

NEWBERG PLANNING COMMISSION MINUTES
September 13, 2018
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)

Chair Philip Smith called the meeting to order at 7:01 p.m.

ROLL CALL

Members Present: Philip Smith, Chair
Jason Dale
Robert Ficker
John Wuitschick
Gary Bliss
Zach Pelz

Members Absent: Allyn Edwards, excused
Capri Wheaton, Student, excused

Staff Present: Doug Rux, Community Development Director
Keith Leonard, Associate Planner
Kristen Svicarovich, Engineering Associate

PUBLIC COMMENTS: None

Community Development Director Rux introduced new Planning Commissioner Zach Pelz.

CONSENT CALENDAR:

MOTION: PC Dale/PC Bliss moved to approve the Planning Commission minutes from August 9, 2018. Motion carried (6 Yes/0 No).

Chair Smith reversed the items on the agenda to start with the legislative hearing.

LEGISLATIVE PUBLIC HEARING

1. **Marijuana retail and dispensary hours of operation:** Consider a resolution recommending the City Council amend the Newberg Municipal Code for marijuana retail and dispensary operating hours.
Resolution 2018-345. File No. DCA18-0004

CALL TO ORDER:

Chair Smith opened the public hearing at 7:04 p.m.

CALL FOR ABSTENTIONS, BIAS, EX PARTE CONTACT, AND OBJECTIONS TO JURISDICTION: None

STAFF REPORT:

The staff report was presented by CDD Rux. This was a request for a code amendment to modify the hours of operation for marijuana retail and dispensaries. Currently these facilities could operate from 9 a.m. to 8 p.m. and

the request was to extend the hours to 10 p.m. Staff had compared these hours to pharmacy hours in Newberg and found that the times were varied. The request would change two footnotes in the code. The request complied with all of the applicable statewide planning goals and Comprehensive Plan goals and policies. The applicant had included a comparison of other operations in surrounding communities which also varied.

Chair Smith clarified that many pharmacies closed at 9 p.m., but most marijuana operations closed at 10 p.m. CDD Rux said that was correct.

PUBLIC TESTIMONY:

APPLICANT:

Anthony Stuart, attorney for Western Oregon Dispensary, said this was an opportunity to expand access and to bring Newberg in line with other nearby jurisdictions. This would not have any impact to the City except for a small increase of taxes that would be generated.

Chair Smith noted the applicant had submitted a number of signatures of people in support. Mr. Stuart said they were signatures of Newberg residents and those who drove into the City for the product.

PROPOSERS: None

OPPOSERS AND UNDECIDED: None

APPLICANT REBUTTAL: None

CLOSE OF PUBLIC TESTIMONY PORTION OF HEARING:

Chair Smith closed the public hearing at 7:10 p.m.

FINAL COMMENTS FROM STAFF AND RECOMMENDATION:

CDD Rux said staff recommended approval of the resolution.

PLANNING COMMISSION DELIBERATION:

None

ACTION BY THE PLANNING COMMISSION:

MOTION: PC Ficker/PC Dale moved to approve Resolution 2018-345. Motion carried (6 Yes/ 0 No).
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QUASI-JUDICIAL PUBLIC HEARINGS

- 1. Planned Unit Development and Conditional Use – Consider a proposal for a Planned Unit Development application on 33.13 acres of land that includes 18 single-family homes, 230 cottage homes and 51 multi-family units with modifications to the base zone’s dimensional requirements as permitted through the PUD process. The conditional use permit request is to allow residential use on C-2 Community Commercial zoned property.**

APPLICANT: Andrew Tull, 3J Consulting, Inc.

LOCATION: 4505 E Portland Road and abutting property without a street address

TAX LOTS: 3216-01100 and 3216AC-13800

FILE NO.: PUD18-0001/CUP18-0004 ORDER: 2018-10

CRITERIA: Newberg Development Code Sections: 15.225, 15.220.060, 15.240, 15.405, 15.410, 15.415, 15.420, 15.440, 15.505

CALL TO ORDER:

Chair Smith opened the public hearing at 7:12 p.m.

CALL FOR ABSTENTIONS, BIAS, EX PARTE CONTACTS, AND OBJECTIONS TO JURISDICTION:

PC Bliss stated he had visited the site and had contacted a couple of planners regarding the Division of State Lands' wetland requirements. These planners did not know about this specific project.

LEGAL ANNOUNCEMENT:

Chair Smith read the legal announcement.

STAFF REPORT:

The staff report presentation was given by Associate Planner Leonard. This was a request for a Planned Unit Development and Conditional Use Permit to develop a mixture of commercial use, single family homes, cottage homes, affordable housing, and multi-family homes with modifications to the base zones' dimensional requirements as permitted through the PUD process. The Conditional Use was to allow residential use on C-2 zoned property. He described the subject site that was located on E Portland Road. The total size of the property was 33.13 acres and it had C-2, R-1, and R-2 zoning with Airport Conical Service and Bypass Interchange Overlays. He then reviewed the site plan and size of the lots for the 18 single-family homes, 230 cottage homes, and 51 multi-family units. There would be detention ponds and a wetland area that would be preserved. There would be public and private streets, and on-street parallel parking on public streets except for Crestview Drive. There would be no parallel on-street parking on the private streets as there would be parking lots to be used for parking. E. Crestview Drive would be extended to E Portland Road and aligned with N. Providence Drive. This would be a phased development over ten years with five one year extensions. Utilities would be extended across E. Portland Road and there would be frontage improvements as well. He described what would be done in each phase. He then explained the proposed front yard and interior setback modifications, minimum lot size reductions, minimum width modifications, and minimum parking and lot coverage modifications. PGE had stated that eight foot public utility easements were acceptable for private streets as long as there were no sidewalks within the easements. There was a question that this application would impact the groundwater well for Oxberg Lakes Estates and the applicant's consultant found that there was little to no potential for impact. However, the Oxberg Lakes Estates' consultant did not think the study was conclusive enough. The applicant's traffic engineer found that the six party agreement for the traffic controls was consistent with the guiding principles established in the agreement; however Oxberg Lakes Estates thought there was still a need for a roundabout immediately south of Robin Court for traffic calming and speed reduction. He then discussed the review criteria, key findings, and conditions of approval. With the implementation of the conditions, there would be required buffering between the proposed and existing development, the Planned Unit Development general provisions would be met, the development was compatible with the surrounding uses, public services were available, there was sufficient usable recreation space, the proposed buildings and structures were arranged to take into consideration the surrounding area, the application would meet all parking and private walkway requirements, and would meet all of the public and private street, water, wastewater, and stormwater system requirements in the code.

Chair Smith directed the Planning Commission to the conditions in Exhibit B.

PC Bliss was concerned about the buffer and whether or not it was adequate. He asked if a sound wall would also be installed. He questioned how the wetland was being handled and noted the wetland delineation had expired in 2013. There should be a new delineation as wetlands grew over time. He asked if staff still thought the application was complete.

AP Leonard responded there was a condition that the applicant would submit additional materials for staff to review the wall and buffering before final approval.

PC Bliss asked about the drainage report as it was missing from the current packet. AP Leonard stated it should have been included. The drainage report from the last packet was still appropriate for the site plan.

PC Bliss asked if there was a study regarding the adequacy of the pump station for Fernwood Road that served this drainage basin.

Engineering Associate Svcarovich responded there was not currently, but it was a condition of approval.

CDD Rux clarified how the wetlands would be handled by the state. Chair Smith said one of the conditions required the applicant to get approval from a long list of other agencies for this application.

PC Pelz asked about the timing for the phases of the project. AP Leonard said the applicant did not have the specific timing, but had requested ten years and five one year extensions.

PC Pelz asked if staff had reviewed the two competing wells. AP Leonard said no, they had not.

Chair Smith asked about the location of the roundabout on Robin Court and the distance to this property. AP Leonard responded it was about 300 feet to the property line.

Chair Smith asked what the speed limit of a major collector was. EA Svcarovich stated it would be around 35 mph. Chair Smith said the agreement stated that this would be a 25 mph street. EA Svcarovich said while that might be in the agreement, the state had the authority to set speed limits.

Chair Smith asked who built the roundabout at Robin Court. CDD Rux said the City did, even though it was outside the City limits.

Chair Smith asked who benefitted from that roundabout. CDD Rux answered the residents in Oxberg Lakes Estates. Chair Smith clarified residents of the County benefitted from the payments of the City.

Chair Smith said it was a condition for the applicant to build a sound wall. Were there any specifics for how it would be built? CDD Rux responded no, there were no specifics in the condition for how high the wall should be or the design.

PC Bliss noted that it was supposed to be built similar to those built on Crestview Drive. CDD Rux clarified there were no specifics and they had to also preserve trees at the same time.

PC Dale asked if there were requirements in the code regarding sound walls. CDD Rux responded there were no design standards for a wall.

Chair Smith commented about the two lots on the west side that would have to be specially designed. AP Leonard responded there would be a vegetative buffer between those lots.

PUBLIC TESTIMONY:

APPLICANT:

Jamie Howsley, attorney for the developer, thanked the Commission and staff. He introduced the project team. The applicant planned to submit a letter addressing the comments that had been made by the neighbors. There were some conditions that he would like modified. He did not think this was the appropriate venue to discuss the six party agreement. Disagreements with the agreement should be made in circuit court. The agreement had been drafted to change the designation of Crestview Drive from an arterial to a major collector and to encourage a 25 mph speed limit. Speed limits on collectors in the City were to be 25 mph. Regarding the wells, a letter would be submitted rebutting the Oxberg Lakes letter. He thought the conclusions in that letter were wrong as

the Oregon Department of Health Services and DEQ had determined that the Oxberg Lakes well was a completely confined system.

Andrew Tull, 3J Consulting, gave a background on JT Smith Companies who would develop this property. This was an entry level attached and detached subdivision project. The 18 single family homes would be a buffer to the Oxberg Lakes Estates. The 230 single family cottage homes would be built throughout the subdivision and the series of apartments would be placed in the corner of the site. It was an efficient use of the land and created an attractive product that had been built in other areas in the region. There were two alternative plats, one with a series of attached duplexes at various locations, however that might change due to the market and the other plat had these units detached. The staff report stated they were proposing 2.5 foot side yard setbacks, but for the majority of the lots they were proposing 0 foot setbacks on one side and 5 foot setbacks on the other side. There would be 51 apartments which would help provide for workforce housing. Also 5% of the cottage homes would have a deed restriction to ensure ongoing affordable housing. The project would have parks, open space, and retention of the wetland area. There would be about four parking spaces per house and there would be a combination of on street and off street parking and garage parking. There was a landscape plan with unique landscaping. The project had a lot of support and a neighborhood meeting had been held.

Mr. Howsley said DLCD had submitted a letter to the City in support of this project as needed housing in Newberg. He then discussed the conditions of approval that they would like to be adjusted. One was Condition A2 which required tree retention along the northern edge of the site which was where the privacy wall and stormwater treatments were planned. He suggested changing the language to say the applicant shall retain as many mature trees as possible within ten feet of the northern property boundary and remove trees as necessary for the privacy wall and stormwater improvements as allowed. The applicant shall supplement the buffer with new trees as necessary to provide a continuous vegetative buffer. Another was Condition B1, regarding private sidewalks, and the language should be changed to the applicant shall follow the City Engineer's requirement for sidewalks along private streets to be five feet wide with a 12 inch wide, six inch high mountable curb. Another was Condition B7 regarding the Crestview Drive extension being developed to collector standards. The applicant suggested revising the condition to add that improvements related to the upsizing of Crestview Drive to collector standards shall be eligible for SDC credits. Another was Condition B15, widening of Portland Road. Because it was adding surplus capacity, the applicant would like the condition revised to say the widening improvement for the turn lane shall be eligible for partial SDC credits. Regarding Condition B16, six foot bike lane on Portland Road, the proposed language change was to add the bike lane improvement shall be eligible for SDC credits. Regarding Condition B17, turn lanes at the center of Crestview Drive and Portland Road, the language should be changed to add the turn lanes for this intersection shall be eligible for SDC credits. For Condition B29, extension of the City's non-potable water system, the language change would add improvements related to the upsizing of the non-potable water system beyond the irrigation requirements for the public right-of-way irrigation within Crestview Crossing shall be eligible for SDC credits. For Condition B31, Fernwood Road pump station and other off-site sanitary sewer infrastructure, the change was to add any improvements related to upsizing of infrastructure to the Fernwood Road facilities that exceeded the capacity required for Crestview Crossing shall be eligible for SDC credits.

Mr. Tull discussed the proposed change to Condition B38, permanent maintenance access via a paved road within ten feet of the stormwater facilities. The applicant would like this condition to be revised to say access shall extend to within ten feet of the center of all structures unless otherwise approved by the City Engineer.

EA Svcarovich said this condition came directly out of the Public Works design and construction standards.

Mr. Howsley stated Condition D1, allowing one year to achieve final plat submittal, should be changed to a three year time period due to the scale of this project.

PC Bliss asked about the drainage management plan which had been included in the previous packet, but not in the current one. Mr. Tull said no changes to the plan had been proposed. It was not included because it was already part of the record and would have been a duplicate submittal.

PC Bliss asked if a study had been done of the pump station at Fernwood to prove that it was adequate. Mr. Tull responded the City's Wastewater Management Plan stated that upgrades to the Fernwood pump station would be needed in the future. There was a condition to provide a downstream analysis. If that analysis showed the improvements needed to be done now, the applicant would make the improvements. However, the project was part of the Capital Improvement Plan project list and would be SDC eligible.

PC Bliss asked if a revised wetland delineation had been done as the one in the packet had expired. Mr. Howsley said additional field studies had been done and were submitted to the Department of State Lands. The City did not have a wetlands ordinance that required submittal of a wetland delineation or evaluation by the City.

The Commission took a five minute break.

PC Bliss asked what was the origination and destination of the vehicles along Crestview Drive that went west beyond Libra. Diego Arguea with Kittelson and Associates replied some of it was coming from this development and some was local traffic using the new connection. It was coming from or heading towards Springbrook.

CDD Rux explained the improvements planned for Crestview Drive from the north/south county line to the roundabout.

Mr. Arguea commented the traffic study had analyzed the full build to adequately address the impacts.

PC Pelz asked if the applicant was willing to add the affordable housing commitment to the conditions of approval. Mr. Tull said it was in the applicant's proposal to do that, but they were open to a condition of approval. He explained how the affordable housing would be implemented.

PROPOSERS: None

OPPOSERS AND UNDECIDED:

Jeff Kleinman, attorney for Oxberg Lakes Estates, said 25 mph was the established limit for collectors in the City and was a negotiated term in the agreement in 2006. The reason the City made the internal improvements to Crestview was the developer was unable to do so due to the recession. Oxberg Estates had dedicated property to accommodate those improvements. The sound wall on Crestview was already put in as well as the landscaping buffer. The sound wall and buffering for the properties adjacent to three home owners in Oxberg Estates were specified in the private development agreement between the developer and the homeowners. He thought there should be a condition of approval that bound the developer to that agreement. The City put in two roundabouts, but the developers were responsible for the roundabouts on Crestview and Westlake. He then discussed the six party agreement to address transportation issues with this development. One of the terms in the agreement was to post no through trucks on Crestview and that was not in the conditions of approval. Crestview was supposed to be designed to encourage a 25 mph speed limit through traffic calming measures. The newly proposed roundabout would not address this issue. The applicant had indicated 30% of all the traffic generated by this development was likely to run north on the Crestview extension to Springbrook, which was a concern to Oxberg Lakes. An access permit was required for this development to access Crestview north of the property line. Currently this was not a condition of approval. Regarding the groundwater, he found out that the surface water flow did not dictate the groundwater flow. The conclusion of the applicant's report did not support the findings of the Oxberg's consultant report because the well construction and water level data did not require the conclusion that the basalt aquifer that the Oxberg well was in was confined. Instead water level data indicated at

least localized equilibration between surface and ground water levels. While the shallow clay level described in the applicant's report was consistent with limited recharge, the soils at the Crestview Crossing site might be laterally variable with some areas presenting more infiltration risk. The Oxberg report looked at the well logs in the surrounding area, not just at the Oxberg well, and concluded that the finding that the Oxberg well was completed in a confined aquifer was not warranted by the available observations. The applicant had not shown that the Oxberg well was adequately protected. He thought a condition should be added that required a monitoring well to be installed between the development's stormwater discharge area and the Oxberg well and if there was anything filtering to the well, that necessary actions would be taken by the applicant at their own expense. There were some issues that could be addressed through the conditions, and some things that needed to be resolved before the application was approved. They did not have DSL's review of the wetland submittal, and if that was rejected or the project had to be majorly revised, it might render the project undoable. The applicant also had to comply with any further comments from ODOT on transportation issues and he thought approval of the application was premature as that could change the configuration of the project as well. He did not think the application complied with several key criteria and some of the issues that were being pushed aside would involve discretion that went beyond what was permitted to staff without a further public process. He objected to the applicant requesting modifications to the conditions for the first time tonight without allowing staff and the Commission time for consideration. He requested that the record be held open for at least seven days to allow time for response. He expected the applicant to abide by the six party agreement that had been signed without objection. He was also surprised about the request for significant SDC credits that had been made tonight and was not in the original application.

Chris Clemow, Transportation Engineer, commented on the six party agreement and the need for the traffic calming on Crestview Drive. There was concern from Oxberg residents that north bound traffic entering Oxberg Estates would be traveling faster than 25 mph unless there was some form of traffic calming. The traffic study found that unless there was a speed reduction of 35 mph to 25 mph on Crestview, traffic would not be diverted off of Crestview onto Springbrook. The distance between the proposed roundabout and the Robin Court roundabout was 910 feet, which was approximately three City blocks. It was sufficient distance for vehicles to speed, which was the concern. A roundabout might not be necessary, but some form of traffic control was. He suggested something be constructed that would functionally promote 25 mph speeds.

Mr. Kleinman said the reason the applicant was not in favor of building the roundabout at the property line was the effect on the number of lots that could be developed, but there were other appropriate traffic control measures that would not take up as much property that could be used.

PC Pelz asked about the options for traffic control measures. Mr. Clemow read the list of options from the City's Transportation System Plan.

PC Pelz clarified the concern of Oxberg Estates was that development limited the ability of the aquifer to recharge. Mr. Kleinman stated the concern was the ability to recharge with clean water. Their most significant concerns were traffic safety and losing the well.

PC Bliss discussed the location of the well and how the drainage from the street and the roofs had gone into the swales and into the ground for years, which was currently a moderate risk. He assumed there had been no intrusion or contamination of the well to date. Mr. Kleinman said that was correct, the well was checked regularly and there had not been a problem. There were large lots in Oxberg Estates, and it was different in character from the dense development that would occur in Crestview Crossing and the amount of cars would be different as well.

PC Bliss asked if the sound wall design and buffer proposed was satisfactory to them. Mr. Kleinman said no, it should incorporate the language of the agreement.

Chair Smith clarified all of the conditions they would like to have added. He asked for more clarification on the proposed roundabout on Crestview. Mr. Kleinman said Oxberg Estates would accept another appropriate measure that was listed in the City's Transportation System Plan for use on collectors.

Chair Smith discussed the difficulties in determining water quality. He was in favor of the solution proposed for a monitoring well that was checked periodically between the properties. Mr. Kleinman said that was an acceptable solution to them, and that remediation would be required if anything was flowing northward.

John Trudel, Oxberg Estates resident, was one of the key people in the six party agreement. He gave a history of the agreement and how the City had been concerned that the infrastructure for this end of town was inadequate and adding more traffic was an issue. This was a gateway into the City and the parcels were flagship commercial properties for people coming into town. It was premium land and they wanted the road infrastructure developed at the same time and to be done in a context of diversity and to protect the environment. The six party agreement had used best practices and he thought it was crucial that it be followed. The water system was one of the few state licensed commercial water systems in Yamhill County and needed to be protected. The intended results of the agreement were to fund the road upgrades, to get good, high quality development and commercial along the highway compatible with the environment and neighboring properties, diverse housing for broad appeal, best practices, and that it was self-funded.

PC Bliss clarified the main well was on the south border and asked about the area of influence for the well. Mr. Trudel explained how the water system worked. The main well was very close to the proposed development and the recharge zone was on the proposed development property.

Robert Soppe, Newberg resident, discussed the sewer main running north/south that was most likely to service this property and how the updated Wastewater Master Plan changed the routing of this sewer to the east and then south to connect to a new pump station. This new routing was to be evaluated as the property developed, and fortunately was not going to be used. This was an example of engineering by citizen input. The new pump station would still be needed for other properties, but the timing would be later and the size would be smaller. Also in the updated Wastewater Master Plan, the Springbrook sewer main south of 99W had capacity concerns. It was to be constructed in the future when Springbrook was reconstructed. This might not be necessary as a sewer main could be constructed through Crestview starting at Springbrook and routing through this proposed development. The application was proposing a ten inch pipe for the development, which would not have significant capacity to handle substantial flow from the Springbrook main north of Crestview. This was a condition of approval, and he thought the pipe size should be listed as "to be determined" rather than designated as a specific size. There was also a requirement that the applicant upsize upstream flows, however no such requirement was in the packet a month ago. It was another example of engineering by citizen input. He did not think it was reasonable to have the applicant evaluate redirected upstream flows. He asked that the Commission consider whether engineering by citizen input was appropriate for Newberg, if the ten inch pipe designation was appropriate, and if it should be the applicant's responsibility to analyze upstream flows when the City chose not to do so. The applicant requested to make some of the improvements SDC eligible, and he thought the Commission should be careful that it only be applied to upsizing beyond the improvements needed for the property. He was on the Council when the six party agreement was approved and thought the intended flow of traffic from Portland Road to Springbrook was not going to be through Crestview. That seemed to be no longer the case. He thought the funding for the current roundabout was through SDCs which was funded by Newberg developers, not the City. All the members of the agreement benefitted from the roundabout.

APPLICANT REBUTTAL:

Mr. Howsley had heard that an alternative traffic calming measure would be acceptable, and the applicant was open to a condition to that effect. Regarding the sound wall and buffer, the applicant agreed to taking the language from the six party agreement for the design and putting that into a condition as well. Regarding the well, he was unsure about the location of the well as the Oxberg well log did not show the well adjacent to this property. If there was one located on the southern edge, the applicant would agree to a condition for a

monitoring well. The development's HOA would monitor that and the information would be sent to the state and City Engineer.

PC Dale asked about the condition for no through trucks signage. Mr. Howsley said that was acceptable.

PC Bliss asked about the traffic calming and capacity. Mr. Arguea said there was a study attached to the six party agreement to address capacity going from an arterial to a collector. The study determined that the impacts were minimal. Speeds were not related to capacity unless there was a break down condition with vehicle back-ups. Any element of traffic calming that did not create a break down would not have a measurable reduction in capacity.

Mr. Howsley said the way the plan had been laid out would have a neighborhood feel with a lot of stimulus and would be traffic calming in itself.

Chair Smith suggested closing the public hearing and continuing the deliberation to the next meeting so the various agreements that had been reached verbally could be written down by staff. CDD Rux responded there had been a request to leave the record open for seven days to allow for additional testimony, and there would need to be another seven days for the applicant to respond. Staff needed time to consider the proposed changes to the conditions as well.

Mr. Howsley suggested that the lawyers work together to come up with agreed conditions to give to staff within seven days.

Chair Smith said the record would remain open to allow the parties to work together and submit the conditions to staff. There was agreement that the Commission would use the current packets and staff would not have to make more copies.

MOTION: PC Dale/PC Bliss moved to continue the hearing for PUD18-0001/CUP18-0004 to October 11, 2018 at 7:00 pm. The motion carried (6 Yes/ 0 No).

PC Bliss asked about Mr. Soppe's comments regarding the off-site sanitary sewer. EA Svicarovich responded the condition had been updated to address the comments that had been made. She would look into the location of the realignment.

VII. ITEMS FROM STAFF

CDD Rux gave updates on Council items including the Illinois Comprehensive Plan zone, Riverfront Master Plan online survey and design, Newberg 2030 study areas, housing needs assessment process, and community visioning program. He then discussed the anticipated schedule of Planning Commission agenda items.

VIII. ITEMS FROM COMMISSIONERS

Chair Smith said he would be moving to the City of Dundee and would not be on the Planning Commission after December.

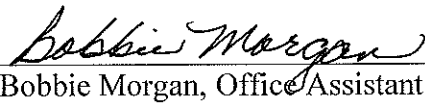
PC Bliss commented that his term would expire in December.

IX. ADJOURNMENT

Chair Smith adjourned the meeting at 10:30 p.m.

Approved by the Newberg Planning Commission this October 11, 2018.


PC Philip Smith, Planning Commission Chair


Bobbie Morgan, Office Assistant II