PLANNING COMMISSION MINUTES
Newberg Public Safety Building - Newberg, Oregon
THURSDAY, MARCH 14, 2002 AT 7 P.M.

Approved at the April 11, 2002 Planning Commission Meeting

I. PLANNING COMMISSION ROLL CALL

Planning Commission Members Present:

Matson Haug	Louis Larson, Chair	Warren Parrish	Bart Rierson
Nick Tri	Lon Wall, Vice Chair	Vacant Position (Hannum)	

Staff Present:

Barton Brierley, City Planner
Terrence D. Mahr, City Manager Pro Tem/City Attorney
Peggy Hall, Recording Secretary

II. OPEN MEETING

Chair Larson opened the meeting at 7:00 p.m. He announced the procedure of testimony. Citizens must fill out a public comment registration form to speak at the meeting.

III. CONSENT CALENDAR

1. Approval of January 10, 2002, Planning Commission Minutes.

Motion #1:	**Tri/Wall** voted to approve the consent calendar items, approving the minutes of the Planning Commission Meeting held on January 10, 2002.

Vote on Motion #1:	The Motion carried (5 Yes/1 Absent [Rierson]/1 Vacant).

IV. COMMUNICATIONS FROM THE FLOOR (five minute maximum per person)

City Manager Pro Tem Terrence D. Mahr, presented information on the Newberg Dodge sign matter. Mr. Mahr said that the signs raise issues dealing with freedom of speech. As City Attorney, he advised the City Council on the likelihood of a lawsuit filed in Federal District Court as a violation of the applicant's civil rights (Emerald v. City of Portland). Mr. Mahr reviewed signs which were prohibited by the City of Portland, and lawsuits were filed. The City of Portland incurred legal fees in fighting the lawsuit. In addition, he wanted to meet with the applicant to see if we could come up with conditions in negotiating the resolution of the issues. The conditions changed the sign significantly from what the applicant requested. However, the applicant was not willing to resolve the conflicts. The design is not beyond the scope of the sign program, and the probability of the City winning on appeal was diminished.

Commissioner Haug discussed the application not being approved by the Sign Committee. He noted the Commission's final recommendation and the issue of moving (electrical) signs and the reason for a size limit was because of the safety and pollution issues. As far as visual acceptability and potential hazardous conditions, he referenced a letter e-mailed to Mr. Brierley concerning his comments involving potential hazards. Further discussion was held concerning a reference to the sign substance and contents. Cities can place no restriction on content.

Commissioner Rierson appeared at the meeting at 7:15 p.m.

Commissioner Haug addressed other cities' ordinance restrictions which are valid and in place. He suggested using them as a guide, so as to not invent new restrictions which may not pass muster. The previous testimony presented goes for not defending our ordinances based on the long process and the threat of costing the City money in potential lawsuits or appeal. Commissioner Haug said that he disagreed with Mr. Mahr's comments in favor.

Mr. Mahr said the only reason for issuing orders was to stop issuance of the electronic signs. At the time the orders were issued in the City of Portland cases, there was no independent testing or research either supporting or denying the claims.

Commissioner Haug addressed the Commission or the City not having sufficient funds to have studies or research conducted concerning denying the sign as proposed. Mr. Mahr referred to the applicant's contention that the City's sign code violates first amendment issues even though the community feels strongly that they affect the visual landscape. In regulating architectural reviews, the signs are challenged and are strong to uphold. The shelter has not been a protectable one to prevent potential lawsuits.

Commissioner Haug addressed aesthetic points in other substantive and livability issues such as construction, etc. The community has the right to protect its visibility and livability. The sign ordinance specifies certain size involving electronic signs. Commissioner Haug addressed other cities and communities which do not have guidelines.

Commissioner Parrish said he appreciated Mr. Mahr for attending the meeting. He said he would encourage the new City Manager to attend the Planning Commission meetings and be involved.

Commissioner Parrish said it was his last meeting as a Planning Commission member. As far as the application from Lanphere, he did not feel it was a constitutionality issue (freedom of speech). He said that he never heard limitation of the size would be constitutionally contested. He would offer that Mr. Mahr think about allowing Lanphere placing a bigger sign up at the location and remember that other developers will look up to this and then see how the variances have been given, the decisions made, and the precedence of allowing the Lanphere sign. Commissioner Parrish said it is not a good idea to allow the application. Discussion was held concerning the Sign Committee and the Planning Commission's authority and how the approval procedure could be challenged. He cautioned that if the City backs off on the issue and allows Lanphere to build their sign, there would be more problems in the future with other developers. There was a reason for the separate sign committee so that the Planning Commission would not be inferred as being bias. He would caution giving the approval because of the repercussions for future developers.

Mr. Mahr said that sign codes are important. However, on the other hand, the Courts are saying that they are matters of freedom of speech.

Commissioner Wall said he agreed with what Commissioners Parrish and Haug have stated. He holds a fairly strict regard to the letter of the law. In most quality control departments of companies, the job of management is to come through and over-ride the quality control recommendation if that is needed. He agreed with Mr. Mahr's recommendation. He said that so long as they are not asking for something beyond the discretion of the code, they are asking for an appeal from the Sign Committee and the Planning Commission. However, if they were asking for more than that and wanted to go further than what is allowed, there is an argument of discretion of the bodies that have reviewed the proposal.

Commissioner Haug discussed the City backing away from a stand on its sign code. The Sign Committee, independent of the Planning Commission, voted unanimously to reject the proposal. If the City

allows this, it is contrary to what the Planning Commission and the Sign Committee's decisions. Commissioner Haug believed that this is a case of a big developer appearing to be more of a bully than trying to work with the community.

Commissioner Wall addressed the criteria that the applicant was not being consistent with the guidelines of the sign code, and, within reason, discretionary, conditional or permitted uses.

Mr. Mahr said that the statements made by Commissioner Wall are consistent with case law. He said that if the City buildings were opened up for all public forums outside the City government, there would be no limit on the discretion requirements on who could rent the facilities (standard of test). Discussion was held not having discretionary limits in the sign code. Mr. Mahr said that often lawyers and judges have stated that sometimes the floodgates of litigation would be opened in many ways because of lawsuits filed for various reasons. In addition, Mr. Mahr said that political signs have always been an issue during political periods. Mr. Mahr said that the applicant's attorney is challenging the City regulating the content and the City's discretionary evaluation of the sign code was also being challenged. Mr. Mahr said that if we went to Court, the City would probably lose.

Commissioner Larson said the sign code stands, but the discretionary portion is faulted.

Chair Larson addressed the size of the sign. The argument boils down to 10 sq. ft. vs. 30 sq. ft. and the animation portion.

Mr. Brierley said the sign is taller than the sign code allows without a sign program (exceeds the height limit, but is within the discretionary portion of the sign code requirement). Discussion was held concerning the sign being within the sign program and the ability to grant the approval within the ordinance. The height of the sign is in the discretionary part of the sign code (greater height and more square footage for the animation). He asked if they were asking for anything else? Mr. Brierley said "no". He questioned the City allowing the height.

Commissioner Rierson said that he originally abstained from voting and he felt that it did not meet his own personal requisites. He said the point was that it did fall within the discretionary means of the sign code/program which included part of a lighting plan, trying to match the style of the surrounding building. Part of the plan was that they would provide old fashioned lighting which may be subjective, but we would have a hard time holding them to match the surrounding architecture (there is no building to be located on the lot). He felt that they have not met the sign program criteria submitted.

Commissioner Haug said that it raises the issues of discretionary and conditional uses. There are a lot of places which are discretionary, and what is the criteria for making decisions outside this area? If it goes beyond outright permitted, there is a requirement of committee approval. He said that it does not meet the livability standards. The argument that is pushing the gray area out - that limit is the same as the outright permitted use. He does not see any difference.

Commissioner Wall addressed other discretionary or conditional uses which do not involve freedom of speech issues. The sign code is not being challenged or compromised, the opinions of the Sign Committee and the Planning Commission appear to be challenged. We need to get over it. If they use the argument that the Commission did not use good judgment or the criteria was not good in providing a compelling benefit to the community or they failed to have a compelling argument in providing for this type of sign, then so be it.

Chair Larson discussed established criteria in a conditional use procedure. Discussion was held concerning when conditional use would be satisfied. Further discussion was held concerning the freedom of speech issue.

Commissioner Parrish asked why it was still a freedom of speech issue?

Commissioner Wall said that is not really the issue because it has to do with the discretionary portion of the 10 square feet vs. the 30 square feet issue. Discussion was held concerning the Commission's discretionary power and the criteria presented.

Commissioner Parrish discussed the discretionary language for additional sign footage.

Tape 1 - Side 2:

Discussion was held concerning the new Ford sign. Chair Larson said that the Commission and the Sign Committee had the opportunity to express their comments.

Chair Larson said that arguments made by the Commission members should be made to the City Council.

Commissioner Haug reviewed the discretionary criteria in the Sign Code:

- Consistent theme of material colors, etc.
- Compatibility with other elements with surrounding properties
- Use of bold and bright colors to be minimal

Discussion was held concerning reading the information presented at the City Council meeting on March 18. Mr. Mahr said that he would

Chair Larson discussed the memo prepared by Mr. Mahr.

Commissioner Rierson addressed the benefit to bluffing the applicant and not approving the application.

Commissioner Haug said that he would be appealing the decision by the Council.

Mr. Mahr said that the hearing was closed.

Commissioner Haug said that he would request that the record be re-opened to make comments at the City Council meeting.

Mr. Mahr addressed the news release noting the City Manager candidates who are being invited back for the second round of interviews on March 27. One of the candidates is the City Manager of Central Point, Oregon, City Manager of Moses Lake, Washington, and the third candidate is John Graham. Discussion was held concerning calling the various cities concerning the candidates. Discussion was held concerning Mr. Mahr's comments about the candidates having the financial background and have done downtown redevelopment. They seem to understand the vitality of the City, strong economics and attracting new business.

The Commission thanked Mr. Mahr for the information presented on the pending City Council hearing on the sign code application by Lanphere Enterprises.

Mr. Mahr said he will talk with City staff concerning the staff recommendation at the hearing.

Chair Larson called for a break at 8:05. The meeting adjourned at 8:10 p.m.

V. ROUND TABLE DISCUSSION

1. Citizen Involvement

Chair Larson said he would like to conclude the meeting at 9:00 p.m. He thanked Mr. Brierley and City staff for the information presented and would like to examine the following items first:

- Mailed Notices
- Posted Notices

Chair Larson said that without a public hearing process, we can come back at a later time and discuss them. The problem is that when meetings are too long and extended, the discussion becomes dull.

Commissioner Haug said he challenges the Chair's authority to limit the time period to reduce the time to deliberate on a matter.

Commissioner Wall said that the Chair does have the authority to limit the time, but does not have authority to waive Oregon statutes. Discussion was held concerning limiting time limits.

Motion #2:	**Wall/Haug** moved to limit the discussion on the matter to 9:00 p.m.

Vote on Motion #2:	The Motion carried (6 Yes/1 Vacant [Hannum].

- Sign noticing.

Chair Larson reviewed his concerns on the Dr. Gail land use property sign involving the annexation. He discussed the content of the signs posting land use proposals. Most people do not understand the language and information contained on the posted signs.

Commissioner Larson said that it was an issue to be addressed and get a better understanding in the community about the public/government land use hearing process. There is a fundamental lack of understanding among the community.

Commissioner Parrish said there has been a history of improper notification in the local newspaper. First of all, he thinks that the newspaper advertising is not doing the job. He has noticed through the years that it is not sufficient. They always cover after the fact. Little towns like Lafayette post "land use hearing tonight" on signs. Newberg does not. People in town do not have a clue on what is going on. The State of Oregon Land Use Department wants the public involved. The press has not been a good avenue to keep the public involved. The signs are not a good source of information. The applicant puts them up and sometimes they are torn down by the weather or other means. It may be a good idea to have City staff put the signs up. The sign itself needs to be more durable. The actual posting should be done by the City staff. The content of the sign is also not sufficient and should have more explanation.

Commissioner Rierson said that it is a good forum to spread the word about the land use hearings and have press releases - pros and cons, when to appear to state opinions and who to contact to help them understand and stimulate discussion.

Commissioner Wall said that it is good that we acknowledged things and keep them in the back of our mind.

- Why do we want more public participation in these matters?

- Why do we not have a more pro-active stance taken by City government in these projects?

- Why isn't there a more pro-active effort at the Council level to bring the public in more? Until we bring this in - there will always be a problem.

Commissioner Rierson says the law requires that the public be involved. The more public input the more the public is informed.

Commissioner Haug addressed the video cameras not present at public meetings. Discussion was held concerning having a deliberated process in getting information and requesting input from the community. Commissioner Haug reviewed the City Council meeting procedures in handling public comments. He addressed the lack of identity of the Council and Commission members in helping to promote the community activities. Commissioner Haug addressed how the Mayor, the City Council and the Commission are promoting pro-activity.

Commissioner Wall said that there are state statute language requirements, but we may not be able to get any additional information contained on the notice itself (too small print/size).

Mr. Brierley said that there is a whole bunch of legal information that is required. Mr. Brierley said that he is in favor of amending the requirements and he believed that the Council would agree in providing much more information that is now being posted. Discussion was held concerning making the sign larger and more sturdy.

Commissioner Rierson suggested that the signs provide for a box or something that would allow for additional pamphlets and information attached to the sign similar to real estate signs.

Commissioner Haug discussed presenting it to the City Council on a basic educational need to know more. Discussion was held concerning the cable channels promoting additional information on meetings, etc. (news releases). Discussion was held concerning approaching the Newberg Graphic allowing the Planning Commission members to write articles of interest. If we can improve the signs and do a better job, the key issue is to have the support of the City Council. Additional discussion was held concerning a joint meeting of the City Council.

Commissioner Parrish said that the Director of Planning should have a weekly article in the Newberg Graphic to present brief information on a land use or planning matter. Over a period of time, it would benefit the community.

Chair Larson said the wording on the sign could be in layman's language and explain what is going on with the specific property. Discussion was held about having a fixed fee for staff to place signs having a larger sign, being more pro-active by providing more information, and having 50-100 flyers which have more information.

Mr. Brierley said the applicant pays for the sign with guidance from City staff. The City determines the size of the sign and how the sign is put up.

Commissioner Rierson said he assumed that changing the fee would need Council approval; however the procedure would not.

Mr. Brierley said the budget is approved by the Council. Commissioner Haug addressed creating ordinance language for the fee, the content, size, design, etc. for land use signs.

Chair Larson said there are procedural changes that can be done now except as it affects the City's budget. The applicant pays the sign company for the sign. What would it take if the City would tell the applicant what to place on the sign?

Mr. Brierley said it would take additional staff time to amend the policy. Discussion was held concerning the enforcement of the sign placement and setting the standards for placing the sign, the design, etc. Discussion was held concerning the City taking responsibility for the design, construction and content of the sign which will provide consistency. If the sign is not properly placed, the hearing body has the authority to postpone the hearing until adequate notice has been placed for the required time. Discussion was held concerning the 120 day rule in land use applications.

Commissioner Wall asked Mr. Brierley to come up with a proposal for the Commission's review without having to go through Council for approval and causing problems with budgetary constraints. Discussion was held concerning a "fee for service" which may be an additional budgetary line item.

Commissioner Haug noted that we may want to come up with a more comprehensive plan.

Chair Larson addressed the Commission's leadership role in the whole process and that the job of going to the Council with a more comprehensive plan would be easier.

Commissioner Haug said that the Commission can request public hearings such as the community meetings which would ultimately receive more community support

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Commissioner Parrish addressed public notices and the posting at the Public Safety Building.

Mr. Brierley said the notices are posted at the Library, Public Safety Building, Fire Station and the City Hall. Commissioner Parrish said that it could be posted at Fred Meyer's.

VI. ITEMS FROM STAFF - Mr. Barton Brierley

1. "Welcome to Newberg Sign" - The money for the sign has been in the budget and it will be done this year. Commissioner Parrish thanked Mr. Brierley for his diligence.

2. Planning Commission and NUAMC Appointments - Commissioner Parrish has resigned from the Planning Commission and the NUAMC Committee. Mr. Hannum has resigned from the Planning Commission and is moving to Washington, D.C. (Georgetown University). Commissioner Parrish said that Mr. Brierley has done a great improvement to the Planning Department. He thanked the Commission for their assistance and helpfulness. He got elected to the School Board and he cannot do both appointments. Mr. Brierley said they are accepting applications for the Planning Commission by April 17, and after that, it is upon the discretion of the City Council. There is one position at NUAMC which must be filled by a Planning Commission member. The Council will make the decision on Monday, March 18. Commissioner Wall said that it would be better to have one Planning Commission member be chosen among the Commission as a consensus to be presented to the City Council. Commissioner Haug said that if it was brought to the Planning Commission last month, when there is an opening, it should be brought forward and discussed. Discussion was held concerning other agencies putting forward a recommendation for approval.

3. Update on Council Items - The Newberg Dodge sign issue will be held on Monday, March 18, 2002. The Council approved the UGB for the new hospital. The County will hear the

held concerning the content being slated for new Planning Commission members. There is a town hall meeting on the City's Urban Renewal District program scheduled for March 16, 2002, at the Chehalem Senior Center.

VII. ITEMS FROM COMMISSIONERS

Commissioner Haug said he appreciated Commissioner Parrish's input and commitment. Discussion was held concerning appeal rights in land use matters. Commissioner Haug said that he was not in attendance at the time the matter was heard. Discussion was held concerning the ability to present new evidence when hearings are closed and negotiating the efforts of the Planning Commission and the Sign Committee so the Council will hear the matter without further review. Commissioner Wall said the City needs to nail down the discretionary portions of the Sign Code which could cause future problems.

VIII. ADJOURN

The meeting was adjourned at approximately 9:20 p.m.

Passed by the Planning Commission of the City of Newberg this 11th day of April, 2002.

AYES: 4 NO: 0 ~~ABSTAIN~~: Vacant 2 ABSENT: 1 (Wall)
(list names)

~~ATTEST~~:

Peggy Hall Peggy Hall 4-11-02

Planning Commission Recording Secretary Signature Print Name Date

INFORMATION RECEIVED INTO THE RECORD
AT THE MARCH 14, 2002 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 #

None.

LABELS FROM THE 3/14/02
PLANNING COMMISSION MEETING
FROM THOSE WHO GAVE PUBLIC
TESTIMONY/ REGISTRATION CARD

NONE