

PLANNING COMMISSION MINUTES
February 12, 2009
7:00 p.m. Regular Meeting
Newberg Public Safety Building
401 E. Third Street

TO BE APPROVED AT THE APRIL 9, 2009 PLANNING COMMISSION MEETING

I. ROLL CALL:

Present: Thomas Barnes Derek Duff Matson Haug
 Philip Smith Cathy Stuhr Nick Tri
 Lon Wall, Chair Amanda Golson, student PC

Staff Present: Barton Brierley, Planning & Building Director
 Steve Olson, Associate Planner
 David King, Recording Secretary

II. OPENING:

Chair Wall opened the meeting at 7:00 pm and asked for roll call.

III. CONSENT CALENDAR:

Chair Wall entertained a motion to accept the minutes of the January 8, 2009 meeting. Commissioner Haug motioned to accept the minutes and Commissioner Tri seconded the motion. Chair Wall asked for any corrections or changes. There were none.

Motion #1 Haug/Tri to approve the minutes from the Planning Commission meeting of January 8, 2009 (7 Yes/0 No, 0 Absent), unanimous voice vote.

IV. COMMUNICATIONS FROM THE FLOOR:

Chair Wall offered for non-agenda items to be brought forth from the audience, but none of the twenty citizens present had an additional topic for discussion.

V. QUASI-JUDICIAL PUBLIC HEARING:

1. **APPLICANT:** Fred Meyer Stores, Inc. c/o Barghausen Consulting Engineers, Inc. Conditional use permit & design review approval for a gas station on the western portion of the Fred Meyer site.
LOCATION: 3300 Portland Road
TAX LOT: 3216-2004
FILE NO.: CUP-08-004/DR2-08-036
RESOLUTION: 2009-262
CRITERIA: Newberg Development Code § 151.210, 151.194, 151.196

Chair Wall asked for any biases, ex parte contact, or conflict of interest. Commissioner Barnes conveyed to the others that he is a Fred Meyer's Reward Card member. He has the future potential benefit from lower gas prices as a card member. Chair Wall assured the commissioners that this alone would not be reason enough to exclude one or all of the commissioners tonight from participating as long as they were not biased.

Chair Wall informed the citizens present of ORS 197.763. He then asked everyone to silence their cell phones.

Staff Report:

Steve Olson reminded everyone of the location of Fred Meyer in general, with a graphic showing the location of the potential gas station on the western end of the property. The station would have a large canopy, seven dispensers, able to service 14 vehicles, with a small kiosk as well. It will only be a gas station, not an oil change shop or repair garage.

Gas stations are allowed in C-2 zoning (i.e., standard commercial property), with a normal design review process. However, the applicant has requested an exception to some of the large-scale retail design standards that apply to the Fred Meyer site, so a conditional use permit process is required. The Planning Commission makes the final decision on such conditional use permits.

Aerial photos presented the western edge of the site with a nearby stream corridor, the canopy of large trees in the stream corridor, and the relatively distant 99W Drive-In screen. Ground-level photos showed the nearly-empty western parking lot, adjacent landscaping, and the proposed area north of the property that needs reconfigured private walkways and traffic controls. Other design graphics showed the proposed new Fred Meyer gas price sign to be located on Springbrook Road.

Page 15/270 of the Agenda Packet included summaries of the public comments that had been submitted in time to be addressed in the staff report. Major concerns included

the ambient light from the property and its impact on the drive-in screen, as well as traffic issues in and around the site. Also mentioned or requested was the removal of the Springbrook Rd. median and the addition of a traffic light at the Fred Meyer driveway on Springbrook Rd. There were concerns about increased garbage and noise on the property, health concerns regarding air and water pollution, and the sentiment that Newberg has plenty of gas stations already. The main issue tonight is for the Planning Commission to decide whether the project can meet the criteria for a design review and conditional use permit. The City does not regulate competition between businesses.

Design review/Conditional Use Permit criteria:

Steve Olson reported that the proposed canopy structure is compatible with the buildings on the site. The proposed architectural canopy is a simple modern structure with no ornamental details and matches the simple box structure of the Fred Meyer building, as well as the US Bank building with drive-through canopy north of the site. The project will remove some parking but the Fred Meyer site will still have plenty of surplus parking if this proposal is allowed. The applicant is planning on revising traffic controls and walkways north of the gas station to better control the flow of on-site traffic. They will also install a new walkway to the main building for residents to the southeast. The applicant has done photometric studies that show light standards would be met with the proposed lighting. Additional conditions will require all the lights under the canopy to be recessed, and the western landscape buffer improved to buffer the impact of car headlights on the drive-in screen. This project would include the removal of two existing parking lot lights. Another approval condition is to ensure that the oil-water separator for stormwater under the canopy operates at all times. The applicant wants to revise the freestanding Portland Rd. sign to include electronic gas prices, as well as install a new Springbrook Road sign. No work will take place in the stream corridor on the site, and no new street improvements are proposed.

Steve Olson summarized the findings of the traffic study report. There will be 74 new trips in PM peak hour due to the additional facility. The applicant's engineer used an I.T.E. 20% shared trips number, which staff thinks may be too conservative. The impact may be lower than they project. The traffic study concludes that no off-site improvements or access improvements are required due to the impact of the proposed gas station. ODOT has reviewed the application and is not at this time requiring any mitigation. They are requiring the applicant to apply for new access permits for the site because of the change of use on the site. When the applicant submits the access permit application then ODOT will review the entire scope of the applicant's traffic study to ensure it was comprehensive and decide whether the accesses need improvements.

The project is also required to address the C-2 design standards for large-scale retail sites. The project does meet some of the criteria but has asked for exceptions to others, which is why the conditional use permit application was required. The project will bring the entire site closer to conformance with the C-2 standards by removing parking between the building and the street, and adding an active use to a part of the building that is primarily a blank wall without windows. The project would also remove some surplus

parking from the site, and bring the site closer the parking maximum. The project will be conditioned to add trees along the southern edge of the parking lot to buffer the future residential development in that area. The applicant has requested exceptions to some standards because the nature of a canopy over gas pumps does not lend itself to meeting some standards. The canopy does not have a pedestrian entrance, and does not have windows because it does not have walls, other than for the small cashier's kiosk. The canopy is not a massive structure and does not need articulation to break up its mass. The conditional use permit criteria examine whether the proposed project can be compatible with nearby development. The previously mentioned conditions regarding controlling lighting, landscape buffers, and revisions to the on-site traffic controls will ensure that the project can be compatible. The operating hours will be the same as the main store (7 am-11 pm) and will not create a negative impact for nearby properties. The site will be convenient for users of the main store, the design will be reasonably attractive, and will be buffered with new and existing landscaping.

The final staff recommendation is to approve the applicant's request with the following key conditions: use recessed canopy lights, fill gaps in the western buffer with trees, control and minimize construction lighting, add trees along the southern edge of the parking area near the site, acquire ODOT access permits, finalize sign details and shift location of new Springbrook sign, ensure there are garbage cans at the gas station, and install a fire hydrant if necessary.

Questions of Staff:

Commissioner Haug wondered how the empty parking lot pictures taken in winter will really jive with a full parking lot during the busy months of the garden center. Steve Olson noted that the western parking lot is empty most of the year, but asked the applicant to address the question during their testimony.

Commissioner Smith wondered how the sidewalk project on the SE corner is being tied to this project. Steve Olson reported that a new project is an ideal time to take care of other shortcomings on the site, and bring the pedestrian connections up to code. To the applicant's credit, they remembered this long standing request and have proposed the new walkway. Barton Brierley added that the sidewalk was only a neighborhood request, not a requirement from the City

Commissioner Stuhr asked about the stormwater catch basin connection to the stream corridor. The applicant will have to install an oil/water separator that operates at all times. DEQ sets water quality standards for cities, which have increased over time and will probably increase in the future. The city has stormwater standards, and the Engineering division reviewed the application and determined that the project did not need detention. Commissioner Stuhr also pointed out that many projects brought before the Planning Commission "always" have a minimum impact on traffic. But some day the accumulative impact is going to be felt. Furthermore, other projects affecting Springbrook Rd. interchanges have had to pay for improvements to the interchanges. This is not an annexation, however, like most of the other projects. Barton Brierley

added that Fred Meyer has paid in the past to fund the traffic light at Springbrook Rd. and Hayes St. to the south. Commissioner Stuhr also wanted to know how ODOT would inform Newberg of access permits. Steve Olson explained that Newberg must be in the loop on such information, and no building permits would be issued until the access permits were obtained. The traffic engineers have looked not only at 2009 impact on the site, but have projected all the way out to 2025. He also followed up on the benefits of Hayes St. The Springbrook Oaks neighborhood to the south will likely use Hayes Street to access the gas station. An aerial schematic of the area showed Hayes St. running all the way east to Providence Dr., which was designed in part, to help relieve traffic congestion in the area.

Commissioner Smith asked about the right-in, right-out from Springbrook Rd. It was not immediately acceptable to people when first installed. How will this median traffic control discourage potential customers who can't enter the site from Hwy. 99 Steve Olson expected that people would drive down to Hayes St., head east, and enter the site's eastern parking lot, and then learn not to turn down Springbrook.

Commissioner Haug asked how the Planning Commission can make an educated decision tonight without all the facts from the ODOT. Will this make any decision tonight incomplete? Chair Wall also asked staff what it meant by "being in the loop". Steve Olson answered the latter question first. Both ODOT and the applicant will inform the Planning Department of the access permits. The city will not issue building permits until the access permits have been obtained, so we control the permit process. The access permit condition is a fairly standard ODOT response to new projects on a state highway. They are not requiring mitigation at this time but reserve the right to change their mind after a more thorough review of the traffic study/access permit application. The access permit process will take months to complete.

Commissioner Haug also asked about the "probably" used in conjunction with the lighting impacts on the drive-in. Can the project meet the code standards but still deliver a negative impact? Steve Olson responded that the project can meet the light-trespass standard as proposed, and that the city has proposed additional conditions to further reduce the potential impact of headlights, which were not anticipated in the light-trespass standards. This project should have less impact than the other projects recently built near the drive-in, which have worked out to have a low impact in practice.

Commissioner Haug also wondered if traffic studies have considered Fred Meyer having special low price sales or gas discounts. Steve Olson did not think that the traffic study dealt with extra high peaks, it was based on the expected typical use.

Commissioner Stuhr read from p. 22 of 270. Steve Olson explained that the stream corridor overlay did not apply to this project because no work was proposed within the stream corridor area.

Public Testimony:

Chair Wall asked that people electing to talk try to stick to the criteria. Furthermore, a time limit will not be strictly enforced but citizens were asked to bring concise comments related to the criteria. Chair Wall also asked that people mention their name first.

* * * Five minute break * * *

James Coombes, employed by Fred Meyer Real Estate Division, appreciates seeing familiar faces on the commission after seven years. He pointed out that Fred Meyer likes being part of the community, and it very recently created a large cake to celebrate Oregon's 150th birthday, and is the second highest employer in the state.

Unlike seven years ago when the station was proposed for the northern parking lot, Fred Meyer has found that many one-stop grocery stores now have gas stations. There are 130 Fred Meyer stores in four states, and 55 currently have gas stations. Ten more stations are planned within the year.

Commissioner Haug wondered if Fred Meyer has considered putting the station on the east side of store, especially for flow of traffic. Mr. Coombes said that the west side keeps the station away from the homes that have filled in to the south and east, and the west side is used less for parking.

Commissioner Barnes wondered what increase the project will bring to the property value. Mr. Coombes didn't think it would be much in light of a 5,500 sq. ft. fuel station being added to a 170,000 sq. ft. building.

Chris Ferko, a representative and consultant for Fred Meyer, stated that fuel centers have become an integral part of many Fred Meyer stores and are such for over 700 Kroger Co. locations. These fuel centers encourage one-stop shopping, and decrease traffic throughout the city.

He used PowerPoint to show schematic drawings of the proposed project. He also presented a candlelight photometric plan of the proposed project. This interesting chart shows how lighting will only exist where needed under the canopy. The Fred Meyer fuel stations have long dealt with community concerns about excess lighting. He explained how all the lights will be recessed or shielded, all of them pointing down from the canopy. The project will also remove two current, tall parking lot lights.

Commissioner Haug wanted him to comment on the right-in, right-out from Springbrook Rd. Mr. Ferko deferred the answer for the traffic engineer. Commissioner Haug also asked if they would waive the 120-day requirement for a decision. Mr. Ferko conferred with his client and then said yes.

Brent Ahrend, Traffic Engineer with Group Mackenzie, said ODOT requires a review of access permits with a change of property use. For the right-in, right-out on Springbrook

Rd, it cannot be changed due to the proximity of the stream corridor and the lack of distance from Hwy 99W to the left turn into the Fred Meyer driveway. The road does not have adequate width to install a left turn lane.

Commissioner Haug wondered if ODOT has jurisdiction on the Springbrook Rd. entrance even though they seem interested in the operation of the stop light intersections of Hwy 99W at Springbrook Rd. and Brutscher. Brent Ahrend said that ODOT will look at the impact on the two stop light intersections and driveways.

Commissioner Haug also asked about the traffic impact of locating the station on the east site. Brent Ahrend restated that the east side is a busier parking lot, and might actually encourage more traffic to go through the adjacent neighborhood.

Chair Wall asked about the figure of 74 new trips in the PM peak hour. Brent Ahrend reviewed the trip generation figures and presented them with additional highlights. He noted that peak hour is defined as 4:30 – 5:30 pm.

Commissioner Haug wanted to hear about traffic figures during special gas price sales. James Coombes answered that they didn't have specific traffic studies for promotions. He relayed the fact that a blue tourist sign that already exists at Brutscher Street to advertise the Fred Meyer Deli will also advertise the gas station, and encourage traffic to use Brutscher Street. He also told the commissioners that the only time there is a big sale is when the gas station opens, that they have learned from earlier opening events, and haven't had traffic problems with recent openings. Mr. Coombes also agreed that the gas station would not operate beyond the store hours.

Commissioner Tri asked about refueling truck schedules. James Coombes said that it is hard to know the truck schedules currently, but they typically are scheduled for off-peak hours.

Commissioner Stuhr asked about the certain parking spots interfering with the proposed new intersection, south of the bank. The actual design picture made the new intersection look like it overlaps with the parking spots. James Coombes assured them the situation would be investigated and rectified. Cathy Stuhr also asked about the new sidewalk from the SE corner. This would be a walkway painted on asphalt. She concurred with Commissioner Haug that the traffic safety yellow striping on the site in general is at a dangerous point, and future maintenance plans should ensure the painting is never allowed to be this faded again.

Commissioner Haug wondered if a fueling truck route is available. Chris Ferko showed a picture indicating the proposed route.

Brian Francis, owner of the 99W Drive-in, said he appreciates the commissioners' efforts. He has been encouraged by the landscaping buffer, and the recessed lighting; however, he would like to have the applicant be ready for handling mitigation if a negative impact was to result on the drive-in when the project is finished. He would like

the focus-type lights eliminated, did not want construction during movie hours, and would like lighting studies to be done and mitigation for any impacts. Commissioner Haug asked Mr. Francis about Chevrolet and Dodge lots' lighting. Mr. Francis said there was a negative impact on the drive-in from those projects.

Gary Bliss, a Newberg resident, had four points to present. First, there are 17 storage containers existing on the property, five on the western parking lot. These affect available parking. Second, the western parking lot slopes towards the stream corridor. Are there any provisions for accidental spilling of fuel entering the stream corridor? Thirdly, he does not understand how there is less impervious area after the project is complete. Finally, he also alerted the commissioners that the western parking lot is also used for storage of gardening items during the summer months. Commissioner Haug wanted to clarify that the storage containers are taking up parking spaces. Gary Bliss said 16 parking spots are being used.

Steve Reimer, independent operator of a fueling center on the west side of town, has concerns about the objectivity of this public hearing. Commissioner Haug stated that the commissioners have tried to stick close to the criteria. Chair Wall pointed out that the hearing needed to occur, and objectivity perhaps is never perfect but they felt they were unbiased. Steve Reimer addressed livability as an issue that needs to be addressed. Chair Wall said that livability isn't strictly a criteria but it is often considered. Commissioner Haug let Mr. Reimer know that an appeal of any decision tonight can be appealed to City Council.

Samuel Farris, a resident in a town home just south of Fred Meyer, wanted to address the traffic at Springbrook at Hayes. Though a loyal customer, he does not want to see the station approved. He asked about the criteria that denied the station seven years ago. He was told that traffic and the location were the main reasons it was denied. He has found that a car per minute drives behind the Fred Meyer store. This has caused unwanted noise. It will only get worse with fuel trucks during off-peak hours. Mr. Farris has worked lately with the store manager to get noise enforcement and limitations on delivery hours. Commissioner Stuhr asked if he had solutions. Samuel Farris said blocking the traffic from the back of the store would be a good start. He would also be in favor of a street being closed off in his neighborhood to keep down the flow of traffic into Fred Meyer. Commissioner Haug asked how long traffic/noise has been an issue. Samuel Farris has lived there for two years, and noise has been a problem since they moved in. Since December 2008 he has been documenting the disturbances. Within the last month, he has contacted the city code enforcement staff about the issues. Commissioner Smith asked if one condition of the project was continuous noise compliance, would this please Mr. Farris. Samuel Farris said yes.

Andy Patel, owner of the Newberg Chevron, believes that a new gas station in Newberg will compound traffic problems at Brutscher Rd. He passed out pictures of closed gas stations in the Astoria/Warrenton area due to a Fred Meyer gas station. He also mentioned that Sherwood denied a Safeway gas station in 2004. He presented a list of signatures of people opposed to the Fred Meyer gas station. Chair Wall asked Mr. Patel

if the trip estimate into Fred Meyer seems reasonable. Andy Patel said he has roughly 400 trips into the Chevron station.

Jeff Kleinman, Mr. Patel's attorney, distributed a memo. He too was present here seven years ago representing Town & Country gas station. Newberg has a lot of fueling stations already. Mr. Kleinman believes that it has not been fully considered how many Portlanders and tourists with Fred Meyer Reward Cards will be dropping in and increasing traffic.

There are several sets of criteria that govern this application, and he points out that the applicant has not met the burden of proof for meeting the design standards. Mr. Kleinman believes that the generic Kroger fueling station picture is not sufficient for the reviewing process. The site seems very narrow, and he doesn't know how the application can be properly reviewed without more details from the applicant.

He referenced the Cooperstown restaurant, and the aesthetic compatibility of the adjacent mini-mall. He wants the design standards raised for the gas station to match standards across the street. It is not fair for the proposed gas station to lower the aesthetics in the area. He doesn't want the city to lower its standards for a piece of commercial property sitting high on a bluff above the stream corridor.

Jeff Kleinman stated that the application is not complete. In part, because the building materials have not been provided, a design plan to scale has not been shown, the parking spaces are not provided in a complete fashion that can be reviewed, not a complete sign/lighting plan, and there is no indication of roadway improvements, which will be discussed by Mr. Bernstein. Lastly, he states that the design compatibility is inferior to the properties west of the site, let alone those existing on site. This ends his memo.

He then addressed issues that came up in public discussion. ODOT will have to approve changes to any intersection. Therefore, until these changes have been approved, he doesn't know how the Planning Commission can make a decision tonight.

Chair Wall allowed for a break, though he wants the other two citizens who have signed up to speak to persevere and have their opportunity.

* * * Five minute break * * *

Commissioner Smith asked whether the design is poor or is too incomplete to review. Jeff Kleinman believes that both apply to the application.

Robert Bernstein, a registered consulting engineer and representative of Mr. Patel, noted two main points regarding the fueling truck path and site circulation. Without a plan that shows the fuel truck traffic plan, as well as a footprint of the truck when it is parked and filling the tanks, it is impossible for the Planning Commission to make a decision. Furthermore, he critiqued the traffic study figures and the superficial conclusions drawn from them. If there is any quantifiable impact on the intersection at Springbrook Rd. and

Hwy 99W, then ODOT's policy is to require improvements so that traffic flow doesn't become worse.

George Johnston, owner of the Dutch Brother's coffee shop as well as a Sherwood gas station, spoke. He brought an analysis of customers going into Fred Meyer. He surmised that 5,000 – 5,500 customers/day enter the store, with 70% of them driving by the front door. He also pointed out that a gas station selling diesel will attract large trucks and trailers, especially in the busy season of summer. He also asked for the record to be left open for seven days.

Chair Wall wanted to hear from the commissioners on how to proceed. Commissioner Haug suggested hearing from the applicants to rebut what they have heard during public testimony, and leave the record open for another month. Chair Wall would rather allow the rebuttal to be postponed and presented next month as well. Commissioner Haug cautioned that proponents and opponents might both want to speak at the next meeting. Barton Brierley said either choice is legally possible.

Commissioner Haug proposed that both proponents and opponents speak at the next meet, and then allow any rebuttals. Commissioner Tri seconded. Barton Brierley pointed out that March 12 has two agenda items already, but maybe one item could be rescheduled. It was agreed to meet February 26, 2009 7:00 PM, with location to be determined.

<p>Motion #2 Haug/Tri to continue the hearing to the Planning Commission meeting on February 26, 2009 (7 Yes/0 No, 0 Absent).</p>
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VI. ITEMS FROM STAFF:

At the City Council meeting on February 17, they will discuss and consider the cell tower ordinance and the parking ordinance.

Barton Brierley handed out a useful brochure on parliamentary procedure. He also learned of an alternative way to limit long-winded public testimony, which he then explained to the commissioners.

The next Planning Commission meeting is scheduled for March 12, 2009, regarding an annexation and a zone change.

VII. ITEMS FROM COMMISSIONERS:

Commissioner Barnes asked about Harris Thermal Transfer Products on Springbrook Rd. putting in a sidewalk. Barton Brierley reported that they are on

schedule to design and build a half-street improvement, and any delay was due to the city waiting for the company across the street to decide whether it would participate in the street improvement.

Commissioner Smith announced the Affordable Housing Ad Hoc Committee Open House for public feedback and scheduled on February 24, 7:00 PM

Commissioner Haug asked about traffic cutting through a grassy area at the Wilsonville Rd. interchange with Springbrook, and whether trees or hedges could be added to stop this. Barton Brierley said that staff will investigate.

Commissioner Stuhr asked what the procedure was for visiting with people on the issue prior to the next meeting. Any discussions would be ex parte contact and would need to be reported at the next hearing, so it would be best to avoid discussing the item outside of the hearing.

VIII. ADJOURN:

Chair Wall adjourned the meeting at 10:38 p.m.

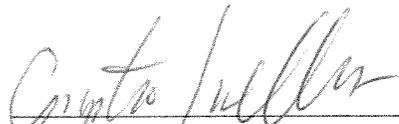
Approved by the Planning Commission this 9th day of April, 2009.

AYES: 6

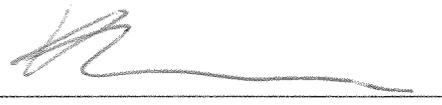
NO: ∅

ABSENT: 1
(List Name(s)) M. Haug

ABSTAIN: ∅
(List Name(s))



Planning Recording Secretary



Planning Commission Chair