Dale Blanton
City Planner
Newberg City Hall
Newberg, OR 97132

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation; JOHN W. STUART; SHARON A. STUART; M. J. McDERMOTT; SHIRLEY McDERMOTT; LOUISE McDERMOTT; GERHARD RASCHE; SUSAN A. RASCHE; LARRY HARTMAN; IVALOU HARTMAN; TOM M. McFERRON; and NEOLA McFERRON,

Petitioners,

vs.

CITY OF NEWBERG, an Oregon Municipal Corporation; ELVERN HALL, its Mayor; ROBERT BLODGETT; FRED CASEY; HAROLD CROBEY; JOHN CACH; ALAN HALSTEAD; ESTHER KELTNER; WILLIAM VAUGHAN; ARTHUR STANLEY; and TOM TUCKER, the City Planning Commission Members; MAURICE CHANDLER; ROGER GANO; JEAN HARRIS; JACK C. NULSEN; ROBERT HURFORD; FRED LaBONTE; CLARENCE STOUFFER; and CHESTER WINDSOR, the City Council Members; DALE BLANTON, the City Planner; M. C. GILBERT, the City Recorder; JR. & JR., INC., dba VALLEY CONCRETE PRODUCTS; and WILLIAM B. HEINZMAN,

Defendants.

No. 33490

PETITION FOR WRIT OF REVIEW

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226 6151

Petitioners allege:

I

The City of Newberg is duly organized and existing pursuant to the statutes of the state of Oregon. Defendants Maurice Chandler, Roger Gano, Elvern Hall, Jean Harris, Robert Hurford, Fred LaBonte, Clarence Stouffer and Chester Windsor

were at all material times herein duly elected and acting members of the city council.

II

The Newberg City Planning Commission is duly organized and existing pursuant to the statutes of the state of Oregon. Defendants Robert Blodgett, Fred Casey, Harold Grobey, John Cach, Alan Halstead, Esther Keltner, William Vaughan, Arthur Stanley and Tom Tucker were at all material times herein duly appointed and acting members of the planning commission.

III

The City of Newberg is a municipal corporation of the state of Oregon and is in Yamhill County. Defendant Jack C. Nulsen was at all material times herein the duly elected and acting mayor of the City of Newberg. Defendant Dale Blanton was at all material times herein the duly appointed City Planner of the City of Newberg. Defendant M. C. Gilbert was at all material times herein the duly appointed City Recorder of the City of Newberg.

IV

Jr. & Jr., Inc., is an Oregon Corporation doing business as Valley Concrete Products.

ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

V

Petitioner East County Homeowners' Association is an Oregon nonprofit corporation in good standing, and members of said association reside in the vicinity of the land subject to the conditional use permit granted in the proceedings giving rise to this petition.

VI

Individual petitioners are landowners in the City of Newberg in the vicinity of the property for which the conditional use permit giving rise to this petition was issued, and were appellants in a proceeding in the City of Newberg, hereinafter set forth in detail.

VII

On or about October 20, 1976, William B. Heinzman, Jr. & Jr., Inc., doing business as Valley Concrete Products, filed an application with the City of Newberg Planning Commission. Said application sought a conditional use permit to build and operate a concrete tile plant at the south end of Alice Way in the City of Newberg, which is zoned M-1.

VIII

On November 16, 1976, the City Planning Commission held a public meeting at which the proposed conditional use was approved.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

IX

On or about November 28, 1976, petitioners appealed the decision of the Planning Commission to the Newberg City Council.

X

On December 20, 1976, the Newberg City Council held a hearing upon the appeal. The city council approved the action of the Planning Commission.

XI

The City Planning Commission lacked jurisdiction to grant a conditional use permit in an M-1 zone and the city council lacked jurisdiction to affirm such a grant for the reason that Ordinance No. 1282 of the City of Newberg, entitled "An Ordinance Establishing Zoning Regulations" as amended by Ordinance No. 1780 does not make provision for allowance of conditional uses in an M-1 zone.

XII

No notice of the November 16 meeting of the Planning Commission was published during the twelve days prior to November 16, 1976, in a paper of record. Petitioners who live on land adjacent to or directly across the street from the affected land did not receive notice by mail of the November 16, 1976, meeting of the Newberg City Planning Commission. Therefore, the City Planning

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

Commission was without jurisdiction to issue a conditional use permit, and the city council lacked authority to affirm a decision made by the City Planning Commission when it lacked jurisdiction to act.

XIII

Both the City Planning Commission and the city council erred in failing to adopt findings of fact or to supply supporting reasons for their decision.

XIV

The Planning Commission did not act as an unbiased tribunal as evidenced by the following:

1. Before the proponent's testimony was concluded one member moved to grant the conditional use permit.
2. While proponent was presenting its case, a second member of the Planning Commission spoke in terms of "when we grant this permit * * *."

XV

No evidence was before either the Planning Commission or the city council which would support a conclusion that the proposed use was not more intensive than existing uses, and it was error to grant the permit.

ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

XVI

The Planning Commission and city council erred in allowing the permit without receiving evidence or making findings upon the availability of other sites already zoned for the manufacture of concrete tile or upon public need. No ordinance of the City of Newberg, by enumerating the manufacture of concrete tile, constitutes a prior determination of public need. The area south of Twelfth Street is designated by the Newberg Comprehensive Plan as a heavy industrial area, and is now zoned

XVII

Granting the conditional use permit was error because it violates the Newberg Comprehensive Plan in the following particulars:

1. Failure to adhere to the requirement that the area between Hess Creek and Springbrook Street, the A-dec Site, be developed to "the highest standards."
2. Failure to group industries into well planned industrial areas.
3. Permitting interference with the use of Hess Creek as open space and as an outdoor recreation area.
4. Failure to consider "proper location" for heavier industry.
5. Permitting citing of a heavier industry before establishing "strong development standards."

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

XVIII

The City Planning Commission and the city council abused the police power in granting a conditional use permit which created a defacto spot zoning for heavy industry on a small parcel surrounded by land zoned for residential use.

XIX

The actions of the Newberg Planning Commission and the Newberg City Council as aforesaid have been to the injury of substantial rights of petitioners.

WHEREFORE, petitioners pray for a writ of review directed to the City of Newberg, its planning commission, city council, and city recorder, directing them to make return to the above-entitled Court forthwith the records and proceedings in the above-described cause for review by said Court.

Dezendorf, Spears, Lubersky & Campbell
Herbert H. Anderson
Harold C. Pope

Dezendorf, Spears, Lubersky & Campbell
Herbert H. Anderson
Harold C. Pope

Attorneys for Petitioners.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

C E R T I F I C A T E

I, HAROLD C. POPE, of attorneys for Petitioners, certify that I have examined the process or proceedings and the decision or determination herein and it is erroneous as alleged in the Petition.

Harold C. Pope

Of Attorneys for Petitioners

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

STATE OF OREGON)
County of Multnomah) ss

I, K JOHN W STUART, being first duly sworn, depose and say that I am ~~the~~ one of the petitioners in the above-entitled action; and that the foregoing PETITION FOR WRIT OF REVIEW is true as I verily believe.

X John W Stuart

SUBSCRIBED AND SWORN TO before me this 14th day of February, 1977.

Notary Public for Oregon
My commission expires 10-24-80

I, _____, of attorneys for _____ in the above-entitled cause, do hereby certify that the foregoing copy of _____ is a full, true and correct copy of the original and of the whole thereof.

_____

Service of the foregoing _____ by copy, as prescribed by law, is hereby admitted at _____, Oregon, this _____ day of _____, 19___.

_____
Attorney for _____

Dezendorf, Spears, Lubersky & Campbell
800 Pacific Building
Portland, Oregon 97204 226-6151

VERIFICATION

NULSEN & PAXTON
ATTORNEYS AT LAW. PROF. CORP.
817 E. FIRST STREET
NEWBERG, OREGON 97132

JACK C. NULSEN, JR.
DAVID R. PAXTON

TELEPHONE 538-9433

February 24, 1977

George Layman
City Attorney
115 N. Washington
Newberg,OR 97132

Dale Blanton
City Planner
Newberg City Hall
Newberg, OR 97132

Re: East County Homeowners' Association vs. City of Newberg and William B. Heinzman

Yamhill County Case no. 33490

Dear Sirs:

Please find enclosed photocopies of Petition for Writ of Review, Undertaking, and Order for Writ.

Very truly yours,

David R. Paxton

David R. Paxton
Attorney at Law

DRP/mc
Encl.

FILM 31 PAGE 606
FILED
YAMHILL COUNTY, OREGON
FEB 18 9 07 AM '77
WANDA CATT
COUNTY CLERK
DEPUTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation; JOHN W. STUART; SHARON A. STUART; M. J. McDERMOTT; SHIRLEY McDERMOTT; LOUISE McDERMOTT; GERHARD RASCHE; SUSAN A. RASCHE; LARRY HARTMAN; IVALOU HARTMAN; TOM M. McFERRON; and NEOLA McFERRON,

Petitioners,

vs.

CITY OF NEWBERG, an Oregon Municipal Corporation; ELVERN HALL, its Mayor; ROBERT BLODGETT; FRED CASEY; HAROLD GROBEY; JOHN CACH; ALAN HALSTEAD; ESTHER KELTNER; WILLIAM VAUGHAN; ARTHUR STANLEY; and TOM TUCKER, the City Planning Commission Members; MAURICE CHANDLER; ROGER GANO; JEAN HARRIS; JACK C. NULSEN; ROBERT HURFORD; FRED LaBONTE; CLARENCE STOUFFER; and CHESTER WINDSOR, the City Council Members; DALE BLANTON, the City Planner; M. C. GILBERT, the City Recorder; JR. & JR., INC., dba VALLEY CONCRETE PRODUCTS; and WILLIAM B. HEINZMAN,

Defendants.

No. 33490

ORDER FOR WRIT OF REVIEW

ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

Petitioners above named having petitioned for a writ of review to issue, requiring Defendants above named to return to the Clerk of the Court a certified copy of the record and proceedings together with the minutes, findings, exhibits and orders of the Newberg City Planning Commission and the Newberg City Council concerning the grant of a conditional use permit to allow the operation

of a concrete tile factory to operate at the south end of Alice Way in the City of Newberg, and

IT APPEARING TO THE COURT that an undertaking has been filed by Petitioners, as required by law, now, therefore,

IT IS HEREBY ORDERED that the Clerk of this Court forthwith issue a writ directed to the Defendants and the City Recorder requiring the return of said writ to this Court, on or before the 1st day of March, 1977, together with a certified copy of the record and proceedings had concerning the granting of the said conditional use permit by the Newberg City Planning Commission, together with the minutes, exhibits, findings and orders rendered.

DATED this 17th day of February, 1977.

Circuit Judge

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation; JOHN W. STUART; SHARON A. STUART; M. J. McDERMOTT; SHIRLEY McDERMOTT; LOUISE McDERMOTT; GERHARD RASCHE; SUSAN A. RASCHE; LARRY HARTMAN; IVALOU HARTMAN; TOM M. McFERRON; and NEOLA McFERRON,

Petitioners,

vs.

CITY OF NEWBERG, an Oregon Municipal Corporation; ELVERN HALL, its Mayor; ROBERT BLODGETT; FRED CASEY; HAROLD GROBEY; JOHN CACH; ALAN HALSTEAD; ESTHER KELTNER; WILLIAM VAUGHAN; ARTHUR STANLEY; and TOM TUCKER, the City Planning Commission Members; MAURICE CHANDLER; ROGER GANO; JEAN HARRIS; JACK C. NULSEN; ROBERT HURFORD; FRED LaBONTE; CLARENCE STOUFFER; and CHESTER WINDSOR, the City Council Members; DALE BLANTON, the City Planner; M. C. GILBERT, the City Recorder; JR. & JR., INC., dba VALLEY CONCRETE PRODUCTS; and WILLIAM B. HEINZMAN,

Defendants.

No. 33490

UNDERTAKING

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6131

WHEREAS, the above-named petitioners have applied for a Writ of Review of the actions of the City Council and Planning Commission of the City of Newberg in granting a conditional use permit for manufacture of concrete tile at the south end of Alice Way in the City of Newberg,

NOW, THEREFORE, John W. Stuart and M. J. McDermott as Principals, and Louise McDermott as Surety, are jointly and severally bound and undertake that said petitioners will pay all costs that may be adjudged to the respondents in the action upon the review not to exceed the sum of $100.00.

DATED this 14 day of FEBRUARY, 1977.

Louise E. McDermott
Petitioner-Surety

x John W Stuart

x M. J. McDermott

Petitioners-Principals

SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

YAMHILL COUNTY
Oregon

BOARD OF COMMISSIONERS

February 28, 1978

Mr. David R. Paxton
Attorney at Law
817 E. First Street
Newberg, Oregon 97132

Dear Mr. Paxton:

Enclosed is a signed copy of your letter of agreement between Mr. Heinzman and Yamhill County concerning the care of Alice Way (a public road) North of the City of Newberg.

Road bed tests were taken and the signed agreement with approved actions satisfies the County Engineer and Yamhill County as of this date.

Respectfully,

John P. Macaulay
John P. Macaulay, Chairman

Colin Armstrong
Colin Armstrong, Commissioner

Ted Lopuszynski
Ted Lopuszynski, Commissioner

CA:eep

cc: Yamhill County Road Dept., w/encl.
✓City of Newberg, Planning Dept., w/encl.

Courthouse • McMinnville, Oregon 97128 • Telephone 472-9371

NULSEN & PAXTON
ATTORNEYS AT LAW, PROF. CORP.
817 E. FIRST STREET
NEWBERG, OREGON 97132

JACK C. NULSEN, JR.
DAVID R. PAXTON

TELEPHONE 538-9433

February 23,1978

Mr. Colin Armstrong, County Commissioner
Mr. Dennis West, County Engineer
Yamhill County Courthouse
McMinnville, Oregon 97128

Re: William Heinzman's Care of Alice Way

Gentlemen:

It is our understanding that the agreement concerning the care of Alice Way between Mr. Heinzman and Yamhill County consists of Mr. Heinzman doing the following:

1. He will cause 3/4" minus crushed rock to be placed on said road in three (3) different applications, one of which has already been done, with the second application due in March of 1978 and a third application due in May of 1978 if needed. He will thereafter maintain the road at that existing condition and keep the potholes out of the road. Each said application consists of 2 - 3 inches of crushed rock.

2. He will widen the entrance to Alice Way and rebury the culvert pursuant to the County Permit sometime in the Spring of 1978.

3. He will provide dust control on Alice Way pursuant to DEQ standards.

If the foregoing is the agreement between Mr. Henizman and the County, I would appreciate you signing below in order that we have a record of this agreement.

Very truly yours,

David R Paxton

David R. Paxton
Attorney at Law

THE FOREGOING REFLECTS THE AGREEMENT BETWEEN THE PARTIES.

DATED Feb. 28, 1978

Colin Armstrong

Colin Armstrong, County Commissioner

DATED Feb. 28, 1978

Dennis West

Dennis West, County Engineer

CITY OF NEWBERG
414 E. First Street
Newberg, OR 97132

Terrence D. Mahr
City Attorney
503-538-9421

February 24, 1978

To: Dale Blanton
From: T. Mahr
Re: Heinzman Conditional Use Permit Review

In reference to your memorandum of February 23, 1978 concerning the yearly review of the Conditional Use Permit granted to William Heinzman. I agree with your procedure in this matter. When the Council granted the permit they put a condition on that granting that the permit would be reviewed in one year for compliance. They stated specifically that the Staff should review that permit and that the permit should be revoked if all the conditions had not been complied with.

Since then as you know the matter has been pending in Circuit Court on a Writ of Review. Although I do not agree with Mr. Paxton's position that the conditions do not have to be complied with until the litigation becomes final, especially since the applicant Mr. Heinzman is using his property persuant to the Conditional Use. However I do think that some consideration has to be given since the status of the Conditional Use Permit is still not settled. Therefore I believe that since Mr. Heinzman has substantially complied with the terms and conditions of the granting of the Conditional Use Permit it should not be revoked.

Terry D. Mahr
City Attorney

TDM/bjm

Terry

Dale

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

FEB. 23

EAST COUNTY HOMEOWNERS' ASSOCIATION, et al., Petitioners,	)	No. 33490
vs.	)	PETITIONERS' REPLY BRIEF
CITY OF NEWBERG, et al., Respondents.	)	

I

MATTERS ALREADY DECIDED

Respondents Heinzman and Jr. & Jr., Inc., raise arguments upon which the Court has already ruled. They argue that petitioners have no standing because they allege no special injury. This allegation was raised in Respondents' Objection to Standing, filed herein on or about June 24, 1977. This objection was denied by the Court after respondents failed to appear for a Duddles hearing on standing. At that time petitioners were prepared to present testimony on standing. The order of the Court denying respondents' objection is the law of the case.

In any event, in land use cases there is no requirement for the kind of allegations of injury to which respondents refer. In land use matters it is the rule that property owners in reasonably close proximity "should ordinarily have standing to challenge a zoning decision." Duddles v. City Council of West Linn, 21 Or App

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

Ned 1174

310, 535 P2d 583, 592 (1975).

Second, respondents Heinzman and Jr. & Jr., Inc., argue that the grant of the conditional use permit was by the Planning Commission, and that the 60 days in which to file a petition for review should run from the date of the Planning Commission decision, rather than the date upon which the City Council heard and decided the appeal from the Planning Commission. The Court has already ruled against respondents on this issue, which was raised in respondents' Motion to Quash, filed herein on or about June 23, 1977. The order denying the Motion to Quash is the law of the case with respect to this issue.

In Duddles v. City Council of West Linn, 21 Or App 310, 535 P2d 583 (1975), in a discussion of the meaning of "60 days from the date of the decision or determination sought to be reviewed" (ORS 34.030), the court observed that the 60 days was only from the entry of the formal written order by which a city council rezoned property. Therefore, it was not proper to count the time from a prior vote of the City Council upon an oral motion to grant the request of zone change. The ruling that time ran from the date of the formal written order rested upon analogy to the rule regarding the time for an appeal from a decision of a court. There the time runs only from the entry of a formal written judgment. Thus, in a review of a quasi-judicial act, to determine the date from which time within which to file a petition runs, it is appropriate to

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

look for the equivalent of a final order. This rule is consistent with the policy of requiring a party to exhaust administrative remedies before seeking review in the courts. Oregon has rejected the common law form of the writ of review, which removed a case to a superior court prior to its conclusion in the inferior court in Holmes v. Cole, 51 Or 483, 94 P 964 (1908). ORS 34.020 provides that a court may review any intermediate order affecting the decision or determination sought to be reviewed. It would have been improper to seek writ of review within 60 days of the Planning Commission approval since that would have defeated the procedure permitting the City Council to have appellate review. Accordingly, a writ to review the decision of the Planning Commission filed prior to review by the City Council would have been subject to a motion to quash. 94 P at 965.

II

THE GRANT OF A CONDITIONAL USE PERMIT IS A QUASI-JUDICIAL DECISION

Respondents incorrectly state that the grant of an application for a conditional use permit is a legislative decision. For example, in Rockway v. Stefani, 23 Or App 639, 543 P2d 1089 (1975), the Oregon Court of Appeals found that a decision to issue a conditional use permit on a 400-acre tract was not legislative in nature despite the size of the tract. It is clear from West v. City of Astoria, 18 Or App 212, 524 P2d 1216 (1974), and Kristensen v.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 - 226-6151

Eugene Planning Com., 24 Or App 131, 544 P2d 591 (1976), that a decision on an application for a conditional use permit is quasi-judicial.

III

NOTICE

Respondents admit that petitioners did not receive mailed notice of the meeting before the Planning Commission on November 9, 1976. Affidavits filed herein by petitioners show that they are the persons to whom notices should have been sent. When an ordinance requires notice, the majority of courts consider it jurisdictional. Moreover, in land use matters, the appearance at a hearing when one did not receive notice to which one is entitled does not waive jurisdictional defects.

In West v. City of Astoria, 18 Or App 212, 524 P2d 1216 (1974), 17 persons including the plaintiff signed an appeal from a planning commission grant of a conditional use permit. The council considered the appeal although nothing in the record showed prior formal notice to the appellants. Although at least seven interested parties appeared at the hearing, the court held that all who signed the appeal were entitled to "reasonable advanced notice." 524 P2d at 1217. As authority, the court cited McCarthy v. Coos Timber Co., 208 Or 371, 302 P2d 238 (1956). In McCarthy the court applied the following rule of law respecting notice:

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226 6181

" * * * a notice on which depends jurisdiction in first instance of a board or court, or jurisdiction on appeal, must be so addressed and framed as to unequivocally disclose the party for whom it is intended, and who is to be affected by the proceeding * * * " (302 P2d at 247).

Clearly petitioners did not receive reasonable advance notice, or any notice which would advise them clearly of the issues. This is evidenced by Exhibit 13 in the return to the writ herein. Virtually all of the remonstrances filed by petitioners were prepared and dated on the date of the hearing which demonstrates they were not aware of the November 16 meeting until the last minute.

In Carroll v. Zoning Board, 248 A2d 321 (RI 1968), the court held that:

"In zoning matters * * * notice is a jurisdictional prerequisite * * *.

* * * * *

" * * * To meet that requirement--and it is a due process requirement--the rule has developed that the notice, if it is to be adequate and sufficient, must in addition advise concerning the precise character of the relief sought and the specific property for which that relief is sought. * * * "

Appearance at a hearing of which one has had inadequate notice is not a waiver. In Slagle v. Zoning Board of Appeals, 144 Conn 690, 137 A2d 542 (1957), an appeal was taken from a decision of a zoning board. At the hearing all but four or five of 14 plaintiffs were heard in opposition to a requested variance. The city zoning ordinance required public notice of the hearing. Notice

BLEIENBERG, SPEARS, LUBENSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

was given 81 hours before the time for hearing. The court voided the decision of the zoning board on the ground that the ordinance in question required a reasonable notice and that 81 hours was not reasonable. The court held that failure to give reasonable notice was a jurisdictional defect and therefore, the plaintiffs who appeared at the hearing were not estopped from objecting later.

The reason that appearance in zoning matters should be treated differently from court proceedings is because in a zoning matter an appearance at a hearing is equivalent to an appearance at a trial. When one enters an appearance in a court proceeding one is thereafter given ample time to prepare and present one's case before it must be tried. Here petitioners had no opportunity to determine what the legal issues were in respect to the requested conditional use permit, and had no opportunity to gather and prepare evidence in respect to the pertinent issues.

IV

SUFFICIENCY OF FINDINGS

The decision to grant an application for a conditional use permit, as discussed above, is a quasi-judicial decision. The standards for findings in quasi-judicial decisions relating to land use are established by Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 1, 559 P2d 512 (1977). There is no basis for a contention that the measure for adequacy of a finding is the standard that is set for the pleadings in a lawsuit. Therefore, an argument

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

by analogy to pleading of ultimate fact that the findings of the city were adequate is inappropriate. As the court said in Sunnyside Neighborhood:

> " * * * What is needed for adequate judicial review is a clear statement of what, specifically, the decision-making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. Conclusions are not sufficient" (281 Or at 21).

Certainly the determination that one use is not more intensive than other uses must be based upon an examination of facts which lead to that conclusion. The facts should be stated.

V

ADEQUACY OF EVIDENCE

Respondents maintain that Exhibits 12a-e, 5 and 8 support the finding of the County. Exhibits 12a-e do not address themselves to the comparison of a concrete tile plant and other industry. Exhibit 8, which is the report of the planning staff, merely states a conclusion that the proposed use is no more intense than other permitted uses. This conclusion, like those of the Planning Commission and City Council, can only be based upon what is in the record. The only thing in the record which purports to establish a comparison between the concrete tile plant and other uses is the affidavit of Mr. Heinzman in Exhibit 5. This has been thoroughly discussed in petitioners' Second Memorandum of Law, and respondents have been unable to respond to the arguments set forth there.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

VI

THE COMPREHENSIVE PLAN

It is apparent from Exhibit 10, page 1318 that petitioners did raise objections at the hearings below based upon failure to comply with the Comprehensive Plan. In Marbet v. Portland Gen. Elect., 277 Or 447, 561 P2d 154 (1977), the court determined that in an appeal from an administrative action one is not limited to objecting only to errors which one asserted before the deciding body. 561 P2d at 161. One reason for this is that:

> " * * * Such a rule could preclude a person * * * from securing review of the legality of the final order on issues that the agency in fact decided on someone else's initiative. No rule compels that result. * * * " (561 P2d at 160).

As discussed at page 14 of petitioners' Second Memorandum of Law, the Comprehensive Plan does declare that the area in which the permit is to be granted is to be "developed to the highest standards," and that there is a need for "superior building design." No evidence was submitted to the city pertaining to building design and no questions were asked about it. Therefore, the city has failed to make a decision in the manner required by the Plan and has, accordingly, been unable to document their compliance with it. It follows that this is a failure to develop the subject area according to the "highest standards."

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 226-6151

VII

OTHER POINTS RAISED IN RESPONDENTS' BRIEF

Petitioners do not concede points raised in respondents' brief which are not addressed in this brief; they believe that these matters have been adequately dealt with in their Second Memorandum of Law.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
Herbert H. Anderson
Harold C. Pope

Dezendorf, Spears, Lubersky & Campbell
Herbert H. Anderson
Harold C. Pope

Attorneys for Petitioners

800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 228-8181

STATE OF OREGON)
County of Multnomah) ss

I, _____, being first duly sworn, depose and say that I am the _____ in the above-entitled _____; and that the foregoing _____ is true as I verily believe.

_____

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 19 ___.

_____
Notary Public for Oregon
My commission expires _____

I, Harold C. Pope, of attorneys for Petitioners in the above-entitled cause, do hereby certify that the foregoing copy of PETITIONERS' REPLY BRIEF is a full, true and correct copy of the original and of the whole thereof.

Harold C. Pope

Service of the foregoing _____ by copy, as prescribed by law, is hereby admitted at _____, Oregon, this _____ day of _____, 19____.

_____
Attorney for _____

Dezendorf, Spears, Lubersky & Campbell
800 Pacific Building
Portland, Oregon 97204 226-6151

VERIFICATION

Dale

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation; JOHN W. STUART; SHARON A. STUART; M. J. McDERMOTT; SHIRLEY McDERMOTT; LOUISE McDERMOTT; GERHARD RASCHE; SUSAN A. RASCHE; LARRY HARTMAN; IVALOU HARTMAN; TOM M. McFERRON; and NEOLA McFERRON, Petitioners, vs. CITY OF NEWBERG, an Oregon Municipal Corporation; ELVERN HALL, its Mayor; ROBERT BLODGETT; FRED CASEY; HAROLD GROBEY; JOHN CACH; ALAN HALSTEAD; ESTHER KELTNER; WILLIAM VAUGHAN; ARTHUR STANLEY; and TOM TUCKER, the City Planning Commission Members; MAURICE CHANDLER; ROGER GANO; JEAN HARRIS; JACK C. NULSEN; ROBERT HURFORD; FRED LaBONTE; CLARENCE STOUFFER; and CHESTER WINDSOR, the City Council Members; DALE BLANTON, the City Planner; M. C. GILBERT, the City Recorder; JR. & JR., INC., dba VALLEY CONCRETE PRODUCTS; and WILLIAM B. HEINZMAN, Respondents.	NO. 33490 FINDINGS, CONCLUSIONS AND JUDGMENT

ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

This matter came on for hearing before the Court on January 20, 1978. The Court filed a letter opinion on March 15, 1978. Thereafter petitioners filed proposed Findings, Conclusions and Judgment. Defendant City of Newberg filed objections to the proposed Findings, Conclusions and Judgment and objections to the Cost Bill. On May 1, 1978 a hearing was held upon said objections.

It appeared to the Court that petitioners sought review

//

of Ordinance Nos. 1776 and 1780 enacted by the City of Newberg on July 7, 1975 and August 4, 1975, respectively, and of the Conditional Use Permit, approved by the Newberg City Council of December 20, 1976, authorizing defendant William Heinzman to operate a concrete tile factory at the south end of Alice Way in the City of Newberg.

Based on the ehtire record herein, including the affidavit submitted by petitioners, the letter opinion of March 15, 1978, as modified by the letter opinion of May 2, 1978, and after due consideration of the objections by defendant City of Newberg, this Court finds as follows:

1. The petition for writ of review herein was filed more than 60 days after the enactment of Ordinance Nos. 1776 and 1780. Therefore, the Court has no jurisdiction to review petitioners' challenge to the validity of those ordinances.

2. Notice of the Planning Commission meeting on November 16, 1976 was not sent to the record owners of property within 300 feet of land subject to the Conditional Use Permit.

Based on the foregoing, the Court adopts the following conclusions:

1. Failure to give all property owners within 300 feet of the affected premises advance notice of the Planning Commission hearing by mail as required by Zoning Ordinance No. 1282 of the City of Newberg is a jurisdictional defect. Consequently, both the Planning Commission decision and the subsequent affirmation of that decision by the City Council are void.

//

ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

2. Jurisdictional defects are not waived by failure to make timely objection before the municipal body. See Green v. City of Eugene, 22 Or App 231, 233 (1975).

3. Evidence disclosing a jurisdictional defect which is not part of the return to a writ of review may be considered by the Court. See Duddles v. City Council of West Linn, 21 Or App 310, 328 (1975).

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the decision of the Planning Commission and the decision of the City Council of the City of Newberg approving the Conditional Use Permit are declared annulled and void.

IT IS FURTHER ORDERED that petitioners have judgment against respondents for their costs and disbursements herein, taxed in the sum of $50.80.

DATED at McMinnville, Oregon this _____ day of _____, 1978.

H. W. Devlin, Circuit Judge

ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

M E M O R A N D U M

TO: City Attorney January 19, 1978

FROM: Dale Blanton, City Planner

RE: Notice for Heinzman C.U.P.

When I began working for the City in July, 1976, the Heinzman file contained a list of property owners and a prepared notice for a Conditional Use Permit hearing. No application had been filed at that time.

When the application was filed in October, we used the list which was in the file, but prepared a new notice. It came to my attention that the list was approximately one year old when I was contacted by a petitioner in this case.prior to the hearing.

At the hearing, before the Planning Commission, all owners had signed a petition, and were given the opportunity to present and rebut evidence. In essence they were treated as if they had received notice.

At the hearing, the point that not all parties had received notice was again mentioned. I read the list of those receiving notice into the record.

The City Attorney informed the Planning Commission that although not all parties received notice, all had signed a petition and were at the hearing for the matter.

The petitioners then appealed the matter to the City Council. They were treated as if they received notice and their right of appeal was fully recognized by the City. Their appeal was based upon seven alleged errors. The appeal did not mention failier to receive notice as a factor in the appeal.

The appeal hearing was preceded by published notice as per City ordinances. A full evidenciary hearing was held by the Council as per resolution #75-583 requiring such a hearing, if requested.

The City acted in good faith by sending notice, and subsequently allowing petitioners all rights of effected owners, including appeal to the governing body.

It would appear to me that the petitioners in this case are trying to use failier to receive notice as a techniciality to have the City's decision overturned. In essence this is the very problem the City has attempted to avoid by stating that failier to receive notice shall not invalidate a proceeding.

In this case, no petitioner was denied a property right, and all had an opportunity to speak at the hearings. In essence, the intent of notice was fulfilled, in that all interested parties attended meetings, testified and signed petitions.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, et al, Petitioners, vs. CITY OF NEWBERG, et al, Respondents.	No. 33490 PETITIONERS' SECOND MEMORANDUM OF LAW

I

FACTS

This is a proceeding by writ of review pursuant to ORS 34.110 et seq. Review is sought of the actions by which the Newberg City Planning Commission and City Council granted to William Heinzman a conditional use permit for a concrete tile factory. This permit was approved by the Newberg City Council on December 20, 1976, and the petition for writ of review was filed in a timely manner thereafter.

A. Background.

In 1973 the subjecttland was land outside the city zoned rural residential. Heinzman applied to the county for a zone change which would permit him to build a factory for the production of cement tile. That was denied.

Subsequently, the Heinzman property was annexed to the city of Newberg. On July 7, 1975, the zoning map of the city of Newberg was amended by Ordinance No. 1776 to rezone the 4.39

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

acres belonging to Heinzman from residential (R-1) to light industrial (M-L). The surrounding area was not rezoned. Prior to the rezoning on July 7, 1975, there was a hearing before the planning commission on January 21, 1975. This hearing was continued until March 18, 1975, and on March 18 it was continued until June 17, at which time the rezoning was approved by the planning commission. No notice was published of any hearing before the commission after the January 9, 1975, notice of the January 21, 1975, meeting.

A concrete tile factory was not a permitted use in a light industrial zone at the time of the rezoning. A proposal was made to amend section 31 of the Zoning Ordinance No. 1282 (Ex. 2 to the Return) to add subsection 45:

> "Any use found after hearing to be the same or similar in intensity of use as the foregoing enumerated uses should be allowed as a conditional use."

That proposal was approved by the planning commission on July 1, 1975. Thereafter the city council met on August 4, 1975, and adopted Ordinance No. 1780 adding subsection 45 to section 31 of the zoning ordinance.

Prior to the city council meeting on August 4, 1975, no notice was published in a newspaper of general circulation as is demonstrated by the Return. The hearing and approval was, therefore, in violation of the zoning ordinance which provides at

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

section 71(3):

"Public hearing held by the council on the proposed amendment to the zoning ordinance shall be given as provided in ORS 227.260."[1]

B. The Conditional Use Permit.

On October 20, 1976, Heinzman applied for a conditional use permit to operate a concrete tile factory upon the subject property. On November 16, 1976, the planning commission held a hearing and approved the permit. Prior to the hearing no notice was mailed to petitioners. Notice was Given, But Petitioners Did Not Recieve Notice because of Outdated Assessors Records See Exhibit 7 to the original Return herein and the affidavits attached hereto as Exhibits A, B, and C. Some of the petitioners, as shown by the affidavits

---

[1] ORS 227.260 is as follows: not required for a cup appeal

"Hearing and notice prior to final action. Upon receiving the final report required by ORS 227.250, the council shall afford persons particularly interested, and the general public, an opportunity to be heard at a time and place to be specified in a notice of hearing published in a newspaper to be designated for that purpose. This newspaper shall be a local newspaper, if there is one; otherwise, a newspaper of general circulation within the municipality. The notice shall be published not less than three times in any daily, or not less than once in any other newspaper of general circulation within the municipality and within the week within which the meeting is to be held."

The "final report" required by ORS 227.250 is the final report of the city planning commission.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

attached hereto as Exhibits A, B, and C, were listed in the records of the county assessor as owners of property within 300 feet of the Heinzman land.

The meeting and approval was in violation of section 82 of Zoning Ordinance No. 1282, which provides:

> " * * * the City Recorder shall giverwritten notice of the hearing by mail to all owners of property lying within 300 feet or directly across a street from the lot or parcel of land on which the conditional use is requested * * * using for this purpose the names and addresses of owners as shown upon the records of the County Assessor. * * *"

continue -

During the hearing before the planning commission the bias of its members was clear from the statements of the members. Before the proponent's testimony was concluded and the opponents had an opportunity to speak, one member moved to grant the conditional use permit. During proponent's presentation, a second member of the planning commission habitually addressed his questions to proponent prefaced with the phrase, "when we grant the permit * * * " (Affidavit of Charles Heckman filed on June 1, 1977).

irrelevant

After approval by the planning commission an appeal was taken to the city council. At a hearing on December 20, 1976, the city council approved the action of the planning commission. The only findings adopted by either the planning commission or the city council to support the approval were the following:

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

" * * * This use is no more intense than other permitted uses, and should be permitted * * * " (Ex. 6 to Return, p. 3, Ex. 10 to Return, p. 1317).

" * * * The requested use conforms with the Comprehensive Plan; it is in conformance with the City Charter and other ordinances; the applicant demonstrated public need and such public need will be best served by granting this conditional use request. * * * " (Ex. 10 to Return, p. 1320).

II

FAILURE TO GIVE PROPER NOTICE

No notice of the November 16, 1976, planning commission meeting was mailed to those petitioners whose property is "within 300 feet or directly across a street from the lot or parcel of land on which the conditional use is requested," as required by City of Newberg Zoning Ordinance No. 1282, § 82 (Ex. 2 to Return). This is evident from the Notice of a Public Hearing (Ex. 7 to Return), and the affidavits attached hereto as Exhibits A, B, and C.

Failure to give the necessary notice before the planning commission meeting is a violation of the ordinance. It is also a violation of state statutes.

ORS 227.175(4) provides that when a hearing upon a land use matter is held before officers designated by a city council to hear such matters, as the planning commission is designated by § 82 of Ordinance No. 1282, hearings "may be held only after

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

notice to the applicant and other interested persons" [Emphasis added]. Surely persons required by the zoning ordinance to receive notice are "interested." Other "interested" persons would be those in "reasonably close proximity" and includes at least all those within sight and sound of the proposed project, Duddles v. City Council of West Linn, 21 Or App 310, 535 P2d 583 (1975), who have standing to seek review of a decision.

A hearing upon a land use matter is a public meeting and is also subject to ORS 192.640 which requires:

> "The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time and place for holding regular meetings. If an executive session only will be held, the notice shall be given to the members of the governing body, and to the general public, stating the specific provision of law authorizing the executive session. No special meeting shall be held without at least 24 hours' notice to the members of the governing body and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances."

— this was done

The notice requirement for a land use decision was discussed in West v. City of Astoria, 18 Or App 212, 524 P2d 1216 (1974). There petitioners were also challenging the grant of a conditional use permit. In that case a general article had appeared in the local newspaper referring to the time and place of a zoning appeal. Interested parties were present and given an opportunity to be heard. Nevertheless, the Court of Appeals said

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

that all who signed the appeal should have reasonable advance notice. Failure to give such notice was held to be reversible error, even though some interested parties had appeared.

1. Published notice of appeal
2. All parties appeared

In conclusion, the planning commission did not have jurisdiction to approve the conditional use permit on November 16, 1976. That approval being given at a time when no notice had been given to the petitioners was invalid and affirmance by the city council was affirmance of an action invalid at its conception. It was error for the city council to affirm an action taken without the prior notice which was a condition of jurisdiction under state statutes and case law.

Notice of Appeal Published

Respondents Heinzman may argue that Ordinance No. 1282, § 82, provides that "[f]ailure of a person to receive notice shall not invalidate any porceeding [sic] in connection with the application for a conditional use" [Emphasis added]. That is intended to prevent frustration of a good faith attempt to give notice, when it is sent, but not received. (In this case no notice was sent.) While the city may be excused from responsibility for the vagaries of the U. S. Mail, it should not be excused from its duty to comply with its own ordinances. Furthermore, when differences between the notice requirement imposed by a general zoning statute, such as ORS 227.175(4), and those in a local ordinance, the courts have adopted the view that to the extent the requirements of the general statute are greater or more extensive, they control.

Notice was Sent

See exhibits

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

Gallagher v. Board of Appeals, 221 NE2d 756 (Mass 1966), was a judgment annulling the decision of selectmen in granting a permit where the notice did not meet the requirement of state statutes, although it complied with the local ordinance. Also, in Babcock v. Port Washington Little League, 144 NYS2d 179 (1955 Supp), the state statute required notice in an official town newspaper. The town ordinance provided only for notice by mail to those living within two hundred feet of the property subject to the ruling. A land use decision which satisfied the notice requirement of the ordinance but not of the state statute was held invalid.

III

FAILURE TO ADOPT ADEQUATE FINDINGS

The only finding of the planning commission was the following:

> " * * * This use is no more intense than other permitted uses, and should be permitted * * *." (Ex. 6 to Return, p. 3).

The city council made the same finding (Ex. 10 to Return, p. 1317), and under the heading Motion in the minutes (Id. at 1320) made what appears to be further findings:

> " * * * The requested use conforms with the Comprehensive Plan; it is in conformance with the City Charter and other ordinances; the applicant demonstrated public need and such public need will be best served by granting this conditional use request * * *."

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

The findings are inadequate, being mere conclusions as is discussed below.

Fasano v. Washington Co. Comm., 264 Or 574, 507 P2d 23 (1973), gives a right to "adequate findings executed," 264 Or at 588. In Fasano the only finding in the record was the staff finding which reads as follows:

> "'The staff finds that the requested use does conform to the residential designation of the Plan of Development. It further finds that the proposed use reflects the urbanization of the County and the necessity to provide increased densities and different types of housing to meet the needs of urbanization over that allowed by the existing zoning. * * *'" (Id. at 588-589).

The court said of these findings, which are more detailed than those of the Newberg planning commission and city council, that:

> " * * * Such generalizations and conclusions, without any statement of the facts on which they are based, are insufficient to justify a change * * *." (Id. at 589).

The requirement for adequate fact findings in administrative proceedings is best stated in Home Plate, Inc. v. OLCC, 20 Or App 188, 530 P2d 862 (1975), where in respect to an administrative agency, the Court of Appeals said:

> " * * * [W]e must require that its order clearly and precisely state what it found to be the facts and fully explain why those facts lead it to the decision it makes. Brevity is not always a virtue. * * * " 530 P2d at 863.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

Home Plate has been applied to land use decisions. See Tierney v. Duris, 21 Or App 613, 536 P2d 435 (1975). Here the findings only quote or paraphrase language of the zoning ordinance or of Fasano, supra. "Such conclusions, standing alone, are insufficient to support a decision to change zoning applicable to specific property." Tierney v. Duris, supra, at 441.

The findings of fact made in an administrative proceeding should be sufficiently specific so that a reviewing court does not need to delve into the record. Publishers Paper Co. v. P.U.C., 28 Or App 189, 194 (1976). As the Oregon Supreme Court said in Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 569 P2d 1063 (1977):

> " * * * What is needed for adequate judicial review is a clear statement of what, specifically, the decision-making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. * * * " Opinion at 21.

IV

ABSENCE OF AN IMPARTIAL TRIBUNAL

Opponents of a proposed land use change have the right to present and rebut evidence before "a tribunal which is impartial," for example, having had no prehearing or ex parte contacts. Fasano, supra. The opponents of the conditional use permit were not allowed to present and rebut evidence before an impartial tribunal.

The Pet. Do not Allege Pre Hearing or Ex Parte Contacts

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

The tribunal had prejudged the case. This is evidenced by the following:

1. Before the proponent's testimony was concluded one member moved to grant the conditional use permit.

2. While the proponent was presenting its case, a second member of the planning commission addressed questions to proponent prefixed with "when we grant this conditional use permit * * *."

The record of the hearing should show this and the fact is supported by the attached affidavit of Charles Heckman, filed on June 1, 1977. The Court of Appeals has recognized that, when it is necessary, supplemental evidence may be taken in a writ of review proceeding. Duddles v. City of West Linn, 21 Or App 310, 535 P2d 583 (1975). Therefore, the court may consider the affidavit of Mr. Heckman.

V

LACK OF SUBSTANTIAL EVIDENCE

Inadequate findings will render a decision fatally defective even when there is substantial evidence upon which a finding might be based. However, in this case, there was not substantial evidence to support the conclusion that the proposed use is not more intensive than outright permitted uses.

The only item which petitioners have found in the record which appears to be offered as evidence to support the bare

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

conclusion that the proposed use is not more intensive than permitted uses is an affidavit executed by Mr. Heinzman, the applicant for the conditional use permit. His affidavit said that he personally examined several types of operations permitted in an M-L zone and he had "determined" his operation was less intense (Ex. 5 to the Return).

There is nothing in the record from which the planning commission or city council could have concluded that Heinzman had sufficient expertise or knowledge of one-half dozen different industries to determine that the use he desired to make of his property was "substantially less intense" than others. There is nothing in the record to indicate what criteria were used to reach this opinion.

In Myers v. Cessna Aircraft, 275 Or 501, 520, 553 P2d 355, 370 (1976), the Supreme Court said:

> "It is universally conceded that possession of the requisite qualifications to give an opinion enparparticular matter must be expressly shown by the party offering that expert's testimony. * * * "

It is not enough that a person is a corporate officer unless he has special qualifications which justify his offer of an opinion (Highway Com. v. Assembly of God et al, 230 Or 167, 368 P2d 937 (1962)(testimony upon value of property)). The mere fact that Heinzman is an officer of Jr. & Jr., Inc., does not qualify him as an observer of use intensity.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

As the finding that a concrete products factory is no more intense than permitted uses in an M-L district is based upon Heinzman's affidavit, it is based upon an opinion which Heinzman was not qualified to give. It requires expertise for an observer to determine if a smoke plume is violating pollution laws. An observation of relative intensity is a more complex observation. When expertise is necessary to permit a witness to testify about his observations, that expertise is similar to that required before an expert can express an opinion. State v. Fry Roofing Co., 9 Or App 189, 495 P2d 751 (1972), adhered to 11 Or App 403, 502 P2d 1162 (1972). And in order to be competent, the opinion must be baseduupon facts in the record which are here noticeably absent.

VI

FAILURE OF PROPONENT TO ESTABLISH PUBLIC NEED

The burden is upon a proponent of a land use change to show a public need for the kind of change in question, and that the need is best met by the proposal under consideration. When other areas have previously been designated for the particular type of development proposed, it must be shown why it is necessary to introduce it into an area not previously contemplated and why the property owners there should bear the burden of the departure. Fasano v. Washington Co. Comm., supra.

Does This Apply to a Conditional Use Permit

See Kristenson Case Aukland

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

No showing was made that there was a public need for a cement products factory on the subject property. The Newberg, Oregon Comprehensive Plan, which is a legislative finding of public need, declares that (1) the subject area is to be within an industrial park developed to the highest standards (p. 27), (2) there is a need for superior building design in the park (p. 27), (3) that rail-oriented industries should be encouraged to locate in the park (p. 27), (4) that industries should be grouped into well-planned industrial areas (p. 17), (5) that "strong development standards" should be established before siting heavy industry (p. 17), and (6) that there is a need to consider "proper location" for heavy industry (p. 17).

No findings were made as to these matters. Other areas in Newberg are zoned to permit heavy industry as an outright use. The applicant presently is operating a concrete products factory at another location in Newberg (Affidavit of Heinzman, Ex. 5 of the Return). No finding was made as to why it is necessary to introduce a concrete products factory into an area where it is not an outright permitted use.

If an ordinance designated specified uses as conditional uses, that would constitute a finding of need for the designated use. Kristensen v. City of Eugene Planning Com'n, 24 Or App 131, 544 P2d 591 (1976). However, a blanket provision such as Sections 31-45 of Ordinance No. 1282 is not a finding that specified uses

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

have been found to be desirable as conditional uses. Furthermore, Section 36 of Ordinance No. 1282 which pertains to M-1 zones, makes no provision for conditional uses. Permitted uses in an M-1 zone include "A use permitted in an M-L zone." Section 31 lists uses "permitted" in an M-L zone. Concrete products factories are not one of these uses. Section 31-45 does not make conditional uses "permitted," it makes them "allowed as a conditional use." Section 31 distinguishes permitted and allowed uses. Allowed uses under Section 31 are not permitted in an M-1 zone by Section 36.

who determines This

M-1 M-L

VII

SPOT ZONING Prior to CUP Grant Not Subject of Writ

The area surrounding the rezoned parcel is zoned R-1. The 4.39 acre island belonging to Mr. Heinzman was rezoned M-1 and a conditional use permit was granted to allow a concrete products factory on the island. This was done to accommodate the desires of one landowner. This was done even though it was contrary to the high standards set by the comprehensive plan for the area, and without the necessary evidence and findings. This rezoning is spot zoning encompassed by the following prohibition:

what are these standards

> " * * * Arbitrary, or 'spot,' zoning to addommodate the desires of a particular landowner is not only contrary to good zoning practice, but violates the rights of neighboring landowners and is contrary to the intent of the enabling legislation which contemplates planned

Zoning was in 1975

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

zoning based upon the welfare of an entire neighborhood. * * * " Smith v. County of Washington, 241 Or 380, 384, 406 P2d 545, 547 (1965).

VIII

INVALIDITY OF UNDERLYING ORDINANCES

Both Ordinance No. 1776, changing the zoning of the subject property from R-1 to M-L, and Ordinance No. 1780, permitting conditional uses in an M-L zone are void. As the subject property was not, therefore, validly zoned for industrial use and there is no valid ordinance permitting conditional uses in any industrial zone, the conditional use permit cannot stand.

Section 71 of Ordinance No. 1282 makes mandatory public hearings by both the planning commission and the city council before final action is taken on a zoning amendment. Prior to a hearing by the planning commission, if the amendment will affect less than ten acres, notice must be given by one publication in a newspaper of general circulation in the city not less than ten days prior to the hearing, and by mailing written notice not less than ten days before the hearing to owners of property within three hundred feet of the property involved. § 71(1)(a). If an amendment to the ordinance will affect an area of ten acres or more, notice must be given by two publications in a newspaper of general circulation in the city once a week for two consecutive weeks prior to the hearing. § 71(1)(b).

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

Prior to the hearing of the planning commission on June 17, 1977, at which rezoning of the Heinzman property to light industrial was approved, the only published notice of rezoning was that of January 9, 1975. No notice appeared in a newspaper of general circulation during the two weeks prior to the meeting of June 17.

Notice before the meeting of the city council at which Ordinance No. 1780 was adopted was not given in the manner prescribed by zoning ordinance No. 1282. This ordinance requires notice "as provided in ORS 227.260." (Ordinance No. 1282 at § 71(3)). The statute requires "publications within the week within which the meeting is to be held." No notice was published.

It is generally recognized that where a final action by a governing body on a zoning ordinance will be based upon a recommendation by a body like the planning commission, any irregularity in the planning commission proceeding invalidates the ordinance passed by the governing body. In Buell v. City of Bremerton, 495 P2d 1358 (Wash 1972), the zoning scheme required a planning commission to hold hearings and make zoning recommendations to a city council. The city council had final authority. One of the planning commission members participating in a hearing on an ordinance had a conflict of interest. Although the recommendations of the planning commission were not binding upon the city council, the council's approval of the ordinance was held void.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

In Hart v. Bayless Investment & Trading Company, 346 P2d 1101 (Ariz 1960), the zoning statute required two separate public hearings before adoption of a zoning ordinance. In each case, the notice to be given was specified. An ordinance was recommended by a county zoning commission which had failed to notice a hearing. The proposed ordinance was adopted at a properly noticed meeting of the Board of Supervisors. The Supreme Court of Arizona held the ordinance void for lack of the requisite notice.

See Tierney v Dunn 75 OR advance sheets 2005

IX

CONCLUSION

For the foregoing reasons, the conditional use permit granted for the subject property should be revoked.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
Herbert H. Anderson
Harold C. Pope

Dezendorf, Spears, Lubersky & Campbell
Herbert H. Anderson
Harold C. Pope

Attorneys for Petitioners

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, et al,
Petitioners,
vs.
CITY OF NEWBERG, et al,
Respondents.

No. 33490

AFFIDAVIT

STATE OF OREGON)
) ss.
County of Yamhill)

I, John W Stuart, being first duly sworn, depose and say:

1. I am one of the petitioners in the above-entitled proceeding.

2. I reside at 2000 Villa Road Newberg Ore.

3. I have resided at this address since 3 Oct 76.

4. I have verified that the property upon which I reside is within lines parallel to and 300 feet from the exterior boundaries of the property which is the subject of this litigation.

5. I am now and have been shown as the owner of the property upon which I reside in the records of the county assessor since MAY 14 76.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

EXHIBIT A

6. I did not receive mailed written notice of any hearing held with respect to Zoning Ordinance No. 1780 or Zoning Ordinance No. 1776 of the City of Newberg.

Took place prior to May 14, 1976

Prior to ownership

No Written Notice Required

7. I did not receive mailed written notice of proceedings for the review of the application for a conditional use permit filed by William B. Heinzman with the City of Newberg Planning Commission on October 20, 1976.

Hearing on November 16, 1976

John W Stewart

SUBSCRIBED AND SWORN TO before me this 20 day of NOV, 1977.

Notary Public for Oregon
My commission expires: Dec 3, 1979

ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, et al, Petitioners, vs. CITY OF NEWBERG, et al, Respondents.	)	No. 33490
	)	AFFIDAVIT

STATE OF OREGON)
) ss.
County of Yamhill)

I, Ruby M. Bennett, being first duly sworn, depose and say:

1. I am one of the petitioners in the above-entitled proceeding.

2. I reside at 2 1/2 W. Main Road Newberg, Ore. 97132.

3. I have resided at this address since May, 1975.

4. I have verified that the property upon which I reside is within lines parallel to and 300 feet from the exterior boundaries of the property which is the subject of this litigation.

5. I am now and have been shown as the owner of the property upon which I reside in the records of the county assessor since January 6, 1976.

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

EXHIBIT B

6. I did not receive mailed written notice of any hearing held with respect to Zoning Ordinance No. 1780 or Zoning Ordinance No. 1776 of the City of Newberg.

No Written Notice Required took place prior to January 6, 1976

7. I did not receive mailed written notice of proceedings for the review of the application for a conditional use permit filed by William B. Heinzman with the City of Newberg Planning Commission on October 20, 1976.

hearing November 16, 1976

Shirley M McDermott

SUBSCRIBED AND SWORN TO before me this 20 day of November, 1977.

Notary Public for Oregon
My commission expires: Dec 3 - 1979

DEZENDORF, SPEARS, LUBERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 226-6151

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNER'S' ASSOCIATION, et al,
Petitioners,
vs.
CITY OF NEWBERG, et al,
Respondents.

No. 33490

AFFIDAVIT

STATE OF OREGON)
) ss.
County of Yamhill)

I, Louise F. McDaniel, being first duly sworn, depose and say:

1. I am one of the petitioners in the above-entitled proceeding.

2. I reside at 2300 N. Villa Rd

3. I have resided at this address since June 1, 1976.

4. I have verified that the property upon which I reside is within lines parallel to and 300 feet from the exterior boundaries of the property which is the subject of this litigation.

5. I am now and have been shown as the owner of the property upon which I reside in the records of the county assessor since Jan 8th 1976 (correct) entitled to notice

DEZENDORF, SPEARS, LUDERSKY & CAMPBELL
ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 — 228-6151

EXHIBIT C

6. I did not receive mailed written notice of any hearing held with respect to Zoning Ordinance No. 1780 (No Written Notice Required) or Zoning Ordinance No. 1776 of the City of Newberg. (took place prior to January 9, 1976)

7. I did not receive mailed written notice of proceedings for the review of the application for a conditional use permit filed by William B. Heinzman with the City of Newberg Planning Commission on October 20, 1976. (hearing being held November 16)

Louise E. McDermott

SUBSCRIBED AND SWORN TO before me this 20 day of Nov, 1977.

Thomas F. McHenry
Notary Public for Oregon
My commission expires: 12-23-1979

ATTORNEYS AT LAW
800 PACIFIC BUILDING
PORTLAND, OREGON 97204 226 6161

STATE OF OREGON)
) ss
County of Multnomah)

I, _____, being first duly sworn, depose and say that I am the _____ in the above-entitled _____; and that the foregoing _____ is true as I verily believe.

_____

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 19 ___.

_____
Notary Public for Oregon
My commission expires _____

I, Harold C. Pope, of attorneys for Petitioners in the above-entitled cause, do hereby certify that the foregoing copy of PETITIONERS' SECOND MEMORANDUM OF LAW is a full, true and correct copy of the original and of the whole thereof.

Harold C. Pope
_____

Service of the foregoing _____ by copy, as prescribed by law, is hereby admitted at _____, Oregon, this _____ day of _____, 19____.

_____
Attorney for _____

Dezendorf, Spears, Lubersky & Campbell
800 Pacific Building
Portland, Oregon 97204 226-6151

VERIFICATION

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation; JOHN V. STUART; BYRON A. STUART; M. J. McDERMOTT; SHIRLEY McDERMOTT; LOUISE McDERMOTT; GERHARD RASCHE; SUSAN A. RASCHE; LARRY HARTMAN; IVALOU HARTMAN; TOM M. McFERRON; and NEOLA McFERRON,

Petitioners,

vs.

CITY OF NEWBERG, an Oregon Municipal Corporation; ELVERN HALL, its Mayor; ROBERT ELLSWORTH; FRED CASEY; HAROLD GROBEY; JOHN GACH; ALAN HALSTEAD; ESTHER HELTNER; WILLIAM VAUGHAN; ARTHUR STANLEY; and TOM TUCKER, the City Planning Commission Members; MAURICE CHANDLER; ROGER GANO; JEAN HARRIS; JACK C. NULSEN; ROBERT SUMSTAD; FRED LaBONTE; CLARENCE STOUFFER; and CHESTER WINDSOR, the City Council Members; DALE BLANTON, the City Planner; M. C. GILBERT, the City Recorder; J.T. & J.R., INC., dba VALLEY CONCRETE PRODUCTS; and WILLIAM B. REINEMAN,

Defendants.

No. 33490

RETURN TO WRIT OF REVIEW

. . . . .

Defendants above named, pursuant to Writ of Review hereto annexed, make return to said Writ of Review by attaching hereto the following documents, constituting record of proceedings of the Newberg Planning Commission and the Newberg City Council relating to granting of a conditional use permit for the manufacture of concrete tile at the south end of Alice Way in the City of Newberg, together with basic municipal authority relating thereto:

1. Comprehensive plan for the City of Newberg, adopted May 6, 1974.

2. Zoning ordinance No. 1282, as amended.

3. Resolution No. 75-505, adopted November 5, 1975, rules of procedure.

4. Resolution No. 75-583, adopted November 3, 1975, supplement to rules of procedure.

5. Application for conditional use permit, dated October 20, 1976.

6. Minutes of Newberg Planning Commission meeting, November 16, 1976.

GEORGE H. LAYMAN
Attorney at Law
Newberg, Oregon 97132

7. Mailed notice of public hearing before Planning Commission on November 16, 1976, with certification of mailing on November 9, 1976.

8. Staff report for Planning Commission, dated November 16, 1976.

9. Appeal from Planning Commission to City Council dated November 28, 1976.

10. Minutes of Newberg City Council meetings December 6, 1976, and December 20, 1976.

11. Notice of public hearing before City Council, as published on December 9, 1976.

12. Exhibits introduced at City Council meeting December 20, 1976:

    a. Letter from Department of Environmental Quality to William B. Heinzman, dated December 20, 1976.

    b. Yamhill County receipt dated December 20, 1976, for $25.00 covering payment of septic tank permit fee; permit No. 36-438-76; application for septic tank dated December 20, 1976; and proposed subsurface sewage disposal system.

    c. Meads Park Subdivision map.

    d. Letter from Workmen's Compensation Board to William Heinzman, dated December 16, 1976.

    e. Letter from Yamhill County Board of Commissioners to Newberg City Council dated December 20, 1976.

13. Petitions filed against conditional use application.

14. Correspondence relating to conditional use application:

    a. Letter from David Paxton to Superintendent of Public Works, dated November 23, 1976.

    b. Letter from City Planner to William Heinzman dated November 23, 1976.

    c. Letter from City Engineer to Leonard Rydell, Consulting Civil Engineer, dated December 28, 1976.

    d. Letter from City Engineer to David Paxton, dated November 29, 1976.

    e. Letter from David Paxton to City Council, dated December 1, 1976.

    f. Letter from David Paxton to Merlin Gilbert, dated December 7, 1976.

    g. Letter from David Paxton to City Administrator, dated December 7, 1976.

    h. Letter from Yamhill County Board of Commissioners to City Council, dated December 20, 1976.

    i. Letter from Department of Environmental Quality to William B. Heinzman, dated December 20, 1976.

    j. Letter from Adec to City Council, dated December 20, 1976.

    k. Letter from City Planner to William Heinzman, dated December 23, 1976.

    l. Memorandum from City Planner dated January 3, 1977, and letter from City Planner to William Heinzman, dated December 23, 1976.

GEORGE H. LAYMAN
Attorney at Law
Newberg, Oregon 97132

m. Letter from Yamhill County Engineer to City Council, dated January 3, 1977.

n. Letter from Yamhill County Legal Counsel to all interested parties, dated January 5, 1977.

15. Original unofficial tapes covering above listed meetings of Newberg Planning Commission and Newberg City Council.

M. C. GILBERT
Recorder, City of Newberg

GEORGE H. LAYMAN
Attorney for Defendants except Jr. & Jr. and William B. Heinzman

STATE OF OREGON)
) ss.
County of Yamhill)

I, M. C. GILBERT, being first duly sworn, on oath say: That I am the duly appointed, qualified and acting Recorder of the City of Newberg; that I have custody of the files and documents relating to the conditional use application on Alice Way, Newberg, Oregon; and that the documents above listed are true and complete copies of the originals thereof; that the tapes filed herewith are all unofficial recordings of the meetings described therein; and that the annexed record is true and complete covering the said conditional use application.

M. C. GILBERT
City Recorder

SUBSCRIBED and sworn to before me this 14th day of March, 1977.

Arvilla Page
Notary Public for Oregon
My Commission expires ~~October 7, 1980~~ Jan. 17, 1978

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE ORIGINAL THEREOF.

Attorney for

GEORGE H. LAYMAN
Attorney at Law
Newberg, Oregon 97132

CITY OF NEWBERG
OFFICE OF CITY ATTORNEY

115 NORTH WASHINGTON STREET | TELEPHONE 538-2166 | NEWBERG, OREGON 97132

GEORGE H. LAYMAN

July 14, 1977

MEMORANDUM TO: Dale Blanton, City Planner

Re: East County Homeowners' Association v. City of Newberg

For your information, I hand you my file copy of the answer to Amended Writ of Review, with attachments.

This material was necessarily assembled somewhat hastily on Thursday afternoon (as you noted), and I would appreciate it if you could check through the various attachments sometime on Friday, noting whether they are complete.

In one instance I note that the recorder's certificate of mailing is not attached to a notice of the meeting, but undoubtedly it is otherwise covered in the published notice. In any event, if there are any significant gaps, any additional material could be assembled in four copies, and I could hand it in to the court at the time of the hearing.

GHL

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation; JOHN W. STUART; SHARON A. STUART; M. J. McDERMOTT; SHIRLEY McDERMOTT; LOUISE McDERMOTT; GERHARD RASCHE; SUSAN A. RASCHE; LARRY HARTMAN; IVALOU HARTMAN; TOM M. McFERRON; and NEOLA McFERRON,

Petitioners,

vs.

CITY OF NEWBERG, an Oregon Municipal Corporation; ELVERN HALL, its Mayor; ROBERT BLODGETT; FRED CASEY; HAROLD GROBEY; JOHN CACH; ALAN HALSTEAD; ESTHER KELTNER; WILLIAM VAUGHAN; ARTHUR STANLEY; and TOM TUCKER, the City Planning Commission Members; MAURICE CHANDLER; ROGER GANO; JEAN HARRIS; JACK C. NULSEN; ROBERT HURFORD; FRED LaBONTE; CLARENCE STOUFFER; and CHESTER WINDSOR, the City Council Members; DALE BLANTON, the City Planner; M. C. GILBERT, the City Recorder; JR. & JR., INC., dba VALLEY CONCRETE PRODUCTS; and WILLIAM B. HEINZMAN,

Defendants.

No. 33490

RETURN TO AMENDED WRIT OF REVIEW

. . . . .

Defendants above named, except Jr. & Jr. Inc. and William B. Heinzman, pursuant to amended writ of review, make return to said amended writ of review, supplementing writ heretofore filed to original writ of review, by attaching hereto documents relating to the adoption of Ordinances No. 1776 and No. 1780:

1. Copy of application for zone change submitted by William B. Heinzman, dated November 3, 1974.

2. Notice of public hearing re zone change, to be held January 21, 1975.

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

3. Certificate of City Recorder of mailing said notice on January 9, 1975.

4. Affidavit of newspaper publication on January 9, 1975. (excerpt)

5. Minutes of meeting of Planning Commission, January 21, 1975.

5a. Minutes (excerpt) of Planning Commission, February 18, 1975, and March 18, 1975.

6. Minutes of meeting of Planning Commission, June 17, 1975.

6a. Minutes (excerpt) of Planning Commission, July 1, 1975.

7. Certificate of mailing said notice on June 20, 1975.

8. Affidavit of newspaper publication on June 19 and June 26, 1975.

9. Notice of public hearing re zone change, to be held July 7, 1975.

10. Affidavit of newspaper publication on June 26 and July 3, 1975.

11. Minutes of meeting of City Council, July 7, 1975.

12. Ordinance No. 1776, adopted July 7, 1975.

13. Minutes of meeting of City Council, August 4, 1975.

14. Ordinance No. 1780, passed August 4, 1975.

M. C. Gilbert
Recorder, City of Newberg

George H. Layman
Attorney for Defendants except Jr. & Jr. and William B. Heinzman

STATE OF OREGON)
) ss.
County of Yamhill)

I, M. C. GILBERT, being first duly sworn, on oath say: That I am the duly appointed, qualified and acting Recorder of the City of Newberg; that I have custody of the files and documents relating to the adoption of Ordinances 1776 and 1780; and that the documents above listed are true and complete copies of the originals thereof; and that the annexed record is true and complete covering the said ordinances.

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

SUBSCRIBED and sworn to before me this 14th day of July, 1977.

(Seal) George H. Layman

My Commission expires October 7, 1980

I hereby certify that I served the foregoing Return to Amended Writ of Review on Harold C. Pope, attorney for the Petitioners, on the 14th day of July, 1977, by mailing to said attorney a true and correct copy thereof, certified by me as such. I further certify that said copy was placed in a sealed envelope addressed to said attorney at his regular office address, to-wit: Harold C. Pope, Dezendorf, Spears, Lubersky & Campbell, Attorneys at Law, 800 Pacific Building, Portland, Oregon 97204, and deposited in the post office at Newberg, Oregon, on the 14th day of July, 1977, and that the postage thereon was prepaid. Between the said post office and the address to which said copy was mailed, there is a regular communication by U. S. Mail.

Dated July 14, 1977.

George H. Layman

Attorney for Defendants except Jr. & Jr. and William B. Heinzman

BACKING SHEET

(1)

NULSEN & PAXTON, P.C.
ATTORNEYS AT LAW
P. O. BOX 453
NEWBERG, OREGON 97132

JACK C. NULSEN, JR.
DAVID R. PAXTON

TELEPHONE 538-9433
617 E. FIRST STREET

December 3, 1974

Merlin Gilbert, Recorder
City Hall
Newberg, Oregon 97132

Re: Zone Change Application

Dear Mr. Gilbert:

Please find enclosed an Application for Zone Change and attachments A, B, and C. Please also find enclosed a check for $150.00.

We are making request of the City Attorney for information regarding what proceedures and requirements are necessary to complete a zone change application.

Very truly yours,

Dave Paxton

David R. Paxton
Attorney at Law

DRP/lq
Enclosures

cc: George Layman

CITY OF NEWBERG

RECEIVED
DEC 3 1974
CITY OF NEWBERG, ORE
OFFICE OF RECORDER

File No. _____

APPLICATION FOR ZONE CHANGE

ZONE CHANGE

Zone change No. _____

Received on _____

By: _____

Fee: _____

Date of Public Hearing: _____.

Action: By Planning Commission

By _____, Chairman

Date: _____

Action: By City Council

BY _____, Mayor

Date: _____

Petitioner: Do not write above this line.

Petitioner must furnish with the application the names, addresses, lot, block, plat or tax lot and DLC designations of all of the property owners within 300 feet of boundaries of the property for which zone change is requested. See Attachment B

TO THE CITY OF NEWBERG:
The Undersigned Petitioner (s) William Heinzman is (are) the (check one) owner _____ Purchaser X & Agent of petitioner (if applicable) attach written evidence of authority.

William Heinzman, Jr., Route 2, Box 158C, Newberg, Oregon 538-3297
(Name and Address) (PHONE)

LOCATION OF PROPERTY FOR WHICH ZONE CHANGE IS SOUGHT:

Presently R-R - See Attachment A
(ZONE) (LOT) (BLOCK) (PLAT)

#632-15-1 (1200) 17 3 S 2W
(TAX LOT) (DLC) (SECTION) (TOWNSHIP) (RANGE)

_____ on the _____ side of the
(Building Number) (Street) (Direction)
street between _____ Street and _____ Street

Property Dimensions: Width _____, Depth _____, Total sq. ft. area 191,400

REQUEST:

Applicant requests a zone change for the above-described property from a Rural Residenti district to a M-1 district in order to Locate a concrete tile & pier Block Manufacturing Company called Valley Concrete Products on said tract.
(Explain why zone change is requested) as shown on the attached plot plan. Plot plan must show property dimensions, existing buildings, if any, proposed use and structure, how site provisions of ordinance will be met, i.e., off-street parking, sitbacks, screenings, etc. See Attachment C.

Nov. 3 1974
(Date)

William B. Heinzman Jr.
Signature of Petitioner or agent

Exhibit A

------A tract of land consisting of Tax Lot 1200, and being 4.39 acres more or less in Sec. 17, T. 3 S., R. 2 W. of the W. M., Yamhill County, Oregon being a part of that certain tract of land conveyed to Reginald and Alice Meads, husband and wife by document recorded in Film Vol. 67, Pg. 585, Yamhill County Deed Records and being more particularly described as follows: beginning at the S.E. Corner of Lot 4, Block 1 of Meads Park Subdivision; thence S. 464.1 ft. to the S. line of the aforesaid Meads tract; thence W. along said S. line 448.7 ft. to the S.W. corner of said Meads tract; thence N. along the W. line of said Meads tract 348.1 ft. to the S.W. corner of that certain tract of land conveyed to Meyers and Rudolph by deed recorded in film Vol. 88, Pg. 1028, Yamhill County Deed Records; thence E. 206.74 ft. to the S.E. corner of said Meyers-Rudolph tract; thence N. 10°12' E. along the E. line of said Meyers-Rudolph tract, 62.8 ft.; thence continuing along said E. line, Northeasterly 54.69 ft. along the arc of a 307.27 foot radius curve left, through a central angle of 10°12' to the S. line of Meads Park; thence W. 226.0 ft. to the point of beginning.------

NULSEN & PAXTON
PROF. CORP. – ATTORNEYS AT LAW
817 E. FIRST STREET
NEWBERG, OREGON 97132

Exhibit B

PROPERTY OWNERS WITHIN 300 FEET OF
ZONE CHANGE PROPERTY

North of Property:

1) Richard Rudolph and John Meyers - interest in
Tax Lot 3217-1201
P. O. Box 56
Beaverton, Oregon 97005

2) Reginald and Alice Meads
Tax Lot 3217-1300
Route 2, Box 28C
Newberg, Oregon 97132

3) John Meads
Directly North of Tax Lot 3217-1300 - actual Tax Lot number unknown
Route 2, Box 28B
Newberg, Oregon 97132

4) Ralph Mortenson
Tax Lot 3217-1100
Route 2, Box 27E
Newberg, Oregon 97132

5) Marvin Hutchenson
Directly North of Tax Lot 3217-1100, actual Tax Lot number unknown
Route 2, Box 27G
Newberg, Oregon 97132

East of Property::

1) A-Dec Corporation -
Tax Lots 3617-600 and 3217-700
Growers Avenue
Newberg, Oregon 97132

NULSEN & PAXTON
PROF. CORP. - ATTORNEYS AT LAW
517 E. FIRST STREET
NEWBERG, OREGON 97132
TELEPHONE 538-9433

West of Property:

1) E. & F. Thorne
Tax Lot 3217-1800
Route 2, Box 24
Newberg, Oregon 97132

South of Property:

1) Claude Lewis
Tax Lot 3217-2100
545 Pine Street
Central Point, Oregon

2) Margie Simmons
Tax Lot 3217-2100
c/o Claude Lewis
545 Pine Street
Central Point, Oregon

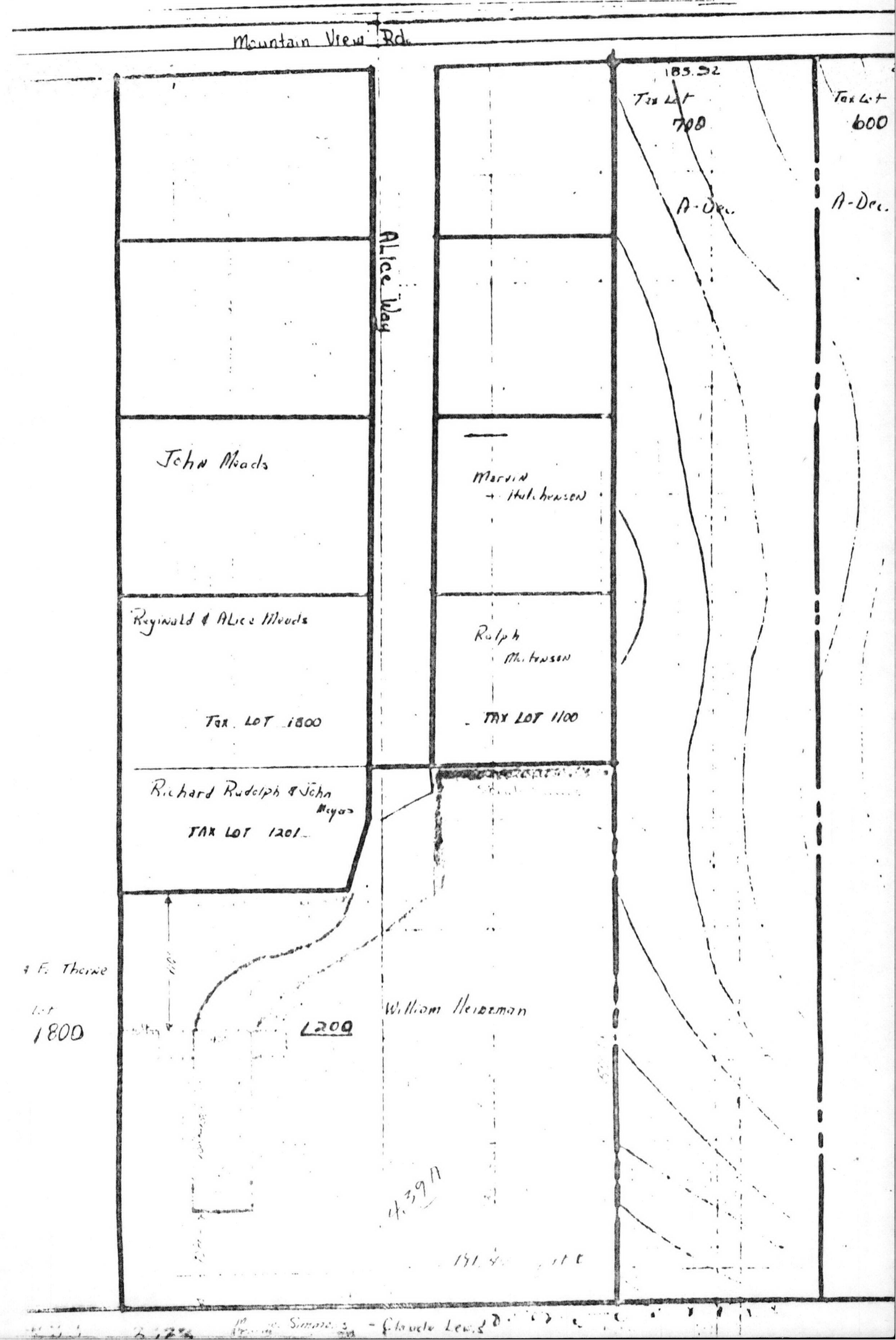
3) Constance Larson
Tax Lot 3217-2100
c/o Claude Lewis
545 Pine Street
Central Point, Oregon

4) Irene Sieloff
Tax Lot 3217-2100
c/o Claude Lewis
545 Pine Street
Central Point, Oregon

NULSEN & PAXTON
PROF. CORP. - ATTORNEYS AT LAW
617 E. FIRST STREET
NEWBERG, OREGON 97132
TELEPHONE 538-9433

Exhibit C

PROPOSED PLOT PLAN ON
ZONE CHANGE APPLICATION



(2)

NOTICE OF A PUBLIC HEARING

ZONE CHANGE

NOTICE is hereby given that a public hearing will be held by the Planning Commission of the City of Newberg, Oregon on Tuesday, January 21, 1975, at the hour of 7:30 P.M., City Hall, Newberg, Oregon, on the zone change petition of William Heinzman, to change zone from (RR) Rural Residential to (M-1) Light Industrial of property located East of Hess Creek, South of Mt. View Drive and North of Crestview Drive, extended, described as follows to-wit:

A tract of land consisting of Tax Lot 1200, and being 4.39 acres more or less in Sec. 17, T. 3 S., R. 2 W. of the W. M., Yamhill County, Oregon being a part of that certain tract of land conveyed to Reginald and Alice Meads, husband and wife by document recorded in Film Vol. 67, Pg. 585, Yamhill County Deed Records and being more particularly described as follows: beginning at the S.E. Corner of Lot 4, Block 1 of Meads Park Subdivision; thence S. 464.1 ft. to the S. line of the aforesaid Meads tract; thence W. along said S. line 448.7 ft. to the S.W. corner of said Meads tract; thence N. along the W. line of said Meads tract 348.1 ft. to the S.W. corner of that certain tract of land conveyed to Meyers and Rudolph by deed recorded in film Vol. 88, Pg. 1028, Yamhill County Deed Records; thence E. 206.74 ft. to the S.E. corner of said Meyers-Rudolph tract; thence N. 10°12' E. along the E. line of said Meyers-Rudolph tract, 62.8 ft.; thence continuing along said E. line, Northeasterly 54.69 ft. along the arc of a 307.27 foot radius curve left, through a central angle of 10°12' to the S. line of Meads Park; thence ~~W.~~ E. 226.0 ft. to the point of beginning.

Yamhill County Tax lot 3217-1200.
The area involved is approximately 4.39 acres.

Any person wishing to speak for or against the proposed zone change may do so in person or by attorney at the public hearing. Also, written objections may be filed with the City Recorder, City Hall, Newberg, Oregon.

By Order of the Planning Commission of the City of Newberg, Oregon.

First Publishing: January 9, 1975

M.C. Gilbert
City Recorder

(4)

AFFIDAVIT OF PUBLICATION

STATE OF OREGON, COUNTY OF YAMHILL—ss.

I, Pauline Field

being first duly sworn, depose and say that I am the publisher of the Newberg Graphic, a newspaper of general circulation, as defined by Secs. 1-509, 1-5-10, Oregon Code; printed and published at Newberg in the aforesaid county and state; that the

Notice of a Public Hearing

Zone Change

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper

for One successive and consecutive

weeks in the following issues:

January 9, 1975

Pauline Field

Office Mgr. x~~Publisher~~

Subscribed and sworn to before me this

13 day of June, 1977

Notary Public for Oregon.

(My Commission expires.....)

...HEARING
ZONE CHANGE

NOTICE is hereby given that a public hearing will be held by the Planning Commission of the City of Newberg, Oregon on Tuesday, January 21, 1975, at the hour of 7:30 p.m., City Hall, Newberg, Oregon, on the zone change petition of William Heinzman, to change zone from (RR) Rural Residential to (M-1) Light Industrial of property located East of Hess Creek, South of Mt. View Drive and North of Crestview Drive, extended, described as follows to-wit:

A tract of land consisting of Tax Lot 1200, and being 4.39 acres more or less in Sec. 17, T. 3 S., R. 2 W. of the W. M., Yamhill County, Oregon being part of that certain tract of land conveyed to Reginald and Alice Meads, husband and wife by document recorded in Film Vol. 67, Pg. 585, Yamhill County Deed Records and being more particularly described as follows: beginning at the S.E. Corner of Lot 4, Block 1 of Meads Park Subdivision; thence S. 464.1 ft. to the S. line of the aforesaid Meads tract; thence W. along said S. line 448.7 ft. to the S.W. corner of said Meads tract; thence N. along the W. line of said Meads tract 348.1 ft. to the S.W. corner of that certain tract of land conveyed to Meyers and Rudolph by deed recorded in film Vol. 88, Pg. 1028, Yamhill County Deed Records; thence E. 206.74 ft. to the S.E. corner of said Meyers-Rudolph tract; thence N. 10°12' E. along the E. line of said Meyers-Rudolph tract, 62.8 ft.; thence continuing along said E. line, Northeasterly 54.69 ft. along the arc of a 307.27 foot radius curve left, through a central angle of 10°12' to the S. line of Meads Park; thence W. 226.0 ft. to the point of beginning.

Yamhill County Tax lot 3217-1200.

The area involved is approximately 4.39 acres.

Any person wishing to speak for or against the proposed zone change may do so in person or by attorney at the public hearing. Also, written objections may be filed with the City Recorder, City Hall, Newberg, Oregon.

By Order of the Planning Commission of the City of Newberg, Oregon.

M.C. GILBERT
City Recorder

First Publishing:
January 9, 1975

The meeting was called to order by Wayne Tautfest, Chairman.

Present:

Wayne Tautfest
Esther Keltner
Don Tarlow
Sam Sherrill
Robert Blodgett
Tom Tucker
Roger Gano

Jack Nulsen, Mayor
George Layman, City Attorney
Bobbie Johnson, Building Inspector
Rich Leonard for Jerry Dragoo, Planning Consultant
M. C. Gilbert, Finance Officer

Bob Collamore, new member of the commission was introduced.

Minutes of the previous meeting were read and approved.

Public hearing on the request to vacate Garfield Street from the S. line of Franklin Street to the Southern Pacific tracks. Rich Leonard, Acting Planning Consultant recommended that the request be granted. Chairman Tautfest called for comments from the audience and none were received. No comments from the Commission members. Blodgett-Sherrill motion to recommend vacation request. Carried.

Public hearing on renaming Walker Drive to N.E. Columbia Drive. Comments from the audience were called for. Two residents on that street cited the confusion now existing. There are 9 houses West of Main in the County and 4 houses East of Main St. Bob Johnson speaking for Fire Chief Paola stated that there could be some confusion between Columbia Drive and Columbia Street if it were renamed. Tarlow suggested that Columbia Street could be renamed. Tautfest stated that Columbia Street is an old established street and it would not be practical to change its name. Gano-Blodgett motion to recommend change of name to N.E. Columbia Drive. Carried.

* Public hearing on Zone Change by William Heinzman from Rural Residential to M-1 Light Industrial, 4.39 acres, Tax Lot 3217-1200. The Planning Consultant stated that this property is designated Light Industrial in the Comprehensive Plan, but to change the Zone now would be premature because the only access to the property is along Alice Way, a residential Street. Also, the intended use of the property is not specifically designated under Light Industrial in the Zoning Ordinance.

Dave Paxton, representing William Heinzman, cited the Fasano opinion that change should be allowed if it is in conformance with the Comprehensive Plan and that public need is shown by the Comprehensive Plan. There have been no complaints about the operation of this business at its present location. This Planning Commission gave its approval when the applicant applied to the County for a zone change on this property before it was annexed to the City. The Newberg zoning ordinance does not require landscaping and design approval, but the applicant does plan to screen adjacent property with shrubs. Alice Way is a public road, not maintained by any government body. The applicant would repair the road as it now exists, but any

way is dedicated 60 feet with approximately 30 feet in use. The applicant would have 10 to 12 trucks coming in per week which would be less than if the property was developed as residential.

Fred Anderson representing opponent Florence Thorne stated that the adjacent property is zoned low density residential and the planned use is not proper in the M-1 zone requested. Granting the zone change and use would be violating the Zoning Code and violating the rights of neighbors.

Charles Heckman stated that Mr. Anderson had covered most of the points he wished to make and agrees with the Planning Consultant and Mr. Anderson that the planned use does not conform with the zone change requested.

In rebuttal Mr. Paxton stated that no screening of materials or crushing would be done on the site. There are no objections to the business at its present location. The payroll is about $30,000 annually. No equipment is washed down and very little water is used in the process.

Sherrill-Keltner motion to continue the hearing at the next regular meeting. Carried.

Zone change application from R-1 to C-2 by L.E. Risedorph and G. Baxter. Robert Blodgett abstaining. Fred Anderson representing Risedorph and Baxter presented the site plan to the Planning Commission

Planning Consultant Rich Leonard suggested a compromise with the front of the property as C-2 and the rear which is now being used as a wrecking yard, to remain R-1 and cleaned up.

Mr. Baxter explained the site plan and answered questions regarding plantings and fencing.

Stan Bunn representing the homeowners requested a 10 minute recess to consult with the homeowners on the site plan and suggested compromise. Tucker-Gano motion to grant recess. Carried.

The Meeting was called or order by the Chairman. Mr. Bunn states that the site change as presented does not change their views and they request that the zone change be denied.

Mayor Nulsen offered the information that the State Highway Department plans to make extensive changes at Highway 99W and W. First Street at that location.

Sherrill motion to deny the zone change. No second.

Tarlow-Gano motion to approve the zone change. 4 Ayes, 2 Nays, 1 abstention. Passed.

Zoning Ordinance Committee, Robert Blodgett, Chairman, stated that they hope to have a progress report by the next meeting.

Subdivision Ordinance Committee, Roger Gano, Chairman, reported that they are still one member short but the Committee has met. Bob Collamore was appointed as a new member of the committee.

Petition for annexation of approximately 4.6 acres West of Wynooski, North of 11th, East of Pacific, South of 9th St. extended; by Michael and Joy Mahon, and Michael and Tanya Lockwood, applicants.

Gano-Tucker motion to include all property North of 11th Street, West of Wynooski Street now outside of City and set public hearing for February 18, 1975. Carried.

Dragoo, Planning Consultant, recommends the annexation.

Mr. Mike Mah[illegible] stated they would comply with [illegible] right of way dedication requests.

5a

There were no oppositions to the annexation.

Tautfest-Blodgett motion to approve and recommend to the Council the annexation with the condition that street dedication of 30 feet on the East boundary be made. Passed.

-15-75

Mr. Blodgett for the zoning ordinance committee stated they have met several times and are developing R-3 zoning for multiple dwellings, and fencing between Industrial and residential zones. Bob Johnson requested that the committee consider adding a "mini-storage" designation in a commercial zone. Mr. Johnson was asked to meet with the committee on this.

Tucker-Tautfest motion to add to the M-1 zone "Manufacturing, compounding, processing of cement blocks and tile using only previously pulverized materials, with the finished product not to exceed size of 3 feet x 12 inches x 12 inches. 3 Aye, 1 Nay, 1 Abstention, (Tarlow). Motion failed. No majority of the quorum.

Subdivision Ordinance Committee did not meet. Tautfest was appointed as Chairman of the Committee with Collamore and Keltner.

Sign Ordinance Committee- Tarlow reported they have met and are continuing to work on it. Mr. Johnson was asked to provide copies of the proposed sign ordinance for all members of the Commission.

Continuance of deliberation on request to change zone from RR to M-1 by William Heinzman.

Tautfest-Tarlow motion to continue deliberations to March 18, 1975 on the application of William Heinzman and until needed information is provided. Passed.

Dave Paxton representing William Heinzman submitted to the Commission a memorandum suggesting amendments to the M-1 zone.

Annexation petition request by Martin of portion of Tax Lot 3219 CA 100 on W. 5th Street.

Blodgett-Tarlow motion to put petition over to March 18, 1975. Finance Officer to try to get applicant to include the rest of the property. Passed.

Request for sign variance from Benjamin Franklin Savings & Loan at 700 E. 1st to move sign from old location to new location.

Mr. Johnson, Building Inspector, recommends approval of the variance.

Tucker-Collamore motion that the variance be granted. Passed.

Request for a sign variance by Newberg Travel 811 E. 1st--a non-conforming sign previously contracted for.

Mr. Johnson, Building Inspector, recommends the variance be granted with a condition of minimum height.

Tautfest-Tarlow motion to grant the variance with a minimum height of 10 feet stipulated. Passed.

Collamore-Tarlow motion to hold a public hearing March 18, 1975 on petition of Spaulding Pulp & Paper Co. to vacate Columbia Street, Pacific Street, and alleys; all in Block 15 and 16, City Park Addition. Passed.

screening in the area. No remonstrances received in writing. Hearing declared closed.

Sherrill-Tucker motion to approve and recommend to the Council the zone change, stating there is public need, it conforms with other use in the area, the public need will best be served by granting the zone change and it conforms with the Comprehensive Plan. Carried.

Public Hearing to vacate Pacific Street from South boundary of 12th Street, South approximately 132 feet to North boundary of Pacific Street vacated; Columbia Street from South boundary of 12th Street, South 267 feet to City limits; the alley running East and West between Pacific Street and Columbia Street in Block 16, City Park Addition, the alley running East and West between Columbia Street and Willamette Street in Block 15, City Park Addition. Applicant: Spaulding Pulp and Paper Co. Mr. Dragoo, Planning Consultant stated he had no opposition to this request. Mr. Anderson for Spaulding Pulp and Paper stated that Mrs. Virginia Marr owner of lots 5 and 6 in Block 16 joins in the request. No remonstrances verbal or in writing. The hearing was declared closed.

Tucker-Sherrill motion to approve and recommend to the council that the vacation request be granted. Carried.

3-18-75

Continued Public Hearing for Conditional use permit to construct a duplex at 204 N. Morton Street. Applicant: James L. Barnard. Mr. Dragoo presented a survey of property use in the area. Mr. Barnard presented a site plan for the property showing lot coverage at approximately 24%.

Tarlow-Tucker motion to grant the Conditional Use permit. Stating it will be an improvement in the area, it is appropriate to the area because of the closeness of the railroad, commercial area and other duplexes within one block. Carried.

Continued Deliberation of Variance request for 30 ft. roadway and 30 ft. right of way from required 34 ft. roadway and 60 ft. right of way at 2007 NE Portland Road. Applicant: Ron Willcuts. Mr. Dragoo presented a site review. He stated that it is a difficult piece of property. Chairman Gano again read the letter from Fire Chief Paola that was read at the February 18, 1975 meeting. Mr. Dragoo suggested that (1) the plan be approved as submitted, (2) no access to Portland Road be permitted from adjoining property except emergency access, (3) Meet all applicable zoning and conditions, (4) Submit landscaping plan with the building permit application. Mr. Layman read the section of the zoning Ordinance regarding conditions needed to grant a variance: (1) Property is isolated, (2) If we don't grant the variance it will be discriminatory, (3) The granting of the variance will not be detrimental or injurious to property in the vacinity. (4) The variance will alleviate a hardship.

Tucker-Tarlow motion to grant the variance with the following conditions: 1. Revised plan be approved as submitted. 2. No access to Portland Road from adjacent property except emergency from the East side and access by the commercial property (Kentucky Fried Chicken) on the West side. 3. Meet all applicable zoning and conditions, 4. Planner-approved landscaping plan, 5. Plan have the approval of the Fire Chief, 6. Remove first 7 parking spaces for a clear 30 ft. roadway the entire length with no parking and the roadway be signed. Carried.

* Continuance Deliberations of zone change R-R to M-1. Applicant: William Heinzman. Mr. Blodgett for the zoning Ordinance Committee offered a

ings may appear in person or by
by of the public hearing.

revision to be added to section 31, P. 13, zoning ordinance, with some wording indicating definite "conditional uses."

"C" "Any use found, after hearing, to be the same or similar in the intensity of use as the foregoing enumerated uses shall be allowed as a conditional use in the M-L zone."

The City Attorney recommended recessing the hearing on the zone change. Tucker-Tarlow motion to recess the hearing to June 17, 1975, 7:30 p.m. Carried.

Annexation Petition of portion of Tax Lot 3219 CA 100 W. 5th St. The Applicant Larry Martin was informed that the lot would not conform to the zoning and that the City would need a 10 ft. right of way dedication on the North edge of the property for future road improvement.

Tucker-Tarlow motion to postpone further action until April 15, 1975 at 7:30 p.m. Carried.

Committee Reports:

Zoning Ordinance --No report
Subdivision Ordinance -No report
Sign Ordinance- Meetings continue

Mr. Dragoo reported on "Community Development Block Grant." Public meetings are scheduled for March 20, 1975 and March 27, 1975.

Tarlow-Collamore motion to adjourn. Carried.

Arvilla Page

(6)

Minutes of a Regular Meeting of the Planning Commission
June 17, 1975

The meeting was called to order by Roger Gano, Chairman.

Present:
Robert Blodgett
Fred Casey
John Cash
Roger Gano
Bob Johnson, Building Inspector
George Layman, City Attorney
Rich Leonard, Planning Consultant
M. C. Gilbert, Finance Officer
Sam Sherrill
Wayne Tautfest
Tom Tucker

Arvilla Page, Recording Secretary

Minutes of the previous meeting were read and approved as corrected.

* Continuation of Deliberation of Zone Change R-R to M-1: Applicant William Heinzman. The necessity of making the zone change at the present time was discussed by the Commission members. Mr. Leonard pointed out that the Commission is bound by the testimony of the public hearing and the motion must include the findings of fact as required by the Fasano decision. Dave Paxton representing Mr. Heinzman summarized the proposed use and plans for the property for the two new members of the Commission. Tucker-Sherrill motion to approve and recommend to the Council the zone change stating there is a public need, it conforms with other use in the area, the public need will best be served by granting the zone change, it conforms with the City Charter and Ordinance and it conforms with the Comprehensive Plan. Carried.

Esther Keltner now present.

* Sherrill-Tautfest motion to set a Public Hearing July 1, 1975 at 7:30 p.m. on amendment to the zoning ordinance; M-L Zone, Section 31, add subsection 45 as follows "Any use found, after hearing, to be the same or similar in intensity of use as the foregoing enumerated uses shall be allowed as a conditional use." Carried.

Mr. Blodgett for the Zoning Ordinance Committee stated they have had no meetings with all members. They are considering RMl zoning designation and changing the requirement on parking space size from 8'6" to 9'6". Mr. Tautfest for the Subdivision Committee reports that they will soon begin presenting the ordinance in sections. Bob Johnson stated the Sign Committee had no report. Esther Keltner stated the Streets Committee had no report.

Preliminary Plat - "Baker's Orchard". A 19 lot subdivision at N. College and Pinehurst streets: Applicant Judco, Inc. The Planning Consultant recommended the plat be changed so the street will connect with proposed streets in the area in the future, and also objected to the sewer line on the South side of the property instead of in the planned street. Tautfest-Sherrill motion to set over the hearing so that the developer can meet with the City Engineer and Planning Consultant to make changes in the plat. Carried.

6a

The meeting was called to order by Roger Gano, Chairman.

Present:
Robert Blodgett
John Cach
Fred Casey
Roger Gano
Jerry Dragoo, Planning Consultant
Richard Leonard, Planning Consultant
Bob Johnson, Building Inspector
George Layman, City Attorney
M. C. Gilbert, Finance Officer
Arvilla Page, Recording Secretary

Esther Keltner
Don Tarlow
Wayne Tautfest
Tom Tucker

* Public Hearing to amend the Zoning Ordinance: M-L Zone, Section 31, add Subsection 45. To read "Any use found, after hearing to be the same or similar in intensity of use as the foregoing enumerated uses shall be allowed as a conditional use." Carried.

Dave Paxton spoke in favor of the amendment. Ed Savage representing the Newberg Boys Club spoke in favor of the amendment. No one wished to speak against the amendment. Tautfest-Tucker motion to recomend to the Council that the zoning ordinance be amended in M-L Zone, Section 31, to add Subsection 45 "any use found, after hearing, to be the same or similar in intensity of use as the foregoing enumberated uses shall be allowed as a conditional use". Carried.

Tarlow-Keltner motion to recommend to the Council that the Zoning Ordinance be amended by adding to Section 84, a new Subsection 7-3 "any use found, after hearing, to be the same or similar in intensity of use as the enumerated uses shall be allowed as a conditional use". Carried

Public Hearing recommending to the Council the repealing of the Comprehensive Plan of the City of Newberg as amended and approved May 6, 1974. Mr. Dragoo stated procedures to be followed. Mr. Layman, City Attorney, recommended against repeal and recommended amending by specific amendment.

Proponents to repeal were: Fred LaBonte of Allen Fruit Co. (exhibit #1), Ken Hough representing the Chamber of Commerce. Mayor Jack Nulsen suggested a moratorium on the Comprehensive Plan until 1/1/76, others recommending repeal of the plan were: Milo Ross, George Fox College Foundation; Bud Malone of Malone Realty and George Hafeman.

The City Attorney state that a moratorium on the Comprehensive Plan would be contrary to State law.

Opponents to repeal of the plan were: Wayne Stuckey, resident, spoke against repeal and for revision of the plan. Dave Paxton, representing William Heinszman spoke in favor of amendments and revision and against repeal. Charles Heckman, resident (exhibit #2). Craig Greenleaf, Planning Director for Yamhill County (exhibit #3).

7

CERTIFICATION

STATE OF OREGON)
County of Yamhill) SS
City of Newberg)

I, M. C. GILBERT, duly appointed, qualified and acting Recorder for the Cityoof Newberg, Oregon, do hereby certify that the attached notice of public hearing of ZONE CHANGE was mailed to the following by United States Mail, postage prepaid, on JUNE 20, 1975.

Richard Rudolph and John Meyers
P.O. Box 56
Beaverton, OR 97005

Reginald and Alice Meads
Rt. 2 Box 28C
Newberg, OR 97132

John Meads
Rt. 2 Box 28B
Newberg, OR 97132

Ralph Mortenson
Rt. 2 Box 27E
Newberg, OR 97132

Marvin Hutchenson
Rt. 2 Box 27G
Newberg, OR 97132

A-Dec Corporation
Growers Avenue
Newberg, OR 97132

E. & F. Thorne
Rt. 2 Box 24
Newberg, OR 97132

Claude Lewis
545 Pine Street
Central Point, OR 97501

Margie Simmons
c/o Claude Lewis
545 Pine Street
Central Point, OR 97501

Constance Larson
c/o Claude Lewis
545 Pine Street
Central Point, OR 97501

Irene Sieloff
c/o Claude Lewis
545 Pine Street
Central Point, OR 97501

M. C. Gilbert
City Recorder

change may appear in person or by

(8)

AFFIDAVIT OF PUBLICATION

STATE OF OREGON, COUNTY OF YAMHILL—ss.

I, Pauline Field

being first duly sworn, depose and say that I am the publisher of the Newberg Graphic, a newspaper of general circulation, as defined by Secs. 1-509, 1-5-10, Oregon Code; printed and published at Newberg in the aforesaid county and state; that the

Notice of a Public Hearing

Change in Zoning Ordinance

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper

for Two successive and consecutive

weeks in the following issues:

June 19, 26, 1975

Pauline A. Field

Office Mgr.

Subscribed and sworn to before me this

13 day of June, 1977

Notary Public for Oregon.

(My Commission expires.....)

NOTICE OF A PUBLIC HEARING

NOTICE is hereby given that a public hearing will be held by the Planning Commission of the City of Newberg on Tuesday, July 1, 1975 at the hour of 7:30 p.m. in the Council Chambers, City Hall, Newberg, Oregon, on a proposed charge in the zoning Ordinance, to-wit:

Section 31 of Ordinance No. 1282 of the City of Newberg will be amended by adding a new subsection 45 to read as follows: "Any use found, after hearing, to be the same or similar in intensity of use as the foregoing enumerated uses shall be allowed as a conditional use."

Any person wishing to speak either for or against the proposed amendment to the zoning ordinance may do so in person or by attorney at the public hearing. Also written objections may be filed with the City Recorder, City Hall, Newberg, Oregon.

M. C. GILBERT
City Recorder

Publish: June 19, 1975
June 26, 1975

(9)

NOTICE OF A PUBLIC HEARING

ZONE CHANGE

NOTICE is hereby given that a public hearing will be held by the City Council foRthe City of Newberg, Oregon on Monday, July 7, 1975, at the hour of 7:30 P.M., City Hall, Newberg, Oregon, on the zone change petition of william Heinzman, to change zone from (RR) Rural Residential to (M-1) Light Industrial of property located East of Hess Creek, South of Mt. View Drive and North of Crestview Drive, extended, described as follows to-wit:

A tract of land consisting of Tax Lot 1200, and being 4.39 acres more or less in Sec. 17, T. 3 S. R. 2 W. of the W.M., Yamhill County, Oregon being a part of that certain tract of land conveyed to Reginald and Alice Meads, husband and wife by document recorded in Film Vol. 67, Pg. 585, Yamhill County Deed Records and being more particularly described as follows: beginning at the S.E. Corner of Lot 4, Block 1 of Mead Park Subdivision; thence S. 464.1 ft. to the S. line of the aforesaid Meads tract; thence W. along said S. line 448.7 ft. to the S.W. corner of said Meads tract; thence N. along said S. line 448.7 ft. to the S.W. corner of said Meads tract; thence N. along said S. line 448.7 ft. to the S.W. corner of said Meads tract 348.1 ft. to the S.W. corner of said Meads tract 348.1 ft. to the S.W. corner of said Meads tract 348.1 ft. to the S.W. corner of that certain tract of land conveyed to Meyers and Rudolph by deed recorded in film Vol. 88, Pg. 1028, Yamhill County Deed Records; thence E. 206.74 ft. to the S.E. corner of said Meyers-Rudolph tract; thence N. 10° 12' E. along the E. line of said Meyers-Rudolph tract, 62.8 ft.; thence continuing along said E. line, Northeasterly 54.69 ft. along the arc of a 307.27 foot radius curve left, through a central angle of 10° 12' to the S. line of Meads Park; thence E. 226.0 ft. to the point of beginning.

Yamhill County Tax lot 3217-1200.
The area involved is approximately 4.39 acres.

Any person wishing to speak for or against the proposed zone change may do so in person or by attorney at the public hearing. Also, written objections may be filed with the City Recorder, City Hall, Newberg, Oregon.

Publish:

June 26, 1975
July 3, 1975

M. C. Gilbert
City Recorder

To Gazette 6-18-75

(16)

AFFIDAVIT OF PUBLICATION

STATE OF OREGON, COUNTY OF YAMHILL—ss.

I, Pauline Field

being first duly sworn, depose and say that I am the publisher of the Newberg Graphic, a newspaper of general circulation, as defined by Secs. 1-509, 1-5-10, Oregon Code; printed and published at Newberg in the aforesaid county and state; that the

Notice of Public Hearing

Zone Change

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper

for Two successive and consecutive

weeks in the following issues:

June 26, July 3, 1975

Pauline Field

Office Mgr. ~~Publisher~~

Subscribed and sworn to before me this

13 day of June, 1977

Notary Public for Oregon.

(My Commission expires.....)

My Commission Expires Oct. 22, 1977

NOTICE OF A PUBLIC HEARING ZONE CHANGE

NOTICE is hereby given that a public hearing will be held by the City Council for the City of Newberg, Oregon on Monday, July 7, 1975, at the hour of 7:30 p.m., City Hall, Newberg, Oregon, on the zone change petition of William Heinzman, to change zone from (RR) Rural Residential to (M-1) Light Industrial of property located East of Hess Creek, South of Mt. View Drive and North of Crestview Drive, extended, described as follows to-wit:

A tract of land consisting of Tax Lot 1200, and being 4.39 acres more or less in Sec. 17, T. 3 S. R. 2 W. of the W.M., Yamhill County Oregon being a part of that certain tract of land conveyed to Reginald and Alice Meads, husband and wife by document recorded in Film Vol. 67, Pg. 585, Yamhill County Deed Records and being more particularly described as follows: beginning at the S.E. Corner of Lot 4, Block 1 of Mead Park Subdivision; thence S. 464.1 ft. to the S. line of the aforesaid Meads tract; thence W. along said S. line 448.7 ft. to the S.W. corner of said Meads tract; thence N. along said S. line 448.7 ft. to the S.W. corner of said Meads tract; thence N. along said S. line 448.7 ft. to the S. W. corner of said Meads tract 348.1 ft. to the S.W. corner of said Meads tract 348.1 ft. to the S.W. corner of said Meads tract 348.1 ft. to the S.W. corner of that certain tract of land conveyed to Meyers and Rudolph by deed recorded in film Vol. 88, Pg. 1028, Yamhill County Deed Records; thence E. 206.74 ft. to the S.E. corner of said Meyers-Rudolph tract; thence N. 10° 12' E. along the E. line of said Meyers-Rudolph tract, 62.8 ft.; thence continuing along said E. line, Northeasterly 54.69 ft. along the arc of a 307.27 foot radius curve left, through a central angle of 10° 12' to the S. line of Meads Park; thence E. 226.0 ft. to the point of beginning.

Yamhill County Tax lot 3217-1200.

The area involved is approximately 4.39 acres.

Any person wishing to speak for or against the proposed zone change may do so in person or by attorney at the public hearing. Also, written objections may be filed with the City Recorder, City Hall, Newberg, Oregon.

M.C. Gilbert
City Recorder

Publish: June 26, 1975
July 3, 1975

(11)

A REGULAR MEETING OF THE CITY COUNCIL

July 7, 1975

The meeting called to order by Mayor Nulsen.

Roll Call - Present -

Durell Belanger
Maurice Chandler
Elvern Hall
Jean Harris
James McNelly
Clarence Stouffer
Chester Windsor

Absent:
Robert Hurford

Staff Present:
M.C. Gilbert — Finance Officer
H. Hawkins — Chief of Police
Bob Johnson — Building Inspector
George Layman — City Attorney

Minutes of the previous meeting approved as submitted.

Bi-Centennial

Commemorating the Bi-Centennial, Mrs. Harris introduced members present of the Chehalem Valley Heritage: Vance Fowler, Mildred Renne, Agnes and Arthur Parris, Katherine Keifer, Stewart Harris, and Crystal Rilee. Mrs. Rilee then honored Mayor Nulsen with presentation of certificate and honorary membership in the Chehalem Valley Heritage. He also was presented a bronze bi-centennial medal by Mr. Harris.

Mayor Nulsen stated this was the time set for public hearings.

Ord. 1775

1. An amendment to the Zoning Ordinance to add a new subsection: "Home Occupation, limited to single family dwelling." Notice of publication voted and filed. There were no abstention by the Council. Mr. Gano stated the Planning Commission has recommended the amendment to the Council. There were no proponents. There were no opponents or remostrance in writing. Hearing closed.

Belanger-Hall motion to read ordinance number 1775, to amend zoning ordinance number 1282 by adding a new subsection 9 to section 6 to read: (9) Home occupation, limited to single dwelling. Motion carred. The ordinance was the read. Roll call vote. Ayes (7) Belanger, Chandler, Hall, Harris, McNelly, Stouffer, and Windsor. Nays (0), Absent (1) Hurford. The Mayor then declared the ordinance passed.

one Change

County Tax Lot 3217-1200

2. An amendment to the zoning map to change an area zoned Rural Residential (county) to City Light Industrial. County Tax Lot 3217-1200, approximately 4.39 acres.

Notice of mailing and publication voted and filed. There were no abstention by the Council. Mayor Nulsen disclosed his connection with the Zone Change applicant.

Mr. Gano stated the Planning Commission has recommended the Zone Change amendment. Mr. Paxton, attorney for the applicant presented the proponents case, by advising the Council of the proposed used for the area and type of industry. Mr. Meads of Meads Trailer Park stated he was in favor of the zone change. There were no opponents. No remonstrances in writing. Hearing closed.

oncrete ain tile

Mr. Hall questioned Mr. Paxton regarding products to be manufactured, and number of vehicles that would be traveling through Mead's Trailer Park to the plant each day. Mr. Paxton advised of concrete drain tile to be manufactured, also that approximately 12 truckloads a week would be using the roadway.

Mrs. Harris questioned the landscaping planned for the area. Mr. Heinzman stated there would probably be some shrubbery planted. Mr. Chandler asked about dust from the plant. Mr. Paxton stated there was practically, none, and if it was excessive the DEQ would regulate them.

. 1776

Belanger-Stouffer motion tp read ordinance number 1776 to amend the zoning map of ordinance number 1282 by change tax lot 3217-1200 from Rural Residential (county) to Light Industrial (city) zones. Carried. The ordinance was then read. Roll call vote: Ayes (5) Belander, Hall, McNelly, Stouffer and Windsor. Nays (2) Harris and Chandler. Absent (1) Hurford. The Mayor then declared the ordinance passed.

Mayor Nulsen called for requests, petitions, etc. from floor.

(12)

AN ORDINANCE AMENDING ORDINANCE NO. 1282 OF THE CITY OF NEWBERG, OREGON ENTITLED "AN ORDINANCE ESTABLISHING ZONING REGULATIONS"; PASSED AND APPROVED MAY 8, 1961, AS AMENDED, BY ADDING CERTAIN ZONE BOUNDARIES TO THE ZONING MAP REFERRED TO IN SECTION 5 OF SAID ORDINANCE, THEREBY CHANGING A PORTION OF AN AREA ZONED RURAL RESIDENTIAL TO LIGHT INDUSTRIAL ZONE.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

Section 1. The Council finds that the area hereinafter described has heretofore been classified Rural Residental by the County of Yamhill, and as such annexed by the City of Newberg.

Section 2. The Council finds that pursuant to prescribed procedures, the application for change of zone of said area from Rural Residential to Light Industrial zone was the subject of a public hearing held by the Newberg Planning Commission, and the said Commission has heretofore recommended approval of the application.

Section 3. The Council further finds that after due and legal notice a public hearing was held on July 7, 1975 before the Council, and that at said hearing applicant and all interested parties were afforded an opportunity to be heard, and to present and rebut evidence with respect to said application.

Section 4. Based on the evidence and record of said hearing before the City Council, the Council makes the following findings:

a. That the application for change of zone is compatible with the Comprehensive Plan heretofore adopted for the City of Newberg, the uses of adjacent areas and the County Comprehensive Plan.

b. That the change of land use classification from Rural Residential to Light Industrial in accord with said application, is consistent with the public need, and that such public need is best served by granting the application.

c. That the granting of the application will not unduly burden the nearby residential area nor have an undersirable impact on the locality.

Section 5. That Ordinance No. 1282 of the City of Newberg, Oregon, entitled "An Ordinance Establishing Zoning Regulations", passed and approved May 8, 1961, be and the same hereby is further amended to change certain zone boundaries on the zoning map referred to in Section 5 of said Ordinance, by changing the use classification of the following described real property from Rural Residential Zone to Light Industrial Zone;

A tract of land consisting of Tax Lot 3217-1200, and being 4.39 acres more or less in Sec. 17, T. 3 S., R. 2 W. of the W. M., Yamhill County, Oregon being a part of that certain tract of land conveyed to Reginald and Alice Meads, husband and wife by document recorded in Film Vol. 67, Pg. 585, Yamhill County Deed Records and being more particularly described as follows: beginning at the S.E. Corner of Lot 4, Block 1 of Meads Park Subdivision; thence S. 464.1 ft. to the S. line of the aforesaid Meads tract; thence W. along said S. line 448.7 ft. to the S,W. corner of said Meads tract; thence N. along the

W. line of said Meads tract 348.1 ft. to the S.W. corner of that certain tract of land conveyed to Meyers and Rudolph by deed recorded in film Vol. 88. Pg. 1028, Yamhill County Deed Records; thence E. 206.74 ft. to the S.E. corner of said Meyers-Rudolph tract; thence N. 10°12' E. along the line of said Meyers-Rudolph tract, 62.8 ft.; thence continuing along said E. line, Northeasterly 54.69 ft. along the arc of a 307.27 foot radius curve left, through a central angle of 10°12' to the S. line of Meads Park; thence W. 226.0 ft. to the point of beginning.

PASSED by the Council at a regular meeting held on the 7th day of July, 1975, by the following votes:

AYES: 5 NAYS: 2 ABSENT: 1

M.C. Gilbert - City Recorder

APPROVED by the Mayor the 7th day of July, 1975.

Jack C. Nulsen, Jr. - Mayor

MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL
August 4, 1975

The meeting called to order by Mayor Nulsen.

Roll Call:
Present:
Durell Belanger
Elvern Hall
Jean Harris
Robert Hurford
Clarence Stouffer

Absent:
Maurice Chandler
James McNelly
Chester Windsor

Staff Present:
M.C. Gilbert — Finance Officer
Herbert Hawkins — Chief of Police
Bobbie Johnson — Building Inspector
George Layman — City Attorney

Minutes of previous meeting corrected and approved.

Mr. George ~~R. Vey~~ ARIAD of the Information and Referral Center made inquiry regarding future Resource Center, and possibility of his organization having space there in.

Zoning Ordinance Amendment

Public Hearing on Zoning Ordinance Amendment
There were no abstentions
No objections to jurisdiction of the Council
Mr. Gano stated the Newberg Planning Commission has recommended the adoption of this amendment.
Mr. Dave Paxton, Attorney at Law, spoke in favor of the amendment.
There were no proponents
No remonstrances in writing.
Hurford-Stouffer motion to read ordinance number 1780, amending ordinance 1282 by adding to conditional uses permitted in an Industrial Zone: "Any use found, after hearing to be the same or similar in intensity of use as the enumerated uses shall be allowed as a conditional use." Motion carried. The ordinance was then read. Nays (0), Absent (3) Chandler, McNelly and Windsor. The Mayor then declared the ordinance passed.

Committee reports were called for:

Finance Committee
Insurance Bids
Liens

Mr. Hall stated the Finance Committee has received two bids for the City's Comprehensive Liabiltiy Insurance and Auto. They have been referred to the City's Agent of Record for his recommendation. Advised that $1,258 for Council of Government dues for year 1975-76 is available from Revenue Sharing funds. Stated in the Fire Chief's request for $800 for a radio, that he be advised to purchase the radio out of his operating budget if he considers it a top priority need. On the Police Chief's request for an air conditioner; He be advised to purchase the air conditioner out of his operating budget if it is a top priority need. Recommended foreclosure on three improvement liens: Samuel Smith $439.38 plus interest on 1969 paving; Harold Scharff $1,343.66 plus interest on 1972 Sewer; John McGregor $685.56 plus interst on 1972 paving.

Parking Meter Com.

Mr. Hurford stated the Special Committee on Parking Meter does recommend returning the meters at the current charges; and adding some meters on the side streets. The Council will be advised of other recommendations regarding the meters, spacing and location at future Council meeting.

Public Works Com
Street repairs
Sewer Main Interceptor
Animal Fac.

Mr. Belanger stated that the Public Works Committee will be interviewing applicants for position of City Engineer this week; That proposals have been requested for repairs to streets: Morton, Sherman, Sheridan, Meridian, Vermillion, River, Howard, Wynooski, East Second, Fourth, Third and N. Springbrook Street. To proceed with applications to EPA for funding balance on sewer main interceptor from W. Third Street to W. Illinois Street. Have $16,000 available from Community Development Block Grant on this project. On the sewer main interceptor from W. Illinois Street northerly to NW area a grant in amount of $9,780 has been received to fund current engineering on a facilities plan by Meyer Engineering Co. Also that Meyer Engineers have been retained to study and make recommendations on disposing of the sludge from the sewage plant. The Publisher Paper Co. will deed a parcel of land 60 X 144 on S. Blaine Street to the City for animal facilities and the committee does recommend acceptance and proceeding with construc-

(14)

ORDINANCE NO. 1780

AN ORDINANCE AMENDING ORDINANCE NO. 1282 OF THE CITY OF NEWBERG, OREGON ENTITLED "AN ORDINANCE ESTABLISHING ZONING REGULATIONS" PASSED AND APPROVED MAY 8, 1961, AS AMENDED, BY ADDING CONDITIONAL USE TO LIMITED INDUSTRIAL ZONE".

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

Section 1. That Ordinance No. 1282 of the City of Newberg, Oregon entitled: "AN ORDINANCE ESTABLISHING ZONING REGULATIONS" passed and approved May 8, 1961, as amended, be and the same hereby is amended by adding the following, to-wit:

Section 31, subsection (45) to read as follows: "Any use found after hearing to be the same or similar in intensity of use as the foregoing enumerated uses shall be allowed as a conditional use".

Section 84, subsection (7) to be amended to read:

7 - CONDITIONAL USES PERMITTED:

A. Low Density Residential (R-1) Zone.
   1. Two family dwellings (11-1-71 - #1639)

B.

C.

D.

E. Limited Commercial (C-1) Zone
   1. Electrical, Plumbing, Heating or Paint Contractor's storage, sales, repair or service (5-1-72 - #1654)
   2. Automobile Service Stations (7-4-73 - #1704)
      (a) Location of Service Stations - No service station other than service stations in operation on October 1, 1973, shall be located closer than 200 feet from any school or public playground and 400 feet from any church, nursing home, convalescent home, hospital, or home for the aged.
      (b) Minimum Lot Size for Service Station - The minimum area for a service station site shall be 15,000 square feet. The minimum street frontage for a service station site on an interior lot shall be 120 feet. (This sub-paragraph shall not apply to service stations in operation on October 1, 1973).
   3. Mortuaries (7-2-73- #1700)

F.

G.

H. Limited Industrial (M-L) Zone
   1. Any use found, after hearing to be the same or similar in intensity of use as the enumerated uses shall be allowed as conditional use. (8-4-75 - #1780)

WHEREAS, the addition of conditional use as stated herein is immediately necessary; NOW THEREFORE, an emergency is hereby declared to exist and this ordinance shall be in full force and effect immediately upon its passage by the Council.

PASSED by the Council at a regular meeting held on the 4th day of August, 1975 by the following votes:

AYES: 5 NAYS: 0 ABSENT: 3

M.C. GILBERT - Recorder

APPROVED by the Mayor this 4th day of August, 1975.

JACK C. NULSEN, JR - Mayor

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation, et al, Petitioners	No. 33490
vs.	OBJECTIONS TO STANDING
CITY OF NEWBERG, an Oregon Municipal Corporation, et al, Respondents	

Comes now the Respondent and objects to the standing of the following parties;

1. East County Homeowners' Association for the reason that petitioner was not a party to the proceeding below.

2. Gerhard & Susan A. Rasche for the reason that said petitioners have no interest in any property located within 300' of the property owned by William B. Heinzman.

3. Larry & Ivalou Hartman for the reason that said petitioners do not own property within 300' of the property owned by William B. Heinzman.

4. Tom M. McFerron and Neola McFerron for the reason that said petitioners do not own property within 300' of the property owned by William B. Heinzman.

And for the further reason that none of the foregoing petitioners have alleged any special injury by way of ultimate fact by which to enhance their standing.

NULSEN & PAXTON
PROF. CORP.— ATTORNEYS AT LAW
817 E. FIRST STREET
NEWBERG, OREGON 97132
TELEPHONE 538-9433

Respectfully submitted this 22 day of June, 1977.

NULSEN & PAXTON, P.C.
Attorneys at Law

by David R. Paxton
David R. Paxton
Attorney for William B. Heinzman
and Jr. and Jr. Inc.

POINTS AND AUTHORITIES:

1. DUDDLES vs. CITY COUNSEL OF WEST LINN
   21 Or App. 310, 535 P2d 583 (1975)

2. O.R.S. 34.040

3. O.R.S. 1.160

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation, et al, Petitioners	No. 33490
vs.	MOTION TO DISMISS
CITY OF NEWBERG, an Oregon Municipal Corporation, et al, Respondents	

Comes now the Respondents and move for an order of dismissal, dismissing the above referenced writ of review against the following Respondents;

1. Jr. and Jr. Inc., dba Valley Concrete Products, for the reason that said corporation was not a party to the conditional use application which petitioners are contesting.
2. Dale Blanton, City Planner
3. M.C. Gilbert, City Recorder
4. Jack C. Nulsen, Jr.
5. Maurice Chandler
6. Robert Hurford

Respondents noted in 2 through 6 above are not proper parties to the Petition for writ of review for the reason that none of the foregoing cast any vote on the conditional use application which is the subject matter of this litigation.

Respectfully submitted this 22 day of June, 1977.

NULSEN & PAXTON, P.C.
Attorneys at Law

by /s/ David R. Paxton
David R. Paxton
Attorney for William B. Heinzman and Jr. and Jr. Inc.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation, et al,

Petitioners

vs.

CITY OF NEWBERG, an Oregon Municipal Corporation, et al,

Respondents

No. 33490

MOTION TO CONTROVERT AND QUASH

Comes now the Respondent, William B. Heinzman, and moves to controvert the certification of Harold C. Pope on the petition on file herein, and if said certification is found to be in error, further have an order quashing and dismissing with prejudice the entire proceeding brought by virtue of said certified petition.

Respectfully submitted this 22 day of June, 1977.

NULSEN & PAXTON, P.C.
Attorneys at Law

by /s/ David R. Paxton
David R. Paxton
Attorney for William B. Heinzman and Jr. and Jr. Inc.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

RECEIVED
JUN 23

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation, et al,

Petitioners

vs.

CITY OF NEWBERG, an Oregon Municipal Corporation, et al,

Respondents

No. 33490

AFFIDAVIT IN SUPPORT OF MOTION TO CONTROVERT

STATE OF OREGON)
) ss.
County of Yamhill)

I, DAVID R. PAXTON, being first duly sworn do depose and say upon oath that;

In the proceedings held before the Planning Commission for the City of Newberg and the City Counsel for the City of Newberg, that I represented William B. Heinzman in said meetings and that to the best of my knowledge and belief, Harold C. Pope was not present at said meetings and that, further, to the best of my knowledge and belief, Harold C. Pope did not ever, in person, examine the records of the proceedings mentioned in the petition for writ of review by any visitations to the Newberg City Hall where said records are kept.

/s/ David R. Paxton
David R. Paxton

Subscribed and sworn to before me this 22 day of June, 1977.

(Seal)

/s/ Marilyn L. Cook
Notary Public for Oregon
My commission expires: 7-14-79

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation, et al,

Petitioners

vs.

CITY OF NEWBERG, an Oregon Municipal Corporation, et al,

Respondents

No. 33490

MOTION TO QUASH

Comes now the Respondents, William B. Heinzman and Jr. and Jr. Inc., dba Valley Concrete Products, and move this Court for an order quashing the writ of review proceedings against him for the reason that the writ was not served on the above named Respondents pursuant to O.R.S. 34.080 and neither Respondent stipulated to any extension of time for the return of the writ.

Respectfully submitted this 21st day of June, 1977.

NULSEN & PAXTON, P.C.
Attorneys at Law

by /s/ David R. Paxton
David R. Paxton
Attorney for William B. Heinzman and Jr. and Jr. Inc.

POINTS AND AUTHORITIES:

1. SHANKS et al vs. WASHINGTON COUNTY
   22 Or App. 426, 539 P2d 1111, (1975)

2. O.R.S. 34.080

3. NORTHWESTERN ENVIRONMENTAL DEFENSE CENTER vs. CITY OF PORTLAND
   75 Or Adv. Shts. 425

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, an Oregon nonprofit corporation, et al, Petitioners	No. 33490
vs.	MOTION TO QUASH
CITY OF NEWBERG, an Oregon Municipal Corporation, et al, Respondents	

Comes now the Respondent, William B. Heinzman, and moves this Court for an Order quashing the writ issued February 18, 1976, for the reason that the order directing the writ to be issued directs the clerk to issue a writ as follows;

> "IT IS HEREBY ORDERED that the clerk of this Court forthwith issue a writ directed to the defendants and the City Recorder require the return of said writ to this Court on or before the 1st day of March, 1977, together with a certified copy of the record and proceedings had concerning the granting of the said conditional use permit by the Newberg City Planning Commission, together with the minutes, exhibits, findings, and orders rendered."

It appearing from the order that the Court only ordered a writ to be directed to the planning commission and the writ which was issued was directed to the planning commission proceedings and in addition, to the planning commission and the city counsel. It appears on the face of said petition that the approval by the Newberg City Planning Commission was more than 60 days prior to the filing of the petition.

Respectfully submitted this 22 day of June, 1977.

NULSEN & PAXTON, P.C.
Attorneys at Law
by /s/ David R. Paxton
David R. Paxton-Attorney for William B. Heinzman and Jr. and Jr. Inc.

CITY OF NEWBERG, A BICENTENNIAL COMMUNITY

414 EAST FIRST STREET TELEPHONE 538-9421 NEWBERG, OREGON 97132

February 28, 1977

M E M O R A N D U M

TO: CITY ATTORNEY
FROM: CITY PLANNER
SUBJECT: WRIT OF REVIEW ON HEINZMAN CONDITIONAL USE PERMIT

Attached herewith you will find all pertinent records for the Heinzman Conditional Use Permit case, with the exception of recordings of the two Public Hearings.

I have the following comments regarding the Petition for Writ of Review #33490, which of this date has not been served upon the City of Newberg.

Section XI

In regards to this allegation, ordinance 1282 of the City of Newberg specifies that a use permitted in an M-L, Limited Industrial zone, is permitted in an M-1, Light Industrial zone.

Ordinance 1780, amending ordinance 1282, specified that any use found after a public hearing to be the "same or similar in intensity of use as the foregoing enumerated uses shall be allowed as a conditional use."

In this case, the conditional use was determined to meet the ordinance requirement for an M-L, Industrial zone. Being a permitted use in the M-L, Limited Industrial zone, it would then be a permitted use in an M-1, Light Industrial zone.

Section XII

There is no statutory requirement for the publication of Conditional Use Permit Hearings, nor does the applicable City Ordinance (Ordinance 1282) prescribe such a procedure.

Section 82 of the zoning ordinance governs the notice for a public hearing in Conditional Use Permit cases. It states the following: "At least five days, but not more than 20 days prior to the date of the hearing, the City Recorder shall give written notice of the hearing by mail

to all owners of property lying within 300 feet or directly across a street from the lot or parcel of land on which the conditional use is requested, and shall notify owners of any other lot or land parcel he deems affected by the proposed variance, using for this purpose, the names and addresses of owners as shown upon the records of the County Assessor. Failure of a person to recieve notice shall not invalidate any proceeding in connection with the application for a conditional use."

Although some owners not listed on the assessors records, or a tax lot map, did not recieve written notice, all owners and petitioners were at the public hearings, and/or signed a petition on the matter. All were given an opportunity to speak and present evidence on the matter.

In this case, despite the fact that not all owners received notice, the intent of notice was fulfilled through intercommunication between those who did receive notice and concerned neighbors.

To invalidate a proceeding for failure to receive notice would be contrary to the text and intent of section 82 of ordinance 1282.

This section of the writ questions City Planning Commission and City Council jurisdiction. An opportunity was given at each hearing to challenge the jurisdiction of the respective body to take action, as per rule 6 sub-section 3 of resolution 73-505, entitled, "A Resolution Adopting Rules of Procedure for the Conduct of Hearings Relating to Land Use Matters", and no person challenged the jurisdiction.

This question should have been raised as an earlier point in time. Even given a specific point in each hearing, the petitioners did not raise a jurisdictional question.

Section XIII

As the record will show, the Planning Commission did not adopt findings of fact. However, on appeal, the Council, following resolution 73-505 did adopt findings supporting their decision.

The "public need", and "need best served" tests may not apply in a conditional use permit case.

As per Aukland vs. Board of Commissioners of Multnomah County, and Kristensen vs. City of Eugene Planning Commission, this permit concerned an "outright permitted use" as long as certain factual prerequisites are shown. These prerequisites involved demonstration of intensity the same as, or similar to enumerated uses.

Following Aukland, the Fasano substantive and procedural requirements may not have applied in this case.

Section XV

The reference to lack of evidence supporting the conclusion that the proposed use is not more intensive than existing uses is correct. The parcel

was vacant. Any use would have been more intense. However, the ordinance reads as follows: "Any use found after hearing to be the same or similar in intensity of use as the foregoing enumerated uses shall be allowed as a conditional use." The petitioners are incorrect in replacing the words "enumerated uses" with the words "existing uses."

The record will show that a list of enumerated uses was read, and evidence was submitted, demonstrating that the manufacture of concrete tile and pier blocks was the same or similar in intensity as enumerated uses.

Section XVI

In this section petitioners allege that no evidence was submitted or findings made on the availability of other sites zoned for the manufacture of concrete tile.

As per Kristensen vs. City of Eugene Planning Commission, as the applicant may not have needed to separately prove "public need." As indicated, if a use permitted by conditional use is not an outright permitted use in any zone, there is no need to show that a particular property better serves the "public need."

The plan map does not distinguish between light and heavy industry. Both the area south of Twelfth Street, and the approved parcel carry the same designation.

Under recommended policies, the plan does refer to the area south of Twelfth Street as a heavy industrial area. First, the industrial classification of this specific use is not "heavy industrial." Second, the policy reads as follows:

"The heavy industrial area south of Twelfth Street should not develop beyond what is there, until adequate access is provided. This would be by the proposed bypass or other routes."

This provision would prevent further development at this time, because no improved access has been developed. In addition, this area is currently in Yamhill County, with Publishers Paper Corporation as the owner.

Section XVII

1. Under a "recommended" policies section of the Comprehensive Plan the following statements are made;

a. "Industrial uses should be encouraged to locate in well designed industrial parks. The perimeter of these industrial areas should be landscaped and provide proper buffers from adjoining areas."

b. "The A-dec Industrial should be developed to the highest standards, including adequate buffering, landscaped areas, superior building design and proper setbacks..."

c. "The heavy industrial area south of Twelfth Street should not develop beyond what is there until adequate access is provided. This would be by the proposed bypass or other routes."

(Emphasis added)

The above policies were followed in this case. Conditions placed upon the applicant specifically address the appropriate policies.

3. The plan uses Hess Creek as a buffer between residential use to the west and industrial on the east. In addition this use was approved with heavy landscaping requirements which eliminate interference with Hess Creek, as much as reasonably can be expected.

4. The hearing resulted in this site being approved as the proper location for this use. The reference to "heavier" industry, does not refer to any standard to judge intensity by. I would ask "Heavier than what?"

5. The standards were included as Conditions of Approval for this permit.

Section XVIII

This is a writ pertaining to a Conditional Use Permit, not the zoning. The zoning existed prior to the Conditional Use Permit.

Dale E. Blanton
City Planner

Form 407 PO

PITTSBURGH TESTING LABORATORY
ESTABLISHED 1881
611 S. E. HARRISON STREET
PORTLAND, OREGON 97214

ORDER No. PO-7506 LABORATORY No.

CLIENT'S No. 7605 FILE No.

February 7, 1977

REPORT

REPORT #1

Valley Concrete Products
Rt. Box 73AA
Newberg, Oregon 97132

Attn: Bill Heinzman

Re: Rock Samples Taken
at Alice Way, Newberg, Oregon.

Gentlemen:

A representative of this laboratory was present at the above subject project site to take rock samples, as requested, on February 1, 1977. Following are results.

I. Sample Locations. (All Samples secured on Alice Way)

#1 - 500' South of Mountain View Drive, Center

#2 - 270' South of Mountain View Drive, East

#3 - 90' South of Mountain View Drive, West

II. Description of material at Sample Locations.

#1 - 2" crushed rock, 8" Gray Clay, Brown Clay

#2 - 3" Crushed Rock, Brown Clay

#3 - 5½" Crushed Rock, Brown Clay

III. Results of Gradation Tests, given in percent passing.

Sieve Size	Sample No. 1	Sample No. 2	Sample No. 3
1½"	99.6	100	100
1"	92.8	94.8	96.1
3/4"	71.1	79.2	86.5
1/2"	49.9	61.8	63.3
3/8"	43.6	52.0	51.4
1/4"	31.0	37.7	34.3

- Continued -

PITTSBURGH TESTING LABORATORY
ESTABLISHED 1881
611 S. E. HARRISON STREET
PORTLAND, OREGON 97214

Form 407 PO

ORDER No. PO-7506 LABORATORY No.

CLIENT'S No. 7605 FILE No.

REPORT

Valley Concrete Products
(continued from first page)
February 7, 1977

Sieve Size	Sample No. 1	Sample No. 2	Sample No. 3
#4	24.4	30.2	26.7
#10	14.6	19.3	14.6
#40	6.5	8.3	5.8
#200	3.4	3.9	3.2

Respectfully Submitted,

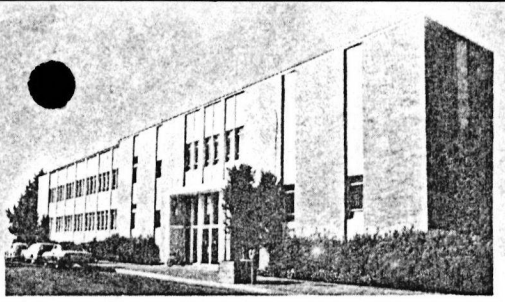
PITTSBURGH TESTING LABORATORY

Donald R. Scott

Donald R. Scott, Manager
Portland District

CAB/jds
cc: City of Newberg
Yamhill County Courthouse

YAMHILL COUNTY
Oregon



LEGAL COUNSEL

MEMORANDUM OF UNDERSTANDING

TO: ALL INTERESTED PARTIES

SUBJECT: W. Heinzman, Conditional Use Permit to allow construction of a concrete tile plant.

FROM: ROBERT S. WILLOUGHBY, Legal Counsel for Yamhill County

DATE: January 5, 1977

On January 3, 1977, Commissioner Ted Lopuszynski; Commissioner Colin Armstrong; Commissioner John P. Macaulay; W. Heinzman, applicant; D. Paxton, applicant and attorney at law; James F. Nimms, Engineer, City of Newberg; Dale E. Blanton, Planner, City of Newberg; Dennis West, Engineer, Yamhill County; Craig Greenleaf, Planning Director, Yamhill County; Greg Wolfe, Planner, Yamhill County; Robert S. Willoughby, Legal Counsel, Yamhill County, met in Room 105 of the Yamhill County Courthouse to discuss Condition No. 6 of the above mentioned conditional use permit imposed by the Newberg City Council. (under "Access" heading)

The purpose of this Memorandum is to confirm in writing the substance of the discussion at that meeting. The Board of Commissioners expressed two concerns with regard to Mr. Heinzman's proposed use of Alice Way:

1. That the proposed use not tear up or destroy Alice Way and that the road be constructed to the minimum standards necessary to carry the vehicles and traffic to be generated by the proposed use.

2. That the proposed use not create a dust problem for Meads Park Subdivision.

Concern No. 1 would be met by the applicant having the soils under Alice Way tested by Pittsburgh Testing Laboratories to determine the California Bearing Ratio (CBR) value of the soils and provide this information to the Yamhill County Engineer. The Yamhill County Engineer will then use this value to determine a minimum surfacing depth for Alice Way to handle the proposed use.

Mr. Paxton and Mr. Heinzman agreed to have the soils tested within a month if possible and provide the information to the Yamhill County Engineer.

Concern No. 2 would be met to the satisfaction of the Commissioners if the applicant would apply as needed an asphalt treated surface with the principal purpose to reduce air pollution caused by dust.

Mr. Paxton and Mr. Heinzman agreed to apply such a surface as needed.

The only unresolved issue at this point appears to be whether the applicant and Mr. Paxton will agree to apply the minimum surfacing depth of gravel recommended by the Yamhill County Engineer after he has examined the CBR values. They have asked to wait until they are informed as to what this minimum surfacing depth is before they commit themselves to answer.

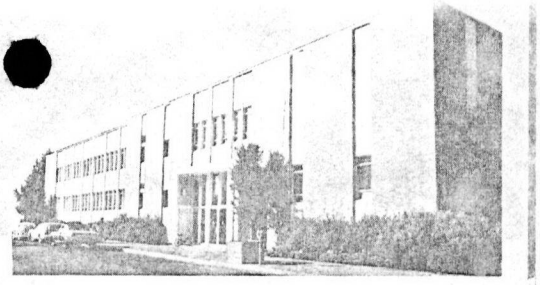
The matter will, therefore, not be resolved until this decision is made by the applicant. If any party has a different understanding of the meeting or has any questions or concerns, please contact me.

ROBERT S. WILLOUGHBY
Legal Counsel for Yamhill County

RSW:js

cc: Board of Commissioners, Yamhill County
W. Heinzman
D. Paxton
James F. Nims
Dale E. Blanton
Dennis West, Yamhill County Engineer
Craig Greenleaf, Yamhill County Planning Director
Greg Wolfe, Yamhill County Planner

YAMHILL COUNTY
Oregon



COUNTY ENGINEER
Dennis R. West

January 3, 1977

Newberg City Council
Newberg City Hall
Newberg, Oregon 97132

Subject: Request for Conditional Use Permit for W. Heinzman Property near Newberg, Oregon

Gentlemen:

Mr. James Nims, Newberg City Engineer, and myself made an inspection of the roads on the W. Heinzman property and through Meads Mobile-home Subdivision to determine what the roadway design should be.

It is our opinion that the roadway section through the subject property be constructed to the normal 34 foot width between curbs as required by the subdivision ordinance. This would allow for a possible future extension of the road.

Before setting the surfacing depth requirement, we felt that the applicant should have the soils tested by an experienced and qualified firm (such as Pittsburgh Testing Laboratory, Northwest Testing Laboratories, etc.) to determine the California Bearing Ratio value (CBR). Then, using this value, a surfacing depth to adequately handle the anticipated use of this road can be determined.

Also, according to a letter dated December 23, 1976 from Mr. Dale Blanton, Newberg City Planner, to Mr. William Heinzman, the applicant will be liable for damages to the existing road through Meads Mobile-home Subdivision caused by the anticipated additional traffic loads. Therefore, if the applicant is required to bear the cost of either oiling or paving the existing road through the mobile-home subdivision and maintaining said road, he may be better advised to provide the required depth of surfacing as determined by the soil bearing tests before providing the dust free surface.

Sincerely yours,

Dennis R. West
County Engineer

cc: W. Heinzman
Board of Commissioners
County Planning Dept.
James F. Nims, City Engineer
Dale E. Blanton, City Planner

MEMORANDUM

Subject: Heinzman Conditional Use Permit 1/3/77

The prerequisite conditions set by the Newberg City Council have been met by the applicant. A landscape and drainage plan have been approved by the planning and engineering departments.

Further conditions are to be met at future dates, and are subject to review by the Planning and Engineering departments.

At this point in time, the planning department sees no reason to hold up the applicant's building permit.

Attached is a copy of the conditions. Check marks (✓) indicate compliance. Dates (12-30-76) indicate approval of plans. Circled numbers (①) indicate review at a later time.

Dale E. Blanton,
City Planner

Attachment

December 23, 1976

William Heinzman
Rt. 2, Box 158-C
Newberg, Oregon 97132

Re: Conditional Use Permit Application

Dear Mr. Heinzman,

Please be advised that the City Council, upon completion of an appeal hearing, has approved your application for a conditional use, with the following conditions:

Land Use and Building -

(1) Building permits should be limited to those shown on the plot plan, until urban services are extended to the property.

(2) No more than four employees shall engage in manufacturing on this site, unless the County sanitarian approves the additional burden upon the drainfield. This provision will not apply after urban services are extended to the area.

12/30/76 → 3. The site shall be properly graded so as to ensure proper drainage. A drainage plan shall be approved by the City Engineer.

(4) Off street parking shall be safe and dust free.

12/30/76 → 5. That all portions of the site be properly graded as they are developed to ensure proper drainage and that all off-street parking be hard surfaced or dust free.

✓ 6. That the building and structures cover no more than sixty-five (65%) percent of the entire development site or of any of the parcels contained therein.

✓ 7. That setback requirements of forty (40) feet be observed on property abutting a residential zone.

✓ 8. That no building or structure exceed twenty-five (25) feet in height at the setback line when the property being developed abuts a residential zone except that the maximum height of forty-five (45) feet be allowed at five hundred (500) or more feet from the nearest residential zone, and that proportionate heights be allowed between the setback line and five hundred (500) feet from the nearest residential zone.

Access

(1) The road through Meads Trailer Park shall be adequate to support the additional traffic load.

(2) That the surface of the access road through Meads mobile-home subdivision be replaced by the applicant if damaged.

(3) The surface shall be dust free, and either oiled or paved.

(4) The applicant shall not remonstrate against an L.I.D. in this area.

(5) That water lines which lie under the roadway through the mobile-home subdivision be replaced by the applicant if damaged.

(6) That the road shall be adequate to support additional traffic with the standards for the roadway to be enforced by the City Engineer. (Should read "County Engineer" not "City Engineer"--Corrected by Colin Armstrong, 12-21-76)

Screening-

(1) Screening shall be installed, and approved by city staff within a nine-month time period. Screening should be in areas adjacent to residential uses, and on buildings which can be seen from residential areas. The applicant may appeal to the Planning Commission to resolve any conflict which might arise in this area.

12-30-76 → 2. Shrub heights and variety should be stipulated in advance of permit approval.

Environmental Standards-

(1) The applicant shall meet or exceed all standards set by D.E.Q., or other agencies which might be involved in environmental protection.

Review for Compliance with conditions-

(1) This Conditional Use Permit shall be reviewed by the city staff one year from its issuance, to check for compliance with the above conditions. If the applicant has not complied, the permit shall be revoked, and the use shall be discontinued.

Sincerely,

Dale E. Blanton,
City Planner

DEB/la
Enc: Conditional Use Application
cc- Dave Paxton
Jim Nims
County Planning Department
County Engineer

Exhibit "A"
12/20-76
Council

DEPARTMENT OF ENVIRONMENTAL QUALITY

Russell H. Fetrow, Jr., P.E.
Manager
Salem-North Coast Region
796 Winter Street N.E.
Salem, Or 97310

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696
Salem 378-8240

ROBERT W. STRAUB
GOVERNOR

December 20, 1976

Mr. William B. Heinzman, Jr.
Rt. 2, Box 73AA
Newberg, OR 97132

RE: AQ-Valley Concrete Products
Newberg, Yamhill County
Salem-North Coast Region

Dear Mr. Heinzman:

As discussed during our December 14 inspection of your existing plant, your new facilities proposed for Alice Way are considered an insignificant source of emissions, and will not require an Air Contaminant Discharge Permit.

You should not have any water quality problems either, since your water usage is mostly in the concrete mixer on a "batch" feed basis. In addition, equipment cleanup is essentially a dry process.

Our staff also reviewed your septic tank disposal site on December 17, and confirmed that your proposed system should satisfactorily handle one sink and one toilet. We understand that no process or cleanup water will be disposed by this system.

There is concern about the potential noise associated with your new plant. We understand that all vibratory and mixing equipment will be enclosed within the building. To minimize noise outside the building you should build the wall (especially to the north and west) with materials having high density and mass (e.g. concrete block, etc.). The hydraulic pump should also be located below floor level if possible. Additional measures may be necessary if violations of the Department's noise regulations (copy attached) are encountered after you start processing.

The attached Notice of Construction form must be completed and

returned to us as soon as possible. A written approval to construct the plant is required, but cannot be issued until the form is received.

Your cooperative attention to these matters will be appreciated. Please call Harry Demaray at 378-8240, Salem, if you have any questions.

Sincerely,

WILLIAM H. YOUNG
Director

Stephen C. Downs, P.E.
Regional Engineer

SCD/taa/021

Attachments (2)

1. OAR 340-35-005 thru 35-100 (Noise Control Regulations)
2. Notice of Construction Form

cc: Air Quality Division w/o att
Noise Control Division w/o att
City of Newberg, w/o att

AFFIDAVIT OF PUBLICATION

STATE OF OREGON, COUNTY OF YAMHILL—ss.

I, Pauline Field

being first duly sworn, depose and say that I am the publisher of the Newberg Graphic, a newspaper of general circulation, as defined by Secs. 1-509, 1-5-10, Oregon Code; printed and published at Newberg in the aforesaid county and state; that the

Notice of Public Hearing

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper

for Two successive and consecutive

weeks in the following issues:

December 9, 16, 1976

Pauline Field

Office Mgr. Publisher

Subscribed and sworn to before me this

16 day of December, 1976

Terry L Wagner

Notary Public for Oregon.

(My Commission expires 4-5-80)

NOTICE OF A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of Newberg, Oregon will hold a Public Hearing on December 20, 1976 beginning at 7:30 p.m. in the Council Chambers, City Hall, Newberg, Oregon to consider the following matter:

CONDITIONAL USE PERMIT APPEAL

Applicant: William Heinzman

Property Location: At the South end of Alice Way on tax lot No. 3217-1200.

Proposed Use: Tile and pier block manufacturing plant.

Zone: M-1, Light Industrial

Comprehensive Plan: Industrial

Any person wishing to speak for or against the above propsoal may do so in person or by Attorney at the public hearing. Also written objections may be filed at City Hall, Newberg, Oregon.

M.C. Gilbert
City Administrator

Publish:
December 9, 1976 and December 16, 1976.

CITY OF NEWBERG, A BICENTENNIAL COMMUNITY

414 EAST FIRST STREET TELEPHONE 538-9421 NEWBERG, OREGON 97132

December 28, 1976

Leonard A. Rydell, P.E.
Consulting Civil Engineer
711 North Deskins #4
Newberg, Oregon 97132

Attn: Mr. Leonard A. Rydell, P.E.

Re: W. Heinzman Property

Dear Mr. Rydell:

Attached herewith you will find a letter dated December 23, 1976 addressed to William Heinzman, Rt. 2, Box 158-C, Newberg Oregon relating the conditions of the Conditional Use Permit application for Mr. Heinzman's property.

Please be advised that several assumptions that you have made are not valid. Of the three basic assumptions which you have made concerning the development of the storm drainage for this property, two of the three are invalid. Number 1, and number 3.

We are enclosing a copy of Mr. Blanton's letter which was sent to Mr. Heinzman and Mr. Paxton concerning this matter for your review and compliance thereto.

We have requested the County Engineer provide you with the necessary documentation for the improvement of Alice Way outside of the city limits at the earliest possible date.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

James F. Nims,
City Engineer

JFN/la
Enc.

for Dale

CITY OF NEWBERG, A BICE

EAST FIRST STREET

December 28, 1976

Leonard A. Rydell, P.E.
Consulting Civil Engineer
711 North Deskins #4
Newberg, Oregon 97132

Attn: Mr. Leonard A. Rydell, P.E.

Re: W. Heinzman Property

Dear Mr. Rydell:

Attached herewith you will find a letter dated December 23, 1976 addressed to William Heinzman, Rt. 2, Box 158-C, Newberg Oregon relating the conditions of the Conditional Use Permit application for Mr. Heinzman's property.

Please be advised that several assumptions that you have made are not valid. Of the three basic assumptions which you have made concerning the development of the storm drainage for this property, two of the three are invalid. Number 1, and number 3.

We are enclosing a copy of Mr. Blanton's letter which was sent to Mr. Heinzman and Mr. Paxton concerning this matter for your review and compliance thereto.

We have requested the County Engineer provide you with the necessary documentation for the improvement of Alice Way outside of the city limits at the earliest possible date.

If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

James F. Nims,
City Engineer

JFN/la
Enc.

December 23, 1976

William Heinzman
Rt. 2, Box 158-C
Newberg, Oregon 97132

Re: Conditional Use Permit Application

Dear Mr. Heinzman,

Please be advised that the City Council, upon completion of an appeal hearing, has approved your application for a conditional use, with the following conditions:

Land Use and Building -

1. Building permits should be limited to those shown on the plot plan, until urban services are extended to the property.
2. No more than four employees shall engage in manufacturing on this site, unless the County sanitarian approves the additional burden upon the drainfield. This provision will not apply after urban services are extended to the area.
3. The site shall be properly graded so as to ensure proper drainage. A drainage plan shall be approved by the City Engineer.
4. Off street parking shall be safe and dust free.
5. That all portions of the site be properly graded as they are developed to ensure proper drainage and that all off-street parking be hard surfaced or dust free.
6. That the building and structures cover no more than sixty-five (65%) percent of the entire development site or of any of the parcels contained therein.
7. That setback requirements of forty (40) feet be observed on property abutting a residential zone.
8. That no building or structure exceed twenty-five (25) feet in height at the setback line when the property being developed abuts a residential zone except that the maximum height of forty-five (45) feet be allowed at five hundred (500) or more feet from the nearest residential zone, and that proportionate heights be allowed between the setback line and five hundred (500) feet from the nearest residential zone.

Access

1. The road through Meads Trailer Park shall be adequate to support the additional traffic load.

2. That the surface of the access road through Meads mobile-home subdivision be replaced by the applicant if damaged.

3. The surface shall be dust free, and either oiled or paved.

4. The applicant shall not remonstrate against an L.I.D. in this area.

5. That water lines which lie under the roadway through the mobile-home subdivision be replaced by the applicant if damaged.

6. That the road shall be adequate to support additional traffic with the standards for the roadway to be enforced by the City Engineer. (Should read "County Engineer", not "City Engineer"--Corrected by Colin Armstrong, 12-21-76)

Screening-

1. Screening shall be installed, and approved by city staff within a nine-month time period. Screening should be in areas adjacent to residential uses, and on buildings which can be seen from residential areas. The applicant may appeal to the Planning Commission to resolve any conflict which might arise in this area.

2. Shrub heights and variety should be stipulated in advance of permit approval.

Environmental Standards-

1. The applicant shall meet or exceed all standards set by D.E.Q., or other agencies which might be involved in environmental protection.

Review for Compliance with conditions-

1. This Conditional Use Permit shall be reviewed by the city staff one year from its issuance, to check for compliance with the above conditions. If the applicant has not complied, the permit shall be revoked, and the use shall be discontinued.

Sincerely,

Dale E. Blanton,
City Planner

DEB/la
Enc: Conditional Use Application
cc- Dave Paxton
Jim Nims
County Planning Department
County Engineer

CITY OF NEWBERG

File No. _____

APPLICATION FOR CONDITIONAL USE

Conditional Use No. _____

Received (Date) 11 22 76

BY: _____

Fee: 15.00 Rec'd 11-22-76

DATE OF PUBLIC HEARING 12/6/76 CC 11/6/76 PC

CONDITIONAL USE

Action: By Planning Commission

APPROVED

BY Planning Commission & City Council

City Planner Dale E Blanton

Date 12/23/76

Conditions: See Attached Letter

Petitioner: Do not write above this line.

THE UNDERSIGNED PETITIONER(S) William B. Henizman Jr., Rt. 2 Box 73AA, Newberg Oregon
(Name) (Address)

is (are) the (check one) X Owner ____ Purchaser. Agent of petitioner (if applicable) attach written evidence of authority.

David R. Paxton 817 E. First St., Newberg, Oregon 538-9433
(Name and Address) (Phone)

LOCATION OF PROPERTY FOR WHICH CONDITIONAL USE IS SOUGHT:

M-1
(ZONE)

(LOT) (BLOCK) (PLAT)

3217-1200 17 3-S 2-W
(TAX LOT) (DLC) (SECTION) (TOWNSHIP) (RANGE)

at the end of Alice Way on the ____ side of the
(BUILDING NUMBER) (STREET) (DIRECTION)

street between _____ Street and _____ Street.

PROPERTY DIMENSIONS: Width 464/348, Depth 448, Total sq. ft. area 191,644 ±.

Petitioner requests a conditional use of the above-described property as follows: Request is for hearing pursuant to Ord. 1780 to determine if tile and pier block manufacturing is the same or similar in intensity of use as are enumerated uses under M/L zone and therefore allowable in M/L zone as conditional use.

as shown on the attached plot plan. (Plot plan must show site dimensions, existing buildings, proposed buildings, topography, other improvements or natural features.)

Use above space to state exactly what is intended to be done on or with the property which would constitute a conditional use of the property under the zoning ordinance. Use the following apce for circumstances pertaining to this request.

List enclosure;
1. Affidavit of Applicant
2. Photographs - 5

RECEIVED

David R Paxton
Signature of petitioner or agent

OCT

CITY OF NEWBERG, ORE.
OFFICE OF RECORDER

December 23, 1976

William Heinzman
Rt. 2, Box 158-C
Newberg, Oregon 97132

Re: Conditional Use Permit Application

Dear Mr. Heinzman,

Please be advised that the City Council, upon completion of an appeal hearing, has approved your application for a conditional use, with the following conditions:

Land Use and Building -

1. Building permits should be limited to those shown on the plot plan, until urban services are extended to the property.
2. No more than four employees shall engage in manufacturing on this site, unless the County sanitarian approves the additional burden upon the drainfield. This provision will not apply after urban services are extended to the area.
3. The site shall be properly graded so as to ensure proper drainage. A drainage plan shall be approved by the City Engineer.
4. Off street parking shall be safe and dust free.
5. That all portions of the site be properly graded as they are developed to ensure proper drainage and that all off-street parking be hard surfaced or dust free.
6. That the building and structures cover no more than sixty-five (65%) percent of the entire development site or of any of the parcels contained therein.
7. That setback requirements of forty (40) feet be observed on property abutting a residential zone.
8. That no building or structure exceed twenty-five (25) feet in height at the setback line when the property being developed abuts a residential zone except that the maximum height of forty-five (45) feet be allowed at five hundred (500) or more feet from the nearest residential zone, and that proportionate heights be allowed between the setback line and five hundred (500) feet from the nearest residential zone.

Access

1. The road through Meads Trailer Park shall be adequate to support the additional traffic load.

2. That the surface of the access road through Meads mobile-home subdivision be replaced by the applicant if damaged.

3. The surface shall be dust free, and either oiled or paved.

4. The applicant shall not remonstrate against an L.I.D. in this area.

5. That water lines which lie under the roadway through the mobile-home subdivision be replaced by the applicant if damaged.

6. That the road shall be adequate to support additional traffic with the standards for the roadway to be enforced by the City Engineer. (Should read "County Engineer", not "City Engineer"--Corrected by Colin Armstrong, 12-21-76)

Screening-

1. Screening shall be installed, and approved by city staff within a nine-month time period. Screening should be in areas adjacent to residential uses, and on buildings which can be seen from residential areas. The applicant may appeal to the Planning Commission to resolve any conflict which might arise in this area.

2. Shrub heights and variety should be stipulated in advance of permit approval.

Environmental Standards-

1. The applicant shall meet or exceed all standards set by D.E.Q., or other agencies which might be involved in environmental protection.

Review for Compliance with conditions-

1. This Conditional Use Permit shall be reviewed by the city staff one year from its issuance, to check for compliance with the above conditions. If the applicant has not complied, the permit shall be revoked, and the use shall be discontinued.

Sincerely,

Dale E. Blanton

Dale E. Blanton,
City Planner

DEB/la
Enc: Conditional Use Application
cc- Dave Paxton
Jim Nims
County Planning Department
County Engineer

CITY OF NEWBERG

File No. _____

APPLICATION FOR CONDITIONAL USE

Conditional Use No. _____

Received (Date) 11-22-76

BY: _____

Fee: 75.00 R# 2524

11/16/76 PC

DATE OF PUBLIC HEARING 12/6/76 CC

Petitioner: Do not write above this line.

CONDITIONAL USE

Action: By Planning Commission

APPROVED

BY Planning Commission & City Council

City Planner Dale E Blanton

Date 12/23/76

Conditions: See Attached Letter

THE UNDERSIGNED PETITIONER(S) William B. Henizman Jr., Rt. 2 Box 73AA, Newberg Oregon
(Name) (Address)

is (are) the (check one) X Owner ____ Purchaser. Agent of petitioner (if applicable) attach written evidence of authority.

David R. Paxton 817 E. First St., Newberg, Oregon 538-9433
(Name and Address) (Phone)

LOCATION OF PROPERTY FOR WHICH CONDITIONAL USE IS SOUGHT:

M-1
(ZONE)

(LOT) (BLOCK) (PLAT)

3217-1200 17 3-S 2-W
(TAX LOT) (DLC) (SECTION) (TOWNSHIP) (RANGE)

at the end of Alice Way on the ____ side of the
(BUILDING NUMBER) (STREET) (DIRECTION)

street between _____ Street and _____ Street.

PROPERTY DIMENSIONS: Width 464/348, Depth 448, Total sq. ft. area 191,644 ±.

Petitioner requests a conditional use of the above-described property as follows:
Request is for hearing pursuant to Ord. 1780 to determine if tile and pier block manafacturing is the same or similar in intensity of use as are enumerated uses under M/L zone and therefore allowable in M/L zone as a conditional use.

as shown on the attached plot plan. (Plot plan must show site dimensions, existing buildings, proposed buildings, topography, other improvements or natural features.)
Plot plan previously submitted with Zone Change Application

Use above space to state exactly what is intended to be done on or with the property which would constitute a conditional use of the property under the zoning ordinance. Use the following space for circumstances pertaining to this request.

List enclosure;
1. Affidavit of Applicant
2. Photographs - 5

RECEIVED
OCT 14 1976
CITY OF NEWBERG, ORE.
OFFICE OF RECORDER

David R Paxton
Signature of petitioner or agent

YAMHILL COUNTY
Oregon

BOARD OF COMMISSIONERS

December 20, 1976

Newberg City Council
Newberg City Hall
Newberg, OR 97132

Dear Mr. Nulsen:

We, at Yamhill County, have reviewed Mr. Heinzmann's request for a conditional use permit in a M1 light industrial zone to allow construction of a concrete tile plant. As a part of that review we would recommend that the conditions listed below be adopted by the City Council.

Building and Land-use.

a) That the building and structures cover no more than sixty-five (65%) percent of the entire development site or of any of the parcels contained therein.

b) That setback requirements of forty (40) feet be observed on property abutting a residential zone.

c) That no building or structure exceed twenty-five (25) feet in height at the setback line when the property being developed abuts a residential zone except that the maximum height of forty-five (45) feet be allowed at five hundred (500) or more feet from the nearest residential zone, and that proportionate heights be allowed between the setback line and five hundred (500) feet from the nearest residential zone.

d) That all portions of the site be properly graded as they are developed to ensure proper drainage and that all off-street parking be hard surfaced or dust free.

Access

a) That the surface of the access road through Meads mobile-home subdivision be of a dust free surface.

b) That water lines which lie under the roadway through the mobile-home subdivision be replaced by the applicant if damaged.

c) That the road shall be adequate to support additional traffic with the standards for the roadway to be enforced by the City Engineer.

Screening

a) Shrub heights and variety should be stipulated in advance of permit approval.

It is our opinion that these conditions should be attached to the approval of this use. We would further recommend that there be provision for a one year review, and if the applicant has not complied with the conditions as agreed that the permit be revoked.

Respectfully submitted,

Colin Armstrong

Colin Armstrong, Chairman
Board of Commissioners

CA-CG:vs

Planner

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

EAST COUNTY HOMEOWNERS' ASSOCIATION, et al, Petitioners, vs. CITY OF NEWBERG, et al, Respondents.	No. 33490

BRIEF OF RESPONDENT CITY OF NEWBERG

At the time of the court hearing in this matter on January 20, 1978, petitioners based their argument upon their "Second Memorandum of Law", received by us on December 10, 1977. By arrangements made between court and counsel, it was understood, at the close of the hearing, that respondents would file their memorandum of law, responding to the written and oral arguments of petitioners, after which petitioners would have an opportunity for a reply memorandum.

In response to the writ of review, and the amendment thereof, the City has filed returns, accompanied by record of proceedings in detail, with all of the documentation now before the court for its review.

1. Questions Presented:

The questions before the court, raised by petitioners, involve the validity of the conditional use permit granted to respondent Heinzman, which is basic, and subordinate thereto, the validity of Ordinance No. 1776, changing the zoning classification of the Heinzman property from residential (R-1) to light industrial (M-1), and of Ordinance No. 1780, adding certain conditional uses to the limited industrial (M-L) zone, and by reference to light industrial (M-1) zone. Petitioners, in their brief, have understandably confused the two designated types of industrial zone, and the sequence of changes therein must be kept

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

in mind. Also, on page 2, they assert that there was no published notice prior to the city council meeting on August 4, 1975, but any such objection was removed from the pleadings by striking allegations thereof from paragraphs XIX and XX of the amended petition for writ of review, submitted with the motion for leave to file the same.

The thrust of petitioner's oral argument was the validity of the conditional use permit itself, and only incidental reference was made to the questions raised regarding the adoption of Ordinances 1776 and 1780, although those points are covered in petitioner's brief, and a response will be made thereto later in our brief.

2. Conditional Use Permit:

The brief of petitioners, beginning on page 3, sets forth their main points in support of their contention that the conditional use permit is invalid, and these points will be discussed in sequence:

a. No notice mailed to petitioners:

The return to the original writ of review, exhibit 7, shows notice of hearing was mailed to certain property owners on November 9, 1976, in advance of the planning commission hearing on November 16, 1976. It is true that said list of property owners does not include petitioners herein. However, the minutes of the planning commission hearing, exhibit 6, show that petitioners John Stuart, Gary Rasche, and Larry Hartman were present in person, and the appeal to the city council, exhibit 9, was signed by petitioners John and Sharon Stuart, M. J., Shirley, and Louise McDermott, and Gary and Susan Rasche. Also, petitioners John and Sharon Stuart, M. J.,

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

Shirley, and Louise McDermott, Susan Rasche, Larry and Ivalou Hartman signed written remonstrance, exhibit 13. Thus, most of petitioners were on record as having full notice of all proceedings. At the judicial hearing, the court indicated that it was satisfied that personal notice of and participation in the proceedings would, in effect, cure defect, if any, in the notice, and the court indicated that it would not consider exhibits A, B, and C, attached to petitioner's brief, nor did it desire testimony by City officials as to the names to whom notices were mailed. In examining this lengthy record for the purpose of this brief, we note that exhibit 7, containing record of notices mailed prior to the conditional use hearing by the planning commission, was inadvertently attached to notice of public hearing before the council on December 20; but petitioners have not raised any question on that point, and do not dispute that notice of the planning commission hearing was mailed to the property owners listed in exhibit 7. However, a copy of the actual notice mailed on November 9, 1976, is enclosed herewith, and it would be appreciated if it could be attached to the exhibits as No. 7-A.

On page 6 of their brief, petitioners cite West, 18 Or App 212, in support of their apparent contention that even though petitioners were present and fully informed, the proceeding would be invalid if they had not received or been sent the proper prior notice. Such a conclusion can only come from

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

the concurring opinion, not the opinion of the court itself.

b. Alleged Bias of Planning Commission Members:

This point is discussed on pages 4 and 10 of petitioners' brief, but not mentioned in oral argument. Factually, it is supported only by an affidavit of Charles Heckman, which would be evidence outside the record, and we do not feel the point has sufficient validity to require detailed response.

c. Sufficiency of Findings:

In the oral argument, petitioners emphasized this point, but it is our position that it is not well taken.

On page 8 of their brief, petitioners quote the specific finding of the planning commission, exhibit 6, and a further statement in council minutes, on appeal, exhibit 10. The only question before the planning commission, and on appeal to the city council, was whether or not the proposed use was more or less "intense" than other permitted uses, and it is difficult to conceive of any requirement, either in semantics or in law, to recite anything other than the ultimate fact whether such proposed use is or is not of such intensity. There certainly is no requirement that evidence be detailed, and it is not controlling in deciding whether there is sufficient record to support a conditional use permit to argue by analogy from cases on zone changes, under Fasano where, of course, findings need be made on several factors, including public need.

It is submitted that the specific finding of the planning commission, sustained on appeal by the city council, is not

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

just conclusionary, but that it is the practical statement of the ultimate fact, that is, degree of intensity, in passing upon a condition only. Even in South of Sunnyside v. Commissioners, 280 Or. 3,21, the Supreme Court said:

> "No particular form is required, and no magic words need be employed."

d. Alleged Lack of Substantial Evidence:

As indicated under point c., we contend there is a sufficient "finding" in this conditional use case, with the issue being strictly limited to conformance to a condition, but beginning on page 11, petitioners assert that there was not substantial evidence before the planning commission to support that finding. There was testimony before the planning commission, and the minutes of the meeting, exhibit 6, show many persons present, and considerable discussion, as well as staff report and other ducuments. It is also to be noted that the petitioners who were present at the hearing gave as their conclusion that the proposed use is not the same or less in intensity than other uses, but petitioners themselves did not offer any evidence to support their contention. It is, therefore, submitted that the planning commission, with the staff report, and oral and written statements made at the hearing, had sufficient evidence in every practical sense, to justify the finding of ultimate fact. It is also to be remembered that in a lay administrative hearing of this kind, it is not reasonable to expect the same particularity and the same documentation as

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

would be found in a judicial hearing on the same topic.

e. Failure to Establish Public Need:

This point is discussed in some detail by petitioners beginning on page 13 of their brief. We submit that requirements for showing public need in zone changes is completely different, both legally and factually, from merely determining whether a specific condition has been met; and we are unaware of any statutory or judicial requirement that "public need" is a prerequisite for an administrative decision on a conditional use, standing by itself.

Petitioners also refer several times to proposals for "heavy industry", but such references are totally irrelevant, as nothing proposed in the conditional use application, or granted by the permit, has any reference whatever to "heavy industry".

f. Spot Zoning:

In the oral argument, petitioners did not emphasize this point; but in any event, whatever might be said for a change of zone itself, this argument would have no possible application to the granting of a conditional use permit, under an underlying ordinance legislative in character.

3. Validity of Underlying Ordinances:

Beginning on page 16 of petitioner's brief, there is a contention that both Ordinance No. 1776, changing the zone of the Heinzman property from R-1 to M-1, and Ordinance No. 1780, permitting conditional uses in a M-L zone, are void. Petitioners conclude that since the property was not "validly zoned for

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

industrial use", and with no "valid ordinance permitting conditional uses in any industrial zone", the permit for conditional use cannot stand.

At the outset, and as stated at the oral argument, respondent City of Newberg takes the position, argued at the time of the motion to amend the writ of review, that the validity of the ordinances is a separate question, and not properly involved in this case. We realize that the court allowed the amendment, and now has all of the issues before it, but we hope that by making a continuing objection, the court will be willing to reexamine this point in making its final decision. Hence, in discussing the point of petitioners that these ordinances are invalid, the City of Newberg makes the following arguments:

a. That the validity of the ordinances should not, from the standpoint of procedure, be a part of this case. The original writ related only to the granting of a conditional use permit, and by the amended writ, petitioners sought to expand the issues before the court, after the time had expired for filing writ of review, to the validity of the two ordinances, adopted at a prior time. Thus, it appears to the City of Newberg that petitioners are trying to do indirectly what they could not do directly, and that instead of merely amending the alleged grounds for writ of review, by a re-statement or amplification, they are, in actual fact, raising new grounds; and that the situation is somewhat analagous to attempting to amend a complaint, after expiration of the statute of limitations, to include items not theretofore a part of the case. This analogy is also found in Meury v. Jarrell, 16 Or App 239, 245.

b. On the merits, the two ordinances were validly adopted.

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

So far as Ordinance 1776 is concerned, changing the zone, petitioners contend (page 17) that prior to the hearing of the planning commission on June 17, 1977 (should be 1975), there was no public notice of re-zoning hearing other than that of January 9, 1975, with no notice appearing in the newspaper during two weeks prior to the meeting of June 17. The matter was first considered by the planning commission on January 21, 1975, and exhibit 3 to the return to the amended writ, contains a notice of public hearing, with certificate of mailing to a list of certain property owners, and exhibit 4 is affidavit of newspaper publication of such notice, on January 9, 1975. While the planning commission did not act on this proposed zone change until June 17, 1975, exhibits 5 and 5-A are excerpts from planning commission meetings showing that this matter was continued from time to time until the meeting on June 17, 1975. The legal requirements for notice clearly apply to the time scheduledfor hearing, and petitioners do not cite any authority for the untenable proposition that each continuation of the hearing would require a separate published notice. We consider this objection by petitioners to be without merit.

In the second paragraph on page 17, petitioners contend that a notice was not given as prescribed by law before the meeting of the city council on August 4, 1975, when Ordinance 1780 was passed, and state that no notice was published.

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

First, as pointed out above, it must be noted that petitioners, in their amended petition for writ of review, withdrew allegations concerning lack of notice, or deficiencies in notice, before meetings of the city council, and this question is not at this time an issue in the case. In any event, it should be pointed out that Ordinance 1780, not relating to particular property, but applying to all property in an M-L zone, is legislative in nature, rather than quasi-judicial. Hence, under all of the land use planning law, such an ordinance is presumed to be valid, procedurally and otherwise, and the only question would be whether it was adopted arbitrarily or capriciously, which is not alleged by petitioners.

4. Conclusion:

The City of Newberg, while not exactly an adverse party in the usual sense, and with this dispute being largely between petitioners, on the one hand, and respondents Jr. & Jr. Inc. and Heinzman, on the other hand, nevertheless is an active participant in this litigation, and is interested in establishing the validity of its administrative procedures. The City submits that while everything which has been done by the planning commission and the council may not be perfect, when examined at the judicial level with benefit of hindsight, nevertheless all of the proceedings were fair, with full hearings, participated in by interested parties, and that they meet the standards of due process. Hence, we urge that the actions of the Planning Commission and City

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

Council be sustained.

Respectfully submitted,

GEORGE H. LAYMAN

TERRANCE D. MAHR

Attorneys for Respondents other than Jr. & Jr. Inc. and Heinzman

GEORGE H. LAYMAN
ATTORNEY AT LAW
115 N. WASHINGTON STREET
NEWBERG, OREGON 97132
TELEPHONE 538-2166

NOTICE OF A PUBLIC HEARING
- Request for a Conditional Use -

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Planning Commission of the City of Newberg, Oregon, on Tuesday, November 16, at the hour of 7:30 P.M. in the City Hall, second floor, Newberg, Oregon, on the application of William Heinzman for a Conditional Use Permit to permit the manufacture of concrete pipe on his property described as Yamhill County tax lot 3217 - 1200. Zoned Light Industrial.

Any person wishing to speak for or against the proposed Conditional Use Permit may do so in person or by attorney at the Public Hearing. Also, written objections may be filed with the City Recorder, City Hall, Newberg, Oregon.

M. C. GILBERT
City Administrator

Exhibit "A"
12/20-76
Council

DEPARTMENT OF ENVIRONMENTAL QUALITY

Russell H. Fetrow, Jr., P.E.
Manager
Salem-North Coast Region
796 Winter Street N.E.
Salem, Or 97310

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696
Salem 378-8240

ROBERT W. STRAUB
GOVERNOR

December 20, 1976

Mr. William B. Heinzman, Jr.
Rt. 2, Box 73AA
Newberg, OR 97132

RE: AQ-Valley Concrete Products
Newberg, Yamhill County
Salem-North Coast Region

Dear Mr. Heinzman:

As discussed during our December 14 inspection of your existing plant, your new facilities proposed for Alice Way are considered an insignificant source of emissions, and will not require an Air Contaminant Discharge Permit.

You should not have any water quality problems either, since your water usage is mostly in the concrete mixer on a "batch" feed basis. In addition, equipment cleanup is essentially a dry process.

Our staff also reviewed your septic tank disposal site on December 17, and confirmed that your proposed system should satisfactorily handle one sink and one toilet. We understand that no process or cleanup water will be disposed by this system.

There is concern about the potential noise associated with your new plant. We understand that all vibratory and mixing equipment will be enclosed within the building. To minimize noise outside the building you should build the wall (especially to the north and west) with materials having high density and mass (e.g. concrete block, etc.). The hydraulic pump should also be located below floor level if possible. Additional measures may be necessary if violations of the Department's noise regulations (copy attached) are encountered after you start processing.

The attached Notice of Construction form must be completed and

returned to us as soon as possible. A written approval to construct the plant is required, but cannot be issued until the form is received.

Your cooperative attention to these matters will be appreciated. Please call Harry Demaray at 378-8240, Salem, if you have any questions.

Sincerely,

WILLIAM H. YOUNG
Director

Stephen C. Downs

Stephen C. Downs, P.E.
Regional Engineer

SCD/taa/021

Attachments (2)

1. OAR 340-35-005 thru 35-100 (Noise Control Regulations)
2. Notice of Construction Form

cc: Air Quality Division w/o att
Noise Control Division w/o att
City of Newberg, w/o att

DEPARTMENT OF ENVIRONMENTAL QUALITY

Russell H. Fetrow, Jr., P.E.
Manager
Salem-North Coast Region
796 Winter Street N.E.
Salem, Or 97310

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229-5696
Salem 378-8240

December 20, 1976

Mr. William B. Heinzman, Jr.
Rt. 2, Box 73AA
Newberg, OR 97132

RE: AQ-Valley Concrete Products
Newberg, Yamhill County
Salem-North Coast Region

Dear Mr. Heinzman:

As discussed during our December 14 inspection of your existing plant, your new facilities proposed for Alice Way are considered an insignificant source of emissions, and will not require an Air Contaminant Discharge Permit.

You should not have any water quality problems either, since your water usage is mostly in the concrete mixer on a "batch" feed basis. In addition, equipment cleanup is essentially a dry process.

Our staff also reviewed your septic tank disposal site on December 17, and confirmed that your proposed system should satisfactorily handle one sink and one toilet. We understand that no process or cleanup water will be disposed by this system.

There is concern about the potential noise associated with your new plant. We understand that all vibratory and mixing equipment will be enclosed within the building. To minimize noise outside the building you should build the wall (especially to the north and west) with materials having high density and mass (e.g. concrete block, etc.). The hydraulic pump should also be located below floor level if possible. Additional measures may be necessary if violations of the Department's noise regulations (copy attached) are encountered after you start processing.

The attached Notice of Construction form must be completed and

COPY

returned to us as soon as possible. A written approval to construct the plant is required, but cannot be issued until the form is received.

Your cooperative attention to these matters will be appreciated. Please call Harry Demaray at 378-8240, Salem, if you have any questions.

Sincerely,

WILLIAM H. YOUNG
Director

Stephen C. Downs, P.E.
Regional Engineer

SCD/taa/021

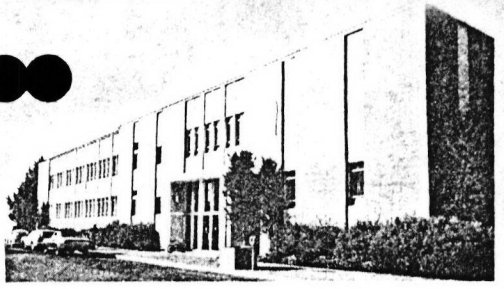
Attachments (2)

1. OAR 340-35-005 thru 35-100 (Noise Control Regulations)
2. Notice of Construction Form

cc: Air Quality Division w/o att
Noise Control Division w/o att
City of Newberg, w/o att

bcc: Mr. & Mrs. Robert McDermott w/o att
2300 N. Villa Rd
Newberg, OR 97130

YAMHILL COUNTY
Oregon



BOARD OF COMMISSIONERS

December 20, 1976

Newberg City Council
Newberg City Hall
Newberg, OR 97132

Dear Mr. Nulsen:

We, at Yamhill County, have reviewed Mr. Heinzmann's request for a conditional use permit in a M1 light industrial zone to allow construction of a concrete tile plant. As a part of that review we would recommend that the conditions listed below be adopted by the City Council.

Building and Land-use.

a) That the building and structures cover no more than sixty-five (65%) percent of the entire development site or of any of the parcels contained therein.

b) That setback requirements of forty (40) feet be observed on property abutting a residential zone.

c) That no building or structure exceed twenty-five (25) feet in height at the setback line when the property being developed abuts a residential zone except that the maximum height of forty-five (45) feet be allowed at five hundred (500) or more feet from the nearest residential zone, and that proportionate heights be allowed between the setback line and five hundred (500) feet from the nearest residential zone.

d) That all portions of the site be properly graded as they are developed to ensure proper drainage and that all off-street parking be hard surfaced or dust free.

Access

a) That the surface of the access road through Meads mobile-home subdivision be of a dust free surface.

b) That water lines which lie under the roadway through the mobile-home subdivision be replaced by the applicant if damaged.

c) That the road shall be adequate to support additional traffic with the standards for the roadway to be enforced by the City Engineer.

Screening

a) Shrub heights and variety should be stipulated in advance of permit approval.

It is our opinion that these conditions should be attached to the approval of this use. We would further recommend that there be provision for a one year review, and if the applicant has not complied with the conditions as agreed that the permit be revoked.

Respectfully submitted,

Colin Armstrong

Colin Armstrong, Chairman
Board of Commissioners

CA-CG:vs

APPLICATION FOR SEPTIC TANK FOR YAMHILL COUNTY

Permit No. 36-438-76

Date Issued 12-20-76 Expiration Date 12-20-77 Fee Paid 25.00

Owner William Heinzman Mailing Address Rt 2 Box 73, Newberg

Location of Site South end of Alice Way Phone 538-4368 538-3297

Description of Property: Tax lot # 3217-1200; 1201 Size 4.33 ac Zone M-1

Aerial Photo _____ Soil Type Woodburn Min. Site Diameter _____

Water Supply: (Spring, (Well), Public) Min. Distance from Septic Tank System 100 feet.

SPECIFICATIONS:

Septic Tank Capacity 750 Gallons.

TRENCHES: No. Required 3
Length 67 Ft. Depth 24 In.
Width 24 In. Gravel 12 In.

Drop Box w/ curtain drain

DISPOSAL FIELD:

Sq. Ft. of trench per bedroom

Number of bedrooms

Add 10% for Garbage Disposal

Total sq. ft. required

Trenches - Total lineal feet 200

Minimum System

Use 1/2" to 2 1/2" clean gravel or crushed rock:

KEEP BOTTOM OF TRENCHES LEVEL

SKETCH OF INSTALLATION See Attached layout

Signature of Applicant W. B. Heinzman Jr. Date 12/20/76

Specification of approved by Joe Edmonds RS Date 12-20-76

Installation approved by _____ Date _____

COPIES:
(1) Applicant
(2) HD files
(3) Building Insp.
(4) Assessor

PROPOSED SUBSURFACE SEWAGE DISPOSAL SYSTEM

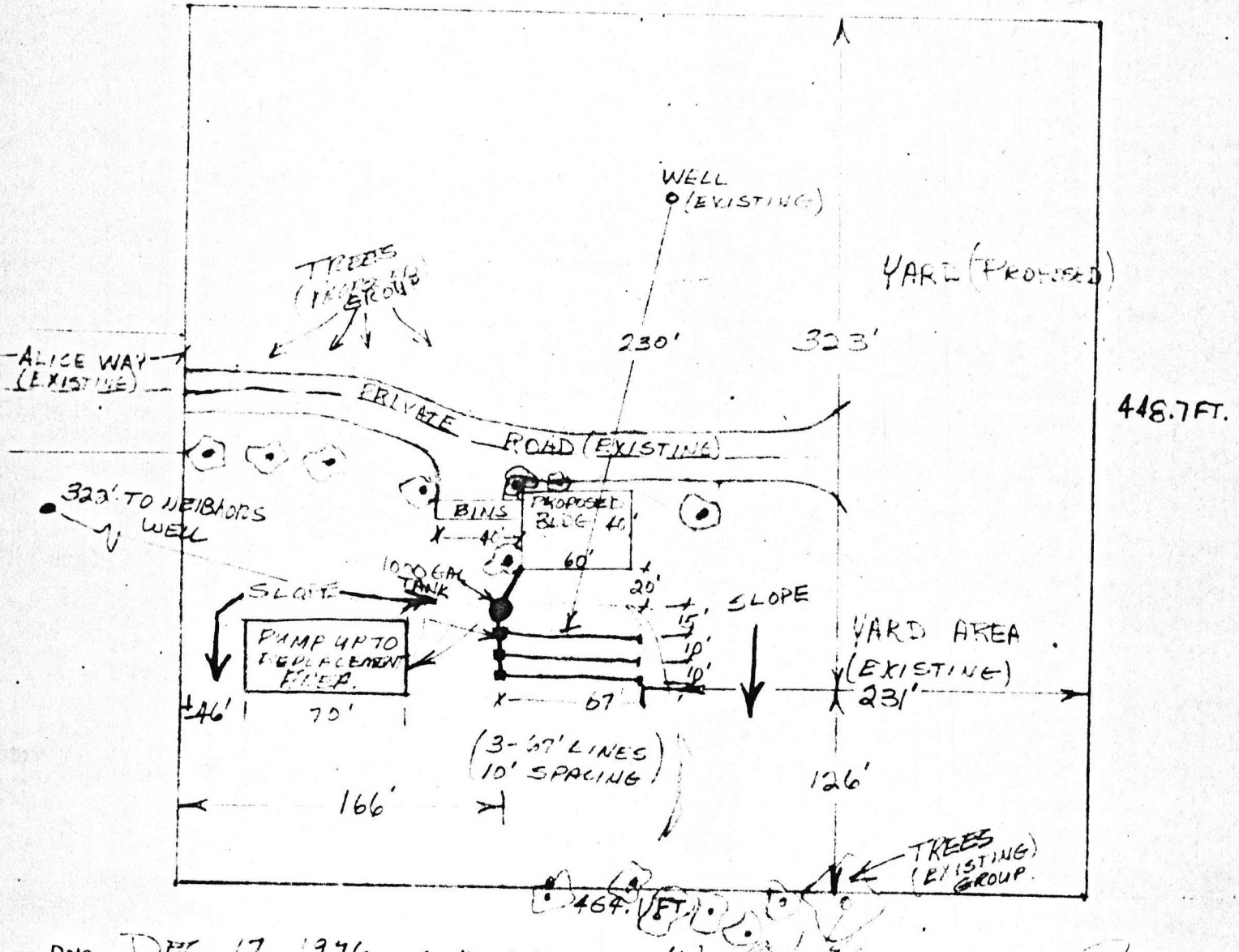
Owner [redacted] Installer [redacted]

T 3S, R 2W, Sec. 17, A.N. TAX LOT 1100 & 1101

UPON COMPLETION OF CONSTRUCTION, NOTIFY YAMHILL COUNTY SANITATION DEPARTMENT

A certificate of satisfactory completion must be issued prior to use of the system (ORS 454.665).

Indicate North in Circle Indicate Scale: 1" = 20'



Date Dec 17 1976 Applicant's Signature [redacted]

OFFICE USE ONLY Application is: Approved ☒ Disapproved ☐

Bedrooms N/A Septic Tank 750 gal. Distribution Type Drop Box

Drainlines ~~3-100~~ 3-67ft Total Lineal Ft. 200 Trench Width 24

Min. Trench Depth 24; Max. Trench Depth 24; Spacing Between Lines 10.00

REMARKS: Curtain drain Required — System must be on contour

Date 12-20-76 Sanitarian Joe Petrovich R.S. 36-439-76

APPLICATION FOR SEPTIC TANK FOR [redacted]HILL COUNTY

Permit No. 76-43 76

Date Issued 12-20-76 Expiration Date 12-20-77 Fee Paid 25.00

Owner William Heineman Mailing Address RT 2 B-x 73, Roseburg

Location of Site South end of Mac Way Phone 535-4328 535-3297

Description of Property: Tax lot # 32-12-1200; 1201 Size 4.33ac Zone M-1

Aerial Photo _____ Soil Type Woodburn Min. Site Diameter _____

Water Supply: (Spring, Well, Public) Min. Distance from Septic Tank System 100 feet.

SPECIFICATIONS:

Septic Tank Capacity 750 Gallons.

TRENCHES: No. Required 3
Length 67 Ft. Depth 24 In.
Width 24 In. Gravel 12 In.

DISPOSAL FIELD:

Drop Box w/ curtain drain

Sq. Ft. of trench per bedroom

Number of bedrooms 4 minimum

Add 10% for Garbage Disposal System

Total sq. ft. required

Trenches - Total lineal feet 200

Use 1/2" to 2 1/2" clean gravel or crushed rock: KEEP BOTTOM OF TRENCHES LEVEL

SKETCH OF INSTALLATION See Attached Layout.

Signature of Applicant W. B. Heineman Date 12/20/76

Specification of approved by [illegible] Date 12-20-76

Installation approved by _____ Date _____

COPIES:
(1) Applicant
(2) HD files
(3) Building Insp.
(4) Assessor

PROPOSED SUBSURFACE SEWAGE DISPOSAL SYSTEM

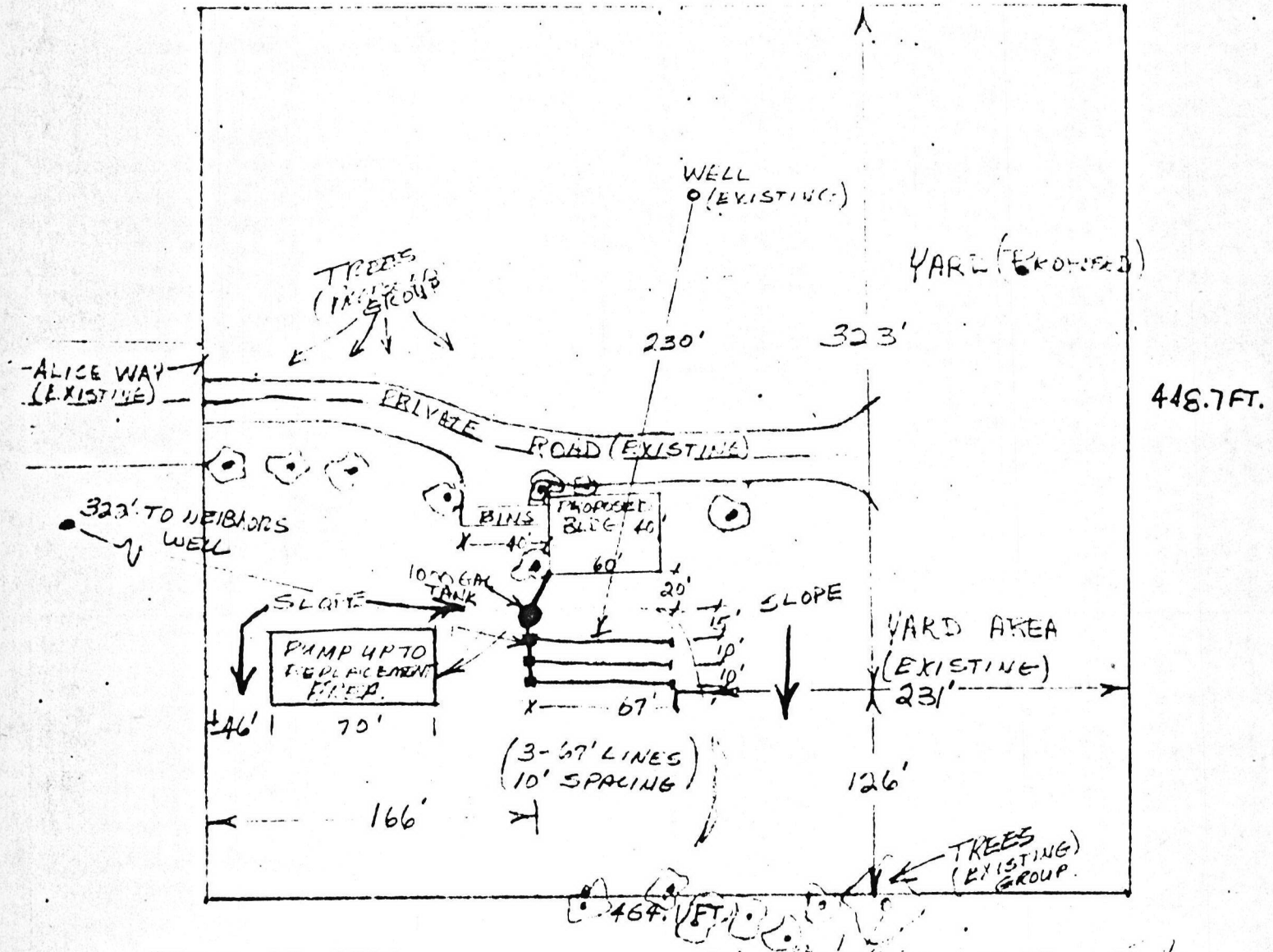
Owner [redacted] Installer [redacted]

T 3S N, R 2 W, Sec. 17, A.N. [redacted]

UPON COMPLETION OF CONSTRUCTION, NOTIFY YAMHILL COUNTY SANITATION DEPARTMENT

A certificate of satisfactory completion must be issued prior to use of the system (ORS 454.665).

Indicate North in Circle Indicate Scale: 20'



Date Dec 17 1976 Applicant's Signature [redacted]

OFFICE USE ONLY Application is: Approved ☒ Disapproved ☐

Bedrooms N/A Septic Tank 750 gal. Distribution Type Drop Box

Drainlines ~~300~~ 3-67Ft Total Lineal Ft. 200 Trench Width 24

Min. Trench Depth 24; Max. Trench Depth 24; Spacing Between Lines 10 oc.

REMARKS: Curtain drain Required — System must be on contour

12-20-76 Joe Petrovich R.S.

Date Sanitarian Permit No.

NOTICE OF A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of Newberg, Oregon will hold a Public Hearing on December 20, 1976 beginning at 7:30 P.M. in the Council Chambers, City Hall, Newberg, Oregon to consider the following matter:

CONDITIONAL USE PERMIT APPEAL
Applicant: William Heinzman
Property Location: At the South end of Alice Way on tax lot #3217-1200.
Proposed Use: Tile and pier block manufacturing plant.
Zone: M-1, Light Industrial
Comprehensive Plan: Industrial

Any person wishing to speak for or against the above proposal may do so in person or by Attorney at the public hearing. Also written objections may be filed at City Hall, Newberg, Oregon.

M.C. Gilbert
City Administrator

Publish December 9, 16.

STATE OF OREGON

Department of Environmental Quality

Permit No. 36-438-76

Expiration Date 12-20-77

3217-1200; 1201

PERMIT

TO CONSTRUCT SUBSURFACE SEWAGE SYSTEM

All work to conform to requirements of Oregon administrative rules governing subsurface sewage disposal. All work shall be performed by property owner personally or by a licensed septic tank installer.

Tank Capacity 750 **Gallons** **Drain Field** 400 **Sq. Ft.**

PERMITS NOT TRANSFERABLE

POST ON PREMISES UNTIL COMPLETED

DEQ/WQ-404 6/76

SP*38487-340

[redacted] [redacted] Firm No. 535165

WORKMEN'S COMPENSATION BOARD

ACCIDENT PREVENTION DIVISION

LABOR AND INDUSTRIES BLDG. • SALEM, OREGON • 97310 • Phone 378-3272

December 16, 1976

Mr. William Heinzman
President
Valley Concrete Products
Route 2, Box 73AA
Newberg, OR 97132

RE: On-Site Consultation of: December 13, 1976

Dear Mr. Heinzman:

The enclosed report lists the problem areas for which you requested consultation, and the solutions which were discussed.

Implementation of the recommended solutions will be considered to fulfill the spirit and intent of applicable rules of the Oregon Safety Code for Places of employment.

If we may be of further service, please feel free to contact our office.

Very truly yours,

ACCIDENT PREVENTION DIVISION
James E. Wiles, Administrator

E. D. Bowder

Everett D. Bowder, Safety Consultant
Technical Services Section

EDB:df
Enc.
cc: R. Purdy
ff
tf

Date 12-16-76

CONSULTATION REPORT

FIRM: VALLEY CONCRETE PRODUCTS

LOCATION: Route 2, Box 73AA (Newberg Road, North of Springbrook Road at Protein Products) Newberg, OR 97132)

CONSULTANT: E. D. Bowder

DATE OF CONSULTATION: December 13, 1976

SITUATION: Blue print study of some steps, railings, ladders, tanks, etc., at new plant location.

SOLUTION: Fixed ladders must have at least 7 inch clearance measured from center line of rung to any fixed object behind the ladder. The rungs, if metal, must be at least 3/4 inch diameter, spaced even and not more than 12 inch spacing. Clearance between the rails must be at least 16 inches. The rungs must be treated or built to be anti-slid surface.

Fixed ladders less than 20 feet do not need cages.

The silo must have guardrailings around the top if employees are to alight thereupon. Guardrail the access hole on the flat top of the silo.

The siderails of the ladder must extend at least 42 inches above the landing served.

Oregon Safety Code for Places of Employment, Chapter 9, 10, and 19 were left at the job site.

EDB:df

BOX 111 • NEWBERG, ORE. 97132 PHONE (503) 538-9471

a dec

December 20, 1976

Newberg City Council
414 E. First Street
Newberg, Oregon 97132

Attention: Honorable Mayor and
Members of the City Council

We have been advised that some adverse comments regarding A-dec's feelings about Valley Concrete Products being allowed to build a tile factory were made at the previous Planning Commission hearing.

We would like to make it clear that A-dec does not have any opposition as to the usage of the property.

Our concerns are no different than what we feel applies within our own Technical Park, the environmental and aesthetic or appearance factors. We assume the Department of Environmental Quality Control has approved the environmental issue. As for the aesthetics, we trust the owners, knowing of the neighborhood concern, will do their utmost to control the appearance.

In no way do we want to curtail or hinder the growth and development of small business or our community.

Very truly yours,

Ken Austin
President

wm

Exhibit "B" 12/20/76 Council

YAMHILL COUNTY

McMinnville, Oregon

OFFICIAL RECEIPT

Date 12-20, 1976

RECEIVED OF Williams Hennyman

Rt 2 Box 73

Newberg Oregon

CASH / CHECK NO.	ITEM	CODE	AMOUNT
	Inspection Fee		
	Restaurant		
	Swimming Pool		
	Tourist Facility License		
	Septic Tank Permit 76-438-76		25 00
	Total Received		25 00

All Items are received for collection only and this receipt shall be cancelled for no payment of any item.

No. 4194 HS

By Barbara Roe

STATE OF OREGON

Department of Environmental Quality

Permit No. 36-438-76

Expiration Date 12-20-77

3217-1200; 1201

PERMIT

TO CONSTRUCT SUBSURFACE SEWAGE SYSTEM

All work to conform to requirements of Oregon administrative rules governing subsurface sewage disposal. All work shall be performed by property owner personally or by a licensed septic tank installer.

Tank Capacity 750 **Gallons** **Drain Field** 400 **Sq. Ft.**

PERMITS NOT TRANSFERABLE

POST ON PREMISES UNTIL COMPLETED

DEQ/WQ-404 6/76

SP*38487-340

APPLICATION FOR SEPTIC TANK FOR YAMHILL COUNTY

Permit No. 36-438-76

Date Issued 12-20-76 Expiration Date 12-20-77 Fee Paid 25.00

Owner William Heinzman Mailing Address Rt 1 Box 73, Newberg

Location of Site South end of Alice Way Phone 538-4328 538-3297

Description of Property: Tax lot # 3217-1200; 1201 Size 4.33 ac Zone M-1

Aerial Photo _____ Soil Type Woodburn Min. Site Diameter _____

Water Supply: (Spring, (Well), Public) Min. Distance from Septic Tank System 100 feet.

SPECIFICATIONS:

Septic Tank Capacity 750 Gallons.

TRENCHES: No. Required 3
Length 67 Ft. Depth 24 In.
Width 24 In. Gravel 12 In.

Drop Box w/ curtain drain

DISPOSAL FIELD:

Sq. Ft. of trench per bedroom

Number of bedrooms

Add 10% for Garbage Disposal

Total sq. ft. required

Minimum System

Trenches - Total lineal feet 200

Use 1/2" to 2 1/2" clean gravel or crushed rock:

KEEP BOTTOM OF TRENCHES LEVEL

SKETCH OF INSTALLATION See Attached layout

Signature of Applicant W. B. Heinzman Jr. Date 12/20/76

Specification of approved by Joe Edwards RS Date 12-20-76

Installation approved by _____ Date _____

COPIES:
(1) Applicant
(2) HD files
(3) Building Insp.
(4) Assessor

PROPOSED SUBSURFACE SEWAGE DISPOSAL SYSTEM

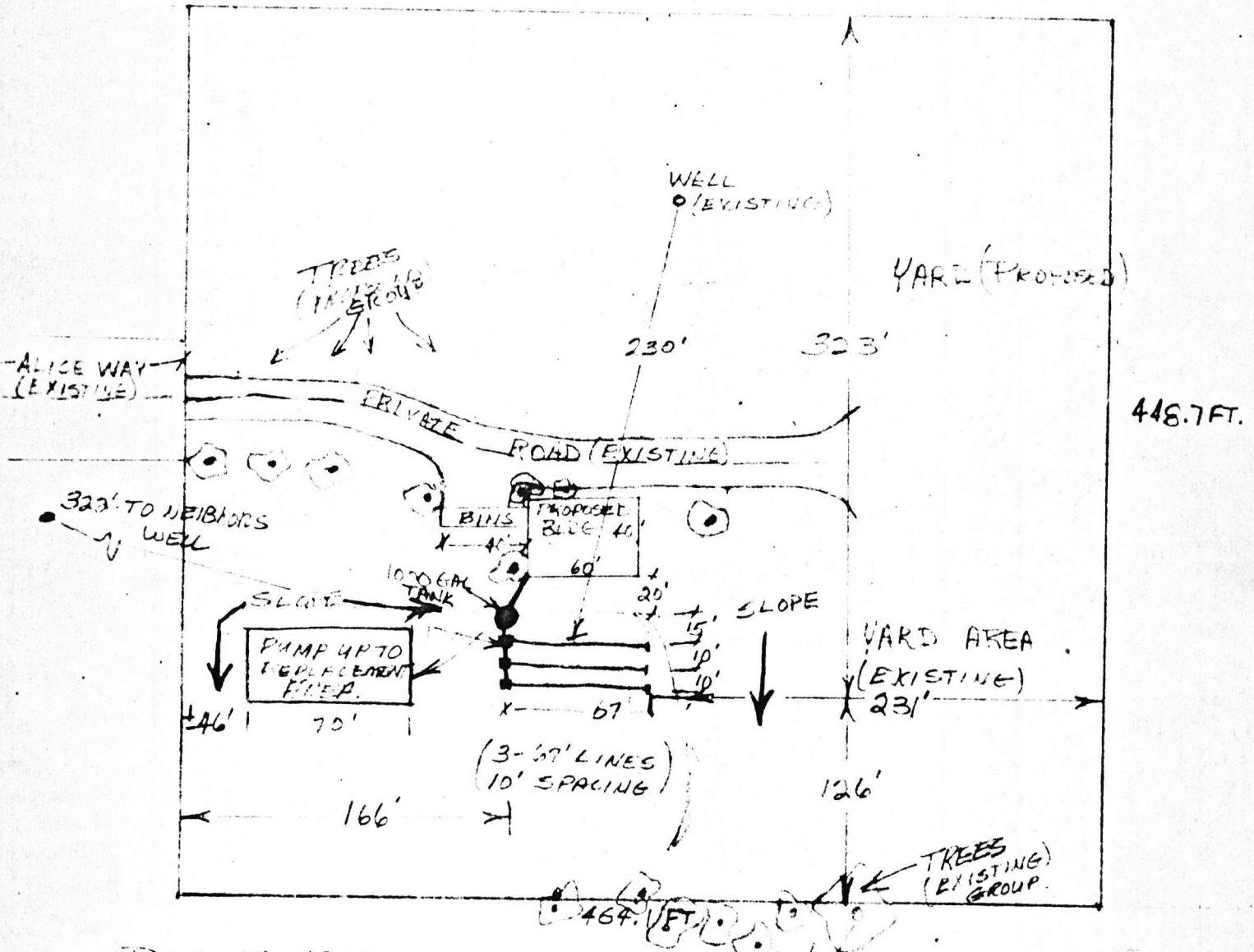
Owner [illegible] Installer [illegible]

T 3S N, R 2 W, Sec. 17, A.N. [illegible]

UPON COMPLETION OF CONSTRUCTION, NOTIFY YAMHILL COUNTY SANITATION DEPARTMENT

A certificate of satisfactory completion must be issued prior to use of the system (ORS 454.665).

Indicate North in Circle Indicate Scale: 1" = 20'



Date Dec 17 1976 Applicant's Signature [illegible]

OFFICE USE ONLY Application is: Approved ☒ Disapproved ☐

Bedrooms N/A Septic Tank 750 gal. Distribution Type Drop Box

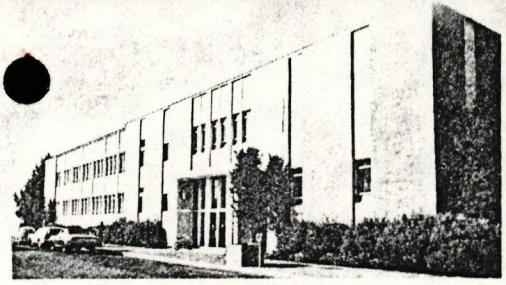
Drainlines ~~3-100ft~~ 3-67ft Total Lineal Ft. 200 Trench Width 24

Min. Trench Depth 24; Max. Trench Depth 24; Spacing Between Lines 10.00

REMARKS: Curtain drain Required — System must be on contour

Date 12-20-76 Joe Petrovich R.S.

YAMHILL COUNTY
Oregon



BOARD OF COMMISSIONERS

"D" ("E")
12-20-76
Council

December 20, 1976

Newberg City Council
Newberg City Hall
Newberg, OR 97132

Dear Mr. Nulsen:

We, at Yamhill County, have reviewed Mr. Heinzmann's request for a conditional use permit in a M1 light industrial zone to allow construction of a concrete tile plant. As a part of that review we would recommend that the conditions listed below be adopted by the City Council.

Building and Land-use.

a) That the building and structures cover no more than sixty-five (65%) percent of the entire development site or of any of the parcels contained therein.

b) That setback requirements of forty (40) feet be observed on property abutting a residential zone.

c) That no building or structure exceed twenty-five (25) feet in height at the setback line when the property being developed abuts a residential zone except that the maximum height of forty-five (45) feet be allowed at five hundred (500) or more feet from the nearest residential zone, and that proportionate heights be allowed between the setback line and five hundred (500) feet from the nearest residential zone.

d) That all portions of the site be properly graded as they are developed to ensure proper drainage and that all off-street parking be hard surfaced or dust free.

Access

a) That the surface of the access road through Meads mobile-home subdivision be of a dust free surface.

b) That water lines which lie under the roadway through the mobile-home subdivision be replaced by the applicant if damaged.

c) That the road shall be adequate to support additional traffic with the standards for the roadway to be enforced by the City Engineer.

Screening

a) Shrub heights and variety should be stipulated in advance of permit approval.

It is our opinion that these conditions should be attached to the approval of this use. We would further recommend that there be provision for a one year review, and if the applicant has not complied with the conditions as agreed that the permit be revoked.

Respectfully submitted,

Colin Armstrong

Colin Armstrong, Chairman
Board of Commissioners

CA-CG:vs

Firm No. 535165

Exhibit "D"
12/20/76
Council

WORKMEN'S COMPENSATION BOARD

ACCIDENT PREVENTION DIVISION

LABOR AND INDUSTRIES BLDG. • SALEM, OREGON • 97310 • Phone 378-3272

December 16, 1976

Mr. William Heinzman
President
Valley Concrete Products
Route 2, Box 73AA
Newberg, OR 97132

RE: On-Site Consultation of: December 13, 1976

Dear Mr. Heinzman:

The enclosed report lists the problem areas for which you requested consultation, and the solutions which were discussed.

Implementation of the recommended solutions will be considered to fulfill the spirit and intent of applicable rules of the Oregon Safety Code for Places of employment.

If we may be of further service, please feel free to contact our office.

Very truly yours,

ACCIDENT PREVENTION DIVISION
James E. Wiles, Administrator

E. D. Bowder

Everett D. Bowder, Safety Consultant
Technical Services Section

EDB:df
Enc.
cc: R. Purdy
ff
tf

Date 12-16-76

CONSULTATION REPORT

FIRM: VALLEY CONCRETE PRODUCTS

LOCATION: Route 2, Box 73AA (Newberg Road, North of Springbrook Road at Protein Products) Newberg, OR 97132)

CONSULTANT: E. D. Bowder

DATE OF CONSULTATION: December 13, 1976

SITUATION: Blue print study of some steps, railings, ladders, tanks, etc., at new plant location.

SOLUTION: Fixed ladders must have at least 7 inch clearance measured from center line of rung to any fixed object behind the ladder. The rungs, if metal, must be at least 3/4 inch diameter, spaced even and not more than 12 inch spacing. Clearance between the rails must be at least 16 inches. The rungs must be treated or built to be anti-slid surface.

Fixed ladders less than 20 feet do not need cages.

The silo must have guardrailings around the top if employees are to alight thereupon. Guardrail the access hole on the flat top of the silo.

The siderails of the ladder must extend at least 42 inches above the landing served.

Oregon Safety Code for Places of Employment, Chapter 9, 10, and 19 were left at the job site.

EDB:df

NULSEN & PAXTON
ATTORNEYS AT LAW, PROF. CORP.
817 E. FIRST STREET
NEWBERG, OREGON 97123

JACK C. NULSEN, JR.
DAVID R. PAXTON

TELEPHONE 538-9433

December 7, 1976

City Administrator
City of Newberg
414 E. First
Newberg, OR 97132

Re: Building Permit for William Heinzman's Property

Dear Mr. Gilbert:

Please be advised that there is apparently some question as to whether or not a building permit should be issued to Mr. Heinzman to place a building on tax lot 3217-1200. Your city building officials seem to feel that until the conditional use hearing now set for December 20th has been disposed of, a building permit cannot be issued. I would question this for the reason that the conditional use apparently is only for the porpose of determining the building and property's use as a tile manufacturing plant.

It would seem apparent that a building permit could be issued and a building could be lawfully used for any purpose as now specified in the zoning ordinance. I, therefore, would request that the city act on the current building permit application before it and issue a permit at its earliest possible convenience restricting the use of said building to those enumerated in the zoning ordinance.

I would hope that the city would react promptly and with dispatch to this request so that Mr. Heinzman does not encounter further delay.

Very truly yours,

David R. Paxton

David R. Paxton
Attorney at Law

DRP/mc

NULSEN & PAXTON
ATTORNEYS AT LAW, PROF. CORP.
817 E. FIRST STREET
NEWBERG, OREGON 97123

JACK C. NULSEN, JR.
DAVID R. PAXTON

TELEPHONE 538-9433

December 7, 1976

Mr. Merlin Gilbert
City of Newberg
414 E. First
Newberg, OR 97132

Re: Appeal hearing December 20th, 1976.

Dear Mr. Gilbert:

The question was raised at the December 6th council meeting on what type of hearing would be held on the appeal on the Heinzman conditional use matter set for December 20th. To the best of my recollection, no answer was given to Councilman Hurford's question, although Mr. Layman indicated that the city had either adopted a new ordinance concerning appeals or had accomplished the same by resolution.

The case of Tierney vs. Duris was president for the proposition that 2 full evidentiary hearings were necessary. The ordinance or resolution which Mr. Layman mentioned in the council meeting supposedly is based upon that case. If the city has adopted an ordinance which reflects the concept of Tierney vs. Duris, I would like to obtain a copy of that ordinance.

Also, in addition, since that matter was left rather vague at the council meeting, it is my feeling that in its public notice or by direct contact with proponents and opponents on the conditional use, that the city should inform those interested parties on the matters of the December 20th hearing and specifically advise the parties as to any ground rules they feel their current ordinance provide for and whether the hearing will be a full evidentiary hearing or merely a review of the planning commission's hearing without further evidence submitted.

Would you please advise promptly.

Very truly yours,

David R. Paxton

David R. Paxton
Attorney at Law

DRP/mc
CC: George Layman
Dale Blanton

November 28, 1976

RECEIVED
NOV 29 1976
CITY OF NEWBERG, ORE.
OFFICE OF RECORDER

Rec'd 11-29-76 1:10 P.M. Shw

City of Newberg
Office of the Recorder
City Hall
Newberg, Ore. 97132

Gentlemen:

We the undersigned wish to appeal the decision of the Newberg Planning Commission in the matter of the Conditional Use Permit for William Heinzman. This matter was heard before the Newberg Planning Commission November 16, 1976. We would request a re-hearing of this matter at the earliest possible time.

The chairman of the Planning Commission indicated that an appeal should be made to the City Council within 15 days.

We make this appeal based on the following:

1. The applicants failure to show public need.
2. Hardship on low income families.
3. Access road and appropriate zoning classification.
4. Newberg Oregon Comprehensive Plan.
5. L.C.D.C. goals and guidelines.
6. Baker vs. City of Milwaukie.
7. Defacto spot zoning.

It is our understanding that notice of this appeal will be forwarded to Mr. Heinzman or his legal representative.

John W. Stuart Sharon A. Stuart
John W. Stuart Sharon A. Stuart 2000 Villa Rd. Newberg, Ore.

M. J. McDermott Shirley M. McDermott
M.J.McDermott Shirley M. McDermott 2018 Villa Rd. Newberg, Ore.

Robert D McDermott Louise McDermott
Robert McDermott Louise McDermott 2300 Villa Rd. Newberg, Ore.

Gerhardt E Rasche Susan A. Rasche
Gerhardt E.Rasche Susan A. Rasche Rt. 2 Box 27G Newberg, Ore.

Gayle S. Wilhoit
East County Homeowners Asso.
By Gayle S. Wilhoit Pres. Rt. 1 Box 23 Newberg, Ore.

For: The City of Newberg

Monday, 7:30 P.M. December 6, 1976

A REGULAR MEETING
OF THE CITY COUNCIL

Council Chambers Newberg, Oregon

The meeting was called to order by Mayor Nulsen.

Roll Call:

Present - Maurice Chandler
Roger Gano
Elvern Hall
Jean Harris
Robert Hurford
Fred LaBonte
Clarence Stouffer
Chester Windsor

Staff Present:

M.C. Gilbert - City Administrator
George Laymon - City Attorney
Dale Blanton - City Planner
Herbert Hawkins - Chief of Police
John Paola - Fire Chief
Jim Nims - City Engineer

The minutes of previous meeting approved as submitted.

Petitions, requests from floor -
Mr. Don Hubbard of 409 E. Fourth Street asked why his property was zoned so he could not sell it. Mr. Hubbard was advised that his property was zoned Medium Density Residential (R-2), and the Comprehensive Plan has it designated "Public Use." He would need a Comprehensive Plan change to construct residential or commercial buildings on his property. Mr. Hubbard was also directed to the Chehalem Park and Recreation District in regard to note given as earnest money on purchase of this property. Also advised that the City cannot purchase his property at this time.

Public Hearings:
Comprehensive Plan Amendment to change designated use from Low Density Residential to Medium Density Residential the area of tax lots 3217-CD-6100, 6200, 6300, 6400, and 6600. Mr. Chandler stated he was employed by George Fox College and does abstain. Mr. Hurford stated George Fox College is his insurance client. The applicant is George Fox College.

The City Planner gave a brief staff report stating: The area is zoned R-2, and is currently the site of a dormitory structure. The surrounding use is predominantly multi-family dwellings. The soil is primarily of the Amity series. However, as the site approaches Hess Creek, the soil is classed as Terrace Escarpment. Building should be prohibited in this area. The site which is planned for development as an additional dormitory wing avoids this problem area.

City water is not available in sufficient quantity at this time to provide adequate fire protection. Access is not adequate at this time to provide for fire access, or an orderly flow of traffic to and from the site.

The Planning Commission has recommended based on the following findings of fact:

1. This use has been permitted in an R-1 zone in the past, as demonstrated by the existing dormitory.
2. The comprehensive plan amendment would bring, stated policy in line with the planning map, thus resolving the existing conflict.
3. There is a demonstrated need for more housing facilities for college students.
4. Provisions are being made to resolve problems of access and fire protection. A staff facilities review was held with the applicant.
5. The college maintains control over parking and vehicular access, and will be able to minimize the effects of traffic upon adjacent uses.

There were no proponents or opponents to speak in regard to this matter. The Hearing was then closed.

Zoning Ordinance Amendment to change the zoning from R-1, Low Density Residential to R-2 Medium Density Residential the area of tax lots 3217-CD-6100, 6200, 6300, 6400 and 6600. The applicant is George Fox College. Mr. Chandler stated he was employed by George Fox College and does abstain. Mr. Hurford stated George Fox College is his insurance client. This City Planner stated the staff report was the same as for the preceding Comprehensive Plan Amendment; and the Planning Commission has recommended based on the same findings of fact.

There were no proponents or opponents to speak in regard to the zone change. The hearing was then closed.

Annexation of tax lots 3218-CA-200, 201, 400 and 500. Applicants and property owners were Joe and Amelia Schneider and Marvin and Anita Schneider. The City Planner stated the area involved is 7.28 acres and the land use is basically residential, with a Commercial/Industrial use combined. This use would be nonconforming upon annexation. Therefore, it could not be expanded, but could continue as is, unless state or local regulations change.

The Council was also advised that the applicants have dedicated additional 10 ft of street right of way to the City as per Planning Commission requirement. There were no remonstrances. The hearing was then closed.

Committee reports:

Finance - Mr. Hall stated they have recommended a filing fee of $150 for Comprehensive Plan Amendments. If a Comprehensive Plan Amendment and Zoning map amendment is filed for the same area at same time a 25 per cent discount to be given on fee charges. Also if zone change and comprehensive plan amendment is reguested at time of applying for annexation the zone change fee and comprehensive plan amendment fee to be discounted 50 per cent. Recommended increase in planned unit development filing fees and imposition of a transient room tax in amount of 6 per cent. Recommended approval of installment payments on water-sewer taps in excess of $2000 over 24 month period.

Fire - No report.

Police - Recommended restricted parking on Sixth Street at Edwards School and on West First Street.

Public Works - No report.

Ordinance - Mrs. Harris stated they recommend passage of Taxi Cab Franchise ordinance.

Public Relations - Mr. Chandler stated the committee recommends passage of the Taxi Cab franchise ordinance.

Personnel - No report.

Bi Centennial - Mrs. Harris read the final report of this committee citing the activities of the Committee through 1976, the Centennial year. Requesting Mayor Nulsen to send each commission member a letter of appreciation. A "Bicentennial Message" signed by the President of the United States was given to the City by Mrs. Harris. The report and Bi-Centennial Message will be maintained in the records of the City. (File 24A)

Canvas of Votes - Election November 2, 1976. The votes recorded and certified to by the Yamhill County Clerk were -

Mayor - Elvern Hall	2023
Council - Maurice Chandler	1628
" Roger Gano	1256
" Robert Hurford	1388
" Jack C. Nulsen Jr.	1364
" Janet Nybakke	1411
" Ron Rollins	963
" Diane Sutherland	1159

Hall - Hurford motion to approve the canvas of votes and to declare Hall as Mayor, Chandler, Hurford, Nulsen and Nybakke as Councilmen. Carried.

Resolution 76-639 was read to amend the map of the Comprehensive Plan to change designated use of the area of Tax lots 3217-CD-6100, 6200, 6300, 6400 and 6600 to Medium Density Residential. LaBonte-Stouffer motion to adopt the resolution. Carried. (Mr. Chandler abstained).

Ordinances:
Gano-Stouffer motion to read Ordinance #1832 to provide restricted parking on East Sixth Street at Edwards School and on portion of West First Street, East of Harrison Street. Carried. The ordinance was then read. Roll Call vote: ayes 5, Chandler, Gano, Hall, Hurford, Stouffer and Windsor. nayes 2, Harris and LaBonte. absent 1, Hurford. The Mayor then declared the ordinance passed.

Hall - Stouffer motion to read ordinance #1833 to amend the zoning map to change tax lots 3217-CD-6100, 6200, 6300, 6400 and 6600 from R-1 Low Density Residential to R-2, Medium Density Residential. Carried. The ordinance was then read. Roll call vote: ayes 7, Gano, Hall, Harris, Hurford, LaBonte, Stouffer, and Windsor. nays 0. Abstain 1, Chandler. The Mayor declared the ordinance passed.

Hall-Gano motion to read Ordinance #1834 to amend and increase the fees to be paid at the time of submitting a preliminary development plan

effective January 1, 1977. Carried. The ordinance was then read. Roll call vote: ayes 8, Chandler, Gano, Hall, Harris, Hurford, LaBonte, Stouffer and Windsor. The Mayor then declared the ordinance passed.

Gano- Harris motion to read ordinance #1835, imposing a transient room tax for the purpose of revenue. Carried. The ordinance was then read. LaBonte-Stouffer motion to amend by deleting subsection 4 of section 7.4. Carried. Hurford-Hall motion to have the City Attorney change the wording of section 7.2 to provide that the tax be paid by the operator based on cash basis of accounting only. Carried. Roll call vote on the ordinance as amended: ayes 7, Gano, Hall, Harris, Hurford, LaBonte, Stouffer and Windsor. nays 1, Chandler. The Mayor then declared the ordinance passed.

Gano-Hall motion to read ordinance #1836 to annex tax lots 3218-CA-200, 201, 400 and 500 to the City. Carried. The ordinance was then read. Roll call vote: ayes 7, Chandler, Gano, Hall, Harris, LaBonte, Stouffer and Windsor. nays 0. absent 1, Hurford. The Mayor then declared the ordinance passed.

Resolutions:

Resolution #76-636 was read to provide for payment of water and/or sewer tap connection fees in excess of $2000 on an installment basis, upon application. Hall-Stouffer motion to adopt the resolution. Carried.

Resolution #76-637 was read to close the Road Improvement Fund and transfer Fund balance to the Special Assessment Fund. Hall-Hurford motion to adopt the resolution. Carried.

Resolution #76-640 was read to approve purchase of property at 115 S. Howard Street for the amount of $60,000. Hurford-Harris motion to adopt the resolution. Carried.

Resolution #76-641 was read to approve transfer of funds in Revenue Sharing Fund, Sewer Fund and Community Development Funds. Hurford-Hall motion to adopt the resolution. Carried

New Business:

Hall-Stouffer motion to refer the matter of leasing the property to Human Resources to the Property Committee and their recommendation to be brought to the Council. Carried.

Stouffer-Hall motion to pay the November accounts Payable. Carried.

The City Attorney read a letter to appeal the Conditional Use Permit application approved by the Planning Commission for construction of a concrete tile plant. He advised the City Council to hold a hearing on the appeal. Attention was called to the letter from David Paxton, attorney at Law, representing the applicant, stating that the letter notice of appeal submitted by the appellants was not a proper filing of the appeal pursuant to the zoning ordinance.

Mayor Nulsen advised that Mr. Paxton is his business associate and that he is also a minority stockholder in the corporation which Mr. Paxton is representing.

Mr. Chandler stated he is owner of the property adjacent to the applicants. LaBonte-Hall motion to set Monday, December 20, 1976 at 7:30 P.M as time for the public hearing on the conditional use application appeal. Carried.

Chandler-Hurford motion to close City Hall on Friday, December 24 and Friday, December 31, 1976. Carried.

Stouffer-Gano to accept and approve letter of resignation from the Council by Elvern Hall, effective December 31, 1976. Carried.

Mayor Nulsen presented a plague to Mr. Windsor for his 20 years service (January 1, 1957 to December 31, 1976) as a councilman.

Hall-LaBonte motion to adjourn to Monday, December 20, 1976 at 7:30 P.M. Carried.

NULSEN & PAXTON
ATTORNEYS AT LAW, PROF. CORP.
817 E. FIRST STREET
NEWBERG, OREGON 97123

JACK C. NULSEN, JR.
DAVID R. PAXTON

TELEPHONE 538-9433

December 1, 1976

Newberg City Council
414 E. First St.
Newberg, OR 97132

Re: Appeal of the Conditional Use Permit for William Heinzman from the Planning Commission to the City Council

Dear Gentlemen:

It has come to my attention that a form of appeal has been filed with the office of the recorder for the City of Newberg, relative to the conditional use approved by the planning commission November 16, 1976 for William Heinzman Jr. As the attorney who has represented Mr. Heinzman in the conditional use hearing, I would wish to point out the following various factors for your consideration.

The original application for conditional use was submitted to the planning commission pursuant to the ordinance 1780 which amended the general zoning ordinance 1282 for the City of Newberg. Ordinance 1282 and sections 74 and 75 specify the appellate procedure to be used for an appeal to the city council from the planning commission. Section 75 of ordinance 1282 specifies as follows;

> "Petition, Application, and Appeals provided for in this ordinance shall be made on forms provided for the purpose, or as otherwise prescribed by the planning commission in order to assure the fullest practical present and pertinent facts and to maintain a permanent record."

Ordinance 1282 and section 77 further provides that,

> "The provisions of this ordinance shall be held to be the minimum requirements fulfilling its objectives where the conditions imposed by any provisions of this ordinance are less restrictive than comparable conditions imposed by any other provisions of this ordinance or of any other ordinance, resolution or regulation, the provisions which are more restrictive shall govern."

A recent case decided by the Court of Appeals, Adam vs. City of Scappoose, 27 Oregon App. page 219, recently decided that in this situation where conditional use permit was applied for on June 20, 1975 and procedural rules were thereafter adopted well after the date of application, the Oregon Revised Statute 227.170 was not complied with. The Court of Appeals decided as a result thereof, that the City Council's decision had to be overturned.

The point of the foregoing references to the appellate procedures

specified in sections 74 and 75 as governed by the interpretation section 77, should lead to the conclusion that the letter notice of appeal submitted by the appellants is not a proper filing of appeal pursuant to section 75 which requires appeals provided for in this ordinance to be made upon forms provided for this purpose and that, therefore, there is nothing to proceed further on.

It should be pointed out that Mr. Heinzman has submitted building plans and made application for a building permit at this time and that delays due to appeals may result in increased construction cost and loss of profit in his manufacturing enterprise. We would hope that the city council for the City of Newberg would follow its own ordinance section 75 and not require any further hearing to be held as a result of the appellant's improper filing of an appeal.

It should also be pointed out that the letter appeal does not allege any error on the part of the planning commission nor does it appear to raise any points which were legitimately before the planning commission at its November 16th hearing. The application for conditional use was to determine whether or not tile and pier block manufacturing was the same or similar in intensity of use as other enumerated uses in section 31 of ordinance 1282.

We are submitting this letter to the council for its information to assist it in making a decision whether to set this appeal for public hearing and would ask that the letter be made a part of the records.

Very truly yours,

David R. Paxton

David R. Paxton
Attorney at Law

DRP/mc
CC: City Hall for the Council
Dale Blanton-City Planner
George Layman-City Attorney
Mr. & Mrs. John Stuart
Mr. & Mrs. M.J. McDermott
Mr. & Mrs. Robert McDermott
Mr. & Mrs. Gerhardt E. Rasche
East County Homeowners Asso. by Gayle S. Wilhoit, Pres.
William Heinzman Jr.

NULSEN & PAXTON
PROF. CORP.—ATTORNEYS AT LAW
817 E. FIRST STREET
NEWBERG, OREGON 97132
TELEPHONE 538-9433

Dale

November 29, 1976

David R. Paxton
Attorney at Law
817 E. First Street
Newberg, Oregon 97132

Re: Application for William Heinzman for Building Permit for his Tile Plant

Dear Mr. Paxton:

As you are aware, the conditional use approved by the Planning Commission carried a requirement for a drainage plan to be submitted so that no additional water would be placed on private property causing damage to others as a result of the new construction which you are undertaking.

There is no question that this is a very difficult problem to design a solution that will be 100 per cent satisfactory to all parties. However, we feel that there are several solutions that are noteworthy which would bear mentioning. One would be a drain field type structure that would allow water to seep across on a broad plane at a given elevation so that the water would continue to sheet the area in the same amounts that it has done before. In order to do this, it will be necessary to compute the difference of the amount of flow of water between the textured surface which you plan to put in, whether it is a rock or asphalt surface, and the grassy surface which used to be in place. We feel any competent civil engineer will be able to arrive at a good solution with this particular method for you. The storage of the excessive amount of water will have to be designed within the scope of your property to allow only that amount that would be reached at a particular point in time through the normal rainfall and the normal grass in place, etc.

Another good solution or better solution to allow the water to get to the creek bottom by means of an easement down the slope and place the water within the pipe with a deceleration method at the creek bottom such as rubble, rip-raff, or as any engineer would design for you. We would suggest that the drainage problem be solved by a civil engineer and stamped by a civil engineer before submittal of the solution. We do not think it would be in the best interests of the City to accept the promise that if a problem occurs that you will take reasonable steps to diminish that problem. We feel it would be a very imprudent effect and may depolarize the efforts of the Planning Commission and their members, if such a step were taken.

I have reviewed the application that you have made to the City. I have gone into the field and reviewed the work done previous to the application which was made to the City. I am in complete agreement with the Planning Commission that adequate steps must be taken in order to protect the downstream owners from the accumulation and acceleration of water which occurs within your project site because of the construction. As far as the criteria concerned for the implementation of this study, a five-minute concentration period will be sufficient for the purposes of this particular site. We would suggest that you use reference to the Oregon State Highway Department nomographs for the calculations of storm water on this project.

We hope we have been of some help to you and will do everything in our power to assist you in the completion of your industrial development.

Very truly yours,

James F. Nims
City Engineer

JFN:pm

Meeting Tues Eve - Newberg City Hall 7:30 pm.

We, the undersigned object to the construction of cement plant adjacent to the Mead Rock area because of cement truck traffic, air pollution caused by plant and unsightly appearance of cement products in a residential area.

Sharon A. Stuart	2000 Villa Rd
John W Stuart	2000 VILLA Rd
M. Jr McDermott	2018 Villa Rd
Shirley M'Dermott	" "
Leon C Anderson	RT 2 - Box 36
Mrs M Robbins	1418 Crestview Dr.
Marion D. Robbins	"
Gayle S. Wilhoit	Rt. 1 Box 23 Newberg, OR
Donna Whatley	1404 Crestview Dr.
Richard E. Allen	1807 N Hoskins
Gene Farley	812 Crestview Dr.
Bill Sexton	804 Crest View DR
Ruth Sexton	804 Crestview Newberg
Mr. & Mrs. Larry P. Hill	1801 N. Villa Rd
Chas C. Heckman	Rt 2 Box 25 Newberg
Mrs. Dorothy Heckman	Rt. 2 - Box 25 Newberg "
Elmer A	712 CRESTVIEW DR
Peggy L. Bart	712 Crestview Dr.
Walter R. Anderson	705 Crestview Dr
Mary Lou Gougler	1306 Crestview Dr., Newberg
Kenneth Dan	1306 CRESTVIEW Dr.

(over)

addendum to Page 1

To stop the Construction of a Cement Plant adjoint to Mead Park Area

Daisy A Johnstone Rt 2. Box 13 - Newberg Oregon

Mr. & Mrs. Tom McFarlane Rt 2. Box 8 Newberg, Oregon

Robert McDermott	2300 N. Villa Rd Newberg
Louise McDermott	2300 N. Villa Rd Newberg
Patty Hartman	RT 2 Box 28A Newberg
Kralon Hartman	Rt 2 Box 28-A Newberg
James M. Highley III	RT 2 Box 27H Newberg
Bonnie M Highley	same
Gerhardt C. Rasche	Rte. #2, Box 27-G, Newberg
Suzon A. Rasche	Rt 2 Box 27-G ~~Newberg~~ Newberg
Rita A. Lowe	RT 2 Box 27 A1 Newberg
Arthur D. Westbrook	Rt. 2. Box 28 B
Eva Talbert	Rt 2 Box 27-F Newberg.
Celia J. Thorne	Rt 2 Box 27 "
Robert C Thorne	R 2 Box 27 Newberg, Ore
Calvin H. Hull	1715 N Villa Rd. Newberg, Ore
Lela B. Hull	1715 N. Villa, Newberg, Or.

(38)

3B
Against

Dear Mr Gilbert:

I would like this letter Read tonight at the Meeting at 7:30 pm Newberg City Hall pertaining to a Conditional use Permit agenda item 3B.

1. We purchased the T home estate appx 2 years back for Residential use, at that time Mr Hemyard had been denied a Permit to build a Cement plant at the South end of Alice Way and Bordering the property I bought. Since That Time and only with the fact that the plant was not being built My Son and Son in Law have built new homes - We have Taken our property into the City of Newberg, I also have been asked to sell additional property to others for home sites, but now they are going to wait see, they would not want to build if they have a Cement or Tile plant to look at, also the pollution, it would cause and trucks by our Place. I would also like to bring up the fact that we have a live Stream (Hess Creek) on our Property and not over 100-200' from This proposed project. Although the Cement plant might add some Revenue to the City In taxes it would be more than offset by the lack of future Residences in the Area.

I hope the Members of the planning Commission will take these objections into Consideration and Deny this Conditional use.

M. J. McDermott 2018 Della Rd

McDermott

3B
Against

November 16, 1976

Newberg Planning Commission
Newberg, Oregon

Dear Planning Commission Members,

In regard to the application for a conditional use permit to allow construction of a concrete plant in the A-Dec Industrial Park, we wish to re-state that this is not an allowable use in the present zoning.

Furthermore, there is:

1.) a possibility of contaminating Hess Creek.

2.) not an accessible, acceptable road to this site.

3.)a possibility of increased noise and air pollution in the area.

4.) no public need for such a plant.

Sincerely,

Gayle S. Wilhoit

Gayle S. Wilhoit, president
East County Home Owners

November 28, 1976

RECEIVED
NOV 29 1976
CITY OF NEWBERG, ORE.
OFFICE OF RECORDER

City of Newberg
Office of the Recorder
City Hall
Newberg, Ore. 97132

Gentlemen:

We the undersigned wish to appeal the decision of the Newberg Planning Commission in the matter of the Conditional Use Permit for William Heinzman. This matter was heard before the Newberg Planning Commission November 16, 1976. We would request a re-hearing of this matter at the earliest possible time.

The chairman of the Planning Commission indicated that an appeal should be made to the City Council within 15 days.

We make this appeal based on the following:

1. The applicants failure to show public need.
2. Hardship on low income families.
3. Access road and appropriate zoning classification.
4. Newberg Oregon Comprehensive Plan.
5. L.C.D.C. goals and guidelines.
6. Baker vs. City of Milwaukie.
7. Defacto spot zoning.

It is our understanding that notice of this appeal will be forwarded to Mr. Heinzman or his legal representative.

John W. Stuart Sharon A. Stuart 2000 Villa Rd. Newberg, Ore.

M.J.McDermott Shirley M. McDermott 2018 Villa Rd. Newberg, Ore.

Robert McDermott Louise McDermott 2300 Villa Rd. Newberg, Ore.

Gerhardt E.Rasche Susan A. Rasche Rt. 2 Box 27G Newberg, Ore.

East County Homeowners Asso.
By Gayle S. Wilhoit Pres. Rt. 1 Box 23 Newberg, Ore.

For: The City of Newberg

CITY OF NEWBERG, A BICENTENNIAL COMMUNITY

414 EAST FIRST STREET TELEPHONE 538-9421 NEWBERG, OREGON 97132

November 23, 1976

William Heinzman
Rt. 2, Box 73 AA
Newberg, Oregon 97132

Dear Mr. Heinzman,

Please be advised that the Planning Commission of the City of Newberg has approved your Conditional Use Permit application with the following conditions:

Land Use and Building -

1. Building permits should be limited to those shown on the plot plan, until urban services are extended to the property.
2. No more than four employees shall engage in manufacturing on this site, unless the County sanitarian approves the additional burden upon the drainfield. This provision will not apply after urban services are extended to the area.
3. The site shall be properly graded so as to ensure proper drainage. A drainage plan shall be approved by the City Engineer.
4. Off street parking shall be safe and dust free.

Access -

1. The road through Meads Trailer Park shall be adequate to support the additional traffic load.
2. The surface shall be dust free, and either oiled or paved.
3. The applicant shall not remonstrate against an L.I.D. in this area.

Screening -

1. Screening shall be installed and approved by city staff within a nine-month period. Screening should be in areas

adjacent to residential uses, and on buildings which can be seen from residential areas. The applicant may appeal to the Planning Commission to resolve any conflict which might arise in this area.

Environmental Standards -

The applicant shall meet or exceed all standards set by D.E. Q., or other agencies which might be involved in environmental protection.

Sincerely,

Dale E. Blanton,
City Planner

DEB/la

NULSEN & PAXTON
ATTORNEYS AT LAW, PROF. CORP.
817 E. FIRST STREET
NEWBERG, OREGON 97123

JACK C. NULSEN, JR.
DAVID R. PAXTON

TELEPHONE 538-9433

November 23, 1976

Jim Nimms
Superintendant of Public Works
Newberg City Hall
Newberg, OR 97132

Re: Application of William Heinzman for Building Permit for his Tile Plant

Dear Mr. Nimms:

As you are aware, the conditional use approved by the planning commission carried a requirement for a drainage plant for the particular property involved. After conference and consideration of a drainage problem on Mr. Heinzman's property with Leonard Riedell, Civil Engineer, and relying upon his problem, he informs us that he can see no service drainage problem as a result of Mr. Heinzman's projected building plans.

Mr. Heinzman has indicated that you mentioned this may be a problem in approving his building permit. As I'm sure you realize, it is very hard to design a solution for a problem when you do not know precisely what the problem might be. We, at this point, have gone to our best expert to examine the problem and he informs us that there is, in fact, no problem in his opinion worthy of or necessitating a solution relative to drainage.

If you feel that the proposed building and grading for Mr. Heinzman's plant will create a problem, would you please specify what that problem is along with any suggested methods for remedying that problem. We would then reduce one of those methods into a diagrammed plan for submission along with our building permit. It is our feeling that there would be no acceleration of surface water that would not be de-accelerated by vegetation on our own property. Therefore, that the water flowing westerly down the slope, would in effect accelerate first, then de-accelerate back to a natural flow by the time it reached adjacent property owners. I would feel that about the only thing that Mr. Heinzman could do is to put any proposed flow into a drain field very similar to a septic tank installation.

Would you please inform me as to your feelings concerning this matter. Also, as you are well aware, we do not have access to Hess Creek since it is not adjacent to the boundary lines of our property, that it, therefore, makes it difficult for us to

ditch and drain directly into Hess Creek.

As an alternative solution, if you would accept our representation that if a problem with drainage does develop, we will take all reasonable steps to diminish that problem and allow us to overlook the solution of any drainage problem at this point. Since we sincerely do not know how to cure a problem which may or may not exist, and examine the matter over this coming winter and make a decision next Spring. If the city is willing to approve our building permit without an actual drain plan at this time, based upon examination and study over the course of this coming winter, we would then, if a problem is found, do everything reasonable to diminish that problem.

Would you please respond to the points raised in this letter in writing, to the undersigned attorney, as promptly as possible.

Very truly yours,

David R. Paxton P.C.

David R. Paxton
Attorney at Law

DRP/mc
CC: William Heinzman
Owner-Applicant
Rt. 2 Box 73AA
Newberg, OR 97132

file copy

STAFF REPORT

Planning Commission November 16, 1976

Agenda Item: 3A, Urban Growth Boundary

The purpose of this Public Hearing is to get citizen input on the boundary proposed by the Citizen Involvement Advisory Committee. The record of this hearing will be used to make alternative proposals and any changes which may need to be made in the final staff proposal. Both citizen and Planning Commission comments or suggestions are requested at this time, so the city staff can present a proposal which meets the city's needs and has public support. Staff will be working with the County Planning Department towards joint adoption of an Urban services boundary early in 1977.

Agenda Item: 3B, Conditional Use Permit

Comprehensive Plan: The designation of the parcel involved is Industrial. The plan states the following goal:

Goals -

2. INDUSTRIAL DEVELOPMENT SHOULD BE ENCOURAGED TO LOCATE IN INDUSTRIAL PARKS OFFERING GOOD ACCESS, BUFFERING AND LANDSCAPPING.

   By grouping industries into well, planned industrial areas, better access, utility service and overall appearance can be attained.

The plan states the following policies:

1. Industrial uses should be encouraged to locate in in well designed industrial parks. The perimeter of these industrial areas should be landscaped and provide proper buffers from adjoining areas.

2. The A-dec Industrial Area should be developed to the highest standards including adequate buffering, landscaped areas, superior building design and proper setbacks. Due to its location on the railroad, rail oriented industrial developments should be encouraged to locate here.

Zoning and Land Use:

The parcel in question is currently zoned M-1, light Industrial. This use is not permitted as an outright use. However, if after a Public Hearing, the use is found to be the same or similar in intensity to other uses, it can be permitted as a "Conditional Use".

The surrounding land is planned for industrial development. However there is a trailer park located on Alice Way, just north of the site at this time. Hess Creek is just west of this site.

Physical Profile: The land is gently sloping, with greater slopes as the site approaches Hess Creek on the west. Soils are Aloha silt loam, posing no major problems to foundations. According to the Yamhill County Sanitarians office, there is only one suitable drainfield site on the property.

Community Facilities: Sanitary sewer and water are not available to this site. Access is through Meads Trailer Park via a sub-standard street.

History: In 1973 the applicant applied for a zone change with the County. No action was ever taken. The applicant annexed to the city and was granted a zone change to Light Industrial. A text amendment was approved to allow as conditional uses, all uses shown after Public Hearing to be the same or similar in intensity as the enumerated uses.

The applicant now wishes to have this use approved as a conditional use based upon the fact that the use is no more intense than permitted uses.

Findings: This use is no more intense than other permitted uses, and should be permitted. However consideration should be given to methods of minimizing its impact upon the surrounding area. The same standards which apply to other industrial uses should be applied to meet the aformentioned goal. The Advisory Committee has reaffirmed its support of encouraging development of high standards.

Therefore staff makes the following recommendation:

This conditional use permit application should be approved with the following conditions.

Land Use and Building -

1. Building permits should be limited to those shown on the plot plan, until urban services are extended to the property.
2. No more than four employees shall engage in manufacturing on this site, unless the County sanitarian approves the additional burden upon the drainfield. This provision will not apply after urban services are extended to the area.
3. The site shall be properly graded so as to ensure proper drainage. A drainage plan shall be approved by the City Engineer.
4. Off street parking shall be safe and dust free.

Access -

1. The road through Meads Trailer Park shall be adequate to support the additional traffic load.
2. The surface shall be dust free, and either oiled or paved.
3. The applicant shall not remonstrate against an L.I.D. in this area.

Screening -

1. Screening shall be installed and approved by city staff within a nine-month time period. Screening should be in areas adjacent to residential uses, and on buildings which can be seen from residential areas. The applicant may appeal to the Planning Commission to resolve any conflict which might arise in this area.

Environmental Standards -

The applicant shall meet or exceed all standards set by D.E.Q., or other agencies which might be involved in environmental protection.

Agenda Item: 3C & 3D, Comprehensive Plan Amendment & Zone Change.

Request:	To change tax lot #3217-CD-6100, 6200, 6300, 6400 and 6600 from low, to medium density residential.
Applicant:	George Fox College
Purpose:	To allow construction of additional housing.
Comprehensive Plan:	The area is designated low density residential. This designation seemingly conflicts with the policy statement allowing higher densities around George Fox College.

Zoning and Land Use: The area is zoned R-1, and is currently the site of a dormitory structure. The surrounding use is predominantly multi-family dwellings.

Physical Profile: The soil is primarily of the Amity series. However, as the site approaches Hess Creek, the soil is classed as Terrace Escarpment. Building should be prohibited in this area. The site which is planned for development as an additional dormitory wing avoids this problem area.

Community Facilities: City water is not is not available in sufficient quantity at this time to provide adequate fire protection.

Access is not adequate at this time to provide for fire access, or an orderly flow of traffic to and from the site.

Findings -

1. This use has been permitted in an R-1 zone in the past, as demonstrated by the existing dormitory.
2. The comprehensive plan amendment would bring stated policy in line with the planning map, thus resolving the existing conflict.
3. There is a demonstrated need for more housing facilities for college students.
4. Provisions are being made to resolve problems of access and fire protection. A staff facilities review was held with the applicant.
5. The college maintains control over parking and vehicular access, and will be able to minimize the effects of traffic upon adjacent uses.

Recommendation: Staff recommends approval of the comprehensive plan amendment.

Staff recommends approval of the zone change with the following conditions:

1. Prior to the issuance of building permits, the problems of access water service and fire protection shall be worked out with staff. The applicant shall have the right of appeal to the Planning Commission in case of conflicts which can't be resolved.
2. The future use shall comply to the parking requirements of the zoning ordinance, unless staff approves a less stringent standard.
3. The applicant shall restrict access to private property in order to minimize the impact of any increase in traffic generation. Methods shall be as deemed appropriate by the applicant.
4. If reasonable complaints are received concerning this use in the future, the applicant shall make every attempt to resolve the problems.

Agenda Item: 4A

Request:	To partition tax lot #3220-BB-5900 into two lots 25' x 160' each, to be added to the adjacent properties.
Applicant:	Peterson, Peterson and Lawson

Background - The applicants live adjacent to this property and jointly purchased it. They had the existing structure demolished, and now wish to include ½ the property with each of their properties.

Staff Recommendation: Staff recommends approval with the following conditions:

1. If it is possible, the partitioned parcels shall be added to each of the existing parcels on the assessors records. (This is only possible if no mortgage exists.) If not possible, the following shall apply.
2. No buildings shall be permitted on the partitioned lots, which do not meet setback requirements.
3. Future permit applications shall consider the lots as a single lot.
4. Additional dwelling units shall not be permitted on the partitioned lots.

Item: 4B

Request:	To partition tax lot 3217-DC-7000 into three lots.
Applicant:	Lloyd Nisly
Purpose:	The purpose of this partitioning is to allow a dwelling to remain on one parcel, while separating two parcels for future development. The dividing line for these two parcels is the zoning boundary between the R-2 zone and the C-1 zone.

The partitioning involves a street which has not been completed at this time.

Recommendation: Staff recommends approval of the partitioning with the following conditions.

1. The developer of the undeveloped R-2 parcel shall improve Sitka Avenue where it adjoins the property prior to the issuance of building permits.
2. If the proposed use of this parcel is apartments, they shall have access to 99W prior to issuance of building permits.
3. The developer of the C-1 parcel shall improve Sitka Avenue where it abutts this property prior to issuance of building permits.
4. All road improvements shall meet city standards.
5. All future uses shall conform to the density requirements of the comprehensive plan.

Agenda Item: 4C, Annexation

Request: To annex tax lots 3218-CA-200, 201, 400 and 500 to the city of Newberg.

Background:

1. These parcels are contiguous to the city.
2. They are within the proposed Urban Growth Boundary.
3. They are on a 40' street.
4. The land use is basically residential, with a Commercial/ Industrial use combined. This use would be nonconforming upon annexation. Therefore, it could not be expanded, but could continue as is, unless state or local regulations change.
5. Water and Sewer are available to the site. The residence on lot #500 is currently using outhouse facilities. Annexation would permit immediate hookup to the sanitary sewer system. The connecting line has already been installed.

Recommendation: Staff recommends that the planning commission recommend the following to the council.

The annexation be approved with the following conditions:

1. An additional 10' of right of way from the center line be dedicated to the city where the property abutts Main Street. This would allow for a 60' right of way in the future.

file copy

STAFF REPORT

Planning Commission November 16, 1976

Agenda Item: 3A, Urban Growth Boundary

The purpose of this Public Hearing is to get citizen input on the boundary proposed by the Citizen Involvement Advisory Committee. The record of this hearing will be used to make alternative proposals and any changes which may need to be made in the final staff proposal. Both citizen and Planning Commission comments or suggestions are requested at this time, so the city staff can present a proposal which meets the city's needs and has public support. Staff will be working with the County Planning Department towards joint adoption of an Urban services boundary early in 1977.

Agenda Item: 3B, Conditional Use Permit

Comprehensive Plan: The designation of the parcel involved is Industrial. The plan states the following goal:

Goals -

2. INDUSTRIAL DEVELOPMENT SHOULD BE ENCOURAGED TO LOCATE IN INDUSTRIAL PARKS OFFERING GOOD ACCESS, BUFFERING AND LANDSCAPPING.

   By grouping industries into well, planned industrial areas, better access, utility service and overall appearance can be attained.

The plan states the following policies:

1. Industrial uses should be encouraged to locate in in well designed industrial parks. The perimeter of these industrial areas should be landscaped and provide proper buffers from adjoining areas.

2. The A-dec Industrial Area should be developed to the highest standards including adequate buffering, landscaped areas, superior building design and proper setbacks. Due to its location on the railroad, rail oriented industrial developments should be encouraged to locate here.

Zoning and Land Use:

The parcel in question is currently zoned M-1, light Industrial. This use is not permitted as an outright use. However, if after a Public Hearing, the use is found to be the same or similar in intensity to other uses, it can be permitted as a "Conditional Use".

The surrounding land is planned for industrial development. However there is a trailer park located on Alice Way, just north of the site at this time. Hess Creek is just west of this site.

Physical Profile: The land is gently sloping, with greater slopes as the site approaches Hess Creek on the west. Soils are Aloha silt loam, posing no major problems to foundations. According to the Yamhill County Sanitarians office, there is only one suitable drainfield site on the property.

Community Facilities: Sanitary sewer and water are not available to this site. Access is through Meads Trailer Park via a sub-standard street.

History: In 1973 the applicant applied for a zone change with the County. [redacted]. The applicant annexed to the city and was granted a zone change to Light Industrial. A text amendment was approved to allow as conditional uses, all uses shown after Public Hearing to be the same or similar in intensity as the enumerated uses.

The applicant now wishes to have this use approved as a conditional use based upon the fact that the use is no more intense than permitted uses.

Findings: This use is no more intense than other permitted uses, and should be permitted. However consideration should be given to methods of minimizing its impact upon the surrounding area. The same standards which apply to other industrial uses should be applied to meet the aforementioned goal. The Advisory Committee has reaffirmed its support of encouraging development of high standards.

Therefore staff makes the following recommendation:

This conditional use permit application should be approved with the following conditions.

Land Use and Building -

1. Building permits should be limited to those shown on the plot plan, until urban services are extended to the property.
2. No more than four employees shall engage in manufacturing on this site, unless the County sanitarian approves the additional burden upon the drainfield. This provision will not apply after urban services are extended to the area.
3. The site shall be properly graded so as to ensure proper drainage. A drainage plan shall be approved by the City Engineer.
4. Off street parking shall be safe and dust free.

Access -

1. The road through Meads Trailer Park shall be adequate to support the additional traffic load.
2. The surface shall be dust free, and either oiled or paved.
3. The applicant shall not remonstrate against an L.I.D. in this area.

Screening -

1. Screening shall be installed and approved by city staff within a nine-month time period. Screening should be in areas adjacent to residential uses, and on buildings which can be seen from residential areas. The applicant may appeal to the Planning Commission to resolve any conflict which might arise in this area.

Environmental Standards -

The applicant shall meet or exceed all standards set by D.E.Q., or other agencies which might be involved in environmental protection.

Agenda Item: 3C & 3D, Comprehensive Plan Amendment & Zone Change.

Request:	To change tax lot #3217-CD-6100, 6200, 6300, 6400 and 6600 from low, to medium density residential.
Applicant:	George Fox College
Purpose:	To allow construction of additional housing.
Comprehensive Plan:	The area is designated low density residential. This designation seemingly conflicts with the policy statement allowing higher densities around George Fox College.

Zoning and Land Use: The area is zoned R-1, and is currently the site of a dormitory structure. The surrounding use is predominantly multi-family dwellings.

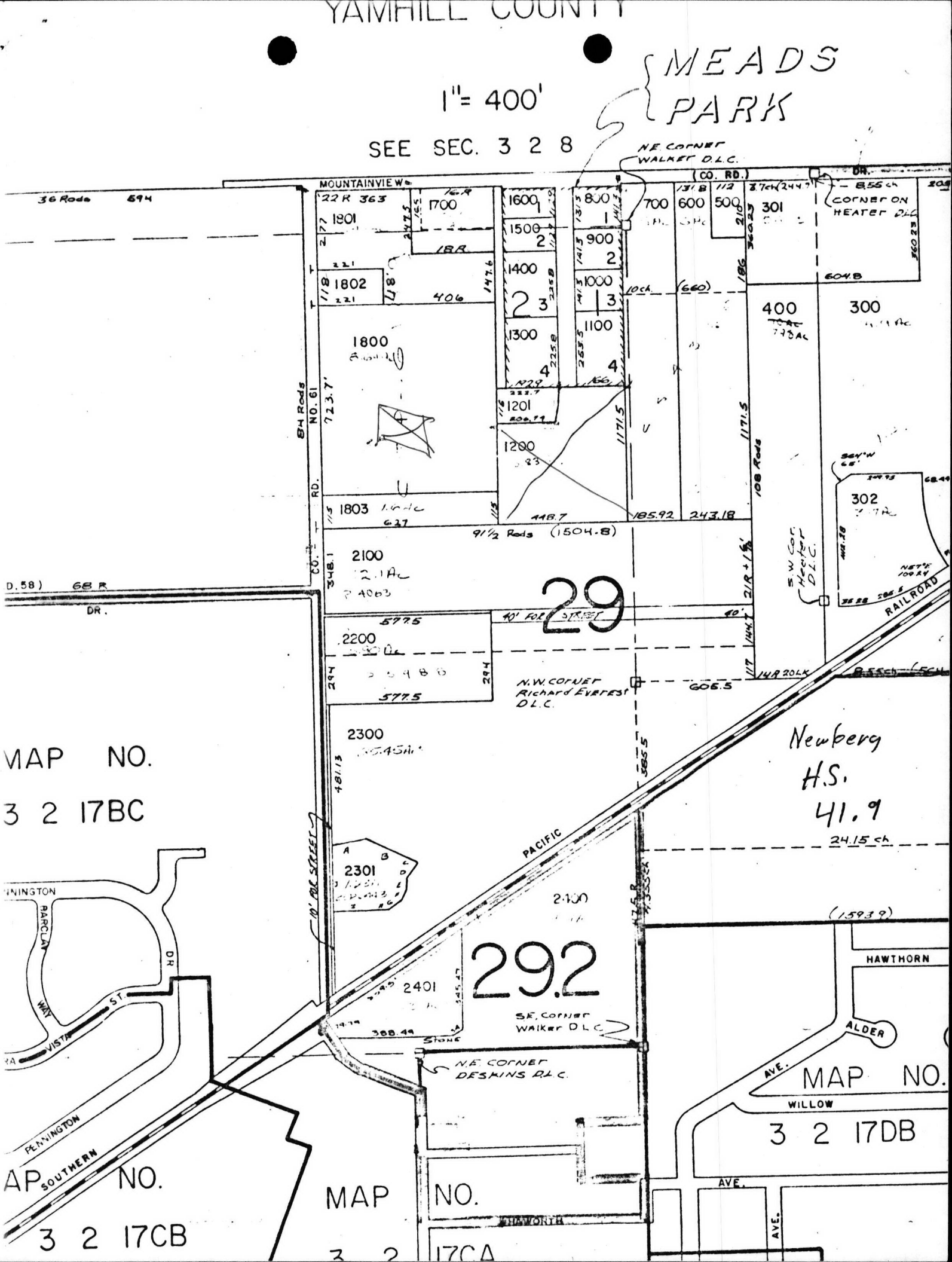
Physical Profile: The soil is primarily of the Amity series. However, as the site approaches Hess Creek, the soil is classed as Terrace Escarpment. Building should be prohibited in this area. The site which is planned for development as an additional dormitory wing avoids this problem area.

Community Facilities: City water is not is not available in sufficient quantity at this time to provide adequate fire protection.

Access is not adequate at this time to provide for fire access, or an orderly flow of traffic to and from the site.

Findings -

1. This use has been permitted in an R-1 zone in the past, as demonstrated by the existing dormitory.
2. The comprehensive plan amendment would bring stated policy in line with the planning map, thus resolving the existing conflict.
3. There is a demonstrated need for more housing facilities for college students.
4. Provisions are being made to resolve problems of access and fire protection. A staff facilities review was held with the applicant.
5. The college maintains control over parking and vehicular access, and will be able to minimize the effects of traffic upon adjacent uses.


YAMHILL COUNTY
1" = 400'
SEE SEC. 3 2 8
MEADS PARK
NE CORNER WALKER D.L.C.
MOUNTAINVIEW
(CO. RD.)
DR.
8.55 ch
CORNER ON HEATER D.L.C.
36 Rods
694
22 R 363
1801
1700
1600
1500
1400
1802
1800
1300
1201
1200
1803
800
900
1000
1100
700
600
500
301
400
300
302
604.8
(660)
10 ch
84 Rods
NO. 61
723.7'
108 Rods
1171.5
185.92
243.18
448.7
91½ Rods (1504.8)
2100
2.1 Ac
P 4063
29
2200
577.5
40' FOR STREET
N.W. corner Richard Everest D.L.C.
606.5
S.W. Cor. Heater D.L.C.
RAILROAD
2300
481.13
385.5
2301
2401
29.2
388.49
345.27
S.E. corner Walker D.L.C.
N.E. corner DESKINS D.L.C.
PACIFIC
Newberg H.S.
41.9
24.15 ch
(15939)
HAWTHORN
ALDER
WILLOW
AVE.
PENNINGTON
BARCLAY
DR.
WAY
ST.
VISTA
MAP NO.
3 2 17BC
MAP NO.
3 2 17DB
MAP SOUTHERN NO.
3 2 17CB
MAP NO.
3 2 17CA

CERTIFICATION

I, M.C. GILBERT, duly appointed, qualified and acting Recorder for the City of Newberg, Oregon, do hereby certify that the attached notice of public hearing on Conditional Use Permit was mailed to the following by United States Mail, postage prepaid, on November 9 , 1976

Richard Rudolph & John Meyers, P.O. Box 56, Beaverton, OR 97005
Reginald & Alice Meads, Rt. 2, Box 28-C, Newberg
John Meads, Rt. 2, Box 28-B, Newberg
Ralph Mortenson, Rt. 2, Box 27-E, Newberg
Marvin Hutchenson, Rt. 2, Box 27-G, Newberg
A-Dec Corporation, Growers Avenue, Newberg
E. & F. Thorne, Rt. 2, Box 24, Newberg,
Claude Lewis, 545 Pine Street, Newberg
Margie Simmons, %Claude Lewis, 545 Pine St., Central Point, OR 97501
Constance Larson, %Claude Lewis, 545 Pine St., Central Point, OR 97501
Irene Sieloff, % Claude Lewis, 545 Pine St., Central Point, OR 97501

Dale E. Blanton,
City Planner

NOTICE OF A PUBLIC HEARING
- Request for a Conditional Use -

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Planning Commission of the City of Newberg, Oregon, on Tuesday, November 16, at the hour of 7:30 P.M. in the City Hall, second floor, Newberg, Oregon, on the application of William Heinzman for a Conditional Use Permit to permit the manufacture of concrete pipe on his property described as Yamhill County tax lot 3217 - 1200. Zoned Light Industrial.

Any person wishing to speak for or against the proposed Conditional Use Permit may do so in person or by attorney at the Public Hearing. Also, written objections may be filed with the City Recorder, City Hall, Newberg, Oregon.

M. C. GILBERT
City Administrator

NULSEN & PAXTON
ATTORNEYS AT LAW, PROF. CORP.
817 E. FIRST STREET
NEWBERG, OREGON 97123

JACK C. NULSEN, JR.
DAVID R. PAXTON

TELEPHONE 538-9433

October 20, 1976

To the City of Newberg-City Council and Planning Commission

The attached application for conditional use is submitted for consideration by the City of Newberg's Planning Commission and City Council, such submission is for the purpose of resolving problems arising regarding the applicant's intended use which was previously before both public bodies from January 1975 through August 1975.

The application is submitted only for the purpose resolving said difficulties and without waiver of any of the applicant's legal rights or remedies and without any acquiesence or acknowledgement of right on the part of the applicant of any position which the City of Newberg may take.

Respectfully submitted this 20th day of October, 1976.

David R. Paxton
Attorney at Law

DRP/mc

RECEIVED
OCT 22 1976
CITY OF NEWBERG, ORE.
OFFICE OF RECORDER

CITY OF NEWBERG

File No. _____

APPLICATION FOR CONDITIONAL USE

CONDITIONAL USE

Conditional Use No. _____

Action: By Planning Commission

Received (Date) 10-22-76

APPROVED

BY: _____

BY Planning Commission & City Council

Fee: 75.00 R# 2526

City Planner Dale E Blanton

DATE OF PUBLIC HEARING 11/16/76 PC 12/20/76 CC

Date 12/23/76

Conditions: See Attached Conditions

Petitioner: Do not write above this line.

THE UNDERSIGNED PETITIONER(S) William B. Henizman Jr., Rt. 2 Box 73AA, Newberg, Oregon
(Name) (Address)

is (are) the (check one) X Owner _____ Purchaser. Agent of petitioner (if applicable) attach written evidence of authority.

David R. Paxton 817 E. First St., Newberg, Oregon 538-9433
(Name and Address) (Phone)

LOCATION OF PROPERTY FOR WHICH CONDITIONAL USE IS SOUGHT:

M-1
(ZONE) (LOT) (BLOCK) (PLAT)

3217-1200 17 3-S 2-W
(TAX LOT) (DLC) (SECTION) (TOWNSHIP) (RANGE)

at the end of Alice Way on the _____ side of the
(BUILDING NUMBER) (STREET) (DIRECTION)
street between _____ Street and _____ Street.

PROPERTY DIMENSIONS: Width 464/348, Depth 448, Total sq. ft. area 191,644 ±.

Petitioner requests a conditional use of the above-described property as follows: Request is for hearing pursuant to Ord. 1780 to determine if tile and pier block manafacturing is the same or similar in intensity of use as are enumerated uses under M/L zone and therefore allowable in M/L zone as a conditional use.

as shown on the attached plot plan. (Plot plan must show site dimensions, existing buildings, proposed buildings, topography, other improvements or natural features.)

Plot plan previously Submitted with Zone Change Application

Use above space to state exactly what is intended to be done on or with the property which would constitute a conditional use of the property under the zoning ordinance. Use the following apce for circumstances pertaining to this request.

List enclosure;
1. Affidavit of Applicant
2. Photographs - 3

RECEIVED
OCT 22 1976
CITY OF NEWBERG, ORE.
OFFICE OF RECORDER

David R Paxton
Signature of petitioner or agent

AFFIDAVIT OF APPLICANT

CONCERNING CONDITIONAL USE

STATE OF OREGON)
) ss.
County of Yamhill)

I, WILLIAM B. HEINZMAN, JR. being first duly sworn do depose and say upon oath that;

I, WILLIAM B. HEINZMAN, JR. am the president of Jr. and Jr., Inc., dba Valley Concrete Products. That I have since 1973 been manufacturing concrete products primarily consisting of concrete tile and concrete pier blocks at the old Springbrook Cannery within the city limits of the City of Newberg. That from approximately January 1975 through August 1975, I submitted an application for a zone change specifying in my application, my intended use as concrete products, manufacturing primarily pier blocks and concrete tile.

I make this affidavit in order that it may be considered as evidence regarding the intensity of my manufacturing processes, to be attached to and submitted along with an application submitted pursuant to City Ordinance 1780.

My manufacturing process consists primarily of having processed aggregates consisting of sand, pea gravel, and crushed rock, trucked to my plant requiring approximately 10 trucks per week, which bring in said aggregates during peak times. That for the most part, during peak times, I would be trucking with 5 to 6 loads of finished goods. These raw materials are processed by mixing them with cement which I backhaul in, normally from Portland and with basically a dry mix

25% COTTON

EXCELEBASE

by

FOX RIVER

composition and then for tile, they are extruded into tile on a Dunn HY-10 tile machine in sizes from 12 x 4 through 12 x 12 tile and for pier blocks, they are vibrated in a metal form to make pier blocks ranging in sizes from 4 x 6 to 16 x 6 pier blocks. The extruded tile are cured in a steam kiln.

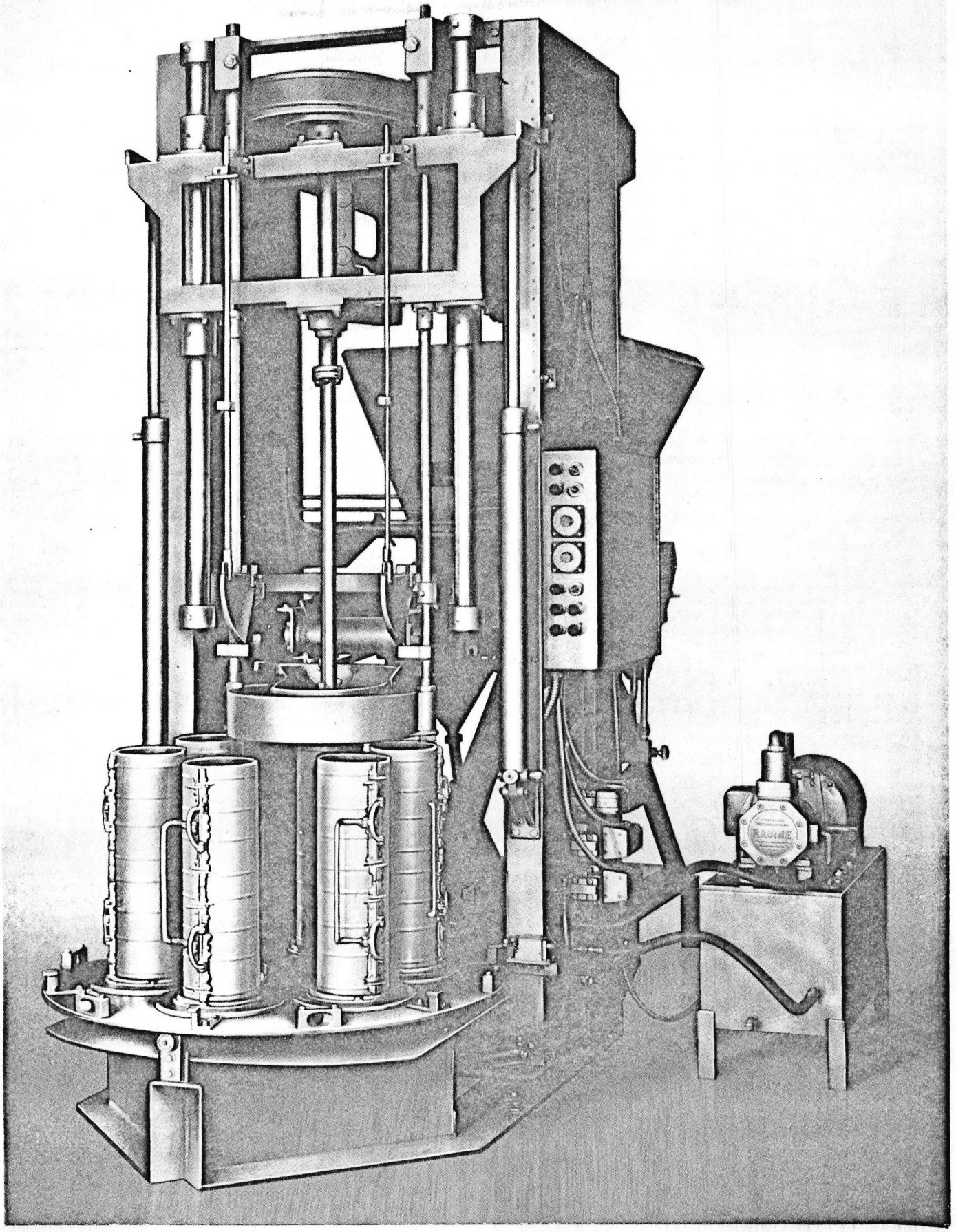
I have personally examined and state that I have compared my manufacturing processes with a cabinet shop; welding shop; tire retreading shop; stone, marble, or granite cutting operation; and machinery repair facilities and have determined that my operation is substantially less intense than the foregoing when one considers the truck traffic to and from, equipment utilized, noise, dust, or other offensive conditions. For example, the noise made by a Dunn HY-10 tile machine is substantially less than that made by the average diesel truck which runs upon our highway and normal conversation can be heard within 15' of said machine. No dust or water pollution occurs from the manufacturing process per se. The number of employees hired range from 2 to 6.

Dated this 20th day of October, 1976, from Newberg, Oregon.

W.B. Fennemore Jr.

Subscribed and sworn to before me this 20th day of October, 1976.

David R Poxton
Notary Public for Oregon
My commission expires: 11/10/79


RACINE

NOTICE OF A PUBLIC HEARING ZONE CHANGE

NOTICE is hereby given that a public hearing will be held by the Planning Commission of the City of Newberg, Oregon on Tuesday, January 21, 1975, at the hour of 7:30 p.m., City Hall, Newberg, Oregon, on the zone change petition of William Heinzman, to change zone from (RR) Rural Residential to (M-1) Light Industrial of property located East of Hess Creek, South of Mt. View Drive and North of Crestview Drive, extended, described as follows to-wit:

A tract of land consisting of Tax Lot 1200, and being 4.39 acres more or less in Sec. 17, T. 3 S., R. 2 W. of the W. M., Yamhill County, Oregon being part of that certain tract of land conveyed to Reginald and Alice Meads, husband and wife by document recorded in Film Vol. 67, Pg. 585, Yamhill County Deed Records and being more particularly described as follows: beginning at the S.E. Corner of Lot 4, Block 1 of Meads Park Subdivision; thence S. 464.1 ft. to the S. line of the aforesaid Meads tract; thence W. along said S. line 448.7 ft. to the S.W. corner of said Meads tract; thence N. along the W. line of said Meads tract 348.1 ft. to the S.W. corner of that certain tract of land conveyed to Meyers and Rudolph by deed recorded in film Vol. 88, Pg. 1028, Yamhill County Deed Records; thence E. 206.74 ft. to the S.E. corner of said Meyers-Rudolph tract; thence N. 10°12' E. along the E. line of said Meyers-Rudolph tract, 62.8 ft.; thence continuing along said E. line, Northeasterly 54.69 ft. along the arc of a 307.27 foot radius curve left, through a central angle of 10°12' to the S. line of Meads Park; thence W.

AFFIDAVIT OF PUBLICATION

STATE OF OREGON, COUNTY OF YAMHILL—ss.

I, Pauline Field

being first duly sworn, depose and say that I am the publisher of the Newberg Graphic, a newspaper of general circulation, as defined by Secs. 1-509, 1-5-10, Oregon Code; printed and published at Newberg in the aforesaid county and state; that the

Notice of a Public Hearing

Zone Change

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper

for One successive and consecutive

weeks in the following issues:

January 9, 1975

Pauline Field

Office Mgr. xPublisher

Subscribed and sworn to before me this

13 day of June, 1977

Notary Public for Oregon.

(My Commission expires.....)

My Commission Expires Sept. 23, 1977

NOTICE OF A PUBLIC HEARING

ZONE CHANGE

NOTICE is hereby given that a public hearing will be held by the City Council for the City of Newberg, Oregon on Monday, July 7, 1975, at the hour of 7:30 p.m., City Hall, Newberg, Oregon, on the zone change petition of William Heinzman, to change zone from (RR) Rural Residential to (M-1) Light Industrial of property located East of Hess Creek, South of Mt. View Drive and North of Crestview Drive, extended, described as follows to-wit:

A tract of land consisting of Tax Lot 1200, and being 4.39 acres more or less in Sec. 17, T. 3 S. R. 2 W. of the W.M., Yamhill County, Oregon being a part of that certain tract of land conveyed to Reginald and Alice Meads, husband and wife by document recorded in Film Vol. 67, Pg. 585, Yamhill County Deed Records and being more particularly described as follows: beginning at the S.E. Corner of Lot 4, Block 1 of Mead Park Subdivision; thence S. 464.1 ft. to the S. line of the aforesaid Meads tract; thence W. along said S. line 448.7 ft. to the S.W. corner of said Meads tract; thence N. along said S. line 448.7 ft. to the S.W. corner of said Meads tract; thence N. along said S. line 448.7 ft. to the S. W. corner of said Meads tract 348.1 ft. to the S.W. corner of said Meads tract 348.1 ft. to the S.W. corner of said Meads tract 348.1 ft. to the S.W. corner of that certain tract of land conveyed to Meyers and Rudolph by deed recorded in film Vol. 88, Pg. 1028, Yamhill County Deed Records; thence E. 206.74 ft. to the S.E. corner of said Meyers-Rudolph tract; thence N. 10° 12' E. along the E. line of said Meyers-Rudoiph tract, 62.8 ft.;

AFFIDAVIT OF PUBLICATION

STATE OF OREGON, COUNTY OF YAMHILL—ss.

I, Pauline Field

being first duly sworn, depose and say that I am the publisher of the Newberg Graphic, a newspaper of general circulation, as defined by Secs. 1-509, 1-5-10, Oregon Code; printed and published at Newberg in the aforesaid county and state; that the

Notice of Public Hearing

Zone Change

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper

for Two successive and consecutive

weeks in the following issues:

June 26, July 3, 1975

Pauline A Field

Office Mgr. ~~Publisher~~

Subscribed and sworn to before me this

13 day of June, 1977

Notary Public for Oregon.

(My Commission expires.....)

My Commission Expires Sept. 23, 1977

NOTICE OF A PUBLIC HEARING

NOTICE is hereby given that a public hearing will be held by the Planning Commission of the City of Newberg on Tuesday, July 1, 1975 at the hour of 7:30 p.m. in the Council Chambers, City Hall, Newberg, Oregon, on a proposed charge in the zoning Ordinance, to-wit:

Section 31 of Ordinance No. 1282 of the City of Newberg will be amended by adding a new subsection 45 to read as follows: "Any use found, after hearing, to be the same or similar in intensity of use as the foregoing enumerated uses shall be allowed as a conditional use."

Any person wishing to speak either for or against the proposed amendment to the zoning ordinance may do so in person or by attorney at the public hearing. Also written objections may be filed with the City Recorder, City Hall, Newberg, Oregon.

M. C. GILBERT
City Recorder

Publish: June 19, 1975
June 26, 1975

AFFIDAVIT OF PUBLICATION

STATE OF OREGON, COUNTY OF YAMHILL—ss.

I, Pauline Field

being first duly sworn, depose and say that I am the publisher of the Newberg Graphic, a newspaper of general circulation, as defined by Secs. 1-509, 1-5-10, Oregon Code; printed and published at Newberg in the aforesaid county and state; that the

Notice of a Public Hearing

Change in Zoning Ordinance

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper

for Two successive and consecutive

weeks in the following issues:

June 19, 26, 1975

Pauline A Field
Office Mgr. ~~Publisher~~

Subscribed and sworn to before me this

13 day of June, 1977

Notary Public for Oregon.

(My Commission expires.....)

My Commission Expires Sept. 23, 1977

3

STATE OF OREGON)
County of Yamhill) SS
City of Newberg)

I, M. C. GILBERT, duly appointed, qualified and acting Recorder for the City of Newberg, Oregon, do hereby certify that the attached notice of public hearing of ZONE CHANGE was mailed to the following by United States Mail, postage prepaid, on January 9, 1975 :

Richard Rudolph and John Meyers
P.O. Box 56
Beaverton, OR 97005

Reginald and Alice Meads
Rt. 2 Box 28C
Newberg, OR 97132

John Meads
Rt. 2 Box 28B
Newberg, OR 97132

Ralph Mortenson
Rt. 2 Box 27E
Newberg, OR 97132

Marvin Hutchenson
Rt. 2 Box 27G
Newberg, OR 97132

A-Dec Corporation
Growers Avenue
Newberg, OR 97132

E. & F. Thorne
Rt. 2 Box 24
Newberg, OR 97132

Claude Lewis
545 Pine Street
Central Point, OR 97501

Margie Simmons
c/o Claude Lewis
545 Pine Street
Central Point, OR 97501

Constance Larson
c/o Claude Lewis
545 Pine Street
Central Point, OR 97501

Irene Sieloff
c/o Claude Lewis
545 Pine Street
Central Point, OR 97501

M. C. Gilbert
City Recorder

RESOLUTION NO. 75-583

WHEREAS, on November 5, 1973, the Council of the City of Newberg adopted Resolution No. 73-505, setting up procedural rules for hearings in land use matters; and

WHEREAS, repeated evidentiary hearings before such bodies as the Comprehensive Advisory Committee, the Newberg Planning Commission, and the Newberg City Council constitute unnecessary repetition and duplication; and

WHEREAS, by judicial decision, it has been determined that more than one evidentiary hearing in land use metters is not required, although it can be permitted; and

WHEREAS, it is desirable to supplement the said Resolution No. 73-505 to eliminate evidentiary duplication, while preserving the right of a full evidentiary hearing at one level;

NOW, THEREFORE, be it resolved by the Council of the City of Newberg as follows:

1. That in the absence of a written objection filed on or before the time set for hearing, or oral objection made at the time set for said hearing, the matter shall be considered by the Council on the record of the Planning Commission hearing, including its general and special findings of fact.

2. That where the Council hears the matter on the record from the Planning Commission, the general and special findings of that commission may be adopted by reference thereto, or may be rejected.

3. That in the absence of written or oral objection to a hearing on the record only, the Council reserves the right, in any case before it, to conduct a full evidentiary hearing, if it so desires.

4. That the forgoing rules shall supplement the procedural rules in Resolution 73-505, which are otherwise confirmed.

ADOPTED by the City Council of the City of Newberg on November 3, 1975.

M. C. Gilbert - City Recorder

June 15, 1973

Mr. William Heinzmann
Rt. 2, Box 158C
Newberg, OR 97132

Re: Docket No. Z-65-73

Dear Mr. Heinzmann:

Pursuant to our discussion on June 13, 1973 in the Planning Department Office and our letter of June 6, 1973 this letter clarifies both the points of discussion and the June 6th letter. First, we agreed that you would furnish proof of the need for an additional 15 acres of Light Industrial-Zoned land as requested in the June 6th letter.

Second, we agreed that we would recommend special development standards prior to the Commission meeting at which final approval is sought in order to provide that adequate review take place prior to recommendation. These special development standards are outlined below. It should be understood that these are not necessarily the final form which these standards will take, but instead provide a framework from which further negotiations can take place. There are four basic areas covered by these standards: land use and building, access, screening and pollution controls. These are detailed as follows:

Land-use and building.

a) That no building permits be issued to Tax Lot 1200 except to accommodate those buildings indicated on the plot plan labeled "Exhibit C" in the Planning Commission's files, Docket No. Z-65-73.

b) No more than __ number of employees be allowed to engage in manufacturing on the site unless the County Sanitarian deems that this is feasible and that permits for additional buildings or structures be issued only after city water and sewer are extended to the site.

c) That no building permits be issued to Tax Lots 600 and 700 or its further subdivision until groundwater and subsurface sewage disposal have been investigated and approved by the County Sanitarian.

d) That the building and structures cover no more than sixty-five (65%) percent of the entire development site or of any of the parcels contained therein.

e) That setback requirements of forty (40) feet be observed on property abutting a residential zone.

f) That no building or structure exceed twenty-five (25) feet in height at the setback line when the property being developed abuts a residential zone except that the maximum height of forty-five (45) feet be allowed at five hundred (500) or more feet from the nearest residential zone, and that proportionate heights be allowed between the setback line and five hundred (500) feet from the nearest residential zone.

g) That all portions of the site be properly graded as they are developed to ensure proper drainage and that all off-street parking be hard surfaced or dust free.

h) That an attempt be made to retain all natural tree cover in the development area.

Access

a) That the dedication to the public of a 10-foot strip of land for roadway purposes be made on the south side of County Road No. 58 for the width of Tax Lots 600 and 700.

b) That a 50-foot radius turnaround be provided within Tax Lot 1200 to serve the present access road through Meads mobile-home subdivision. Additionally, that no access be allowed from that road to Tax Lot 1200, and to ensure this that suitable barriers of fencing and curbing be erected.

c) That access to Tax Lot 1200 be secured by a sixty (60)-foot private easement from the Austin property on a temporary basix and by a sixty (60)-foot public road within two (2) years, the location of which will be stipulated by completion and approval of the final site development plan.

d) That any access road serving Tax Lots 600 and 700 connecting directly with County Road No. 58 assume a north-south alignment sufficient to allow the creation of a tier of industrial lots which would back on Meads mobile-home subdivision and that no road location be approved which provides double-fronting lots in that subdivision.

Screening

a) That all outdoor storage and off-street parking and the walls of any building abutting a residential zone, whether or not a street intervenes, shall be provided with sight obscuring screen-planting and/or attractive fencing to a height of six (6) feet, such screening to be approved by the Planning Department, subject to an appeal by the applicant, if aggrieved, to the Planning Commission.

Pollution Controls

a) That the proposed tile plant on Tax Lot 1200 comply with all laws and regulations of the State Department of Environmental Quality and the Mid-Willamette Valley Air Pollution Authority regarding noise, water-quality and air-quality standards.

Following satisfactory fulfillment of Items No. 1 and 2 in our letter of June 6, we will wish to have prepared a fairly definitive site plan for the area west of Growers Avenue as it affects the 15-acre tract now under consideration. We will also require a letter of intent to develop, with schedule of capital improvements for all urban services, and an indication from the City of Newberg as to the timing for annexation. We would then propose that the contents of a performance agreement and bond be negotiated with the Planning Department for ratification by the Planning Commiesion and Board of Commissioners.

Please again be reminded that these are not requirements until they have been negotiated and approved by the Planning Commission. Please contact us as soon as possible so that these items can be worked out prior to the Planning Commission meeting on July 3.

Yours very truly,

Craig Greenleaf
Planning Assistant

CG:vs

cc: Kenneth Austin
County Engineer
County Surveyor
County Sanitarian
Mid-Willamette Valley A.P.A.
Myrland Gilbert, City of Newberg

bcc: Ira Winters

Uses Permitted

M-L Limited Industrial

* Automobile, truck, trailer or Marine pleasure craft sales, rental, storage or repair.

* Express storage or delivery station
* Machine shop
* Machinery, farm equipment or implement sales, service or repair
* Motor Freight Terminal
* Railroad Freight Depot
* Stone, Marble or Granite Cutting
* Tire retreading, recapping or sales.
* ~~Petroleum distribution of~~

M-1 - Light Industrial

* Fuel-oil distribution
* Lumber Yard or building Material Storage yard
* Railroad Switching Yard
* Contractor's Equipment and storage yard

Read Conditions Section 37 Zoning Ord.
- All outside storage abutting or facing a residential zone shall be enclosed by a sight obscuring fence. The fence shall obstruct the storage from view on the sides

of the property abutting or facing a lot in the residential zone. The fence shall be of such material and design as will not detract from adjacent residences and shall be built according to plans submitted by the owner or his ~~authorized~~ authorized agent and approved by the city recorder.

- TRUCK TRAFIC -

BASED ON LAST 3 YR AVERAGE.

CEMENT: 9 FILLS PER YR. = EVERY 40.55 DAYS

AGGREGATES: 95 TRUCKS/YR = ✓ 3.84 ✓

PRODUCT 160 TRIPS/YR = ✓ 2.28 ✓

264 TRUCKS/YR. = 1 TRUCK @ 1.38 DAYS

264 ✓ ✓ = ✓ @ 1 DAY

ALSO WE HAVE PURCHASED A LOW PROFILE CEMENT SILO THAT IS ONLY 23 FT. FROM TOP OF CURB.

- TRUCK TRAFIC -

BASED ON LAST 3 YR AVERAGE.

CEMENT: 9 FILLS PER YR. = EVERY 40.55 DAYS

AGGREGATES: 95 TRUCKS/YR = ~ 3.84 ✓

PRODUCT 160 TRIPS/YR = ~ 2.28 ~

264 TRUCKS/YR. = 1 TRUCK @ 1.38 DAYS

264 ✓ ✓ = ✓ @ 1 DAY

ALSO WE HAVE PURCHASED A LOW PROFILE CEMENT SILO THAT IS ONLY 23 FT. FROM TOP OF CURB.

DAVID TURPEN CONSTRUCTION
11130 S. W. WALNUT ST.
TIGARD, OREGON 97223
PHONE: 639-5831

To Finish

Time		Materials	Labor
3 days	Deck	150.00	240.00
1 "	Sheet Rock	50.00	128.00
2 "	Panaling	50.00	256.00
1 "	Build stairs	Paid	64.00
1 "	Remove Kitchen Wall	—	128.00
½ "	Relocate waterheater	—	50.00
2 "	Interior of existing House	Paid	250.00
2 "	Siding of existing House	200.00	250.00
2 "	Seal siding on sill	15.00	50.00
½ "	Seal chipboard on upper level	7.50	25.00
1 "	Install chimneys to fireplaces	275.00	64.00
		750.00	1505.00

To Pay

Wiring	600.00
Plumbing	300.00
Cabinet work	600.00
Small windows (5)	100.00
	1600.00
Total to complete	3855.00
Balance Due on Acct	3122.25
	6977.25
Labor for Amy	1500.00
	8477.25
Paid into job	10,000.00


N
Scale: 1" = 50'
MEAD'S
Block One
PARK
Block Two
Lot 1
Lot 2
Lot 3
Lot 4
℄ Mountainview Drive
℄ Alice Way
60' R/W
R=10'
South 464.1 (Deed)
East - 448.7 (Deed)
Temporary Cul-de-Sac (To be vacated when Alice Way is extended)
END OF ALICE WAY
Well
℄R = 752.96
Δ = 10° 12' 00"
L = 134.04
T = 67.20
C = 133.87
CB = S5° 10' 00" W
Proposed Water Line
PRIVATE DRIVEWAY
℄R = 337.27
Δ = 10° 12' 00"
L = 60.04
T = 30.10
C = 59.96
CB = S5° 06' 00" W
Ramp
Building
YARD AREA
2 PARKING SPACES
3 PARKING SPACES
50' x 100' Drain Field Area
1300 ft³ Settling Basin
6" Conc. Pipe S= 4%
Existing Drainage Swale
REPEAT PATTERN TO SOUTH LINE
20 FT
Existing Ditch
① DECIDUOUS TREES - PIN OAK, RUBRUM MAPLE 3-4 FT
② CONIFEROUS TREES - DOUGLASS FIRS & PINE 3-4 FT
③ PALMATUM MAPLE - 3-4 FT
GROUND COVER - IVY
SHRUBS - ANDROMEDA, MUGO PINES, DECIDUOUS AZALEAS.
OWNER AGREES TO REPLACE DEAD STOCK & PROVIDE MAINTAINANCE FOR LANDSCAPED AREAS
APPROVED
BY Planning Department
City Planner Dale E Blanton
Date 12/30/76
Conditions: Improvements to be Installed within 9 months
Approval shall not be construed to authorize or allow the violation of any ordinance of the City of Newberg.
City Planner Dale E Blanton
Date 12/30/76
APPROVED
NEWBERG CITY ENGINEER DEC 28, 1976
Note: All drainage for improvement to settling basin.
PLAN
NOTE BOOK
No.
SURVEYED
PLOTTED
ALIGNMENT CHECKED
RT. OF WAY CHECKED
BY
DATE
PROFILE
GRADES CHECKED
B. M.'s NOTED
STRUCTURE NOTATIONS CHECKED
0+00 = ℄ Mountain View Drive
EXISTING GRAVEL
S= -0.6%
S= 0.4%
S= -0.4%
S= -3.2%
S= -0.6%
BVC 5+57.40
EVC 6+17.40
EVC 6+90
PT 7+07.40
PVC 7+60
PRVC 8+40
EVC 9+10
60' V.C. PI 5+87.40 ELEV 214.77
70' V.C. PI 7+25 ELEV 215.32
50' V.C. PI 8+00 ELEV 214.38
70' V.C. PI 8+75 ELEV 211.98
214.88
213.10
211.77
NOTE: PROFILE SHOWN FOR LEFT CURB. RIGHT CURB 0.5' LOWER.
230
220
210
200 0+00
1+00
2+00
3+00
4+00
5+00
6+00
7+00
8+00
9+00
10+00
11+00
24'
12'
6"
PARABOLIC CROSS SECTION
LEFT SLOPE +4.17%
RIGHT SLOPE -5.33%
PI AT ℄ = LEFT CURB ELEV
2" A.C.
16"
9"
10" 1½"(-) CRUSHED ROCK
RIGHT CURB 0.5' BELOW LEFT CURB
FINISH ℄ = 0.25' BELOW LEFT CURB
TYPICAL STREET SECTION
No Scale
PREPARED FOR:
William B. Heinzman
Route 2, Box 158 C
Newberg, Oregon 97132
Phone: 503-538-3297
PREPARED BY:
Leonard A. Rydell, P.E.
711 North Deskins #4
Newberg, Oregon 97132
Phone: 503-538-5700
28 October 1976
REGISTERED PROFESSIONAL ENGINEER 8518 OREGON LEONARD A. RYDELL
WO No. 7635

Vol 7- Pg-45

Exhibit "C"
12/20/76
Council

MEADS PARK SUBDIVISION

IN SECTION 17, T 3S, R 2W, W.M. YAMHILL COUNTY, OREGON.
PLAT SCALE: 1" = 100'
JULY, 1969.

DEDICATION

Know all men by these presents, that we, Reginald N. Meads and Alice I. Meads, husband and wife; Raymond V. Newby and Lilah Newby; and ✓ Helena L. Perrin owners in fee simple, collectively, of the land shown on the annexed plat of MEADS PARK, do hereby dedicate all roads and streets as shown thereon, to the public for public use forever without reservation or restrictions.
In witness whereof, we set our hands and seals, this 15 day of July, 1969.

Reginald N. Meads — Alice I. Meads
Raymond V. Newby — Lilah Newby
Helena L. Perrin

ACKNOWLEDGEMENT

State of Oregon
County of Yamhill S.S.

On this 15 day of July, 1969, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Reginald N. Meads, Alice I. Meads, Raymond V. Newby and Lilah Newby, known to me to be the persons described in and who executed the foregoing instrument and acknowledged to me that they executed the same freely and voluntarily.
Witness my hand and seal this 18 day of July, 1969.

Notary Public, State of Oregon
My commission expires A. Fred Rawlinson
My Commission Expires June 25, 1972

ACKNOWLEDGEMENT

State of Oregon
County of ~~Yamhill~~ Marion S.S.

On this 22nd day of July, 1969, before me, the undersigned, a Notary Public in and for said county and state, personally appeared ✓ Helena L. Perrin known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that she executed the same freely and voluntarily.
Witness my hand and seal this 22nd day of July, 1969.

Walter H Bell
Notary Public, State of Oregon
My commission expires 8-21-70

APPROVED:
County Planning Commission
By Robert D. Cole Chairman

County Health Officer R.E. Ragan M.D.

COUNTY APPROVALS

Commissioner C.N. Teegarden
Commissioner Morris Mayo
Commissioner R.A. Schaad
County Surveyor H.E. Cox
Assessor Ora J. Maxwell
County Clerk Jack Beeler

Taxes, persuant to ORS 92-095, have been paid to June 30 1970 date.

County Sheriff W. L. "Bud" Mekkers

SURVEYOR'S CERTIFICATE

I, Norris L. Jones, first duly sworn, say that I have correctly surveyed and marked with proper monuments, the land represented on this plat, being further described as follows: Beginning at the Initial Point, a 2" x 36" galvanized iron pipe set 6" below the ground surface at a point on the South line of the William T. Wallace Donation Land Claim and being 1801.90 feet West from the Southeast corner thereof, in Section 17, T 3S, R 2W, W.M., Yamhill County, Oregon; thence South 707.40 feet; thence West 418.90 feet; thence North 707.40 feet to said Claim line; thence East 418.90 feet to the point of beginning. Lot corners are marked by 3/4" x 30" iron pipe.

Surveyor Norris L. Jones

REGISTERED OREGON LAND SURVEYOR
JULY 10, 1964
NORRIS L. JONES
648

Subscribed and sworn to before me this 1 day of July, 1969.

Notary Public, State of Oregon
My Com. Exp. 1972

STATE OF OREGON, County of Yamhill, ss.
#1169
I, JACK BEELER, County Clerk in and for said County and State, do hereby certify that the within instrument of Writing was received and has been by me duly recorded on Page 45 of Volume 7 of the Records of Plats for said County, on this 17 day of October A.D. 1969 at 11:05 o'clock A.M.
In testimony whereof, I have hereunto subscribed my name and affixed my Official Seal.
JACK BEELER, County Clerk
By Velma Turley Deputy