

NEWBERG PLANNING COMMISSION MINUTES
August 13, 2015, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)

Chair Gary Bliss called the meeting to order at 7:04 p.m.

ROLL CALL

Members Present:	Gary Bliss, Chair	Jason Dale	Art Smith
	Philip Smith	Matthew Fortner	Allyn Edwards

Members Absent:	Cathy Stuhr	Luis Saavedra/student
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Staff Present:

- Steve Olson, Associate Planner
- Doug Rux, Community Development Director
- Bobbie Morgan, Planning Secretary
- Jason Wuertz, Engineering

PUBLIC COMMENTS:

Stan Halle, Chair of the Newberg Dundee Bypass Impact Committee for the Ladd Hill Neighborhood Association, discussed the article in the *Newberg Graphic* that had quoted him on things he apparently said. He was not interviewed by the reporter. He represented a large neighborhood association that spanned most of Wilsonville Road and had formed partnerships with Yamhill County Commissioners, Clackamas County Commissioners, City of Wilsonville, and West Linn/Wilsonville School District expressing significant concerns about the public safety impact that the bypass would have on Wilsonville Road if the current configuration went forward. It was an amendment the Planning Commission worked on two years ago and was passed by the City Council in December of 2013. He submitted a written document into the record that laid out the history and concerns. They had been working with Mayor Andrews and staff to find some resolution. They would like a no-through design that would allow traffic on Highway 219 north and south to go in all directions, but traffic on the bypass to Wilsonville Road would be prohibited and from Wilsonville Road onto the bypass. The current TSP would be brought to the Commission soon to be brought into alignment with the bid package from ODOT. ODOT failed to conduct the proper analysis and modeling of the impact to Wilsonville Road and was in violation of the National Environmental Protection Act. They supported the bypass, but requested the no-through design. Another article came out in the *Wilsonville Spokesman* with more details on the issue.

Community Development Director Doug Rux responded staff had been in contact with ODOT and the neighborhood association and were waiting for ODOT to submit an amendment to the current TSP. If one was submitted, it would be brought before the Planning Commission to forward a recommendation to the City Council.

PC Philip Smith was greatly interested in this issue and he looked forward to learning more about it.

CONSENT CALENDAR:

Approval of June 11 and June 25, 2015 Planning Commission Meeting Minutes

Motion: PC Allen Edwards moved to approve the June 11, 2015, Planning Commission minutes. Seconded by PC Matthew Fortner and passed 6/0.

Chair Bliss pointed out one correction on page 2 of 4 of the June 25 minutes. Under Opponents it stated there was an owner to the east of the property, but it should be to the west of the property.

Motion: PC Art Smith moved to approve the June 25, 2015, Planning Commission minutes as corrected. Seconded by PC Matthew Fortner and approved 6/0.

QUASI-JUDICIAL HEARING:

1. APPLICANT: Leonard Johnson (contact – Mart Storm) (continued from 6/25/15)

Request: Highlands at Hess Creek Phases 4 & 5 – subdivision tentative plan approval.

Location: South end of Kennedy Drive and Corrine Drive

Tax Lot: 3220-1400

File Number: SUB3-15-001

Criteria: Newberg Development Code Section 15.235.060(A)

Chair Gary Bliss reopened the public hearing at 7:11 p.m.

Staff Report: Associate Planner Steve Olson presented the staff report. The property was located at the south end of Kennedy Drive and Corrine Drive. He explained the CPRD property next to the property and stream corridor on the property. He then discussed the revised layout of the subdivision which addressed the concerns at the last meeting. Kennedy Drive extended down to the south and the water line would extend with it, and the sewer line already extended there. The easement was removed and it would be 27 lots with a slight shift in configuration. On the eastern part of the property, there would be an access easement to the stream corridor and across the CPRD property. On the southwest corner there would be an access easement to the Darby property. Staff had updated the findings and conditions as they were now showing the street extension, the access easements would need to be finalized by final plat, the lots continued to meet the lot size standards, the lots met the frontage requirements, the water issue had been solved by extending the line south, and they did not need to extend the stormwater line due to the topography, but the applicant would have to submit a final stormwater report and maintenance agreement. Staff recommended approval of the application with the amended findings and conditions.

Public Testimony

Proponent:

Mart Storm, representing the applicant, thought all of the issues had been addressed. They agreed with staff's findings and conditions. He clarified they were able to keep the same number of lots as proposed.

Don Clements, Superintendent of the Chehalem Park and Recreation District, said at the last hearing they did not have access to their property and now they did. There was no Board meeting until the end of this month, and he could not confirm or deny the easement would be granted.

PC Philip Smith asked AP Olson if they could make the approval conditional on the easement being approved. AP Olson said the condition allowed flexibility for the location of the easement.

There was discussion regarding the options for the location of the easement.

Mr. Storm explained where the property was that required an easement. They would create the tract and plot and would ultimately give the land to CPRD.

Close of Public Testimony: Chair Gary Bliss closed the public testimony portion of the hearing at 7:28 p.m.

Final Comments from staff and recommendation: AP Olson recommended approval of Order No. 2015-18.

Action by the Planning Commission:

Motion: PC Philip Smith moved to approve Order No. 2015-18 with Exhibits A, B, and C. Seconded by PC Matthew Fortner and passed 6/0.

2. APPLICANT: ProLand LLC (representing Verizon Wireless)

REQUEST: Appealed to Planning Commission – Design review/variance approval for a 70- foot tall cellular communications tower, with reduced setback requirement.

LOCATION: 2401 E. Hancock Street

TAX LOT: 3220AB-202

FILE NO.: DR2-15-003/VAR-15-001 ORDER NO.: 2015-19

CRITERIA: Newberg Development Code Section 15.220.050(B), 15.445.190, 15.215.040

Call to order: Chair Gary Bliss opened the public hearing at 7:30 p.m.

Call for abstentions, Bias, Ex Parte Contact, and Objections to Jurisdiction: Chair Gary Bliss visited the site a few days ago.

Legal Announcement: Chair Gary Bliss read the quasi-judicial hearing announcement.

Staff Report: AP Olson presented the staff report. This was a cell tower design review and variance application for 2401 E. Hancock Street. This had been appealed to the Planning Commission. The applicant was ProLand LLC representing Verizon Wireless. The property was in the M-2, light industrial zone. He explained the location of the site. It was 1.4 acres with three existing industrial buildings and a mix of businesses in the buildings. He then discussed the uses of the adjacent properties and where the cell tower was being proposed. The appeal focused on two main issues, the first was concern about long term risk from radiation from the cell tower. The Newberg Development Code criteria did not directly regulate cell tower radiation because the FCC regulated it. There was a condition of approval that the applicant had to provide confirmation that the FCC Antenna Structure Registration Application was approved. The other issue was airport safety and the Code required that a cell tower applicant had to meet FAA and ODA requirements. The FAA determined there was no hazard to air navigation. There were two letters from ODA. The first had concerns that the cell tower would create an obstruction especially for take-offs and they requested additional information. The second letter from ODA stated they did not object to the proposal and required the tower to have appropriate markings and lighting. He reviewed the other criteria for cell towers and how the application met the criteria. There was a requirement for an engineer's report and letter of intent to allow co-location on their tower. He then discussed the variance criteria. The setback requirement for the cell tower was 21 feet from adjacent properties, however the building to the north was only 9.5 feet away. They did meet the setback on the other three sides. The only structure they did not meet the setback for was owned by the same person who wanted to put in the cell tower. He did not think it would have an adverse effect on other properties. Staff recommended approval.

There was discussion regarding the setback requirement, FAA and ODA studies, and FCC safety levels for radiation.

Public Testimony:

Proponent:

Mike Connors, representing the applicant, Verizon Wireless, said the cell tower was for a coverage and capacity need in this area. They chose the M-2 zone as the City Code encouraged. All the surrounding properties were commercial, but there was other light industrial in the area. The proposed height was 70 feet. They were comfortable with all of the conditions. Regarding the health related issues, cities were prohibited from considering it so that the FCC standards would be used. This put the city in a difficult position, and they had provided the emissions report which discussed the acceptable public exposure limits. This tower was well

below the standards and there were no health related concerns. Regarding the proximity to the airport, there was a letter from the FAA and Sportsman Airport expressing no concerns. ODA's initial letter was based on a misunderstanding that they were proposing a 100 foot tower. Once they clarified it was a 70 foot tower, it was approved. The study that FAA and ODA did were their own studies and they determined whether or not it met the standards. Part of the appeal was based on the initial ODA letter, but he thought with the new letter based on the actual height and incorporation of their requirements into the conditions, this issue had been resolved. Regarding the variance, all of the setbacks to adjoining properties were met. He did not think the requirement applied to a person's own property, however they had applied for the variance. The property was narrow and developed, and there was no way to locate this facility in a portion of the property that could satisfy the setbacks with the buildings that were there. The property owners were fine with it and supported the application.

Chair Gary Bliss asked how much more service this would provide. He questioned if this was the right location. Mr. Connors explained the area that would receive the better service. It was expensive for Verizon to build cell towers and they wouldn't be here if it wasn't an important need for it.

Chair Gary Bliss asked if there was a criterion regarding the distance of cell towers to each other. AP Olson replied yes, if it was within 2,000 feet of another tower it would be a Conditional Use Permit. It was further than that to the ones at the high school.

Chair Gary Bliss questioned again if this was the best site and height to get the most coverage. Mr. Connors explained the process for site location. They found that this was the best property available.

Opponent:

Fred Casey, Newberg resident, owned a piece of property adjacent to the site on the east. He had a letter from ODA responding to a letter sent from staff.

AP Olson explained staff sent them a copy of the application and a letter asking ODA to review it and return comments.

Mr. Casey thought they knew it was 70 feet at the beginning and did not approve it. His concern was the radiation as his property was currently undeveloped and Verizon planned to add more things to the tower as time went on. The tower required a 21 foot setback and it would establish a precedent to allow a variance.

Chair Gary Bliss said in the Development Code it stated if a variance was granted it would not set a precedence. Applications were approved or denied on their own merit.

Mr. Casey said aircraft flew over that area all the time and he was also concerned about flight patterns. He was still concerned about setting a precedent.

PC Matthew Fortner shared the same concerns as Mr. Casey.

Mr. Connors provided rebuttal. The reason ODA thought initially it was a 100 foot tower was because their original plan was for a 100 foot tower. They filed information with the different organizations separately and ODA based their recommendation on the information they received from the FAA submittal. The FAA, ODA, and the Airport agreed the cell tower would not cause a safety hazard and complied with their standards. Granting a variance would not set a precedent. This was not an instance where a variance would affect an adjacent property, it was a building on the subject property. It was not uncommon for people to raise questions about cell tower safety, but it was not a safety issue and was not one of the criteria for approval.

PC Matthew Fortner asked about acceptable levels and adding future capacity. Mr. Connors responded anyone wishing to co-locate on the cell tower would have to go through the same approval process to show in combination with the existing antennas the standards would still be met.

PC Jason Dale asked if the amount of radiation would increase in the future. Mr. Connors stated no, the test was based on a maximum power of the proposed antennas.

Close Public Testimony: Chair Gary Bliss closed the public testimony portion of the hearing at 8:32 p.m.

Final Comments from staff and recommendation: AP Olson said staff recommended approval of Order No. 2015-19.

PC Jason Dale confirmed there were two cell towers at the high school and the students were not adversely affected.

PC deliberation and discussion of criteria with findings of fact:

PC Philip Smith said a federal agency regulated the radiation levels and he thought it was safe. The FAA and ODA were regulating the air traffic. It was clear in the Code this would not be a precedent. The only grounds for an appeal was the tower was too close to other buildings, but the buildings were owned by the people who wanted to build the tower. He did not see that it was a problem.

PC Art Smith said radiation was always a concern, but they were not the experts and they had to take what the experts told them. He would have concerns regarding flight patterns if the Airport said there was a problem, but they did not.

PC Matthew Fortner thought there would be a problem with radio communications interfering with navigation systems in aircraft. They had to take the word of the experts, but the letters had no proof behind them.

Chair Gary Bliss thought the applicant met the criteria.

Action by the Planning Commission:

Motion: PC Art Smith moved to approve ORDER NO: 2015-19 with Exhibits A and B. Seconded by PC Philip Smith and approved 6/0.

VI. LEGISLATIVE PUBLIC HEARINGS

1. DEVELOPMENT CODE AMENDMENT: Temporary and Portable signs

The proposal:

1. Adds a new section for a temporary sign permit program that will allow additional temporary and portable signs on private property in the C-2, C3, and Institutional zones.
2. Adds new language to address the use of pennants, streamers, and inflatable objects.
3. Adds new language to clarify the definition of a flag display and flag use on holidays.
4. Modifies existing sign code language to clarify the intent of the code.
5. Allows additional signs in the public right-of-way.

FILE NO.: DCA-14-001 RESOLUTION NO.: 2014-308

Call to order: Chair Gary Bliss opened the public hearing at 8:53 p.m.

Call for abstentions, Bias, Ex Parte Contact, and Objections to Jurisdiction:

PC Art Smith had recent email conversations regarding the sign code and copied Mr. Olson on them, and he had clearly made his opinion known. He decided to recuse himself from the hearing and left the dais.

Staff Report: AP Olson gave the staff report presentation. The Planning Commission did approve this by resolution, but staff brought it back as one change was to allow additional signs in the right-of-way outside of downtown. The County said their policy did not allow private signs in the public right-of-way for the County jurisdiction roads in the City. ODOT also did not allow private signs in the public right-of-way. He showed a map of the roads that were under ODOT jurisdiction. Staff asked ODOT if there was an agreement that allowed the signs downtown, and they found that there were “resoluted” highways along parts of First Street, College Street and Main Street. Resoluted highways are state highways on city streets. In these areas ODOT controlled curb to curb and the City managed the right-of-way behind the curb, where signs could be allowed on the sidewalk. Hancock is not a resoluted highway, so this would limit signs on sidewalks along Hancock. Staff recommended changing the Code to coincide with ODOT’s regulations.

There was discussion regarding enforcement of the Sign Code for roads that were in ODOT’s jurisdiction. There was a suggestion to discuss these changes with the Downtown Coalition and to add the issue to the list of discussion items with ODOT as part of the Transportation Growth Management Grant.

AP Olson continued the staff report. The businesses that would be most affected were not the businesses on Hancock, as many of those businesses had room to put a sign on their own private property. There were a lot of businesses on First Street that were putting signs up on Hancock to get the traffic heading west to them. He then discussed the proposed changes in the Code to reflect the limitations from ODOT and the County. A comment had been received from Burgerville about umbrellas. The current recommendation was to allow signs on the lowest 12 inches of the umbrella. Burgerville requested changing the code to allow their proposed umbrellas. Did the Commission want to reopen the discussion regarding umbrellas? Additional comments were received from Robert Soppe. He affirmed it was a good idea not to require notification before a sign was removed, asked about portable signs in the bulbouts, which were allowed if they met vision clearance, and asked about temporary signs for events. For grand opening events and other events businesses were allowed an unlimited number of signs, but for election events they were allowed up to two additional signs. For flag events, they were allowed an unlimited number of flags. Did this need to be clarified further? New testimony had been received yesterday, and he asked if the Commission wanted to allow it. For grand opening events, it required notice to the City, but not for other events. Should the City require notification for other events?

Motion: PC Philip Smith moved to accept the new testimony. Seconded by PC Matthew Fortner and approved 5/0.

The Commission took a five minute break to read the testimony.

AP Olson said staff recommended adoption of the Code changes for signs in the right-of-way. Did the Commission want to address changes regarding umbrellas and clarifying unlimited temporary signs?

Public Testimony:

Robert Soppe, Newberg resident, thought the temporary sign code was not clear. The code needed to be understandable without needing interpretation. There should be City notification for “other” events as there was for grand opening events to avoid enforcement issues. He provided three amendment options and he explained each. These were minor changes that would make the Code more understandable. Regarding the roads in ODOT and County jurisdiction, the specific streets were added to the Code, but these roads could possibly change jurisdiction and they could add “When this section was adopted” before “this applies to Highway 219.” Regarding jurisdiction and enforcement, the Code was written to say the signs were not allowed as if the City was also imposing the regulation. Did that give the City enforceability?

Close of Public Testimony: Chair Gary Bliss closed the public testimony portion of the hearing at 9:45 p.m.

Final Comments from Staff & recommendation: AP Olson thought the suggestions for temporary signs were good clarifications. Most businesses did not give notification of grand opening events, but the code language was good for enforcement. He did not know if it was needed, but it would not do any harm to require notification for other events.

Planning Commission Deliberation:

PC Allyn Edwards thought Mr. Soppe's suggestions were good clarifications except 15.435.100(D) add: "No other additional temporary signs are allowed during these days" which he thought was too prohibitive.

PC Jason Dale asked about the umbrella issue.

PC Philip Smith thought Burgerville's umbrellas looked fine, but so did several others. He thought they should stick to the rules already adopted for umbrellas, and businesses could adapt. Regarding 15.435.100(D), he was concerned that businesses might abuse the unlimited flags and put up other advertisements.

Chair Gary Bliss thought the definition of a flag and definition of a temporary sign were two very different things. AP Olson clarified the definitions. Businesses were allowed an unlimited number of flags on certain days, but there could be other events going on at the same time. Before the changes, flags were already unlimited on any legal holiday or festival day, and the changes spelled out which days were flag days. It was already unlimited as well as grand opening events.

Motion: PC Philip Smith moved to make five amendments to the code as follows:

1. At the end of 15.435.100(A) add "An unlimited number of temporary signs are allowed during a grand opening event."
2. At the end of 15.435.100(B) change "may contain up to two" to "may contain no more than two additional temporary signs."
3. At the end of 15.435.100(C) add "An unlimited number of temporary signs are allowed during the event."
4. At the end of 15.435.100(C) add: "The applicant shall notify the city in writing of the beginning and ending dates prior to the Other Events."

He did not propose to add at the end of 15.435.100(D): "No other additional temporary signs are allowed during these days".

5. Approve staff proposed language, "Temporary and/or portable signs for other than traffic control and motorist advisories are not allowed within State highway right-of-way administered by the Oregon Department of Transportation except on resolute highways. In 2015, resolute highways in Newberg were" and then the rest of the paragraph as written by staff.

Seconded by PC Allyn Edwards.

There was discussion regarding limiting election signs to three when businesses were allowed unlimited number of signs for events. It was determined that this was done for aesthetic purposes.

Action by the Planning Commission:

The Commission voted on each proposed amendment:

1. Approved 5/0.
2. Approved 5/0.

3. Approved 5/0.
4. Approved 5/0.
5. Approved 5/0.

PC Jason Dale thought the umbrella signage should be left as it was currently in the code.

PC Allyn Edwards asked if anyone was affected by the language and denied approval of their umbrella. AP Olson responded these were temporary signs and did not require a permit.

Motion: PC Allyn Edwards moved to change the language and allow a signature logo on top of umbrellas not to cover more than 30%. Seconded by PC Matthew Fortner.

PC Philip Smith thought the 12 inch rule was easily enforceable and still gave businesses room for an effective commercial message.

Chair Gary Bliss thought the purpose of an umbrella was for shade and he thought what they looked like should be limited. He agreed it would bring a better uniformity.

PC Allyn Edwards thought those that had a signature logo should be able to use their signature logo on top of the umbrella.

The motion failed 1/3/1 with PC Allyn Edwards in favor and PC Matt Fortner abstaining.

Motion: PC Philip Smith moved to approve RESOLUTION NO. 2014-308 with the five amendments. Seconded by PC Allyn Edwards and approved 5/0.

ITEMS FROM STAFF:

CD Rux gave an update on Council items including the Villa Road improvement project, noise variance for the bypass, Martell Commons zone change, Street Seat pilot program, TGM grant, and Transportation System Plan update. He announced PC Art Smith had submitted his resignation from the Planning Commission effective the end of August. He thanked him for his service. The next Planning Commission meeting would be September 10.

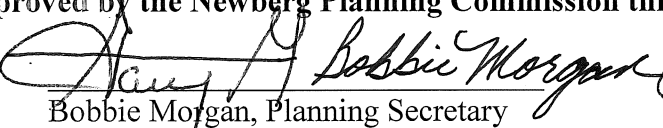
PC Art Smith said it was not an easy decision, but his schedule was not conducive to preparing for and attending the meetings.

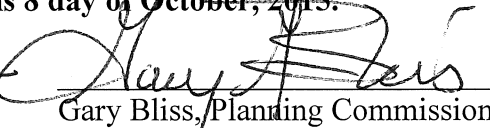
ITEMS FROM COMMISSIONERS:

PC Philip Smith asked for an update on South Industrial Park. CD Rux said LCDC continued to defer the decision on the City's remand of the UGB application until December. The City would repeal ordinances that were adopted and they would be brought to the City Council in October which would allow Yamhill County to repeal their language and get the information to LCDC. The City was also initiating a Comp Plan amendment to put the Yamhill County population and employment projections into the Plan and would apply for a Technical Assistance Grant for work on the buildable lands inventory.

Chair Gary Bliss adjourned the meeting at 10:50 p.m.

Approved by the Newberg Planning Commission this 8 day of October, 2015.


Bobbie Morgan, Planning Secretary


Gary Bliss, Planning Commission Chair