

PLANNING COMMISSION MINUTES

May 13, 2010

7 p.m. Regular Meeting

Newberg Public Safety Building

401 E. Third Street

TO BE APPROVED AT THE JUNE 10, 2010 PLANNING COMMISSION MEETING

I. ROLL CALL:

Present: Nick Tri, Chair Philip Smith, Vice Chair
Thomas Barnes Matson Haug Cathy Stuhr
Lon Wall Derek Duff

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

Others Present: John Bridges Chris Ferko Mekheil Tadrous
Gary Bliss Sue Cole Brian Francis
Brent Ahrend Jim Coombes Sam Farris
Jennifer Bragar Steve Reimer Andy Patel

II. OPEN MEETING:

Chair Tri opened the meeting at 7:00 p.m. and asked for roll call.

III. CONSENT CALENDAR:

Chair Tri entertained a motion to accept the minutes of the April 8, 2010 meeting.

MOTION #1: Wall/Haug to approve the minutes from the Planning Commission Meeting of April 8, 2010. (7 Yes/ 0 No/ 0 Absent) Motion carried.

IV. COMMUNICATIONS FROM THE FLOOR:

Chair Tri offered an opportunity for non-agenda items to be brought forth. No topics were brought forward.

V. QUASI- JUDICIAL PUBLIC HEARING:

APPLICANT: Fred Meyer Stores, Inc., c/o Barghausen Consulting Engineers, Inc.
REQUEST: Conditional use permit & design review approval for a gas station on the 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 NO.:** 2010-262
CRITERIA: Newberg Development Code § 151.210, 151.194, 151.196

Opening of the Hearing:

Chair Tri asked the Commissioners for any abstentions, conflicts of interest, or objections to jurisdiction. Commissioner Wall stated he frequents Fred Meyer as a customer which means he has been on the property and has made observations, as well as being a discount card member. He has had no discussion or contact with anyone regarding this application. Commissioner Haug submitted his ex-parte contact to staff which is located in the staff report. The other Planning Commission members agreed that they too frequent the Fred Meyer Store and agreed it will not influence their decision in this matter. Chair Tri read ORS §197.763.

Steve Olson stated this is a continued hearing from February 12, 2009. Mr. Olson presented the staff report as found in the official meeting packet. He recapped the criteria as well as additional design standards that apply to development in the C-2 zoning district. Public comments were received prior to the February 12, 2009 hearing, at the hearing, and during the recent comment period before this May 13, 2010 hearing. There have also been articles about the project in The Newberg Graphic, and other ex-parte contact. Comments have been received from Brian Francis, 99-W Drive-In Manager, who is concerned about the impact of light trespass on the drive-in movie screen across Springbrook Road from the development site. Other comments have been received from the public regarding the impact of increased ambient light at the drive-in, the need to protect the drive-in as a local landmark and tourist magnet, increased traffic, increased garbage, noise, health concerns due to fumes from the gas, and that Newberg currently has enough gas stations already. Mr. Olson stated the City does not regulate competition thus the number of existing gas stations is not something the decision can be based on.

The traffic study estimated that the fuel facility would generate approximately 74 new p.m. peak-hour trips to the site, which would be scattered between the various access points to the site. The facility would be open from 7 AM – 11 PM, which will match the hours the main store is open. Commissioner Duff and Commissioner Haug asked if refueling could occur during off hours. Mr. Olson replied that Fred Meyer has committed to refueling in off hours to minimize traffic. If that is a noise concern then Fred Meyer can have deliveries come at a different time.

Staff recommends the adoption of Planning Commission Resolution 2010-262 that approves the requested conditional use permit/design review with conditions.

Chair Tri asked staff if any late correspondence had been received. Steve Olson stated quite a bit was received; there were several emails. Also, an article in The Newberg Graphic regarding the hearing tonight is included as ex parte contact as it was probably read by many of the Commissioners. Another submittal was received yesterday from an individual who will be testifying at the hearing tonight and will show a PowerPoint presentation with his testimony. The last piece of correspondence was received today from a firm representing Leathers Oil Co., a 5-page letter and with a 6 page traffic study.

MOTION #2: Haug/Smith moved for Steve Olson to read aloud the article in the Newberg Graphic and the several email correspondence and letter received after 5 PM on Thursday, May 6, 2010; and for Mr. Olson to pass out the hard copies of correspondence; and to accept the PowerPoint presentation to view this evening. (5Yes/ 2 No/ 0 Absent) Motion carried.

Chair Tri recessed the meeting allowing the Commissioner time to read the submitted material followed by a 5-minute break. The Planning Commissioner reconvened meeting at 8:17 PM.

Chair Tri opened the public testimony.

Proponents:

John Bridges, Attorney, is representing Fred Meyer Stores on this application. Chris Ferko passed out the PowerPoint presentation pages for the Commissioners to follow as Mr. Bridges walked those in attendance through the presentation. The presentation analyzed the following criteria: reasonably compatible with the surroundings, provides a convenient and functional shopping environment; and being as attractive as the nature of the use warrants. Mr. Bridges reviewed several business structures in the area of Fred Meyer to show the compatibility of the proposed gas station to its surroundings. He showed where the canopy will be located on the Fred Meyer site and the color schematic of a comparable gas station located in Medford, Oregon which showed the lighting generated at night time. The lights do not extend far from the site and are aimed downward. He looked at other community gas station locations in Dundee and Newberg and all have canopy designs. Fred Meyer will actually be a smaller facility than some. Interesting to note, most of the gas stations in the community are multi-purpose with restaurants and convenience stores. Mr. Bridges reviewed the operations of the gas facility. He showed a photometric study of the light levels under the canopy and on the site nearby. Not only will there not be light trespass to the drive-in, but the lighting will actually be improved by removing two of the tall parking lot lamps and adding shields to the existing lights on the garden center wall. Staff has required an additional landscape buffer to help with lights from car headlights. Also, changes are proposed to the pedestrian circulation at the entrance to the north and east of the site by putting two - 90 degree crosswalks with a short sidewalk, causing a more defined intersection. The existing entry, the first right in, will be modified to address ODOT's concerns. The design will be changed so there will be a right and left turn lane as you near the building, and stop signs at the through travel lane allowing for the entryway to empty out in a more orderly fashion. He showed a fuel truck diagram, which shows trucks entering from Springbrook, right into the entry and circling around the canopy structure to refuel where the tanks are. Only one side of the last row will be affected during refueling. Fuel trucks will not come during peak hours or off hours - none will arrive before 7 AM or later than 10 PM. The stormwater drainage currently runs into a bioswale; the addition of an oil/water separator will add further protection under the canopy. Any kind of drips from cars that park there will go through that separator and reach the bioswells in a cleaner condition. Also submitted was information from the safety analysis, which shows a thorough explanation from engineers who designed the storage tanks and pumps. Because of the size of Fred Meyer, not only do you have alarms that go off on site, but also a main center that monitors alarms throughout the entire country 24 hours per day, seven days per week.

Mr. Bridges concluded by stating the City staff recommends approval, the project meets all Conditional Use Permit criteria, and the project is a state of the art gas station. The applicant agrees with all conditions of approval but asks for one change; for the language on page 36 of the official meeting packet, last paragraph, second sentence that states, "Prior to the insurance of a *building permit* for construction...", replacing the words "building permit" to "occupancy permit", showing they need to construct all that ODOT has required before they can operate the station.

Questions:

Commissioner Stuhr asked why Mr. Bridges did not look at the compatibility with the Columbia River Bank building. Mr. Bridges replied he did not because it is located on the other side of Fred Meyer and is screened from the proposed gas station site. Ms. Stuhr stated that may be true, but Mr. Bridges had made comparisons in his presentation to gas stations across town. Mr. Bridges explained he showed other gas stations to compare the same use as well as comparing how this site would fit in to the surrounding properties. Commissioner Stuhr is concerned with the internal movement of traffic. She inquired as to the traffic traveling in front of the store and asked if there are traffic counts in the study for that area and if the internal traffic plan will work. Mr. Bridges replied this proposal will vastly improve it because one of the problems at this entrance is traffic has to wait in the same line in order to make a right or left turn and cross traffic does not have a stop. Now, someone who enters the first entry will have a choice in turning left or right. There is a second right entry that steers people toward the grocery area, which has the most parking and traffic. People who are buying groceries typically use that second entry.

Commissioner Duff said he understands Mr. Bridges point, but he lives on the north side of Newberg and also understands Commissioner Stuhr's point about congestion. This is a key issue for him. Also, it puts a lot of traffic on the main drive aisle at the main entrance which could be a safety issue for pedestrians. Mr. Bridges replied there are wide stop bars in front of the main entrance that allow for crossing pedestrians. Commissioner Duff is concerned with the potential congestion, and does not think the plans are realistic for shopping on a Saturday afternoon. Although the efficiency will improve in terms of the right and left hand turns into the complex, the flow of traffic will be compromised in front of the store due to the stop signs. Mr. Bridges does not agree, but rather thinks it will be an improvement. Other proposed solutions were considered but were rejected by ODOT.

Commissioner Stuhr asked about the depth to groundwater measure. Mr. Ferko indicated it is lower than the excavation. Commissioner Stuhr asked the time period between a leakage and an alarm being set off. John Bridges will research the material this evening in order to answer her question.

Commissioner Smith stated according to the staff report, 74 additional trips will be coming onto the site. Most of the traffic may already be on site and asked if a study was done on the traffic going past the main door. Brent Ahrend, Traffic Engineer, said an estimate was done for ODOT. There were estimated volumes as part of the discussion with ODOT when they wanted to close the western access. Brent found that with the two lanes and stop signs, even with additional trips going in and out, it would still be a better operation at that particular intersection than is there today. John Bridges does not believe a study was done as per people in the parking lot at peak times. Commissioner Smith stated that is the number of concern. John Bridges stated Fred Meyer wants their customers safe and will do what is needed to maintain safety. Commissioner Smith referred to the photometric plan and stated he understands that Fred Meyer is making some improvements to decrease light pollution, but people are concerned and need to be convinced. He asked John Bridges what would be his response to Fred Meyer paying for two light studies in the field; one now and one when the construction is over. Mr. Bridges replied he would have to approach the applicant with that question, but the problem with that approach is that the amount of light at the Springbrook intersection is affected by more than just the Fred Meyer site. Streetlights, vehicle lights, lights that come from Shari's, etc. all affect the lighting. Essentially, they can show you that what they add to the Fred Meyer site will meet the standards. A study done in the field cannot control the other factors (moon, cloud cover, etc.) that affect light levels. They have lights on site approved in the past that will be removed, reducing the impact. Fred Meyer volunteered to put shields on the garden lights. At the end of this application, light will be reduced from what is there today.

Commissioner Smith asked if Fred Meyer would be willing to do a study as he suggested. John Bridges does not think a before-and-after study can be done that could isolate the impact of the gas station.

Commissioner Wall is not sure why Mr. Bridges is not willing to do a light study and why he believes it is not necessary to do so. John Bridges stated the new lights will not travel beyond the boundary of the property. Commissioner Wall does not understand the objection to the study if that is the case. Mr. Bridges stated there is no way of knowing what light is coming from the Fred Meyer site and what is coming from the bank or street signs. There is no way to carve out Fred Meyer's footprint. They could show what the two parking lot lights generate. He could also show how the garden lights generate light travel and then how when shielded, decrease light travel. Commissioner Wall stated all the pictures Mr. Bridges has shown the Commission are of similar industries, neighboring commercial businesses; all commercial uses that were put up before the current standards that, as Commissioner Wall understands it, Fred Meyer was not in compliance for roughly half of the features in the standards which are now City code. Why then is it acceptable for something the size of this Fred Meyer Gas Station to not meet all of the code requirements? Mr. Bridges stated he attempted to show all the surrounding areas but did apologize for not showing the vacant land to the south, where additional landscaping buffering will be placed. He did not see the need to show the townhomes on the other side because they do not directly surround the property. He believes Commissioner Wall has misunderstood what staff said regarding the code. They did not say 50% of the design review standards are not in compliance but that the applicant has asked for exceptions to roughly 50% of them because those standards do not make any rational sense for a gas station. The standards were developed for buildings with walls and windows, and to say how big box developments should look in Newberg. He believes Mr. Olson is saying they have asked that the standards that apply to a big box not apply to the canopy. Commissioner Wall stated there are design standards for big box, but for substantial changes you have to be in compliance and bring the site up to current standards.

Commissioner Haug asked what consideration has been given to placing the gas station on the other side of Fred Meyer. Mr. Bridges replied the parking lot has the greatest utilization on the other side since it is the grocery entrance. The traffic study found it would increase traffic on the public street coming out of the southeast side of the site. If the gas station was located there, it would cause some traffic to go through the neighborhood and put some degree of light and noise next to the townhomes. Additional traffic on the highly utilized parking lot, and additional noise were not a good idea. Commissioner Haug brought up the problem of people heading south on Springbrook not being able to make a left turn, and possibly turning illegally. Mr. Bridges stated that for traffic heading westbound, there will be signage to indicate the gas station location prior to Brutscher Rd. Commissioner Haug referred to the photometric plan and asked what technology was used in obtaining that information. Mr. Bridges explained it is a software technology that is generally accepted and used by lighting designers. Mr. Haug would like to see evidence in documentation that it is an accepted resource. He then referred to the fuel truck diagram and asked how the trucks will come in Springbrook. Mr. Bridges replied on Hwy 219.

Commissioner Haug added there is no guarantee the trucks will not drive through the neighborhoods. John Bridges stated it can be added as a condition. Commissioner Haug is also concerned that once this facility is built, what happens if there is light pollution that affects the drive-in. Mr. Bridges is confident the light will be less noticeable after the facility is built than is there now. There are trees on the opposite side of Springbrook, and one of the conditions of the application is to add more vegetation near the site.

Commissioner Duff referred to the photometric study, asked about recessed lighting, and whether or not that included the canopy and lettering on top of the canopy. Mr. Bridges replied the signs are backlit and

covered by plastic panels. Commissioner Duff asked if they protrude past the recessed light in the photometric design. Mr. Bridges stated that after looking at the picture of the Medford gas station at night, he does not believe so.

Commissioner Stuhr suggested addressing the public testimony due to the late hour and to ask any further questions of Mr. Bridges after the testimony is heard.

Undecided:

Bryan Francis, owner of the Highway 99 Drive-In, asked what the lighting will be at 11 p.m. Mr. Bridges replied they turn off a certain number of the lights under the canopy; one light will remain on under each bay for security lighting. Mr. Francis appreciates what Fred Meyer is willing to do, but the headlights on the cars that drive up to the gas station are a concern. Perhaps fencing would help along with added landscaping. Sometimes you can see light coming through landscaping and onto the theatre screen.

TIME – 9:56 PM

Opponents:

Samuel Farris gave a PowerPoint presentation in opposition to the Fred Meyer fueling station. He gave the following reasons to oppose it. It will raise safety concerns by increasing the already elevated auto traffic through the Oaks at Springbrook townhouse neighborhood. Today, the majority of the traffic in the neighborhood is Fred Meyer customer traffic to or from Hayes and Brucher. His sampling during after school and weekend hours, when kids and families are outside, revealed that roughly 50% - 75% of traffic was Fred Meyer related. It will increase the already troublesome noise behind the store and in the Oaks at Springbrook townhouse neighborhood. Noise has been and continues to be a long-standing issue behind the Fred Meyer store, and this would increase auto and truck traffic. Customer traffic will increase behind the store driving to or from the fueling station; revving auto engines are already a nuisance and this would only worsen. The City required Fred Meyer to relocate their refrigerated trailer to the proposed fueling station location due to noise ordinance violations. The noise began the first night and it took over a year to enforce and have them move the refrigerator. If this application is approved, where would the trailer go then? Having Fred Meyer fueling trucks drive behind neighboring homes and throughout the neighborhood will further reduce the quality of living.

Andy Patel works for Newberg Chevron. He read aloud a section of an ordinance calling for an economic impact study for big box development, and asked if it would apply to this application regarding land use. Steve Olson stated those requirements were added several months after this application came in, so they would not apply. The ordinance, in any case, only called for a report on the impact to City finances, not the impact on existing businesses. Mr. Patel stated gas station signs are not allowed by ODOT on Hwy 99 in response to Mr. Bridges statement that a sign will be posted before Brucher Road on the highway.

Jennifer Bragar represents Leathers, Co. Inc. This is their second time testifying in opposition to this application. The applicant's latest submittal fails to meet the criteria. City Code §151.194 (B) requires the architectural design must be compatible with structures in the surrounding area and requires design review, not merely a comparison to non-conforming designs. The applicants submittal to the City on March 21, 2010 claim to contain a rendering of the gas station, however this is merely a site elevation plan showing signage and does not provide any renderings of the design of the canopy. The lack of detailed depictions makes it impossible to analyze whether the development will be compatible with the surrounding neighborhood. Further, the City Code §151.210 (A) governing conditional use criteria

states the gas station has a minimal impact on the livability or appropriate development of abutting properties and the application has not met this obligation to prevent adverse effects to the neighborhood due to the lack of a landscape plan. Also, under City Code § 151.210 (A) the question arises whether the gas station will meet public safety concerns with minimal impact on livability in the surrounding neighborhood. The applicant has not provided storm water management in a way that is acceptable to public safety concerns especially to the location of protected stream corridors. Under NDC §151.196 page H5-B, the applicant is required to use best storm water management practices to reduce storm flows and improve water quality. However, the applicant has not addressed how the change in use from a parking lot to an active fueling station could impact and require an upgrade or expansion of the existing storm water system. The conditional use permit requires that the proposed use not cause adverse impacts to surrounding streets. Ms. Bragar has submitted a traffic report by their Traffic Engineer, Robert Bernstein who previously testified in this matter. Traffic blockages will occur and overwhelm the capacity of the roads.

Gary Bliss lives in Newberg and is concerned with the traffic and environmental impacts. Fred Meyer will dispense gasoline from this station and in order for a truck to get there from Portland will have to make a turn onto Elliott Rd. or Brutcher Rd. that goes through the neighborhood. Brutcher is already showing signs of cracking. He is an Oregon registered Water Rights Examiner and has 30 years experience as a development engineer. Petroleum coming into the neighborhood is not good and information regarding the traffic pattern is a must. Regarding the environment, he knows gas gets spilled going from the trucks to the tanks, which he has experienced first hand. A simple oil/water separator does not meet the standards for water treatment. It only allows it to be collected and discharged at a lower rate. In the case of a significant spill, there will be hydrocarbons going into the natural area of the drains. There are systems with canisters where the liquid flow through and the materials in the canisters will have the oil adhere to them or sieve them out so the water can be treated up to 95%. A condition needs to be added regarding the route which the fueling trucks will use to access the site.

Steve Reimer prepared notes based on last years meeting. When Leathers Oil Co. completed their upgrade, they endured a grueling design review process and fulfilled those improvements to meet the standards. At great expense, they fulfilled meeting the highest of Newberg standards. The Leathers Newberg facility generates only a fraction of the income of what this proposed gas facility will generate. The costs to profit ratios are staggeringly different. How then is it conceivable that an entity such as Kroger's could be subject to less scrutiny or to a lower standard of compliance? How is it when asked to provide accurate renderings to demonstrate compliance with code criteria their sub standard submittal has been acceptable? Design standards have been developed for a reason and need to be met.

Chair Tri recessed for a five-minute break at 10:35 PM.

Rebuttal:

John Bridges stated it is a good idea to have a fence as a condition as well as landscaping enhancements as Bryan Francis suggested, helping cut down on the headlights shining on the drive-in screen. He disagrees with the Leather's Oil attorney regarding the completeness of the application, and the amount of traffic the site will generate. On the issue of storm water management, when he used the words "state of the art" he was referring to the environmental controls and safety controls in the tanks and fueling equipment. The facility meets the City's definition of stormwater best practices. There are already two vegetative swales on this site before stormwater enters the stream. Mr. Bridges appreciates the fact that

Leathers did much in their construction, but they are located in the C-3 zone downtown that has more restrictive design standards. He believes the applicable criteria have been met.

Commissioner Haug asked the source of the fuel trucks coming up Hwy 219. Mr. Bridges explained Fred Meyer has many fueling facilities in the Keizer, Salem area and the fuel source comes out of Portland that regularly run traffic down I-5 to service those facilities. It would be simple for them to include this site as a return trip on Hwy 219. Also, Brutscher and Hayes are not local neighborhood street, they are collectors. No driveways open onto them. The roundabout on Brutscher was designed to accommodate trucks, so the streets are not just limited to cars. Regardless, Fred Meyer would be fine with accepting a condition that fuel trucks access the site from Hwy 219.

Commissioner Duff stated that running trucks south in order to come up through Aurora and come through Springbrook did not make sense logistically or financially. Mr. Bridges said if that was a concern then let the trucks use Brutscher and Hayes Streets.

Jennifer Bragar requested the record remain open for 7 days under ORS §197.763 Subsection 6.

John Bridges stated the law only requires it be given at the initial public meeting. The commissioners can keep the record open but it is their option. The applicant did not submit new information. All the written materials were opponent's materials; he only gave staff a copy of the PowerPoint. He is not requesting seven days to respond to the materials from the meeting. Mr. Bridges suggested the Planning Commission could leave the record open for a week and then give the applicant a week to reply, closing public testimony tonight.

MOTION#3: Haug /Duff moved to continue the meeting until the June 10, 2010 Planning Commission Meeting at the point of staff summary and deliberation to follow. (7 Yes/ 0 No/ 0 Absent) Motion carried.

Steve Olson requested that commissioners bring the existing staff report to the next meeting on June 10, 2010 due to the size of the packet, and the cost of reprinting it.

TIME – 11:00 PM

VII. ITEMS FROM STAFF:

Update on Council items:

Barton Brierley stated the next hearings will be for an annexation for a piece of property on 99W near 3rd Street, and a request to place a gazebo at George Fox University in the stream corridor.

A Betty Niven award was given to the City of Newberg for the Affordable Housing Action Plan. Mr. Brierley thanked Commissioner Stuhr, who had suggested this plan be done, and Commissioner Smith, who chaired the committee, along with the entire Planning Commission, who did a great deal of work on the plan.

Other reports, letters, or correspondence:

None were brought forward.

The next Planning Commission Meeting is scheduled on June 10, 2010.

/III. ITEMS FROM COMMISSIONERS:

X. ADJOURN:

Chair Tri adjourned the meeting at 11:25 PM.

Approved by the Planning Commission on this 10th day of June, 2010.

AYES: 7

NO: ☐

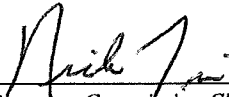
ABSENT: ☐

ABSTAIN:

☐



Planning Recording Secretary



Planning Commission Chair