

## **ORDER No. 2010-0023**

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**AN ORDER APPROVING A REQUEST FOR AN EXISTING NON-CONFORMING BILLBOARD SIGN, OWNED BY CBS OUTDOOR, INC., TO REMAIN AT THE NEWBERG AUTO ELECTRIC SITE AT 616 W. FIRST STREET, AND REVERSING THE HEARINGS OFFICER'S DECISION**

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### **RECITALS:**

1. In 1998 the Newberg City Council adopted revised sign standards. Signs that were legally in place at that time but that did not meet the new standards, known as "non-conforming signs", were allowed to remain until 2010. Newberg Development Code Section 151.149 established processes where owners of non-conforming signs could apply to have the signs remain after March 31, 2010, provided they met certain criteria.
2. Jamie Nibler and John Culver applied to have an existing non-conforming billboard sign at 616 W. First Street remain.
3. On June 8, 2009, Hearings Officer Paul Norr held a hearing concerning the application. After extending the record to accept additional testimony, Hearings Officer Norr closed the record, considered the evidence, and issued his decision and findings on June 29, 2009. The decision denied the application based on the criteria in Newberg Development Code 151.149(B)(2).
4. Ordinance 2008-2706 provides that the hearings officer's decision may be appealed to the City Council. The applicant appealed the decision on July 9, 2009. The City Council heard the matter on September 8, 2009, and continued the hearing to March 1, 2010.
5. After the time of the hearings officer's decision, the applicant made substantial landscaping and other improvements to the property.
6. After these improvements were made, the City Council found that the application met the applicable criteria as shown in Exhibit "A". Exhibit "A" is hereby attached and by this reference incorporated.
7. On March 1, 2010, the Council denied an order that would have upheld the hearing officer's decision. The Council also directed staff to bring back to Council a request to allow a non-conforming sign to remain on the property under certain conditions.

### **THE CITY OF NEWBERG ORDERS AS FOLLOWS:**

1. The hearings officer's decision to deny a request to allow the existing non-conforming billboard sign to remain at the Newberg Auto Electric site at 616 W. First Street is hereby reversed.

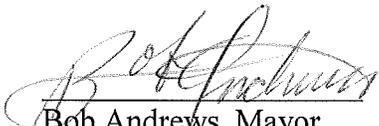
2. The application File NCSIGN-09-005 to allow the existing non-conforming billboard sign located at 616 W. First Street to remain is hereby approved, subject to the following conditions:
- a. The applicant shall install the landscaping as described in Exhibit "B" within 30 days of the date of this order. Exhibit "B" is hereby attached and by this reference incorporated. Said landscaping shall be maintained.
  - b. The sign may remain in place, and is subject to future removal if any of the conditions described in Newberg Development Code 151.149 (C), (D), and (E) apply, except that the copy on the existing sign face may be changed.

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: April 20, 2010

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 19<sup>th</sup> day of April, 2010.

  
Daniel Danicic, City Recorder

**ATTEST** by the Mayor this 22<sup>nd</sup> day of April, 2010.

  
Bob Andrews, Mayor

#### QUASI-JUDICIAL HISTORY

By and through Paul Norr, Hearings Officer at the 06/08/2009 meeting. Or,     None.  
(committee name) (date) (check if applicable)

**Exhibit "A" to Order 2010-0023  
Findings**

**Property summary:**

Applicant: Jamie Nibler and John Culver  
Site Address: 616 W. First Street  
Tax Lot: 3219BD-3900  
Zoning: C-2  
Existing Use: Newberg Auto Electric and Advanced Diesel Service (vehicle repair and maintenance)

**Request:** The property contains an existing sign of approximately 12' x 24' (288 square feet) near 2<sup>nd</sup> Way. The sign was placed on the site in approximately 1984, making this a legal non-conforming sign as that term is used in Newberg Development Code (NDC) Section 151.149(B)(2).

The sign is non-conforming for two reasons. First the sign is too large. The sign is approximately 288 square feet, which exceeds the 100 square foot maximum size. Second, the sign is too tall. The sign is approximately 28 feet tall, which exceed the maximum height limit of 20 feet in the C-2 zone.

The applicant has requested that the sign be allowed to remain under the provisions of Newberg Development Code 151.149(B)(2).

**Procedural Findings:**

The applicant filed a request to have the non-conforming sign remain on March 17, 2009. On June 8, 2009, Hearings Officer Paul Norr held a hearing concerning the application. After extending the record to accept additional testimony, Hearings Officer Norr closed the record, considered the evidence, and issued his decision and findings on June 29, 2009. The decision denied the application based on the criteria in Newberg Development Code 151.149(B)(2).

Ordinance 2008-2706 provides that the hearings officer's decision may be appealed to the City Council. The applicant appealed the decision on July 9, 2009. The City Council heard the matter on September 8, 2009, and continued the hearing to March 1, 2010.

**Newberg Development Code Section 151.149(B)(2)**

In order for a non-conforming sign to remain after March 31, 2010, the applicant must apply and show that the criteria found in Newberg Development Code Section 151.149(B)(2) are satisfied. The Council finds that all of the four criteria listed must be met in order for the application to be approved.

*The owner of any sign that was placed legally but does not now conform to the requirements of this code shall either move the sign or register it with the city on a form provided by the Director prior to January 1, 2000.*

**Finding:** Evidence presented by the applicant indicates that the owner applied for and received a sign permit from the City when the sign was initially installed in 1984. The Council finds that this permit application satisfies the requirement that the sign be registered with the city.

**(a) The sign is in a good state of repair and maintenance.**

**Finding:** The sign is intact with no visible defects. It is in good conditions with no current need for repair or maintenance. Therefore, *this criterion is met.*

**(b) The number, size, and height of signs to remain is minimal and contributes to an attractive appearance to the neighborhood.**

**Finding:** There are two freestanding signs on the property: one is a small “Newberg Auto Electric” sign and the other is the billboard. The site has one other attached sign on the south west side of the building. We note that this is much smaller than the prior “Oregon Orchards” sign that was on the building in 1998. These three signs are certainly few in number, and collectively minimal in size. The billboard’s 28 feet height is minimized by the adjacent topography, in that the sign base is several feet below the nearby highway grade. Therefore the number, size, and height of signs to remain is minimal.

Because of the unique triangular shape of the property and the roads on all frontages, the sign itself is fairly isolated from other buildings, properties and signs. Because of this, there is little to compare the sign to, and the sign is as attractive as the setting warrants. Therefore, *this criterion is met.*

**(c) The use of bold and bright colors, lighting, and designs is minimal.**

**Finding:** The sign does not use bold or bright colors or designs. Lighting is limited to static illumination of the face. Therefore, *this criterion is met.*

**(d) Other elements of the site are well maintained and attractive.**

**Finding:** The hearings officer ‘s decision found that the site was not well maintained and attractive. Since that time, the applicant has done several improvements to the property, including installing arbor vitae around the display area, more neatly ordering the vehicles and materials on site, and striping parking areas. In addition, the applicant proposed to install additional street trees along the Highway 99W frontage, as shown in Exhibit “B”. With these improvements, the site is well maintained and attractive. Therefore, *this criterion is met.*

***Except as specifically determined by the hearings officer, any sign allowed to remain under the provisions of this subsection is subject to removal under the provisions of subsections (C), (D), and (E) below.***

**Finding:** The three subsections require removal of the non-conforming sign upon (C) abandonment, (D) certain site improvements, or (E) sign modifications, including modifications that involve a change in copy. The sign is a billboard type sign, which is designed for frequent copy changes. Such a change would not alter the fundamental design of the sign or the circumstances under which it is allowed to remain. Therefore, the Council finds that replacement of the copy on the face of the sign should not subject the sign to removal under the Development Code provisions.



January 29, 2010

Barton Brierley  
City of Newberg  
414 E. First St.  
Newberg OR 97132

**Re: Agreement regarding final work at 616 W. 1<sup>st</sup>, Newberg Auto Electric**

Dear Barton,

As we discussed on the phone, the first phase of mitigation work has been completed at the Newberg Auto Electric site. Between the landowner and CBS Outdoor, we have already invested considerable resources to make the site more attractive.

We are prepared to complete the project with the installation of four large street trees (Corinthian Linden, 2" caliper) at the site. I have enclosed multiple photos of the site including a mock-up of the trees when they are fully grown. The trees will be located near the existing Arbor Vitae in order to be fed by the same irrigation system. I have also enclosed a current photo of the trees already installed along 2<sup>nd</sup> Way. As those trees grow we believe they will provide valuable screening for southbound Hwy 99 traffic.

At this time we would ask the following of the City:

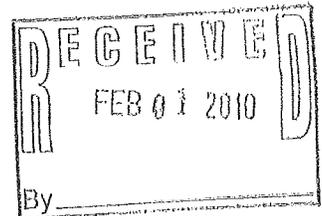
- A letter to CBS Outdoor and Newberg Auto Electric confirming that the work, as proposed, will be satisfactory in resolving this matter and that the CBS Outdoor billboard will be grandfathered and allowed to remain as-is.
- A staff recommendation to the City Council which concludes this matter under mutual agreement.

We will proceed with the final phase of work upon receipt of the letter requested above. Please let me know if you have any questions or concerns about this approach. We'd like to know if we can have agreement within the next 2 weeks in preparation for the March City Council meeting.

Best Regards,

Richard Gaston  
Real Estate Representative  
CBS Outdoor, Inc.

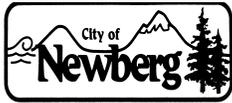
cc: Jamie Nibler, Newberg Auto Electric



*Street trees, proposed*



# FAILED TO PASS ON MARCH 1, 2010 COUNCIL APPROVED THE APPEAL TO KEEP THE SIGN



*ORDER No. 2010-0023*

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**AN ORDER DENYING AN APPEAL FOR AN EXISTING NON-CONFORMING BILLBOARD SIGN, OWNED BY CBS OUTDOOR, INC., TO REMAIN AT THE NEWBERG AUTO ELECTRIC SITE AT 616 W. FIRST STREET**

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### **RECITALS:**

1. Large-scale non-conforming signs are counterproductive to city ordinances that, among other things: enhance the aesthetic quality of Newberg, attract new businesses, encourage existing businesses to remain, encourage tourism, and promote pedestrian scale development.
2. The application does not meet the Municipal Code criteria in order to allow a non-conforming sign to remain. The City Council intends, and requires, that all four of the criteria of section §151.149(B)(2) of the Municipal Code are satisfied in order to allow a non-conforming sign to remain.
3. The findings and decision of the hearings officer are found to meet the intent of the Municipal Code. The hearing's officer's decision is shown in Exhibit "A". Exhibit "A" is hereby attached and by this reference incorporated.

### **THE CITY OF NEWBERG ORDERS AS FOLLOWS:**

1. The hearings officer's decision to deny a request to allow the existing non-conforming billboard sign to remain at the Newberg Auto Electric site at 616 W. First Street is hereby affirmed.
2. The existing non-conforming billboard sign located at 616 W. First Street shall either be removed or brought into conformance with §151.594(C) of the Municipal Code within six months of the date of decision (by September 1, 2010).

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: March 2, 2010

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 1<sup>st</sup> day of March, 2010.

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 4<sup>th</sup> day of March, 2010.

\_\_\_\_\_  
Bob Andrews, Mayor

### **QUASI-JUDICIAL HISTORY**

By and through Paul Norr, Hearings Officer at the 06/08/2009 meeting. Or, \_\_\_ None.

## REPORT AND DECISION OF THE HEARINGS OFFICER

City of Newberg File No. NCSIGN-09-005  
(Newberg Auto Electric)

### Request for a Non-Conforming Sign to Remain

Applicant: Jamie Nibler and John Culver  
Site Address: 616 W. First Street  
Tax Lot: R3219BD03900  
Zoning: C-2  
Existing Use: Newberg Auto Electric and Advanced Diesel Service  
(vehicle repair and maintenance)  
Hearing Date: June 8, 2009

#### I. SUMMARY DESCRIPTION OF APPLICATION

The applicant requests approval for one approximately 12' x 24' sign to remain on the site adjacent to Highway 99 near 2<sup>nd</sup> Street. The sign was placed on the site in approximately 1984, making this a legal, non-conforming sign as that term is used in Newberg Development Code (NDC) Section 151.149(B)(2).

The sign is non-conforming for two reasons: (1) the sign is too big, because at 12' x 24' the sign is 288 square feet in size, which is larger than the 100 square feet maximum size allowed in the C-2 zone [NDC 151.594(B)(3)]; and (2) the sign is too tall, because at 28' in height the sign is taller than the 20' allowed in the C-2 zone [NDC 151.594(C)(2)].

## II. SUMMARY OF EVIDENCE

The record includes:

- A. The tape recording of the June 8, 2009, hearing;
- B. The City of Newberg Planning and Building Department letter of January 2, 2009;
- C. The application with accompanying statement, map, and photographs;
- D. Supplemental Application Information from the City of Newberg Planning and Building Department;
- E. E-mail message from Paul Norr to Duane Bosworth dated June 19, 2009; and
- F. Letter from CBS Outdoor, Inc., dated June 25, 2009, with accompanying statement and photograph.

The public hearing was held as scheduled on June 8, 2009. In attendance representing the City was Luke Pelz, Assistant Planner for the City of Newberg. Representing the applicant were Jamie Nibler and John Culver. The applicants' testimony summarized the application materials with no significant additions.

Prior to the end of the hearing the applicants requested that the record be left open to allow the owner of the sign to submit additional written comments. The Hearings Officer granted the request, and kept the record open until the close of City business on June 22, 2009, to allowed anyone to submit additional written materials on any issue in the case.

On June 19, 2009, the Hearings Officer received a request from attorney Duane Bosworth on behalf of CBS Outdoor, Inc. to extend the record closing date. The hearings officer extended the record closing date from June 22, 2009, to June 26, 2009. Exhibit F was submitted prior to the June 26, 2009, closing deadline.

The Hearings Officer visited the site on May 12, 2009, and on June 8, 2009. The purpose of these site visits was to familiarize the Hearings Officer with the general context of the sign on the site and in the general area.

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### III. DECISION CRITERIA

Newberg Development Code Section 151.149(B)(1) and (2) contain the only applicable approval criteria for allowing a legal, non-conforming sign to remain on the site after March 31, 2010. Section 151.149(B)(2) applies to this request. Following is the Hearings Officer's evaluation of the approval criteria in this case. All approval criteria must be met for the application to be approved.

The Code's approval criteria require a determination of "minimal" impact with regard to the number, size, and height of the signs remaining on the property [Subsection (b)], and with regard to the use of bold and bright colors, lighting and design [Subsection (c)]. The Code does not define the word minimal, therefore the Hearings Officer will use the plain and ordinary meaning of "minimal" in the context of this sign code. The Hearings Officer finds that in this context "minimal" means "no significant off-site impact".

The code approval criteria below are in italics with the Hearings Officer's findings in regular type:

(a) *The sign is in a good state of repair and maintenance.*

The sign is intact with no visible defects, and therefore in good condition with no current need for repair or maintenance. This criteria is met.

(b) *The number, size, and height of signs to remain is minimal and contributes to an attractive appearance of the neighborhood.*

At this location on Highway 99 this freestanding sign is out of the norm. It is the only large billboard type sign visible from Highway 99 near the entrance to the West end of Newberg. This large sign that exceeds both the maximum size and maximum height in the C-2 zone creates an unattractive appearance. This criteria is not met.

The CBS Outdoor response argues that the size and height of this sign are consistent with other outdoor advertising signs throughout Oregon. This may or may not be so, but the City of Newberg approval criteria address the impact on and attractiveness of the neighborhood, not the rest of Oregon.

(c) *The use of bold and bright colors, lighting, and designs is minimal.*

The colors used on the billboard, and the design and lighting of the sign, are consistent with other signs in the immediate vicinity and of minimal impact at this site. This criteria is met.

(d) *Other elements of the site are well maintained and attractive.*

This site is not well maintained and attractive. There is no attractive landscaping. The parking lot is not well defined, and there are no striped parking spaces. Vehicles and vehicle parts are located outdoors in the yard areas. This criteria is not met.

The CBS Outdoor response mis-states this criteria. This criteria addresses other elements of the "site", not other elements of the "sign".

#### Additional Discussion

The CBS Outdoor, Inc., letter dated June 25, 2009, mentions potential constitutional issues, however the letter acknowledges that these constitutional issues are not part of in this case. Based on the lack of specificity in raising any constitutional issues, and the acknowledgment by CBS Outdoor that these issues are not part of this case, there are no constitutional issues to be addressed.

The applicants have raised economic issues, in particular that the denial of this application would cause a financial hardship to the applicants. CBS Outdoor also raised economic issues, although it is not clear from the June 25, 2009 letter what those specific issues might be. Nevertheless, economic hardship does not relate to any of the City's approval criteria found in NDC Section 151.149(B)(1) and (2).

#### **IV. CONCLUSIONS**

Based on the evidence in the record and the above findings, this application does not meet the criteria of Newberg Development Code 151.149(B)(2).

**V. DECISION**

It is therefore the decision of the Hearings Officer that this application is denied.

DATED: June 29, 2009.

  
\_\_\_\_\_  
Paul Norr, Hearings Officer

APPEAL INFORMATION

If you do not agree with the Hearings Officer's decision in this case you may appeal the decision for review by the Newberg City Council, who will then consider this matter. You have 14 days from the date of this decision to file an appeal. The deadline to file an appeal is Monday, July 13, 2009. The filing fee for an appeal is \$850.00. An appeal application may be obtained at Newberg City Hall, 414 E. First Street, Newberg, Oregon 97132. Additional appeal information may be obtained by telephone from the Newberg Planning Division at 503-537-1240.