibited". Also, R1, R2, R3, and RP are Type 3 and leave commercial and industrial as is.

**Commissioner Hannum** requested a description of "top hat."

**Commissioner Parrish** asked to include language saying the owner of system should be expected to abide by property code enforcement of landscaping, etc.

**Barb Mingay** said she will add landscaping language.

**Commissioner Parrish** wondered if there were any removal standards. He wondered what happens if there is an unsafe condition that develops down the road, such as cell towers being deemed potential health hazards. What about litigation or having the towers removed.

**Chair Wall** clarified the Supreme Court says those are not criteria for regulation. Don't know if we can put any language down based on assumptions.

**Commissioner Parrish** asked about the upkeep of equipment. What happens if it becomes structurally unsound.

**Commissioner Hannum** thought we couldn't restrict cell towers more than any other business. It could go to litigation, no matter what building code says.

**Barb Mingay** suggested there were condemnation issues that could deal with that.

**Chair Wall** suspected the legal minds out there would bring the demise of cell towers down if it became scientifically proven they were a problem.

**Commissioner Parrish** says he has no sympathy for time or money issues with these companies. He is more interested in things being done correctly.

**Barb Mingay** said she would begin to modify the language as directed.

<b>Vote on Motion #2</b>	<b>The motion carried ( 6 yes /1 absent Haug).</b>
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**Chair Wall** called for a short break at 8:30 p.m.

**RESOLUTION NO. 2000-131, TOPIC: Exterior Lighting**

**Barb Mingay** gave the staff report and recommended approval of Resolution 2000-131, regarding code amendments to exterior lighting. She said this new section incorporates changes the commission made over the siting and the new section applies to site lighting.

**Commission Deliberation:**

**Commissioner Hannum** asked what type of lighting style was in Francis Square and where that fits in. He asked if staff knew the wattage.

**Barb Mingay** said it was a medium level light fixture.

**David Beam** added that in comparison, the new street lighting they are looking at is 225 watts.

<b>Motion #3</b>	<b>Larson/Molzahn to approve and forward to City Council the amended language in Resolution 2000-131 in regards to exterior lighting.</b>
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<b>Vote on Motion #3</b>	<b>The motion carried (6 yes/ 1 absent Haug).</b>
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**RESOLUTION NO. 2000-131, TOPIC: Underground Utility Installation**

**Barb Mingay** gave the staff report and recommended approval of Resolution 2000-131, amending the development code language regarding underground utility installation.

**Chair Wall** questioned the use of the word "extraordinarily."

**Barb Mingay** indicated that she could eliminate the word "extraordinarily" and replace it.

**Commissioner Parrish** asked about the kind of impact this might have. Do all new utility lines use exactly that language. Is it required for any new residence. Aren't all utilities underground.

**Barb Mingay** replied yes, all new developments are required to place utilities underground. There is no development code statement that requires it. She went on to explain that this language requires undergrounding even for those doing remodeling.

**Commissioner Parrish** expressed concerns for single residents being annexed into the City. If someone wants to be annexed, does that have to go to underground installation.

**Chair Wall** said as a general rule property owners must do many things to be annexed already, its one more requirement.

**Barb Mingay** clarified requirements and language for commissioners explaining that Type 2 does not apply to established residential.

<b>Motion #4</b>	<b>Hannum/Larson to approve and forward to City Council the amended language in Resolution 2000-131, in regards to underground utility installation.</b>
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<b>Vote on Motion #4</b>	<b>The motion carried (6 yes/ 1 absent Haug).</b>
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**RESOLUTION NO. 2000-131, TOPIC: Property line adjustments**

**Barb Mingay** gave the staff report and recommends approval of Resolution 2000-131, amending the development code language regarding property line adjustments, reviewing the sections related to definitions, language, consolidations and adjustments.

<b>Motion #5</b>	<b>Hannum/Rierson to approve and forward to City Council the amended language in Resolution 2000-131, in regards to property line adjustments.</b>
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<b>Vote on Motion #5</b>	<b>The Motion Carried (6 yes/ 1 absent Haug).</b>
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**RESOLUTION NO 2000-131, TOPIC: Group Care Facilities**

**Barb Mingay** gave the staff report and recommended approval of Resolution 2000-131, regarding group care facilities. The changes were needed based on state law. There is a deletion of some language which pertains to people being treated no differently than anyone else.

<b>Motion #6</b>	<b>Rierson/Hannum to approve and forward to City Council the amended language in Resolution 2000-131, in regards to group care facilities.</b>
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<b>Vote on Motion #6</b>	<b>The Motion Carried (6 yes/ 1 absent Haug).</b>
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**RESOLUTION NO. 2000-131, TOPIC: Conditional Zone Changes**

**Barb Mingay** gave the staff report and recommended approval of Resolution 2000-131. This pertains to a subdistrict of a zone and establishes a limited use overlay. It could apply to land that is zoned, by further restricting use. The proposed language lists subdistricts, adds one, creates definition, application process, procedures, maps, and amendments.

**Commissioner Parrish** asked what the history was on the item, i.e. where did it come from and why was it written.

**Barb Mingay** explained the Planning Commission developed the overlay plan to be able to have other tools to be able to allow zone changes; with use limitations.

**Commissioner Larson** asked if it was legal to do this.

**Barb Mingay** said it is legal. There are already other similar overlays in place.

<b>Motion #7</b>	<b>Larson/Parrish to approve and forward to City Council the amended language in Resolution 2000-131, in regards to conditional zone changes.</b>
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<b>Vote on Motion #7</b>	<b>The Motion Carried (6 yes/ 1 absent Haug).</b>
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**RESOLUTION NO. 2000-131, TOPIC: Yards**

**Barb Mingay** provided the staff report and recommended approval of Resolution 2000-131, adding language regarding how a yard is calculated and definitions of a yard.

<b>Motion #8</b>	<b>Hannum/Molzahn to approve and forward to City Council the amended language in Resolution 2000-131, in regards to yards.</b>
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<b>Vote on Motion #8</b>	<b>The Motion Carried (6 yes/ 1 absent Haug).</b>
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**RESOLUTION NO. 2000-131, TOPIC: Home Occupations**

**Barb Mingay** gave the staff report and recommended approval of Resolution 2000-131, regarding Home Occupations. The current language has not been enforced or charges implemented and staff recommended removal of such language. Also, requests for section two, not requiring a Type 3 Conditional Use Permit. There is additional language regarding signage and deletion of language regarding paid employees.

<b>Motion #9</b>	<b>Larson/Rierson to approve and forward to City Council the amended language in Resolution 2000-131, in regards to Home Occupations.</b>
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<b>Vote on Motion #9</b>	<b>The Motion Carried (6 yes/ 1 absent Haug).</b>
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**RESOLUTION NO. 2000-131, TOPIC: Multiple single family homes on one lot.**

**Barb Mingay** gave the staff report and recommended approval of Resolution 2000-131, regarding multiple single family homes on one lot. Add descriptions to describe as one per lot. Add language including multiple family dwellings on one lot, allowing for separated housing on the same lot. This also allows language regarding duplexes and stand alone houses. It revises date restriction in R3 single family.

**Commissioner Parrish** asked for clarification on dates.



<b>Motion #10</b>	<b>Hannum, Molzahn to approve and forward to City Council the amended language in Resolution 2000-131, in regards to multiple single family homes on one lot.</b>
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<b>Vote on Motion #10</b>	<b>The Motion Carried (6 yes/ 1 absent Haug).</b>
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**Barb Mingay** said that after hearing all aforementioned motions, Planning Staff recommended approval of all amendments to the Newberg Development Code under Resolution 2000-131, including cellular communications towers, exterior lighting, underground utility installation, property line adjustments, group care facilities, conditional zone changes, yards, home occupations, and multiple single family homes on one lot.

<b>Motion #11</b>	<b>Hannum/Molzahn to approve and forward to City Council the amendments to the Newberg City Code in Resolution 2000-131.</b>
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<b>Vote on Motion #11</b>	<b>The Motion Carried (6 yes/ 1 absent Haug).</b>
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#### **VI. NEW BUSINESS**

1. Newberg Urban Area Management Commission (NUAMC) Update

Staff report by Barb Mingay who reported that some positions have expired or are vacant on NUAMC. Need someone from planning to be appointed by Mayor to sit on this commission.

**Commissioner Parrish** volunteered and was accepted unanimously by the Planning Commission.

#### **VII. ITEMS FROM STAFF**

1. Update on Council items

**Barb Mingay** said the moratorium on cell tower installation was approved by City Council. Vacation of Block 42 Edwards, city limit boundaries modifications and island annexations were approved.

**David Beam** said he has been attending workshops.

2. Other reports, letters, or correspondence

**Barb Mingay** reported that they have completed relocation to the new City Hall and the Planning Commission is encouraged to come visit.

3. Next Planning Commission Meeting: September 14, 2000

#### **VIII. ITEMS FROM COMMISSIONERS**

**Commissioner Parrish** asked when Avamere was coming before City Council for the Alzheimers unit.

**Barb Mingay** said it is already under construction and was approved by the Planning Commission.

**Commissioner Parrish** asked if the six foot security fence was approved.

**Barb Mingay** said yes it was included and she will be following up on it.

**Commissioner Parrish** asked staff about some trees that were taken down.

**Barb Mingay** said she hasn't forgotten and Mr. McBride would soon receive a letter.

**Commissioner Parrish** asked if the LCDC removed the urban reserve requirement.

**David Beam** said he believes some cities are electing to withdraw.

**Barb Mingay** said she would report back on that. She believed the requirement to put them in place was removed.

**IX. ADJOURN**

The meeting was adjourned at approximately 9:15 p.m.

Passed by the Planning Commission of the City of Newberg this 12<sup>th</sup> day of October 2000.

AYES:

7

NO:

0

ABSTAIN:  
(list names)

0

ABSENT:  
(list names)

0

ATTEST:

Peggy R. Hall  
Planning Commission Recording Secretary Signature

Peggy R. Hall 10-12-00  
Print Name Date

**INFORMATION RECEIVED INTO THE RECORD  
AT THE AUGUST 10 , 2000, PLANNING COMMISSION MEETING.**

**THIS INFORMATION IS ON FILE AT THE COMMUNITY DEVELOPMENT OFFICE  
ATTACHED TO THE MINUTES OF THE MEETING AND IN THE PROJECT FILE IT  
PERTAINS TO.**

**PROJECT FILE #G-53-99**

Fax transmittal letter from Kevin Martin of Q West to Barb Mingay dated 8/10/00, attached to these minutes. Not distributed during the hearing at Planning Commission request, based on lateness and lack of document legibility.

LABELS FROM THE 8/10/00  
PLANNING COMMISSION MEETING  
FROM THOSE WHO GAVE PUBLIC  
TESTIMONY/REGISTRATION CARD

***Be sure to add file number by  
name*** on each label

NO TESTIMONY