

## **PLANNING COMMISSION MINUTES**

**June 10, 2010**

**7:00 p.m. Regular Meeting**

**Newberg Public Safety Building**

**401 E. Third Street**

***TO BE APPROVED AT THE JULY 8TH, 2010 PLANNING COMMISSION MEETING***

### **I. ROLL CALL:**

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

Staff Present: Barton Brierley, Planning & Building Director  
Steve Olson, Associate Planner  
Jessica Nunley, Assistant Planner  
Crystal Kelley, Recording Secretary

Others Present: Randy Lytle                      Dan Schutter

### **II. OPENING:**

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

### **III. CONSENT CALENDAR**

Chair Tri entertained a motion to accept the minutes of the May 13, 2010 Planning Commission meeting.

**Motion #1 Haug /Duff** to approve the minutes from the Planning Commissions meeting of May 13, 2010 (Yes 7 /NO 0) Motion Carried.

### **IV. COMMUNICATIONS FROM THE FLOOR:**

Chair Tri offered an opportunity for non-agenda items to be brought forth from the audience. None were stated.

### **V. QUASI-JUDICIAL PUBLIC HEARING:**

#### **1. (Continued from May 13, 2010 at the point of deliberation)**

**APPLICANT:** Fred Meyer Stores, Inc., c/o Barghausen Consulting Engineers, Inc.

**REQUEST:** 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 NO.: 2010-262**  
**CRITERIA: Newberg Development Code 151.210, 151.194, 151.196**

Steve Olson presented the staff report (see official meeting packet for full report). The record was left open one week for additional written testimony. Some additional written testimony was received and the applicant responded to it; both are included in the meeting packet. The summary and recommendation from staff were presented. Staff recommends that the Planning Commission approve Resolution number 2010-262 as conditioned.

**Deliberation:**

Commissioner Haug stated that he wanted to make a motion recommending denial of the application and revising many of the findings to state that the criteria were not met. He listed the criteria that he felt were not met. After some discussion the Commission decided to discuss the criteria one at a time.

Commissioner Thomas Barnes stated he has studied the traffic flow at the property. He is concerned with light trespass from the site, and is also concerned about traffic. He spent around four hours sitting in the parking lot to watch the situation.

Commissioner Philip Smith stated he saw six different issues. In the past, traffic studies came up with a cost of \$1,500,000 to fix the Springbrook/99W intersection. This building is the only big box store in the city. It was built before the big box requirements were adopted. If they were going to meet the new requirements they would literally have to rebuild the site. What they are doing is bringing this site closer to the big box standards. The second issue is the internal traffic on site, which will experience increased traffic on the west side of the building with this proposal. He feels there are solutions to work out on the issues of traffic safety. He does not see it as a showstopper. Commissioner Smith feels the issues with the drive-in have been well addressed. The noise problem can be addressed as well. The issue of the gas station being an un-safe station does not make sense to him. He is not sure how this station would be any less safe than any other gas station.

Commissioner Lon Wall stated he is in favor of denial for a number of reasons. In the hearings, the implication from the applicant was this proposal would not create a significant increase in trips. They felt a high percentage of gas station customers would already be on the property. He does not see how it would be a dangerous gas station. The arguments that gas would be unfairly cheap he does not agree with either. He is concerned about Fred Meyer not responding very well to their neighbors. The changes staff made to the ODOT condition concerns him. They are now stating they will allow them to occupy that location. Are they going to insist all the key conditions are enforced before they are allowed to occupy the property? He is also concerned with the issue of bringing the property up to code. He feels the City is not

going to ask Fred Meyer to do anything with regard to conformity. They could require a number of the big box improvements on the building. He is also very concerned with traffic. His conclusion is the numbers they were provided regarding how many trips will come into the gas station are not correct. He does not feel the numbers they were given for traffic flow would be enough to keep the station profitable. He is concerned with the congestion of the parking lot. He feels the traffic will be considerably worse than perceived. The argument that the City should not be concerned with internal movement on a piece of property is not a good one. The traffic is already heavy on the property and the addition of the new proposed station will only make traffic worse. Safety is a huge concern for the public.

Commissioner Matson Haug stated he has ten issues. The first one is the issue with ODOT approval and permits before the City moves ahead. The second is the traffic and noise in the neighborhoods. The third would be the light trespass on the drive-in. He feels once the station is in place there will not be any recourse, which is a high risk for the drive-in. The fourth is in regard to the testimony they heard addressing the behavior of the corporation. The fifth is the refueling trucks that will have to pass through the neighborhoods. He does not think the City could ensure they only use certain streets and could not enforce those requirements. The sixth is the drive-in, which is a historic site and is a unique addition to the town. If it were to take a year to address any light trespass issues, the drive-in would not survive the year. The seventh is that Fred Meyer is not a good neighbor. The eighth is the issue of pollution. They are running the station adjacent to a stream. As the chair of the Citizen Rate review Committee, he knows the issues that are still being addressed with regard to storm water. He is concerned about gas leaks. The ninth is the photometric study, about which he is not convinced they are scientifically correct. There may be some engineering standards for photometric study software but when he asked for that information, he did not get it. The tenth is the overwhelming testimony from the community on the corporate behavior, which will have a big influence on how they meet the criteria. He thinks the community has a right to express an interest and a concern. If Fred Meyer was involved in the community and talked to the owners of the drive-in, they would have done something in the past to try to work out their light concerns. He feels the City will lose the drive-in if this is approved.

Commissioner Cathy Stuhr stated that she felt Fred Meyer does not know this community. If they had done something already to find a solution to the concern with the drive-in, it would have looked better for them. The criteria states it should be a reasonable or minimal effect on livability. What is the community getting in exchange for the negative things they are going to be seeing? There does not appear to be any benefits to the City. She feels it is being forced. She is also concerned with the environmental issues. They could do something to try to work with the drive-in. The underground storage tanks are not a concern for her. An underground leak would most likely not occur on a large scale and the project is meeting all the state and federal standards. She is concerned about the traffic. The benefits do not outweigh what the community will have to endure with regard to traffic risks.

Commissioner Derek Duff stated he is concerned about internal traffic. The station would have a huge impact on the internal flow in the parking lot. From a customer standpoint, he does not want to have to wait for five minutes at an internal stop sign. If the congestion does not have an effect on safety and meets ODOT standards that is fine but he may stop shopping at Fred Meyer. He is also concerned with the issue of Fred Meyer being a poor neighbor. The attitude of the business seems to be that they are unwilling to do anything to address the concerns that are brought before them.

Chair Nick Tri stated he has a concern with the issue of traffic and noise in the neighborhood. He is also concerned about the light issues for the drive-in. The refueling trucks are also a concern for him. He feels they will create problems when they are getting in and out of the parking lot. The community is very concerned about the light trespass issue affecting the drive-in.

Commissioner Haug stated they either adopt the findings the staff presented or come up with their own findings. He does not agree with all the findings. They have to decide if they want to adopt each finding or make a motion to modify them. If they say the criterion is not met, staff needs to revise the findings and address the arguments. They need to decide if they think each finding has been met, then staff can come back with findings of denial. Commissioner Wall stated it would be simpler if they just stated they are opposed to the application. They need to establish their own findings rather than giving counter arguments to staff findings. He is not sure what they will say to make them change their mind. Commissioner Haug stated that staff will rewrite the findings to reflect the decision of the commissioners. Mr. Brierley stated it is appropriate for them to do that. Staff would have to come to the next meeting with the findings they requested. Commissioner Smith stated they should take each proposed finding and vote on keeping or changing it. If they are going to approve a motion to deny it they have to explain why they are denying the application. Mr. Olson stated they could either approve the proposal, approve it with conditions, or they can deny the proposal. They are adopting findings when they make their decision, so they need to say how they want the findings revised if they want changes.

Commissioner Wall asked if the City's stance with regard to the ODOT condition had changed from the last meeting. Mr. Olson confirmed he was correct, they revised it to make the condition clearer and to say that ODOT had to approve the plans before the city would approve the plans, although all improvements still had to be constructed before occupancy. Commissioner Wall asked how the City came to the conclusion that Fred Meyer does not have to do anything with the non-conforming building. Mr. Olson stated the code requires the new addition to meet the new code but does not require changes to the existing building, providing that it does not become more non-conforming.

Commissioner Wall stated they are being asked to approve something that does not have a clear benefit to the community.

Commissioner Wall stated they are being asked to approve something that does not have a clear benefit to the community. Commissioner Stuhr stated the science behind light studies is simple and a trustworthy science. This body did not ask them for another light study. Mr. Bridges did the light study and it was clear they could not determine what portion of the light at the drive-in was coming from Fred Meyer versus other buildings. Commissioner Smith stated he is convinced the plan will protect the drive-in from light pollution but the owners and the public are not persuaded. A light study done in the field may be able to persuade them. Fred Meyer could have done some additional study to reassure the drive-in.

Commissioner Haug stated on Page 31 section 4 with regard to landscape requirements, what happens when the tall trees fall. Years later, it will leave a gap that will not easily be filled. According to the finding, the trees are supposed to block the light for the drive-in. Landscaping is not a long-term solution. Commissioner Stuhr stated that concern has been addressed in the conditions. It states if a tree falls down the light can be mitigated. Commissioner Haug stated there is a limit to how big a tree you can put in there. Commissioner Smith stated he thinks the condition implies if a large gap in the screen provided by the trees occurs, the applicant will have to address the issue at that time. Commissioner Duff stated they could put a condition stating there can be no exterior canopy lights to the west.

Commissioner Wall stated he is a big believer in private property rights on your own property. You have to think of the people who own property in the surrounding area, however. They have private property rights as well. The Planning Commission has to realize this is not always black and white. If they ignore the two components, they have not done their job. They have to consider all involved.

Chair Tri adjourned the meeting at 9:00 for a five-minute break.

**Motion #2 Smith/Haug** moved to adopt alternative findings denying criteria on page 28, section 2 based on the arguments the last two sentences have not been met. (Yes 6 /NO 1 {Thomas Barnes}) Motion Carried.

**Motion #3 Smith/Wall** moved to adopt the staff findings on page 30, section 2-3 with regard to setbacks and general requirements (Yes 6 /NO 1 {Matson Haug}) Motion Carried.

**Motion #4 Haug/Wall** moved to adopt alternative findings on page 31, section 4 denying they satisfy criteria also determining the staff findings are not enforceable (Yes 2 /NO 5 {Thomas Barnes, Derek Duff, Philip Smith, Cathy Stuhr, Nick Tri}) Motion Failed.

**Motion #5 Haug/Wall** moved to adopt findings that indicated article 9 of page 33 is not satisfied. The City does not have the ability to mandate what public streets are used by the refueling truck (Yes 1 /NO 6 {Thomas Barnes, Derek Duff, Philip Smith, Cathy Stuhr, Nick Tri, Lon Wall}) Motion Failed.

**Motion #6 Smith/Barnes** moved to adopt staff findings on page 33, section 10 (Yes 5 /NO 2 {Lon Wall, Matson Haug}) Motion Carried.

**Motion #7 Haug/Wall** moved to adopt alternative findings on page 44, section 3A that would deny the condition is met (Yes 6 /NO 1 {Thomas Barnes}) Motion Carried.

**Motion #8 Haug/ Smith** moved to deny application, with amended resolution NO. 2010-262 and amended findings (Yes 6 /NO 1 {Thomas Barnes}) Motion Carried.

Mr. Brierley stated staff would amend the resolution and the findings, and bring them back to the next Planning Commission meeting for adoption.

2.     **APPLICANT:**     **Steve Watt**  
          **REQUEST:**   **Annexation of 0.97 acres**  
          **LOCATION:**   **612 W. 3<sup>rd</sup> St. and 308 Hwy 99W**  
          **TAX LOTS:**   **3219BD-2600 and 3219BD-2500**  
          **FILE NO.:**    **ANX-10-001**                                 **RESOLUTION NO.: 2010-280**  
          **CRITERIA:**   **Newberg Development Code 151.262**

**Opening of the Public Hearing:**

Chair Tri asked the Commissioners for any abstentions, conflicts of interest, or objections to jurisdiction. None were stated. Jessica Nunley presented the staff report (see official meeting packet for full report). Staff recommends they adopt Resolution No. 2010-280.

**Proponents:**

Randy Lytle, representing Mr. Steve Watt, stated the property is two existing parcels which meet the city's criteria. City of Newberg water is already servicing the properties. Commissioner Barnes asked why they would like to be annexed. Mr. Lytle stated it increases the property value and the future options.

Commissioner Smith asked why the City does not recommend they make the property industrial zoned. Mrs. Nunley stated that it has current commercial uses and would not really help mitigate the city's industrial need as it's not the most appropriate place for industrial. The comprehensive plan designation is for commercial use on the property.

**Motion #9 Barnes/Wall** moved to adopt resolution NO. 2010-280 (Yes 7 /NO 0) Motion Carried.

3.     **APPLICANT:**     **George Fox University**  
          **REQUEST:**   **Stream Corridor variance and design review approval to construct a gazebo in the Hess Creek stream corridor.**  
          **LOCATION:**    **West of 1306 E. Sherman Street**  
          **TAX LOT:**     **3217CD-6600**  
          **FILE NO.:**    **MISC3-10-001**                                 **RESOLUTION NO.: 2010-279**  
          **CRITERIA:**   **Newberg Development Code 151.194, 151.474, 151.478**

**Opening of the Public Hearing:**

Chair Tri asked the Commissioners for any abstentions, conflicts of interest, or objections to jurisdiction. Commissioner Smith left the room due to a conflict of interest, as he is employed by the applicant. Commissioner Duff stated he is a George Fox University student, but this would not be a conflict of interest. Mr. Steve Olson presented the staff report (see official meeting packet for full report). Staff recommends the committee approve resolution number 2010-279 with a few conditions. Those conditions were presented in the staff report.

**Proponents:**

Mr. Dan Schutter with George Fox University stated the project is funded by the students. The other locations that were considered were a threat to area trees and the students did not want to cut down any trees. The students would have attended the meeting but they have gone home for the summer. The project benefits are the greater use of the canyon and enhancement of the property. The proposed structure will be an enhancement to the stream corridor. He feels it will encourage an awareness of the area. It is also for the purpose of fitness walking and jogging. It will function as a venue to bring the community and nature together regardless of weather. It is adjacent to vehicle travel areas, which will help bring a rural setting to the area. His only criticism concerning the staff proposal are some of the conditions. The problem with the sewer line is probably a mistake in the map, since GFU has been maintaining the line for some time. They do not have a problem assuming responsibility for maintenance of the line from the city. The City has never done maintenance on the line and the university is fine with taking it over. The way the conditions are written, does not allow for discussion and possible appeal to the State regarding the Building Code. It is not certain what the code says for the specific proposal. He would rather the condition state it has to be done per the code requirements. They will follow the erosion control measures that have been asked.

Commissioner Stuhr asked if they would be required to have a burn permit in order to have a fire pit on the property. Mr. Schutter stated the code says if they build an enclosure around it, they are allowed to build a fire. He is not aware of any restrictions for that. Mr. Olson stated he is not aware of any restrictions other than setting rules for students and the use of the fire pit. Commissioner Haug asked if he discussed his concerns with staff prior to the meeting. Mr. Schutter stated he has not talked to staff about his concerns prior to the meeting.

Commissioner Stuhr asked if the sewer line does not meet the interior requirements would they have to excavate it. Mr. Olson stated he does not know what it is constructed of currently. If it does not meet the requirements, it may have to be excavated but it is still undetermined at this point.

Commissioner Haug stated he would like to see staff make the changes based on what was stated by Mr. Schutter. He asked staff if it would be possible to modify the conditions tonight so the applicant can hear them and they can vote on the issue. Mr. Brierley stated the sewer line building code requirements are not under the Planning

Commission. The City can verify it meets code or the applicant can propose an alternate. Mr. Olson stated the sewer line condition could be changed to say it should meet building code requirements for building over a private sewer line. The applicant will also need to discuss the project with the fire marshal.

**Motion #10 Wall/Barnes** moved to adopt resolution No. 2010-279 and to change condition 2 to meet building code requirements as amended (Yes 6 /No 0) {Philip Smith did not cast his vote due to a conflict of interest}) Motion Carried.

## **VI. ITEMS FROM STAFF:**

Mr. Brierley stated the South Industrial area group meeting took place with 24 people speaking at the meeting. NUAMC took testimony and left the record open for written testimony. They will meet again on June 15<sup>th</sup> to deliberate on the subject.

The City held a work session with the City Council and an open house, town hall meeting with the public on the subject of affordable housing. The subject will be scheduled to go to the City Council but a date has not been set yet.

ODOT has released the Tier 2 Environmental Impact Statement for the Newberg Dundee bypass. There is a meeting at Newberg High School on June 29<sup>th</sup> for testimony and information from 3:00 p.m. to 8:00 p.m.

The Electronic Sign Ad Hoc Committee has been meeting and has arrived at a final recommendation. Their final recommendation will be presented to City Council on July 6<sup>th</sup>. They will be asking City Council to amend the development code, which will require formal hearings. The next Planning Commission meeting will include a brief workshop on the Electronic Sign Committee's recommendation.

## **VII. ITEMS FROM COMMISSIONERS**

Commissioner Smith asked for an excused absence for the July 8<sup>th</sup> meeting of the Planning Commission. His request was approved by Chair Tri.

## **VIII. ADJOURN:**

Chair Tri adjourned the meeting at 10: 25.

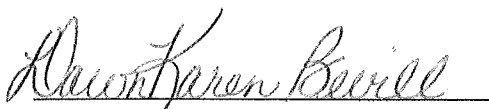
**Approved by the Planning Commission this 8th day of July, 2010.**

**AYES:** 6

**NO:** 0

**ABSENT:** 1  
(List Name(s))  
(Smith)

**ABSTAIN:** 0  
(List Names(s))

  
Planning Recording Secretary

  
Planning Commission Chair