



PLANNING COMMISSION MINUTES

February 12, 2004

7:00 p.m.

Newberg Public Safety Building

401 E. Third Street

APPROVED AT THE MARCH 11, 2004 PLANNING COMMISSION MEETING

I. PLANNING COMMISSION ROLL CALL

Planning Commission Members Present:

Dwayne Brittell
Philip Smith

Louis Larson
Nick Tri

Richard Van Noord, Chair
Dennis Schmitz

Absent: Matson Haug

Staff Present:

Barton Brierley, City Planner
Terrence D. Mahr, City Attorney
Barbara Mingay, Planning Technician
Peggy Hall, Recording Secretary

II. OPEN MEETING

Chair Van Noord 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 (items are considered routine and are not discussed unless requested by the commissioners)

1. Approval of October 9, 2003 and November 6, 2003 Planning Commission Meeting Minutes

MOTION: To approve October 9, 2003 and November 6, 2003 Planning Commission Meeting Minutes. [6Y / 0 N / 1 ABSENT(Haug)] Motion passed.

Ms. Lorraine Hall - 2nd Street Citizens Council, 114 S. Center Street, Newberg, Oregon, handed out 12 packets of information concerning the general history of the transportation task force dealing with re-routing traffic from First to Second Street. She asked the Commission to read the packets and requested action to refer the matter to the Council to determine what happened to the task force's plan of 2001.

APPELLANT: Daniel A. Schutter, et al

REQUEST: Appeal of Design Review approval to install a new wireless pole

LOCATION: 2151 N. Alice Way

TAX LOT: 3217BA-1100

FILE NO: DR-181-03

CRITERIA: NDC §151.194, §151.671

RESOLUTION NO.: 2004-1741

Chair Van Noord stated that the proponents would be speaking first and those who oppose will speak second. There will be a five minute time limit. Chair Van Noord called for abstentions, ex parte contact or objections to jurisdiction. There were none. Chair Van Noord read the applicable ORS statute into the record.

Planning Technician Barbara Mingay reviewed the staff report and noted that the criteria was based on the City's Development Code. The Commission must render its decision within 45 days after the appeal has been presented. Any party can appeal to LUBA. T-Mobile received design review approval for the cell tower with conditions. Some of the staff information reflects that the County and the City previously rejected a cell pole location in the area. Ms. Mingay reviewed the location of the site. Discussion was held concerning other sites for communication facilities, one of which was at the High School (tower). Ms. Mingay said it was turned in for a 100 foot tower, the location is in an industrial area and has an out right permitted use as a cell tower. Staff felt it appropriate to approve the application because it was an outright permitted use. Alice Way is primarily in the County jurisdiction without annexation to the City.

Commissioner Brittell asked if the original review application had conditions for improvements, etc.? Mr. Brierley said there are recommendations of conditions of approval which address it: #5 - payment in lieu for future Alice Way improvements for gutters, sidewalks, etc. for future development to the frontage. Staff report 56(V-1-20).

Commissioner Larson asked Mr. Brierley what it means. Mr. Brierley said when development occurs we require the improvements; curbs, gutters, and sidewalks and utilities. They recognize that we cannot always do that: we can't put a strip of sidewalk in the middle of nothing and have it not connect to anything. The council adopted a policy that if we can't construct it at time of development - we estimate the cost of development, and the city puts the money into trust account and, when a LID or future development is done, - these funds are used for those improvements. It is today's costs and the money will be placed in an interest bearing account which will help inflation. Discussion was held concerning interest rate accounts matching inflation.

Commissioner Larson said in the application there were landscaping requirements. If the landscaping is put in what provisions does the City have for the upkeep of it? Mr. Brierley said it is the property owner's responsibility to maintain it as required by the Development Code. How would the public be assured that it would be maintained? Mr. Brierley said the Code requires compliance with penalties for not maintaining.

Lance Bailey - zone supervisor with T-mobile - agreed with staff report and staff's addressing of criteria relevant to the case. He wanted to point out:

1. The property is zoned M-2 industrial in the City - It is a permitted use. The materials submitted in opposition brought into question the analysis of the design review criteria. Staff had addressed the issue under the design review criteria - it would blend in with landscaping and staff has made a determination.
2. Mr. Larson's comment about landscaping and lease with property owner - the landscaping will be maintained by T-mobile.

Commissioner Larson asked about the zone of influence map (coverage area). Mr. Bailey said it would be a two page color map (green/yellow and red) which shows coverage. Discussion was held concerning City and County layout. The level of coverage in the area goes from a good to a bad scale (green, yellow, red and white). Green is signal streams that allow in-house coverage. The yellow is an in-car coverage and the red is outdoor coverage and the white is with no coverage at all. The original map of north Newberg shows coverage, and the second map shows the location of the proposed site. Discussion was held concerning the area of influence. The red dot of the coverage is not on Alice Way. It is about 1/4 mile south about on Mountainview and instead it is south of Mountainview a 1/4 of a mile. The map illustrates the area of service.

Commissioner Larson asked if he could achieve the same coverage by utilizing the utility and light poles in the area. Mr. Bailey said in the area, one of the criteria in the analysis is to look for existing sites. There is the existing site at the high school and it was looked at as a potential location. The site is 75 feet tall They would not install antennas in excess of 50 feet. Height is a major factor in reducing the area of coverage. Another site similar was precluded by the City's code which required a 2000 foot site exclusion. Based on the current zoning code - the current site is an industrial zoned area. Discussion was held concerning reducing the height by 20% and still having the same coverage. Mr. Bailey said there were photo simulation with the existing areas. There are trees in the greenway area 6-8 feet tall - to get the signal - it has to be higher to propel gate the signal. If there was another company coming through, they would be companies looking for the same site.

Commissioner Larson said he was involved in putting the cell tower code together - he was interested in Mr. Brierley's comments about light and electric poles inside the coverage areas. Mr. Bailey said, that in the search ring, there were no existing utility poles of a height sufficient to provide coverage.

Commissioner Larson asked about a series of small ones on utility poles throughout the coverage area, or is it required/mandatory for a taller facility. Mr. Bailey addressed minimizing the number of hand-offs where there would be a dropped call. In terms of impact to community, they try to minimize the number of towers in the area.

Wayne and Nora Adams, Newberg, said the appeal is based on several factors. This is an industrial zoned area and County road - facing it is a piece of the City with a dozen of homes that will be looking at the tower. It is unclear why the tower could not be situated in the industrial zone in the Hess Creek area eastward. The County has rejected this project in the past on their own, area and it is unclear that these trees will be essential blocking the tower efficiently in a few years. On top of that, the height which is critical - maybe a 1000 feet which is the extension of Mountainview and there are light

poles and such and they would have far greater height to achieve. For aesthetic reasons, property values will be affected in the development - he requested that the Commission/City reject the cell phone tower.

Mr. Don Swan, 2210 Thorne Street, said he also was representing Jessica and Alex Rolf, who live at 1600 Bramble Court, they feel the tower will be an eye sore in the neighborhood - Bramble Creek is a bigger neighborhood - it will take away the natural beauty and the vast majority oppose having the cell tower. Mr. Swan also noted that he believes there to be health concerns. Research they looked at relates cell phone use with brain tumors, especially with children. He uses a cell phone (which works at his address). If a cell tower is out his back yard, the amount of airwave traffic exposure to kids is constant. The cell tower is closer to his home than the cell tower at the high school is closer to the classrooms. The high school tower is at the football field. There are 20 kids in the neighborhood.

Tape 1 - Side 2:

Mr. Dan Schutter, presented the overhead map, noting that since presenting the appeal, he was able to get two more neighbors to oppose the tower and a letter from Joan Austin. On Mountainview and Alice Way, the Austins own a substantial piece of property which the tower is not compatible with, the criteria says "surrounding use" and not "zoning." There are outbuildings (an abandoned nursery). The area is single family dwellings. The surrounding use is residential, not industrial. The County property has history to it. His argument is trying to develop the property - will cause additional problems. There are no city utilities. The water well on the lot serves the other lots. The neighbors are concerned what would happen if the well is damaged or lost service. Residents would be forced to hook up to City services. Some of the neighbors and he are concerned about bringing up the water service for residents. The remainder of the property owners are saying they do not want it. The use is incompatible. He asked what is the problem with the industrial property to the east - they have zoned in a loophole.

Commissioner Larson reviewed that the greenbelt is owned by the CPRD.

Lance Bailey responded to a couple of the points - he denies the comments about a loophole - the area is an industrially zoned area of the City and the underlying plan designation is industrial. The permitted uses would be farm equipment mfg., ceramics, boat manufacturing and other industrial uses that any applicant would have right to make application. He would imagine that there was a need to maintain industrial lands in the area. In terms of the health concerns, as a citizen, he has the same as others, he would remind the Commission that in terms of EMF omissions, they are regulated by the FCC. Under the Telecommunications Act they have determined that it is an issue to regulate it at the federal level. One of the issues, location of the water well and they submitted a site plan with a variety of structures on the property and on the site plan, the structure and the pump is located. They have shown a site plan that had the location and the water well as the same location. He has not indicated that the operation of the facility will affect existing sewer, septic or water services on the site. He would also say that property values can also be affected by other types of development. Discussion was held concerning landscaping areas in Newberg. There are thousands of cell towers around the country - if decreasing values at all, it would be an issue of unsubstantiated fear - there is no evidence that it lowers the property values.

Commissioner Smith said that in response to the tower needs to be at least 100 feet tall, there are 60-80 foot trees and they begin to interfere. Mr Bailey said the park district that owns the greenway, it is up to that public agency. Why would they put the facility tower there - it is their risk as a business to deal with the eventuality that the trees may outgrow the height of the facility. They do not have control of the trees.

Commissioner Brittell said the opposition is generally because of the proposal being allowed to be close to the schools and local residents. How close is the cell tower to the homes and to Mountainview School. Mr. Bailey said it is more than 2,000 feet (they did an analysis of the existing tower at the high school). There are other schools not around the high school. Commissioner Brittell said that it appears that it is close to the west of the tower. Mr. Bailey said the green arrows are the id's and it indicates the location and how far based on the distance to the site. The photo taken off Thorne Street, it is 453 feet, assuming the houses are 30 feet from the street. Mr. Schutter said the greenbelt is 130-140 feet and some of the houses and decks are within 30 feet of the greenbelt. 170 from Wolford's deck. 30 feet from the applicant's house.

Commissioner Larson said that there is a number of feet of residential area to the tower, he would like that report in his review, Mr. Brierley's aid they looked at the site plans as submitted - three are homes on Alice Way, the tower is an estimated 60 feet on the home from the development site and another home that is 100 feet away. Mr. Schutter said that they are about 170 feet from the tower site. Mr. Brierley reviewed the proposed lease area.

Commissioner Larson said that the County zoning allows for this in residential. From the county zoning to a tower is about 100 feet or less (from County residential). From the position of the tower, right next to it is county land and is there a residence on that land (yes) the distance from that residence is about 100 feet (per Barton) and on Thorne - there is a

distance of 170 -300 feet. The greenbelt is owned by CPRD - what is the zoning on that? Mr. Brierley said it is R-1 single family residential with stream corridor overlay. Commissioner Larson asked the space from our R-1 zone and the tower site? Mr. Brierley said it was about 40 feet. Commissioner Larson said the City allows a cell tower within 40 feet of a residential area (no limitation to height) - 100 feet limitation in anywhere on the outright permitted use zoned area. Discussion was held concerning setbacks. Ms. Mingay said the tower setback standard is a minimum of 30% of the height of the tower from the base of the tower (about 30 feet from the property line).

Commissioner Schmitz asked Mr. Swan if he had evidence to support the health issues. He said he did not have any with him. Is there anyone else in the subdivision? They did research on the internet.

Mr. Lee, 2200 Thorne Street, said most people do not put cell towers near residential and school. His concern is not just the children in the neighborhood, but 100's of other children in the new elementary school. Today, there is no medical reason to show what impact they are going to have from the cell phone towers; they cannot wait until the issue is raised - to question why put it in there in the beginning - there has got to be a better area. Mr Lee's comments are included on V-1-64 in the staff packet.

Commissioner Schmitz asked staff about health issues, and he wants to make sure there is evidence to support it and is it available to the Commission. Mr. Brierley said the only written information has been provided to the Commission. As a planner, the studies he has read studies and they are not conclusive, some show there is a risk and others say there is not substantial risks. Mr. Schmitz asked if there is a FCC recommendation on how close these should be in proximity to living facilities and closeness to schools. Ms. Mingay said there is no conflict with the City's code/ordinances concerning this FCC regulations.

Commissioner Smith said there was an earlier proposal for a taller tower on nearby property, and the proposal was rejected. The taller tower had a feature: the 150 tower would have a flashing red light on the top. Mr. Brierley said towers are required by FAA to have an aviation beacon on the top for the purpose of not crashing into the towers. Planes do fly from Sportsman Airpark. Discussion was held concerning enforcing restrictions by the County which are superseded by FAA. Mr. Brierley said the prior hearing required a steady red beacon on the tower.

James Baker, 2120 Thorne Street, Newberg, Bramble Creek Subdivision, he is an electrical engineer. He has worked in the industry for over 20 years. He questions about the radiated - field strength diagrams and watts of power, those within 500 feet, and would like to see a spectrum analysis of frequency, he would like to find design criteria for the electrical engineers and the targets - radiated power uniform in all directions, directional, continuous? The tower is part of the network and pulls calls from adjacent towers. What is the effected range on the tower as far as a good solid call would be from car, etc. What power level is being radiated? With higher power level can provided further distance. There are other sites that can adequately supply signal strength to the north Newberg area which would not being in the midst of residential property. He believes not all the options have been looked at. - Discussion was held concerning design criteria. Engineers would like to see alternative options to resolve the issues. In his location, he has a different company's cell phone and replaced a lost one today. He has used a cell phone over the past 2 years runs on the full power and he does not know the distance and does not know where the tower is located. It is fully adequate and he is not sure where it is coming - but there are other ways to solve the problems. He has seen stronger evidence for rezoning the parcel to residential than place a cell tower on the property and keep it as a commercial(industrial) property. He said that when he selected his parcel, he questioned about looking for existing homes, he rejected other parcels because they were near radiated power. The data that he looked at the time is from the era and from the spectrum journal (Institute of electronic engineers) 30-40 studies. There are a lot of questions to answer.

Commissioner Brittell addressed to Mr. Baker asked about his conclusions for safe instances for high voltage and power lines and cell phone towers (100 foot circle). Mr. Baker said he would not want to be within 1/4 mile of anything. He is going to be doing some low level signals from his house.

Dr. Swan said that it would be helpful and he would be happy to get research and bring it and would be the correlations of not hard to show.

Mr. Bailey said he would not dispute scientific research; there is no conclusive evidence to be regulated at the federal level versus the local level. Staff has accurately stated the requirements in emissions and FCC has an extensive website that goes through more than can be digested. The radio spectrum is huge (radio television to wireless baby monitors) they are just a small piece of it. He wanted to comment on statements about their cell phones work and why do they need one? The cell phones are not like a public utility. The wireless industry is regulated by the FCC and is competitive. One of the reasons it is regulated at the FCC is to maintain competitive nature. He said it does not negate the need/right to have T-Mobile's

site. If you have multiple gas stations (Shell/Texaco) - there is no criteria to prohibit them from providing this service. - it is not a public utility.

Commissioner Schmitz said that when the tower is erected, who is the inspecting authority to regulate it - Mr. Bailey said it regulations power output, location and license information (costs billions of dollars), the FCC has the right to enforce the actions. He said they did submit a letter compliance with FCC regulations.

Mr. Bailey said he understands issues in opposition, relate to aesthetics and health point or variety of issues, they try their best to locate and design sites that are compatible with surrounding areas - they operate in a regulatory environment on the basis of local area - they are in full compliance with the City's code. This is a land use issue, and it should be focused on the criteria on what the zoning code requires. In this case, they have. They are trying to minimize the impact of the location. The greenway is a positive buffer. They have tried to be sensitive to the community.

Ms. Mingay provided the letter received into the record: Jessica and Alex Rolf, Bramble Court, wishing to appeal the construction at 2151 Alice Way. The tower will take away the natural beauty of Thorne Street. The vast majority are opposed to the construction which shows the incompatibility of the site. Ms. Mingay said the decision needs to be based on the appeal criteria on page 5.

Chair Van Noord closed the public testimony. Ms. Mingay referred to page 5, item D, reviewing staff's recommendation in affirming the Planning Division's decision. Further, staff is recommending modifications to the conditions (ADA parking spaces - page 7)

Chair Van Noord noted that this is a land use issue. The use does not have to be allowed always - it is permitted, but one of the criteria is whether or not it is compatible - the Commission is not required to make a decision solely based on the list of permitted uses.

Commissioner Smith said that persons that own property have to plan for the use of their property. They have to rely on reasonable interpretation of the law. This property is zoned industrial use - the owner of the property has to rely on the zoning for the future use and development of the property. It has been alleged by an opponent that the use for the property is something other than the use for the property. He would like to hear expert legal testimony. Zoning is to establish the use the owner has to rely on the zoning code to make decisions. Further, he has close friends, but they have not discussed this- this won't persuade his decision. In order to have private enterprise -some decisions have to be regulated at the federal level (light at the top of a tower) It has been a serious concern and there is a health issue. If health issues are allowed to be judge by local jurisdiction, Congress said it would be an unreasonable injury to the businesses and that is why they are regulated at the federal level. He was humble that the FCC would know more than local residents - he is not willing to give up a property owner's right to do what they want to do with their property - it is a land use management issue - it is outright permitted and there is not a distinction between the use and the zone.

Commissioner Tri said he had been involved with cell phone towers because of previous property he has owned and being too close, the Commission said it was acceptable, over the course of the last 10 years, he does not see it anymore. He has not known of any health issues developed from the property and in accordance with our jurisdiction. The Commission needs to follow the Code, and they have to make the decision from the legal aspects. He concurs with Commissioner Smith, and that the recommendation of the staff as amended is a good decision.

Commissioner Brittell said he agrees with Commissioner's Smith's summary, but at the same time, he identifies with the neighbors and he would not want one close to him. He would agree, but at the same time, they need to look at the documents and consider changes and there is not a provision to this type of facility a distance between residential zone and schools. He would recommend that the Commission revisit this issue after looking at the FCC rules and see what they would allow, including addressing and reviewing any health or aesthetic issues.

Commissioner Smith said they did receive testimony that emissions of the cell tower are well below FCC regulations.

Chair Van Noord addressed outright permitted use and the history of the zoning for the property; it was light industrial for ADEC that its in well with surrounding area. This use does not however, it has to be compatible with surrounding use. It is clear that it is not compatible from the standpoint that it was originally zoned industrial and he does not see that it is exactly what it seems.

Commissioner Schmitz said he thinks we would all understand the opponent's position and there is some incompatible zones industrial property next to residential property throughout the entire city. We have the development code to go by.

Staff should look at how the industrial properties are spotted throughout the community which are incompatible with other uses. It is not the Commission's choice to adjust the zoning in the Development Code. It is not perfect and there are properties intermixed and there appears not to be a way to choose.

Commissioner Van Noord noted that as it is an outright permitted use as long as they are compatible with the surrounding area.

Mr. Brierley said it is a permitted use. Any design review has to meet the criteria for design review. The criteria states design compatibility. They did not find a way to deny the use - they found conditions that were necessary to meet the criterion (an architectural design compatible to the surrounding area).

Commissioner Smith said that among other permitted uses, are uses such as light industrial uses (cabinet construction). The compatibility requirement is a design review not upon whether he could build the shop there or not.

Commissioner Van Noord said if it was compatible with surrounding uses, it should be a 20 foot tower. There is nothing in the code that indicates that the tower needs to be 100 feet. Discussion was held concerning a code allowance for towers being 100 feet within the commercial zone.

Commissioner Larson said that in his heart he wants to say no, but looking at the criteria, he has to say yes.

MOTION: Commissioner Schmitz/Larson moved to approve modifications as indicated (approval in A & B). (6 Yes/1 Absent [Haug]. Motion carried.)

Mr. Brierley said any party wishing to appeal decision to the City Council could do so with in 14 days - the appeal hearing will be a record hearing (written testimony) of the decision - no oral testimony at the City council level.

Break at 9:10 p.m. - reconvened at 9:20

2. **APPLICANT:** Head Start of Yamhill County
 REQUEST: Zone change from M-2 (Light Industrial) to R-P (Residential-Professional) and Comprehensive Plan Map change from IND (Industrial) to LDR (Low Density Residential) to accommodate a proposed head start facility
 LOCATION: 2813 E. Crestview Drive
 TAX LOT: 3217-3500 and -3600
 FILE NO.: CPA-23-031Z-22-03 RESOLUTION NO.: 2004-173
 CRITERIA: NDC § 151.122(A)(3)

Chair van Noord announce ORS 197. - raise it or waive it issues -

Abstentions/bias or objections to jurisdiction - none noted.

Ms. Mingay presented the staff report. This is a zone change and comprehensive plan amendment from M-2 to RP zone from industrial to Low Density Residential - on Crestview drive and SE of the railroad tracks. The criteria are on page V2-2. It is a 1.9 acre triangular shaped parcel. The layout is in the packet - some of the issues: change to comprehensive plan and zoning designation will diminish industrial land in city - it would accommodate need for Head start facility - preschool and low income families - if constructed - design plan for the structure - the proposed development will have minimal adverse impact - several street and access improvements will be required when developed. Staff recommends a limited use overlay with limited residential use - RP zone allows in any residential or commercial comprehensive plan designation and the applicant asks for PQ comp plan district be applied. Staff recommends adoption of resolution and would recommend to City council to approve comprehensive plan from Industrial to Public\Quasi-Public from M-2 to RP (residential professional) with overlay limiting residential use, except in support of main use of lot.

Commissioner Schmitz said the Austins are donating the property to the Head Start program with criteria and has to be rezoned for the donation to be accomplished. Ms. Mingay said the rezoning is required for the purpose of the school. She is not privilege to the Austins requiring rezoning for the use of the property. Ms. Mingay referred him to the applicant.

Commissioner Larson said the restriction on single family residence - why? Ms. Mingay said that recent discussion with residential activities adjacent to industrial activities, it would avoid future conflict Mr. Brierley said the industrial land base is shrinking, and the City is giving up some industrial land and appears to be justified due to the uses in the neighborhood, They think the change would be allowed - they want to avoid having industrial land go to residential use. They want it specified to that type of use.

Commissioner Schmitz said what happens if Head Start wants to sell their property for residential use? Mr. Brierley said it was the overlay designation (limited use overlay). Mr. Brierley said it would go along with RP-LU - does not allow residential use - it would be allowed with a residence in association with a school.

Commissioner Smith said he was worried about the future and the transportation plan meeting the property to the east of the parcel is going to have a change with a road. Once the road is changed, the other road coming off Springbrook and Crestview - what is going to stop us from losing this as well. Mr. Brierley said the other property is the Wareham extension-however, the road becomes a separator between the residential uses from the industrial uses and provides for campuses for industrial uses. Aspen Way (V2-22, Attachment E in packet). The ADEC campus includes the orchard which is an industrial zone this creates the opportunity to cut off Aspen Way and the school campus and opens the area for a cohesive campus in the area. It is a positive position.

Claudia Cantu, Casa of Oregon developer on the head start project - the team leader is Michael Eichman, executive director for YC Head Start and Scott Edwards, architect.

Michael Eichman, Executive Director for Yamhill County CASA noted that the facility currently operates in Joyful Servant Church for almost 20 years. Joan and Ken Austin have made a donation for the future site. They need more space. Part of the problem of accepting the gift, as a preschool program, they need to construct a facility. They can build a facility on the property and there are conditions placed by the Austins. They opened a similar facility in March in Dayton and also in March a facility in Sheridan and a couple of others in the county. Ken Austin is a member of the early morning club and they are active in the community service project.

Discussion was about the current enrollment - Mr Eichman said it is 28 - currently the highest unserved area in the county - the facility will handle double that amount.

Mr. Syd Scott - architect - reviewed the diagrams - concept in grove of trees and to maintain the trees as much as possible. Locate it in the center of the site and have a parking and drop off area looping off Crestview. They are also planning for future administration building and some future potential parking,. The building is modeled after one that is currently completed in Sheridan. Features of the building are pushing the envelopment of sustainability - super insulated building and capitalized on the lot for natural daylight for the children with southern exposure. They have an HVAC system which is better air quality and air system for the kids.

Ms. Cantu handed out photos noting that the project was compatible to the residential neighborhood as it ties in with part of the neighborhood.

Commissioner Smith addressed the safety for the children around the railroad tracks.

Ms. Mingay said since it will be going to council for a hearing. The applicants shall keep the model of the building and the display drawing will be kept as an exhibit to the meeting.

Melinda Newland, Crestview Drive overlay zoning with the Springbrook district - it is not - what kind of traffic is anticipated. Mr. Eichman said the children's parents do not bring the kids to school. There is about 6 staff people, 2 teachers, an advocate, an assistant and a cook- there would be busing of the kids.

Mr. Eichman said phase 2 would add more vehicles to the administrative center - funding for early head start - 0-3, or after birth, they would want 2 people who would be an auxiliary site - there are more programs in the outlying area and then go from Newberg to McMinnville and add 2-3 more people. The Austins wanted to see something constructed that is compatible and similar to what their other sites are like the US Green building a sustainable building - 1 of 50 buildings that meet the sustainability criteria.

Ms. Mingay said staff recommends adoption as stated. Chair Van Noord closed the hearing -

MOTION: Smith/-Brittell to approve zone change from M-2 (Light Industrial) to R-P (Residential-Professional) and Comprehensive Plan Map change from IND (Industrial) to LDR (Low Density Residential) to accommodate a proposed head start facility. (6 Yes/1 Absent [Haug]. Motion carried)

Ms. Mingay said it will go to the March 15 City Council meeting.

3. APPLICANT: James R. Mitchell
 REQUEST: Tentative plat approval for a five lot subdivision to be known as Cottonwood Meadows 3 Subdivision
 LOCATION: Crater Lane North of Oxford
 TAX LOT: 3207DC-11104
 FILE NO.: 5-42-03 RESOLUTION NO.: 2004-172

CRITERIA: NDC § 151.242

City Attorney Terrence D. Mahr was in attendance to discuss the issue with the Commission.

Mr. Brierley said the same hearing rules apply to the hearing. It is on the Western side of Newberg - the applicant is requesting tentative plat approval for 5 lot subdivision. Each lot would be 7500 sq. feet or greater. A water line is available off Crater Lane. The applicant proposes installation of the improvements - seems to be simple subdivision and should be approved. The city staff would like to see it approved. The city has put improvements in the area - the city has approved a subdivision on this property twice in the past - this has not been developed because of issues with sewer. The existing sewer line has provided adequate service to the 32 lots in Cottonwood Meadows I, and II. Three does not quite have enough sewer fall from the City's sanitary sewer to service the area of the subdivision. Staff met with the applicant to help find solutions to the sewer issue. There were other properties in the same boat - they wanted to develop properties. They thought of forming a LID to contribute funds and install sewer system. The City did a significant amount of work with the property owners in the area and tried to organize the area - there were some other challenges, some of the properties were not in the UGB and some were not in the City. Staff worked hard and these properties were annexed and they got to the point to have the council hold the hearing and form the LID. When the effort proceeded, it went to a CC hearing to consider the formation of the LID. Of the 19 owners in the LID, the city receives only one remonstrance from Mr Mitchell, despite the fact that he was the original petitioner for the LID. He took the position that he should not be charged for the improvements. The council held a hearing and did the preliminary assessment of \$20,082. Mr. Mitchell has filed a lawsuit against the City for including his property in the LID and the Judge has ruled in favor of the City on all points - the attorney for the applicant has moved for reconsideration of the decision and the decision of the Judge also voted in favor of the city. Copies of the judgment were distributed. The applicant is proposing connecting to the sewer in one of 2 ways:

1. Have the lots connect directly to the existing sewer main in Crater lane through LID and to connect without paying an assessment through LID
2. Pump sewer to existing sewer in Holiday Lane located to the back of the property. He would install individual pumps on each to and pump back to sewer line on Holiday Lane.

Mr. Brierley said the Planning Commission's job was to review the request in light of existing development ordinances and criteria. The subdivision review process as it relates to the building and plumbing permit process and subdivision process. the processes are separate. The assessment process that decides that will be assessed a separate amount is separate from the subdivision review process. The Planning Commission has no authority to make any decisions about the local improvement district. The Planning Commission has no authority to say that they cannot connect to the sewer without a fee (assessment is not a connection fee - it is applicable to the property whether it is connected or not).

2. Building and plumbing permit process - they can apply for a plumbing permit to connect to the sewer system - decision has to be based on Building and Plumbing code. It is raised because in light of the applicant/ request for a sewer system - in light of what the building code says for 1-2 family code says - draining by gravity. If someone can connect without having to use pump station, they have to do it by gravity first. The building official to look at these.

3. Planning Commission is to look at Subdivision review process - generally a planning staff review - applicant has requested the Planning Commission review - based on the building code and applicable criteria. The applicable criteria from code and comprehensive plan. The lot sizes are correct, layout is fine - but the sewer issue is problematic as proposed by the applicant - (page 2) a sewer system run by gravity is much better served by gravity and directly connected to the Crater Lane main sewer system. The sewer system in Crater Lane is coming available within the matter of weeks, lines are there and are installed and other improvements need to be completed. The option to pump does not meet applicable criteria, but the connection directly to the main does meet the criteria.

Payment of assessment - Development Code says that final approval for plat and all fees have been paid or adequate guarantee has been given. If there is an assessment, it has to be paid before the property is allowed to be subdivided.

Mr. Brierley said the subdivision meets the standards with the exception of sewer. The applicants' sewage disposal system does not meet standards. The Planning Commission can deny the subdivision based on the sewage disposal system. Staff would like to have the subdivision approved with conditions to meet with applicable criteria. It has to connect to the Crater Lane sewer main.

Mike Gunn, attorney for Mitchells, 201-B N. Meridian, Newberg, said it should have been a straight forward decision. Terry Mahr is attending, because there are issues of what can and cannot do. The hearing is NOT about the Crater Lane LID, not to do what they are not allowed to do the judge ruled against them, they are filing an appeal with the court of Appeals. It should not be part of the LID. Mostly what Barton has said - is correct except - they are not asking for something special, they are as far as the property is concerned - owned by Holiday - more than 20 years ago, there was a LID formed for the North Main Sewer Lines. An area defined and properties were assessed - the Holiday property was assessed on a frontage and square footage basis. The property paid for the assessment to be able to build the N. Main Sewer line and to use the N. Main sewer line as developed and subject to the one LID already. Mr. and Mrs. Mitchell paid for the property with the assessment. That property should have been allowed to utilize the N. Main sewer line. What happened, over the

course of time, certain properties were developed and Mr. and Mrs. Mitchell obtained approval for Cottonwood Meadows I and II (there are 5 properties that won't gravity flow there - the issue is what is the City going to do to allow them on the property. That property has paid for the assessment.

Mr. Gunn said the one proposal about 4 years ago - for Mitchells to build a pump station - not to serve 10-15 parcels, but one to do one for acres and potentially use system development credits and upon annexation. The City would reimburse for certain areas. It was a disaster. System development credits was shelved due to economic standpoint. The subdivision approval does not on appeal as the lowest based jurisdiction - the staff would normally approve or deny the subdivision approval- they are not asking the Planning Commission to rule in Mitchells for not being part of the LID. They are not asking them to hook into the crater lane LID - they are asking that when they initially applied for the ability to pump those five stations. There is quite a difference in the staff report as to why these pump stations should be used - there is no evidence other than self serving statements from the staff - about the pump stations, that is far flung statement.

Mr. Gunn handed out a list of the properties that are served by pump stations. (Canned self contained pump systems) - predesigned systems and pump short distance where you can gravity flow from there. The city has allowed pump stations on the properties located at 204, 207, 208, 211 and 212 Pinehurst, 110, 115, 120 and 128 and 129 Nicholas Way, 129, 150 and 170 Lauren Court and the home located behind 170 Lauren Court.

905 N. Main
605 N. Washington

Mr. Gunn said that they were allowed "where practical" . Mitchell's have been denied the use of N. Main street for the main sewage. They are here to ask the Planning Commission to approve the pump stations authorized by the City's code because it is the only thing to do - and not having to pay \$20,082 fee to hook up 5 lots who already paid to hook up to the N. Main Sewer. The ordinances allow these types of pump stations (individual pump stations). They can be allowed by the staff.

Secondarily, there is another request, they will bond-offer a bond or cash in order to be able to do the work on these 5 parcels because it would be more economical to put in the streets and sidewalks. If they lose the legal situation and wants to hook up and the Court of Appeals tells them, that is what he will have to do without the individual pump stations. This condition be added to the approval of the subdivision.

Russ Mitchell said that the reason court ruled against it because the City states it paid for the assessment twice - they had not been approved them to be hooked up to N Main - The judge bought that hook line and sinker.

Chair Van Noord said Mr. Mitchell said he was in favor of the Crater lane LID and that after they denied the small pumps - he wanted to hook up and not have to pay for the assessment again. Mr. Gunn said they were not against the Crater Lane LID as far as the need for the sewer line for the pump station - they had a problem with the property being part of the LID in the assessment and had paid of the N. Main sewer.

Commissioner Schmitz said the cost of the 5 pumps- \$1200 each of \$6,000 rather than \$20,000 which includes the pump maintenance fee. Discussion was held how far is the closet house to the Main Street? Mr. Mitchell said it is about 100-125 feet - rather than 30 feet from the Crater LID service.

Commissioner Schmitz said the argument is that they are forced to be paid for the service twice. It was assessed for the N. Main and cannot hook into it. Mr. Mitchell said Mr Holiday was against first LID and was threatened - He paid \$500 every 6 months for 10 years to pay for it.

Commissioner Smith said the PC should be careful not to adjudicate the legal issues before the Court of Appeals and whether the property is part of the Crater Lane LID Mr. Gunn said they are not asking the PC to rule on this. The code said it is practicable and the City allows things to pump and discussion as held concerning the issue of expense.

Mr. Gunn said the staff report is complete with language why the pump stations should NOT be used from a health standard - even though the city has allowed to use these types of pump stations. He asked staff that in every other case were pump stations have been, the idea of practicable because of gravity flow situations. Mr. Brierley said there was not case where a gravity sewer was available. Discussion was held concerning the practicability of gravity flow not allowed. Mr. Gunn said that practicable in this case that this property has been assessed already once and allowed because it should not be allowed to use gravity flow due to assessment.

Why is it not practicable to have gravity flow? Mr. Gunn said it is possible to have gravity flow. But there are 5 parcels that have already paid for the assessment. Crater Lane LID was not there, they would not allow the subdivision or pump stations.

Mr. Mitchell said that the first time the subdivision was denied, there was not sewer line on Crater. So, it would have been practical then to allow them to do it.

Discussion was held concerning the number of homes in the area - with all 3 phases 30-35.

Commissioner Smith said there was no Crater Lane LID when you were denied at a previous time? Discussion was held concerning the Mitchell was allowed to pump to the College Street line. The Crater Lane line is still not working. The city approved a pump? Crater Lane (new), N. Main (paid for) and one on College Street).

Mr. Gunn said the City wanted a regional pump station - wanted the Mitchells to build it to take in the surrounding properties.

Mr. Brierley said this is the 4th application to subdivision the property, 1st approved, 2nd denied, 3rd approved and 4th pending.

Commissioner Schmitz asked Barton why were they denied access to the North Main in the previous application. Mr. Brierley said there are a total of 32 to that have connected to North Main. It is not accurate that they have not been denied access to N. Main. The way they have chosen to subdivide it- there is not gravity flow to N. Main. It was denied due to gravity flow.

Discussion was held concerning a rebuttal. City is recommending approval with conditions. Mr Gunn said the PC should not reflect on 30-35, the point is there are parcels that should be allowed to hook on to the N. Main and why were they denied: Because it was not gravity flow. At that time of the denial, there was no Crater Lane LID. The first one approved, second one denied. Mr. Brierley said the previous proposal was not being heard tonight. The criteria focused on the availability of the sewer. The proposal was inconsistent with the Development Code..

Tape 3 - side 1 -

Mr. Brierley said they worked with the applicant and want the subdivision to go through. The criteria is clear - the sewer main and stubs are available in Crater Lane. Gravity drainage required and it is the best use practical - don't have a choice but to approve or deny with conditions.

Commissioner Schmitz addressed the cost of the expense of hiring the attorney - principal of paying for something twice - he questioned why he did not appeal decision the last time through - he is clearly denied access in a practical situation - not to be addressed - the situation has changed - there is a sewer main that is adjacent to his property and is more practical because it is gravity flow. A discussion was held concerning how we got to this mess 5 years ago.

Discussion was held concerning the position of the Planning Commission to make a determination of going with gravity flow. Terry Mahn said the City has studied the area and formed the LID and put the property in the LID and the property gets it from Crater lane LID- and now he wants individual pump stations - then if it was approved by the Planning Commission - then it would be sent to the Council for the decision to be delivered (sewer). It seems easy that Mr. Mitchell said that he paid it - Mr. Holiday got assessed on the larger piece of property and the Mitchells subdivided it so that it would not be gravity flow. Over the 20 year period, it would be more than the individual pump stations - discussion was held concerning the benefit to the assessment an the court ruled on the benefit. When the entire property was assessed - he subdivided it in the five lots were not done to provide for gravity. It has been decided by the Circuit court, court of appeals, Supreme Court.

Commissioner Brittell said the assessment to the developer would be the same per lot for connection fees and on-going (SDC's) whether they go to Crater or to Main Street.

Commissioner Larson said that looking at it strictly public interest -if he bought a home with an individual pump station, he would prefer to have a gravity flow system to the sewer and he could not have it because the developer that the City approved would be upset. In the public interest - gravity flow system in the Crater Lane strictly in viewpoint of public interest. Certainly, the argument that the property paid for the N. Main sewer and does not want to pay for Crater is a very credible argument for a reasonable point of view. He is a disappointed that a reasonable assumption and solution is not worked out between the parties. Mr. Mitchell is hanging his hat on principal; and there could have been a reasonable solution.

Commissioner Smith agreed with Commissioner Larson that if a property paid for a LID into a sewer system, that seems unfair- but the Development Code says that a gravity system is better than pumping. So, practicable and what it is not because fair because it has already been paid. He said that Mr. Gunn said that the Planning Commission cannot make that decision because it is in the courts - so, gravity flow is much better.

MOTION: Smith/Larson to accept Resolution (5 Yes/1 Abstain (Brittell)/1 Absent [Haug]). Motion carried.

Mr. Brierley said Appeal can be made to the City Council within 14 days of the decision. Any process questions? Ask the Planning staff.

VIII ITEMS FROM COMMISSIONERS

Commissioner Brittell - New U-Haul business in town (Second Street) - automobile sale or rental - what is up? Mr. Brierley said that is the Dormers building. It has been in existence for about 4 years. Discussion was held concerning taking over 2 city blocks and street parking. Mr Brierley said he noticed it today and would talk with Dormers.

Commissioner Schmitz wanted to talk about practical point of view.

Commissioner Larson said what they had tonight is a straight forward application to do a project. The Mess which Commissioner Schmitz alluded to, is a breakdown of government.

Terry Mahn said that when you own a big piece of property and he is the one that controls how to subdivision he has to accept responsibility in such a way so that they were no longer a gravity flow - with some anticipation that he would take the gravity flow. How much is it to pump those five lots. He said he wanted to hook to the sewer and pay nothing. There was a blockage of communication and they didn't want to come to the table and once they get started on litigation - they are not willing to talk anymore. Whatever advice they thought over at court did not happen - they got slammed - they got the benefit of the LID. The law looks at the benefit of the property not just the developer- the city offered credit/accommodation - but he thought he would get away . Discussion was held concerning trying to reason with Mr Mitchell.

Mr. Brierley said that he sat down with the Mitchells to come up with solutions. The Planning Commission did not see that. They met with him and the solution was to get a gravity system so they don't have to pump. He agreed and was trying to get people to join the LID. It was a lot of effort. Chair Van Noord thanked staff for working with them.

Ms. Mingay said that the Planning Commission does not see that staff is trying to work with the applicants. They try their very best to get the public served well before it gets to Planning Commission.

Commissioner Schmitz said he sees the fairness all the time - why couldn't we have gotten that information and how the city tried the reasonable resolution. Discussion was held concerning the matter that was not part of this particular application. Not seeing the whole picture. Staff kept themselves to the details of this application. The history of the piece was in Mr. Gunn's presentation.

Tape 3- Side 2:

Commissioner Larson - noted Granite Motor sports was parking in landscaping area - 2/10-11 and 12/ 2004 - they did park in the landscaping area - they had 30 days after the Planning Commission hearing to follow conditions. Mr. Brierley said it was 30 days from the Council decision. He does not see landscaping, signs off the side of the building and not part of the code, not the wooden fence. He does not see any of the conditions being met.

Commissioner Larson - City is not requiring developers to place trees on Juniper Drive according to code. On Mountainview Drive a number of trees being damaged are put in according to the Code. As a taxpayer, he is concerned. He is at odds with the criteria used and tree codes of the city.

Commissioner Brittell said that staff may have a guidelines for setbacks to schools and residential areas to bring before the council before making recommendation changes in ordinances as it relates to cell phone towers.

Discussion was held concerning what action the city is going to take with the task force in developing transportation issues and is there anyway it can be addressed by staff. Ms. Lorraine Hall has information and history on both the process and what was said and that things fell through the cracks. Mr. Brierley said the process they are going through and the workshops and out from public. They are planning on developing a draft transportation plan and take that with staff's recommendation and they will be able to hold a public hearing and accept recommendation or change it. The recommendation will go to the City Council - there was certainly not a decision on the Planning Commission's part one way or another- we were just soliciting information. It will probably be addressed at the May/April meeting.

Discussion was held concerning whether it was the Planning Commission's position to determine whether this property should have to pay an assessment.

VII. ITEMS FROM STAFF

1. Update on Council items
2. Other reports, letters, or correspondence
3. Next Planning Commission Meeting: March 11, 2004

Mr. Brierley said the next meeting will have two hearings: (1) heliport for the hospital (2) appeal on a partition. There is a new staff person (Steve Olson) who will be trying to fill Barb Mingay's shoes.

