

PLANNING COMMISSION MINUTES
Newberg Public Safety Building - Newberg, Oregon
THURSDAY, MAY 8, 2003 AT 7 P.M.

Approved at the June 12, 2003 Planning Commission Meeting

I. PLANNING COMMISSION ROLL CALL

Planning Commission Members Present:

Matson Haug	Louis Larson	Dennis Schmitz
Philip Smith	Nick Tri, Chair	

Absent: Dwayne Brittell
Richard Van Noord

Staff Present:

Barton Brierley, City Planner
Barbara Mingay, Planning Technician
Peggy Hall, Recording Secretary

II. OPEN MEETING

Chair Tri 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. None.

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

VI. QUASI-JUDICIAL PUBLIC HEARINGS

1. **APPLICANT:** City of Newberg
REQUEST: Amend the Newberg Development Code (NDC) § 151.372, C-3 conditional use list to allow drive up window service. Two options regarding the proposed amendment will be considered. Option 1 would allow "drive-up windows" as a conditional use in the C-3 zone. This option would also delete NDC § 151.373, which prohibits drive-up windows in the C-3 zone. Option 2 would allow drive-up windows as a conditional use, with the provision that the use must be associated with an existing business. This option would also modify NDC § 151.373 to prohibit new stand-alone drive-up windows in the C-3 zone.
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| FILE NO.: | G-93-03 | RESOLUTION NO.: 2003-165 |
| CRITERIA: | NDC § 151.025 | |

OPEN FOR PUBLIC HEARING:

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

Abstentions/ex-parte contact: None.

Staff Report and Preliminary Staff Recommendation: Ms. Mingay presented the staff report and indicated that staff recommended adoption of Resolution 2003-165 approving the amendment to the Newberg Development Code (NDC) § 151.372, C-3 conditional use list to allow drive up window service. Two options regarding the proposed amendment will be considered. Option 1 would allow "drive-up windows" as a conditional use in the C-3 zone. This option would also delete NDC § 151.373, which prohibits drive-up windows in the C-3 zone. Option 2 would allow drive-up windows as a conditional use, with the provision that the use must be associated with an existing business. This option would also modify NDC § 151.373 to prohibit new stand-alone drive-up windows in the C-3 zone.

Staff recommended Option 2. Discussion was held concerning asking staff questions.

Commissioner Haug said the staff's recommendation captures the deliberation that occurred previously when the drive-up windows were originally prohibited.

Mr. Brierley said it was a change from what was adopted at that time. They did amendments to the downtown standards. The focus was to make the downtown more pedestrian friendly and less auto oriented. Part of the discussion was that drive-up windows keep people in their cars, they do not encourage people to shop, eat and bank. They discussed other possibilities to not allow or to allow only for banks. Extensive discussion was held not singling out allowing banks and not others. The past Planning Commission and City Council recommendation was to not allow them at all.

Proponent Mr. Dave Mehler, 402 N. School Street, Newberg, said he thinks that they do have 99W in front of their business and like it or not they have automobiles. There are about 30,000 cars driving past his business each day. He understands making downtown more pedestrian friendly, but they do get a lot of walk-in traffic. He thinks the proposal would actually make the Coffee Cottage more viable and enhance business. It would relieve congestion and people would provide for better access. There would be less demand for the limited parking. They would be expanding their business and facility for storage and would be tying it in aesthetically, not just a cart or mobile unit. It would be a fixed building.

Commissioner Haug said he envisioned a cue similar to a McDonald's and cannot envision where a drive-thru would be. Mr. Mehler drew a diagram of the location of the proposed drive-thru. Discussion was held concerning parking and cueing to access the drive-thru and possible back-up off Hwy. 99W. Currently, people will parallel park and with the drive-thru, it would most likely reduce the parallel parking congestion. Mr. Mehler said he also agrees with the staff's recommendation for Option 2.

Mr. Steve Roberts, 814 E. Hancock Street, Newberg, said that 5 SUV's or 7 regular size vehicles could access the proposed drive-up location.

Commissioner Haug said he attended the downtown visioning meetings, was on the Urban Renewal District Committee, and was a member of the Downtown Association. He understands the vision of the downtown core area.

Mr. Mehler said they are not located on First Street, and the conditional use process provides control.

Mr. Steve Roberts said he attended most of the downtown and core area meetings. He said the fundamental issue is returning First Street to two-way. As long as we have Hwy 99W, we do not have a "core area". The property is at the extreme area where the core of downtown is. It is envisioned to make an old downtown main street. At least one lane will always be on Hancock Street. He does not feel the proposal would majorly impact the core area.

Ms. Mingay said the policy change would affect the entire C-3 district. Option 2, would require other businesses to adhere to the new rules prohibiting drive-thru service. Stand alone drive-thru's prohibited.

Commissioner Schmitz asked about the stand alone drive-thru on W. First. This is a coffee shop and a drive-thru as part of the business.

Ms. Mingay said a conditional use permit is a separate public hearing, and criteria could be addressed that would limit impacts of the improvement. The C-3 zone is from River Street to the Dairy Queen.

Commissioner Smith addressed "associated with business" and he felt it should be associated with an existing business and building.

Mr. Brierley suggested adding the language "accessory" to the business. Discussion was held concerning modification to include "building".

Commissioner Haug said that "stand alone" and "drive-up" are not defined in the Development Code. Discussion was held concerning coffee kiosks and further defining the language in the Development Code.

Mr. Steve Roberts defined "fully serviced" as having independent water, sewer and electricity. Most stand alones have a jimmy rigged functions that do not provide independent service, nor sanitary services as part of the facility. No water service, no sewer service coming into the building could be defined as stand alone.

Mr. Brierley said there is a temporary merchant permit (similar to Sip City) allowed in C-2 and C-3 in the Municipal Code and not defined in the Development Code.

Discussion was held concerning the Bi-Mart Coffee Kiosk and how it is defined as being a temporary business. The temporary businesses do not have periodic review of licenses. Mr. Brierley said they used to be required to have a permit. There was no real purpose because of the lack of criteria. What is the difference between the drive-thru and a temporary merchant? Mr. Brierley said the intent is to say that if they are running a business, they can have a drive-up but the entire business cannot be drive-up.

Hearing Closed.

Staff Recommendation: Adopt Resolution 2003-165 as follows:

- Option 2 - (f) would conditionally permit drive-up windows as accessory to an existing business with walk-in customer service (drive-up bank window)
- Buildings and uses prohibited - drive-up service windows except those in service on April 1, 2002 and those accessory to existing business with walk-in customer service.

Motion #1:	Haug/Larson to adopt Resolution 2003-165 approving the Amendment to the Newberg Development Code (NDC) § 151.372, C-3 conditional use list to allow drive-up windows as a conditional use, with the provision that the use must be associated with an existing business on the site with walk-in customer service, i.e. drive-up bank. This option would also modify NDC § 151.373 to prohibit drive-up windows in the C-3 zone with two exceptions.
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Commissioner Smith said that the City Council's decision to allow temporary drive-thru is not a good idea, but this proposal is good.

Commissioner Haug asked if we need further clarification of the term "stand alone". He would like a more clearer definition. The matter of water and power hook-ups may be a good way to go. Discussion was held to add "walk-in business structure".

Commissioner Haug asked if they have an existing business with an additional separate building kiosk without plumbing service could they sell coffee out the window?

Mr. Brierley said it would be allowed under the proposal as stated.

Commissioner Larson said they need to make the drive-thru window as part of the structure. Discussion was held concerning clearer definitions.

Commissioner Haug reviewed the prior discussions involving C-3 including drive-thrus for the banks. The intent was to limit the various kiosks. The intent was to get away from downtown fast food operations. There are also issues regarding the temporary merchant permits. Do we want them to use a building that is a real building - yes. They will have to come before the Planning Commission to discuss the design and to conform to the intent.

Commissioner Haug said the motion should be a recommendation to change the Development Code to incorporate the problems with temporary merchants as conditional use and go through the hearing process.

Commissioner Smith said the temporary merchant issue is a separate issue which needs to be discussed and reviewed by staff at a later time. There are costs and efficiency issues in solving the temporary merchant situation.

Commissioner Larson addressed conformance with design standards to prohibit issues dealing with problems.

Tape 1 - Side 2:

Ms. Mingay said there is no reason that the Planning Commission cannot request the City Council to address the temporary merchant ordinance. The new credit union design has no drive-thru window. This opportunity would allow for them to have a drive-up window.

Commissioner Larson called for the question.

Mr. Brierley said the proposed amendment removes the word "stand-alone" language.

Vote on Motion #1:	The motion carried (5Yes/2 Absent [Brittall/Van Noord]).
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Ms. Mingay said that the matter would be referred to the City Council at the June 2, 2003 hearing.

Motion #2	Haug/Larson to have the City Council revisit the issue of temporary merchants in the C-3 zone.
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Vote on Motion #2:	The motion carried (5 Yes/2 Absent [Brittall/Van Noord]).
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V. OLD BUSINESS

1. Appeals from Planning Commission to City Council

Mr. Brierley addressed the appeals from the Planning Commission and text amendment to be considered at a later time. He reviewed the skeleton of the proposal and requested direction from the Planning Commission. He also reviewed the proposed changes for land use appeals and modification of land use applications:

Commissioner Haug addressed prior appeals involving new evidence from the Planning Commission record, then to the City Council, appealed to LUBA and then remanded back to the City Council. The hearing is arguing the record and the law. We can have oral argument based on the information contained in the record - further clarification. It goes to the City Council, no one speaks, the City Council can decide.

Discussion was held concerning not allowing new testimony, only argument discussions.

Commissioner Larson noted there were instances where the whole picture is opened up and questions the process. Discussion was held concerning a legal appeal. In these situations, we have a motion going on and new evidence is presented that could change what occurred at the Planning Commission level. In court procedures, we are not worried about hurting the attorney's fees about not allowing further testimony.

Commissioner Schmitz asked about the new evidence/open up testimony process the City Council appears to do at certain times.

Mr. Brierley said there has been a question of what the record is, can the person change the plan from when the Planning Commission heard the matter and then make amendments before the time it reaches the City Council hearing. The policies should be clear before there is a problem.

Mr. Brierley said that there have been issues involving official transcripts of hearings rather than "minutes". Allow the parties to request that the appeal hearing be held as a "new" hearing if they feel the minutes do not fully reflect the Planning Commission's hearing. If the applicant is denied at the Planning Commission level, with a record hearing, they are not allowed to make changes at the City Council. Allow the applicant to modify its application after a Planning Commission hearing, and request a reconsideration at the Planning Commission level. The 120-day clock starts over and a reduced fee would be available. Or, allow the parties to request that the City Council appeal hearing be held as a "new" hearing, where modifications can be made, provided they waive the 120-day rule.

Mr. Brierley said the applicant can "argue" the record but not provide new testimony. There is always the question: Is there a complete transcript? Are all the exhibits available? The deliberation of the Planning Commission and City Council are not part of the record. Mr. Brierley said that he does believe that the Commission/Council's deliberation should be considered part of the record.

Commissioner Haug said when the Planning Commission finds weaknesses in the application, the applicant should be able to modify their application with some sort of continuation or come with a new hearing and modified application. He thinks they have to waive the 120-day rule or the Planning Commission will deny the application. If they persist to go to the City Council, they must not be allowed to enter new evidence. The record will be at the hearing and want a verbal presence, but nothing new. As long as it is clear, the applicant should understand the issues raised at the Planning Commission hearing. Minor to significant changes should be not allowed. The City Council, in the past, has allowed it. Then it would be a new proposal.

Commissioner Smith said he agreed and there is an important practical problem. When an applicant runs into the Planning Commission and receives a "no."

- The applicant can modify the proposal. In that case, we ought to allow it, but the City Council should not hear it and it should go back to the Planning Commission.
- Evidence and Argument - the appellant should be able to argue it, but not be allowed to give new evidence. When they start hearing new evidence, they need to stop the hearing. In the legal system, lawyers and judges are trained to determine evidence and argument. The applicants and appellants are sometimes not aware of difference between new evidence or argument. It is a practical problem to determine what is what. There is a problem when the applicant is allowed to modify the proposal. We need oral argument. Issues relating to further appeal when the application or opponents are denied their rights to argue the matter. The public should be able to offer testimony.

Commissioner Larson said the public has the opportunity to visit in the public forum. There is a public hearing at the Planning Commission level and they have a right to show or not to show. The decision is rendered by the Planning Commission, and if denied, it goes to the City Council on appeal. At the appeal, there is a new public hearing and new testimony. A common phrase that John Bridges uses on appeal, is "the Planning Commission" ...does this....etc. He will explain why the Planning Commission made a bad decision to a new body (to the City Council often times blind-sided).

Commissioner Haug said that when the applicant changes the application, the City Council often times allows the applicant to work out modifications. They should not be allowed to change the application. There is a difference on the word "appeal" from the City Council and an appeal from LUBA. The final decision making body is the City Council. These are elected officials (City Council) and are obligated to listen to the public. The rights and the record are governed by the testimony, rules, criteria and evidence presented. He said he does not think that the City Council would have a closed, no written oral argument hearing. It will not fly.

Commissioner Smith noted that the great majority of the problem is the applicant's modification of the application from when it was heard at the Planning Commission level to when it is heard at the City Council level. Discussion was held that often more evidence and findings are presented. About 25-30% actually want to do a change to the application. Mr. Bridge's argument in his letter said that there needs to be room for argument in the appeal. People may present evidence, but the significance may not be viewed by the lay people. They hire a lawyer to find that they did not bring up certain testimony or evidence. The City Council must allow oral argument on appeal. He does not think there should be new evidence on appeal. It is difficult to hold it out.

Tape 2 - Side 1:

Discussion was held concerning how often issues such as this has arisen.

Commissioner Larson said that he felt there were about 3- 5 appeals.

Mr. Brierley said there is approximately one a year.

Commissioner Schmitz addressed the most recent land use hearing where the applicant chose not to make the proposed modifications as offered by the Planning Commission. He agreed with the point about the public wanting access to the elected officials. Discussion was held concerning not allowing the application to change on an appeal. The public should be able to speak on appeal and provide due process and fairness. On most appeals, the public should make their own argument, but most applicants have an attorney. There are legal issues in a quasi-judicial process. The applicants have lawyers and the people affected by the decision, the public voices their opinions pro and con. Nine times out of 10 they do not have legal representation. Then it goes to the City Council and the same thing happens. Does the community support or decline the proposal.

Ms. Mingay noted that sometimes the citizens may be objecting to a favorable Planning Commission decision which may be appealed to the City Council.

Commissioner Haug said that the appeal is appealed by an opponent. He felt that problems arise when the application changes from the first proposal to the Planning Commission to the City Council.

Commissioner Larson addressed changes of the application by the City Council or changes to the Development Code. If the Code changes, it could get remanded to the Planning Commission. Discussion was held concerning amendments to the application as to the structure or modifications to the proposal. Making it stick will be tough. Further, he would like to ideally allow the appeal without any new evidence. The highest desire is to at least make a decision on the modification. If the proposal is modified, it should come back to the Planning Commission. Any modification to the proposal and appeal to the City Council on a new application needs to be remanded back to the Planning Commission. Discussion was held concerning statutory parameters, not allowing modified applications to be presented for remand back to the Planning Commission.

Commissioner Larson reviewed instances where the applicant could offer amendments to sweeten the pie and the City Council allowing the applicant to make the modifications rather than take the time to be remanded back to the Planning Commission. Discussion was held concerning the procedure at the City Council level to hear appeals. Commissioner Larson said at the City of Beaverton, there is no new hearing. The City Council hears the matter based on the record submitted.

Mr. Brierley said that City Attorney Terrence Mahr is available on appeals to offer guidance to the City Council. Mr. Brierley said he believes he has adequate general direction from the Commission. He propose that he takes the information from the Planning Commission and write a proposal for presentation at public hearing.

Motion #3	Larson/Schmitz to have staff bring back a proposal for further discussion at a public hearing.
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Vote on Motion #3:	The motion carried (5 Yes/2 Absent [Brittell/Van Noord]).
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VII. ITEMS FROM STAFF

1. Update on City Council items:
 - Grahn CopperGold zone changes amendments were approved by the City Council.
 - The NUAMC hearing recommended CPRD's golf course UGB amendment forwarded to City Council and County Commission for approval. It was a very well attended hearing. The farmland goals were the center of the issues as well as traffic, etc. After midnight, NUAMC voted 5/2 to recommend the amendment. It will be presented to the City Council. The key issue was Goal 3 requiring farmland to do an analysis for alternative sites. It was acknowledged that the evidence submitted weak and did not cover the outlying areas. They gave oral testimony, and some written testimony. Ken Friday recommended denial because he felt it would be remanded on appeal. Ms. Lewis said that she would make recommendation to the Commission and suggested that she would deny it at the Commission level if they do not make more appropriate findings. She favors the idea but has concerns with siting. It should go to the City Council on June 16. They had five sites within the Newberg area. If the development was to happen, they were proposing just land for the golf course. The surrounding properties would not be included. CPRD has been very specific about building a golf course and not houses

around the course. Ms. Mingay reviewed the location of the property on a copy of the City's Comprehensive Plan Map. The property is off Wilsonville Road. Alternatives include the Schaad property, the riverfront property some Austin property, and the other property that is too steep. They are also proposing to use wastewater treatment water and untreated Otis Springs water for watering the lawns. If it gets through the County Commission and the City Council, a new application would then go to the City Council for annexation and approval by the voters. Discussion was held concerning availability. The site is on an 1974 County Comprehensive Plan Map with an area for a park golf course and that is the spot. In the early 1990's, they talked about a golf course and issues were raised concerning prime farm land and it is more likely to convert the property that is in the City. Ms. Marilyn Reeves, Friends of Yamhill County, and Sid Friedman, 1000 Friends of Oregon, were in attendance. Ms. Reeves was not in favor. Mr. Warren Parrish said that he does not want a bunch of homes, but is in favor of the golf course. CPRD owns the property.

2. Other reports, letters, or correspondence

Mr. Brierley reviewed an email for a workshop with Steve Johnson, Portland State University concerning a transportation and land use management work session. His impression was that Mr. Johnson wanted to gather data to report back to Salem. The program is going and the smart development techniques are working.

Commissioner Haug said that smart growth benefits livability. He would like to see the concepts brought forth for people to think about.

Commissioner Smith asked about how much it would take away from the rest of the agenda.

Mr. Brierley said Mr. Johnson wanted to come by the end of June. It would have to be at the special meeting which could be done as a work shop on transportation and smart growth. More education for the Commission gives them ideas and sense of aesthetics. Discussion was held concerning scheduling a date inviting the City Council.

3. Next Planning Commission Meeting: June 12, 2003

VIII. ITEMS FROM COMMISSIONERS

IX. ADJOURNMENT

The meeting was adjourned at approximately 9:00 p.m.

Passed by the Planning Commission of the City of Newberg this 12th day of June, 2003.

AYES:

7

NO:

0

ABSTAIN:
(list names)

0

ABSENT: 0

ATTEST:

Peggy R. Heel 6-12-03

PEGGY R. HALL 6-12-03

Planning Commission Recording Secretary Signature

Print Name

Date

**INFORMATION RECEIVED INTO THE RECORD
AT THE May 8, 2003 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 5/8/03
PLANNING COMMISSION MEETING
FROM THOSE WHO GAVE PUBLIC
TESTIMONY/ REGISTRATION CARD

Mr. Dave Mehler
402 N. School Street
Newberg, OR 97132

G-93-03

Mr. Steve Roberts
814 E. Hancock Street
Newberg, OR 97132

G-93-03