

NEWBERG CITY COUNCIL MINUTES
MARCH 2, 2015, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)

A work session was held at 6:00 p.m. preceding the meeting. Present were Mayor Bob Andrews, Councilor Tony Rourke, Councilor Lesley Woodruff, Councilor Mike Corey, Councilor Scott Essin, and Councilor McKinney and Councilor Denise Bacon. Also present were City Manager Jacque Betz, City Recorder Sue Ryan, City Attorney Truman Stone, Library Director Leah Griffith, Finance Director Matt Zook, Public Works Director Jay Harris, Community Development Director Doug Rux, Associate Planner Steve Olson, Police Chief Brian Casey, Associate Planner Jessica Pelz, IT Network Administrator Joseph Falbey and Fire Chief Les Hallman.

IT Network Administrator Joseph Falbey reported on the new computers at the Library and increasing the video surveillance storage space.

Public Works Director Jay Harris gave a well field update. Work had been done on Wells No. 4 and No. 5. Well No. 9 would be put in next fall or winter. He reported on tank leaks that had been repaired at the Water Treatment Plant, potholes being patched, water line cleaning, and Wastewater Treatment Plant expansion.

Library Director Leah Griffith said there had been issues with the new Library computer system. The Library Foundation paid for new furniture. Grants had been received for children's programs and book giveaways. Strategic planning for the Library was continuing and the plan would be ready for Council review in the summer. Author April Henry would be in town on Friday and Saturday. Councilor McKinney asked about creating a taxing district for the library. LD Griffith explained the process and how Yamhill County and City of Dundee had not been supportive in the past.

Police Chief Brian Casey reported on a recent bomb disposal on Highway 219 and Bell Road, mental health issues in the community, two new dispatchers, and Citizens Police Academy. Councilor McKinney asked if there was training for handling the mental health issues. PC Casey said the police officers had received training.

Finance Director Matt Zook said the final audit for Fiscal Year 2013-2014 would be ready for Council in April. They also had been preparing the 2015-2016 budget. Budget Committee meetings would begin in April. There would soon be a finance software upgrade that would improve financial processes. There had been issues in utility billing and he was working on delivering better service. There was discussion regarding the process for reading water meters.

Councilor Essin requested more summarizing of the financial report for the Council.

Fire Chief Les Hallman said the Fire Department continued to have a high call volume. The department would host the annual Easter Egg Hunt on April 5 and Pancake Breakfast on May 3. EMS Division Chief Frank Douglas had been named a recipient for the Chamber of Commerce's 2014 Edward Stevens Distinguished Service Award. There was discussion on why call volume was up. FC Hallman said car accidents and fires were up.

Associate Planner Steve Olson said the Transportation System Plan Citizen Advisory Committee would be meeting on Thursday to discuss the draft project list. The Urban Growth Boundary mediation process was continuing. The Planning Commission would be discussing medical marijuana dispensaries next week. The portable sign recommendation would be coming to the Council in April. The Historic Preservation Commission applied for a grant to update the downtown commercial historic property list. The scope of work was being developed for the downtown revitalization project. There was discussion on current and future building activity and contracting out planning services.

CM Jacque Betz thanked the management team and Associate Planner Steve Olson for his service as Interim Planning and Building Director for the last nine months. She introduced Doug Rux, the new Community Development Director.

The meeting was recessed for cake at 6:45 p.m.

CALL MEETING TO ORDER

ROLL CALL

Members Present: Mayor Bob Andrews Mike Corey Tony Rourke
Scott Essin Stephen McKinney Lesley Woodruff

Staff Present: Jacque Betz, City Manager Truman Stone, City Attorney
Sue Ryan, City Recorder Brad Allen, Code Compliance Officer
Jessica Pelz, Associate Planner Brian Casey, Police Chief

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was performed.

CITY MANAGER'S REPORT: City Manager Jacque Betz reported on the Second Street parking lot maintenance and funding and how information would be provided more on an ongoing basis. There was discussion on potential funding sources for the parking lot and the proposed timeline for replacing the parking lot.

PUBLIC COMMENTS: Jim Culbert, member of the Yamhill County Parks and Recreation District Board, was looking for people to volunteer to serve on the Board.

Walter C. Want, resident of Newberg, was part of a group called Waste Not who was opposed to the continuing efforts of Waste Management to expand the landfill. He thought the location of the landfill was not a good place, did not meet standards and emitted odors, however DEQ stated they did not have the ability to do anything about it, that there was a threat of E.Coli from the falcons used to patrol the landfill. Waste Management suppliers had offered the cities of Yamhill County \$15,000 as a gift and it was an incentive to support what they were doing. He thought Waste Management had influenced public officials to continue the expansion. The first priority needed to be to protect the health and safety of the population.

Marilyn Godfrey invited everyone to the Newberg Community Band concert on March 15, which would be a fundraiser for Habitat for Humanity.

CONSENT CALENDAR:

MOTION: Bacon/Woodruff moved to accept the Consent Calendar, including the February 17, 2015 meeting minutes and the lease of the Newberg Animal Shelter to the Newberg Animal Shelter Friends, retroactive to July 1, 2014 and authorizing the City Manager to execute the lease agreement. Motion carried (7 Yes/ 0 No).

PUBLIC HEARING: Order 2015-0036, An Order determining whether a shed built too near a property line constitutes a nuisance. Mayor Andrews opened the hearing at 7:17 p.m. He asked if there were any abstentions, bias, ex-parte contacts, conflicts of interest, or objections to jurisdiction. There were none.

City Attorney Truman Stone said this was a nuisance abatement appeal. He explained the procedure for the quasi-judicial hearing and applicable criteria found in Section 15.410.030, 15.05.100, and Chapter 8.15, Uniform Nuisance Abatement procedure.

Staff report: Code Compliance Officer Brad Allen presented a Powerpoint on the issue (Exhibit A). He said the City received a complaint that a shed was built too near a property line. The shed owners were contacted and sent a notice of violation. The owners submitted a statement protesting that no nuisance existed. It was the role of the Council to determine whether or not a nuisance existed. He discussed the location of the shed, which had been moved closer to the house and was four feet from the east property line. The Newberg Development Code required a minimum interior yard setback of five feet and anything that varied from the standard was a public nuisance. The applicant could apply for a Code adjustment of the minimum setback to as little as three feet. He was not aware of any damage that had been caused to the neighbor's property by the shed. According to the owners, it had been on the property for 15 years. The setback requirements were the same at that time.

Public testimony:

Appellants: Russ Mitchell, resident of Newberg and property owner of the shed appealing the Nuisance Abatement, said the shed had been moved and was five feet from the neighbor's property to the north, which was the neighbor who complained. The property to the east was fine with the shed's location although it was only four feet from the property line. He had moved the shed as far as it could go.

Sandy Mitchell, resident of Newberg and co-owner of the shed appealing the Nuisance Abatement, referred to a book of pictures she had submitted. They had been told previously by the City that as long as the people to the east did not have an issue with the shed, it would be fine. There were full grown trees between them and the neighbor that complained and the shed could not be seen. It was a rental house, and the owner did not live there. She thought the neighbor was just trying to cause problems. They would be willing to take off a gutter on the garage and move the shed, which would be a gain of six inches. They had a narrow backyard and the shed was in the least obtrusive place on the lot.

Mr. Mitchell said they hadn't applied for an adjustment to the Code because when they built the shed, the neighbors to the east had theirs up against the fence. The reason there was a problem was they had told the neighbor who complained that he had to have a setback for the lean-to he wanted to add on to his house and asked that he trim his arborvitae that were growing over the fence onto their property. There were many sheds in the City that were close to property lines and the Code was not being enforced.

Councilor Essin encouraged them to apply for a code adjustment.

Mayor Andrews clarified the interior setback from the property of the complainant met the code at five feet. The interior setback from the property to the east did not meet the setback, but they had been told by City staff that it was fine as long as the property owner did not object.

There was no further public testimony. Mayor Andrews closed the public testimony portion of the hearing at 6:50 p.m.

CA Stone said the book of pictures and emails from the neighbor were part of the Council packet, and if the Council was going to consider them as part of the record, he suggested the written testimony be accepted by motion (Exhibit B)

MOTION: McKinney/Rourke moved to accept the portion of the packet into the record. Motion carried (7 Yes/ 0 No).

CA Stone gave final legal announcements. If the decision was continued, the record could be re-opened at a later date by motion of the Council. If the decision was postponed, they should not assume no additional evidence would be taken. If a decision was made, the Council could reconsider the decision following proper procedure. An appeal of the decision would go to the Yamhill County Circuit Court.

The Council asked questions regarding the code adjustment process, the definition of a public nuisance, the decision the Council was making on whether or not this met the Code, fee structures for different types of planning actions, enforcement of these types of Code violations which was complaint driven, and making changes to the Code through the legislative process.

CA Stone said because this was a quasi-judicial hearing, the Code required the City Council to make a determination and staff typically did not make a recommendation for these types of hearings. The finding would be whether or not the nuisance existed.

Mayor Andrews closed the hearing at 8:25 p.m.

Deliberation of Council including discussion of criteria with findings of fact:

Councilor McKinney did not want to postpone the decision. He thought the Code was clear and should be followed. He did not want to continue the ambiguity into the future.

Councilor Woodruff said it was written into the Code that it was up to the Council to decide.

Councilor Essin said the decision was made by the tape measure, and he thought it was five feet.

Councilor Corey said the question that night was whether a nuisance existed under the Code, and he thought there was.

Action by the City Council:

MOTION: Essin/Rourke moved to make a finding that this was within Code and no nuisance existed. Motion failed (3 Yes/ 4 No [Corey/Woodruff/Bacon/McKinney]).

AMENDMENT TO THE MOTION: Andrews/Bacon moved to amend the motion that rather than 10 days the appellants could have 30 days to relocate the shed. Motion carried (7 Yes/ 0 No).

MOTION: McKinney/Corey moved to establish that a nuisance existed according to the Newberg Municipal Code. Motion passed (5 Yes/ 2 No [Essin/Rourke]).

NEW BUSINESS:

Green4Growth Grant Opportunity: CM Betz said this was an informational item. She would be submitting the grant application soon, which would benefit the whole community.

Resolution 2015-3181: Associate Planner Jessica Pelz said at the last Council meeting she had discussed the provision to allow waivers to the requirement of increasing employment for an Enterprise Zone designation. Applicants would have to meet the rest of the EZ requirements. To get a waiver, they would have to either complete an investment of \$25 million or more or fulfill all the other requirements provided employment did not decrease below the annual average employment of the firm. They would have to demonstrate at least 10% increase in productivity no later than 18 months following the assessment year and to keep that productivity increase during the life of the abatement. Only one waiver per qualified firm would be allowed per exemption. Staff recommended Council adopt the resolution.

Councilor Rourke wanted the internships to be for Newberg residents only. CM Betz said if an applicant was only asking for a three-year abatement, it would not come before Council. It was only if they were asking for a five-year exemption it would come to Council. Councilor McKinney was concerned about allowing an exemption that did not hire even one extra person and that the Council did not approve applications for three year abatements. Councilor Bacon thought it would help to retain jobs and would bring an overflow of money coming into the area as improvements were being done.

Mayor Andrews saw value in the workforce training, and thought it should be open to all the high schools in Newberg, not just the public school. After the motion was made, Councilor McKinney expressed concern that it was a Newberg tax abatement, and the intern should be from Newberg only and not from the Newberg area which would include Dundee. Mayor Andrews explained the taxing districts participating in the tax abatement went beyond the boundaries of the City.

MOTION: Rourke/Essin moved to approve Resolution 2015-3181, A resolution establishing a program to allow waivers to the standard Enterprise Zone employment requirements consistent with ORS 285 C with two amendments, one under 1-B to include a statement of providing interns from Newberg area residents only and one to amend 1-C from Newberg School District STEM to Newberg area school STEM programs to include private schools. Motion carried (7 Yes/ 0 No).

EXECUTIVE SESSION: Executive session pursuant to ORS 192.660 (2) (n) relating to labor negotiations. The Council entered executive session at 9:11 p.m. The Council re-entered open session at 9:35 p.m.

Resolution 2015-3174: A resolution approving the collective bargaining agreement between the City and the Newberg-Dundee Public Safety Association (NDPSA)

MOTION: Rourke/Woodruff moved to approve Resolution 2015-3174, A resolution approving the Collective Bargaining Agreement between the City and the Newberg-Dundee Public Safety Association (NDPSA); agreement will be effective retroactively to July 1, 2014; authorizing the Mayor and City Manager to execute the agreement and delegating the authority to the City Manager to make amendments and interpretations of the agreement on behalf of the City. Motion carried (7 Yes/ 0 No).

COUNCIL BUSINESS:

Councilor Rourke reported on City Hall Day at the Capitol including meeting elected representatives about Newberg's needs. He explained the League of Oregon Cities' five point agenda for this legislative session and how Newberg's largest challenges fit in with those items.

Mayor Andrews discussed legislation dealing with mid-term collective bargaining and inclusionary zoning pre-emption.

Councilor Bacon thought the Code regarding sheds should be changed. She thought there should be other options rather than having the issue come to Council. There was consensus that for issues such as these that they not rise to the Council level in the future. CM Betz thought making changes to the Code and the Code Enforcement program should be discussed at the upcoming Goal Setting meeting.

Councilor Essin reported on tours he took of the Police Department and Public Works.

Councilor McKinney asked about the status of the sidewalk on Villa Road and its potential completion. CA Stone would look into it and report back.

ADJOURNMENT: The meeting adjourned at 9:55 p.m.

ADOPTED by the Newberg City Council this 16th day of March, 2015.



Sue Ryan, City Recorder

ATTESTED by the Mayor this 19th day of March, 2015.



Bob Andrews, Mayor

RCA for Order No. 2015-0036

Storage shed at
101 E Oxford St

**Newberg City Council Meeting
March 2, 2015**

Abatement Procedure

NMC 8.15.200 Abatement by responsible party.

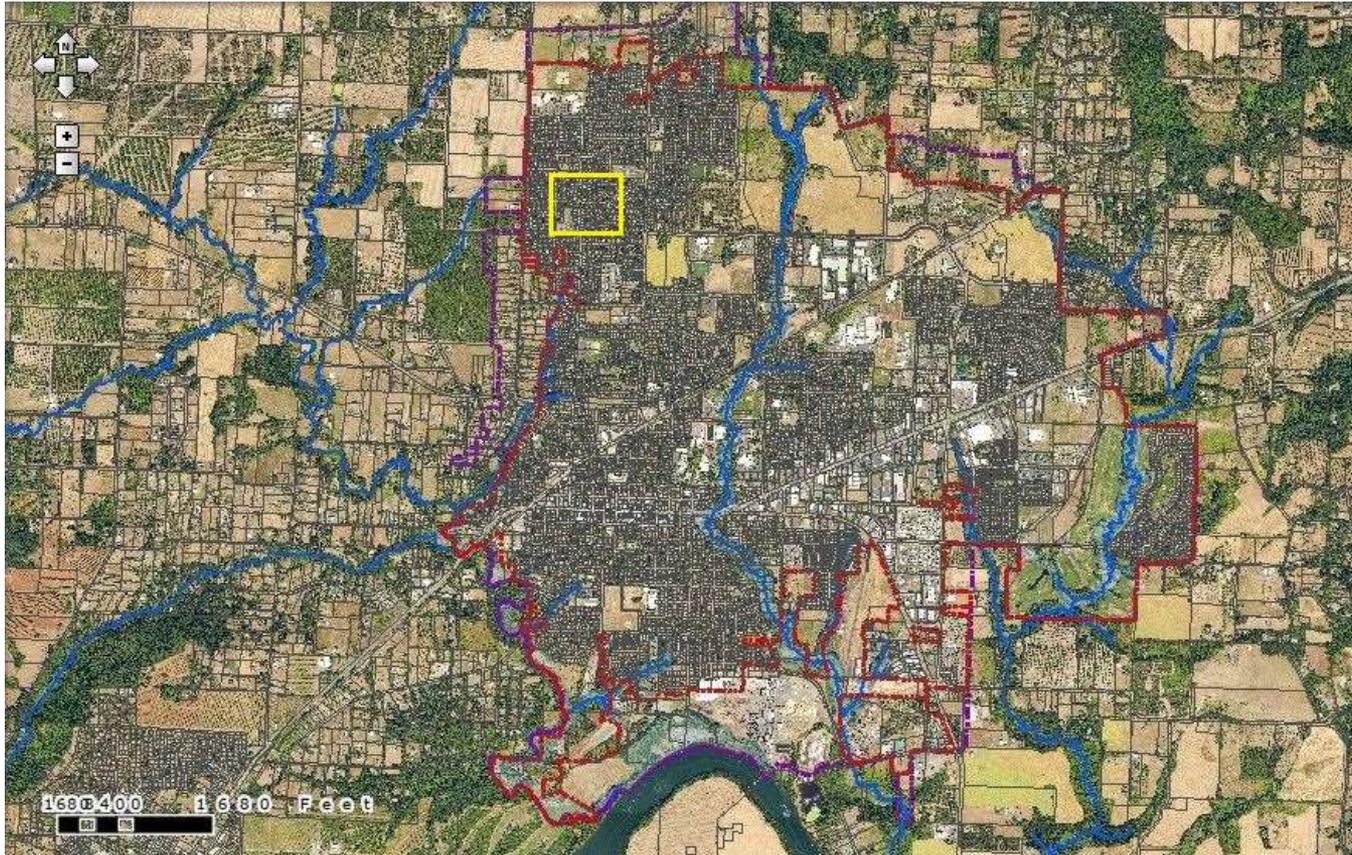
A. Within 10 days after the posting and mailing of the notice as provided in NMC 8.15.190, a responsible party shall remove the nuisance or show that no nuisance exists.

B. A responsible party, protesting that no nuisance exists, shall file with the enforcement officer a written statement specifying the basis for protesting.

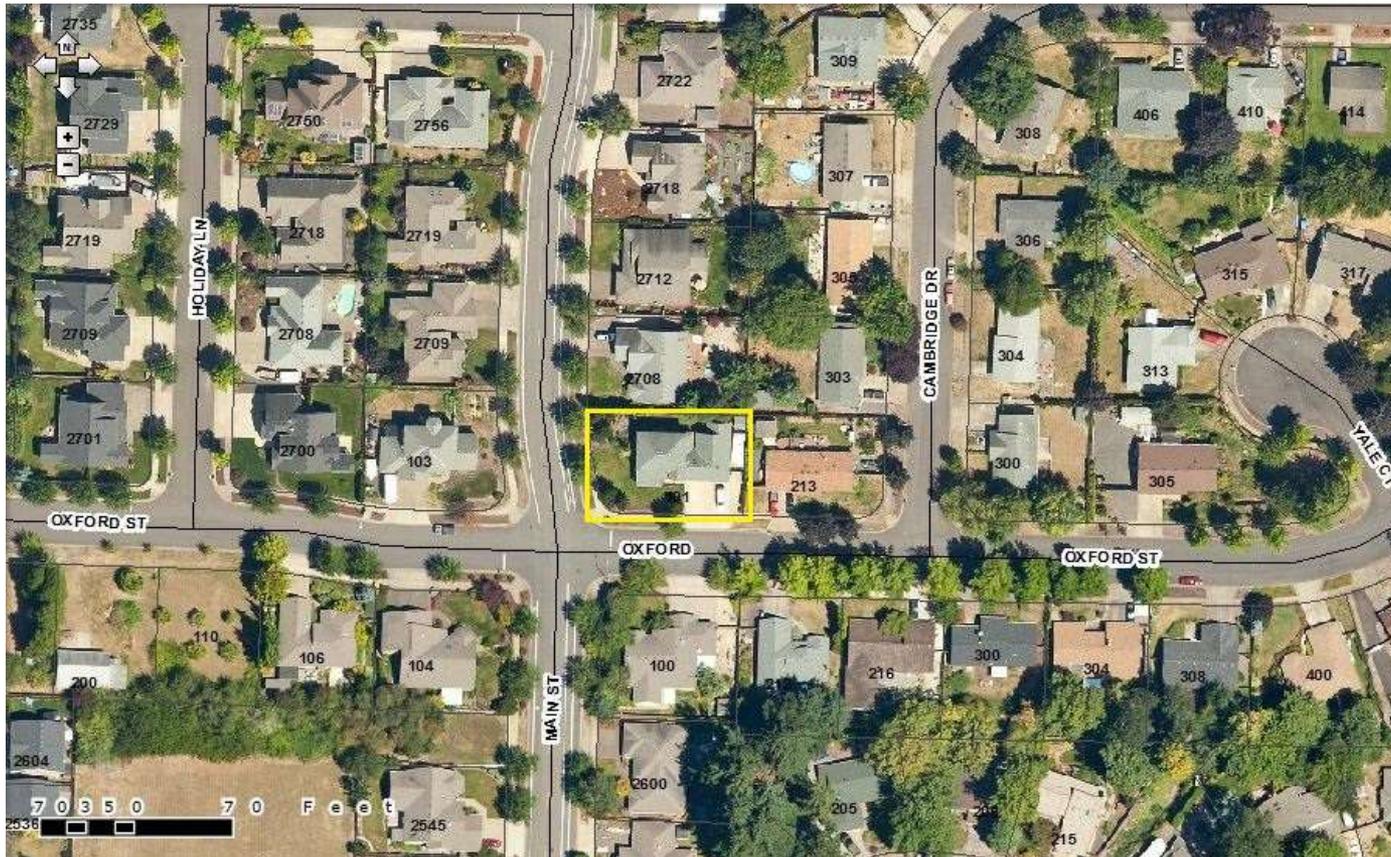
C. The statement shall be referred to the city council as a part of the city council's regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the city council; and **the city council shall determine whether or not a nuisance in fact exists**; and the determination shall be required only in those cases where a written statement has been filed as provided.

D. If the city council determines that a nuisance does in fact exist, a responsible party shall, within 10 days after city council determination, abate the nuisance.

101 E Oxford St



101 E Oxford St



101 E Oxford St



101 E Oxford St



101 E Oxford St



Submitted by Applicant 2/26/2015

Code Requirement

NDC 15.410.030 Interior Yard Setback

A. Residential.

1. All lots or development sites in the AR, R-1, R-2 and R-3 districts shall have interior yards of not less than five feet. . .

NDC 15.05.100 Enforcement

- B. Abatement. Any use which is established, operated, erected, moved, altered, enlarged, painted or maintained contrary to the zoning regulations shall be and is declared to be unlawful and a public nuisance, and may be abated as such.

Brad Allen

From: Sandy Mitchell <sandy@thekellygroup.net>
Sent: Saturday, January 31, 2015 4:49 PM
To: Brad Allen
Subject: RE: shed

Formal Statement by 2-2-15

No nuisance exists, the shed has been in the same location for 14 years without issue. This matter stems from a disgruntled neighbor who doesn't even live in his house, it's a rental. Moving the shed would create an undue hardship for us.

Thank you,

Sandy Mitchell

Licensed in Oregon, Broker/Realtor

The Kelly Group

Keller Williams Realty – Portland Premiere

Cell: 503-502-6408

Fax: 503-336-6708



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Sellers - Please obtain your copy of the Seller's Advisory Guide

From: Brad Allen [<mailto:Brad.Allen@newbergoregon.gov>]
Sent: Friday, January 30, 2015 2:45 PM
To: Sandy Mitchell
Subject: RE: shed

Mrs. Mitchell –

I can allow more time if your intention is to move the shed. Please propose a date by which the shed will be in compliance with the code.

If, however, you want the issue to be considered by the City Council, then we must stick to the deadline of **Feb 2nd, 2015**. That being said, all you need to do by Feb 2nd is to submit a statement (email works fine) specifying your basis for protesting that no nuisance exists. The item will be put on a council meeting agenda. Any evidence or arguments you wish to present can be submitted before or at the meeting.

Let me know if you have questions.

Regards,

Brad Allen

Code Compliance Officer

Ph: 503-554-7709

Fx: 503-537-5013

brad.allen@newbergoregon.gov

414 E First Street

P.O. Box 970

Newberg, OR 97132



<http://www.newbergoregon.gov/>

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From: Sandy Mitchell [<mailto:sandy@thekellygroup.net>]

Sent: Friday, January 30, 2015 1:33 PM

To: Brad Allen

Subject: shed

We request more time

Thank you,

Sandy Mitchell

Licensed in Oregon, Broker/Realtor

The Kelly Group

Keller Williams Realty – Portland Premiere

Cell: 503-502-6408

Fax: 503-336-6708



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Sellers - Please obtain your copy of the [Seller's Advisory Guide](#)

From: Russ Mitchell
101 E Oxford St.
Newberg, OR

To: City of Newberg Code Compliance Division
414 E First St.
Newberg, OR 97132

RE: Accessory building inside minimum interior yard setback at:
101 E Oxford St.
Newberg, OR

City Council Members:

1. The shed in question was built and placed in this location in 2000, in other words, this is the 15th year it's been in this location.
2. The shed is and has been located five feet off of the fence which borders the complainants property and is four feet off the neighbor to the East's property. If we removed the gutter from the shed, we'd be 4'6" off the neighbors to the East's property.
3. Jim and Julie Courson, the neighbors to the East have written a letter stating the shed is absolutely of no concern nor is it problematic to them. The shed hasn't caused any difficulty for them in any way whatsoever. (Please see exhibit seven)
4. This complaint is the direct result of a disgruntled vindictive neighbor (Jim Nichols) and this is how he is expressing his irritation. Jim Nichols doesn't live in his house, it's a rental. He stated to Brad Allen, the Code compliance Officer, he doesn't want to look at the shed, yet he doesn't live in the house and hasn't for two or more years. Note: There are full grown trees blocking the view of the shed.
5. The shed is not a nuisance, it's a nicely build shed (see pictures)
Definition of nuisance is as follows:
Any act, status, condition, thing, substance or activity which is detrimental to, injurious to, or constitutes a danger to the public health, safety or welfare or which is declared, defined, designated or denominated to be a nuisance by any ordinance of the city. Our shed is none of these things.
6. Because of the nature of our lot, our back yard is very narrow; there isn't another location in the back of the house the shed could go. The current location is the least obtrusive, least seen location there is. It would cause undo hardship for us to have to move it, especially since it's been there going on 15 years.

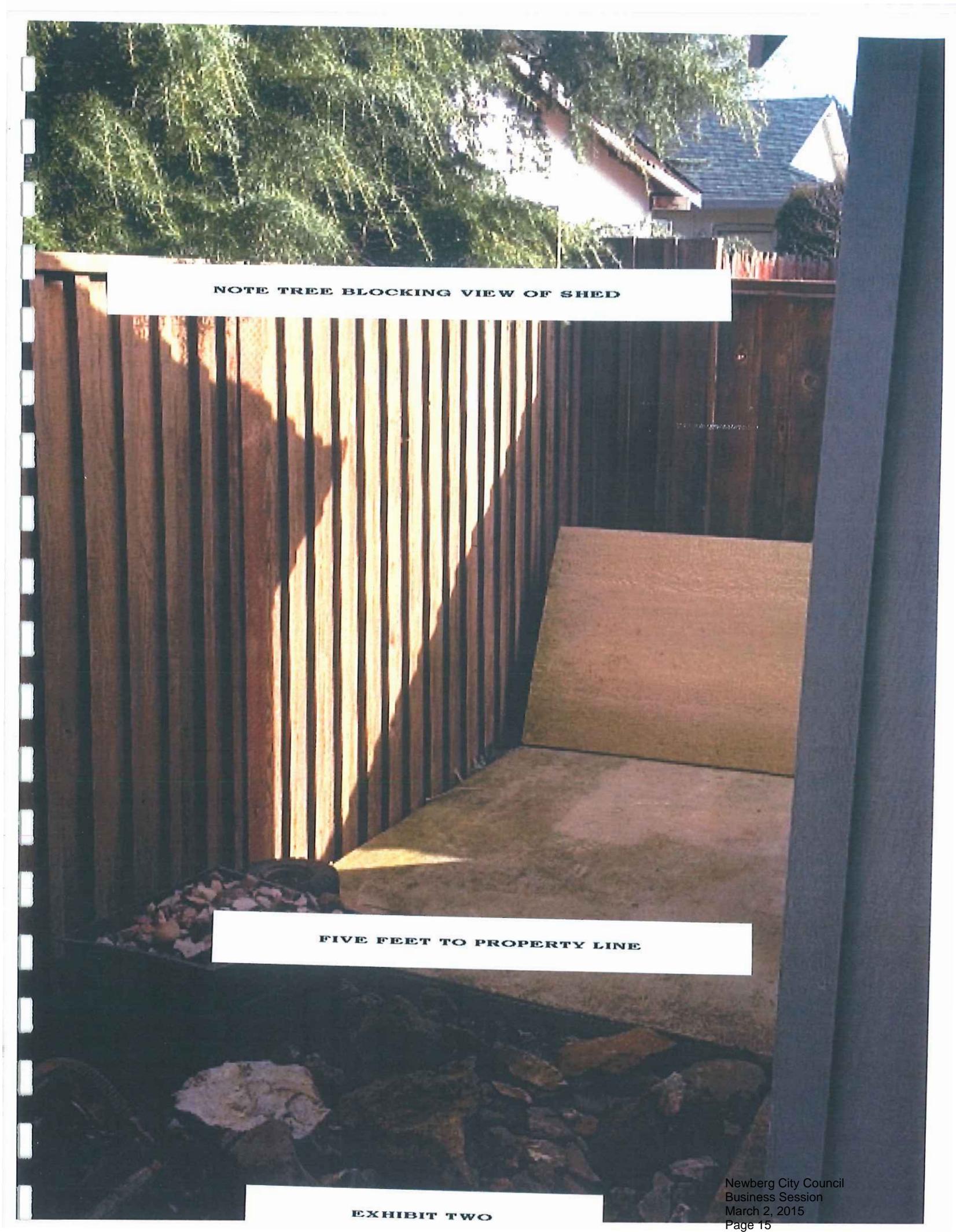
Pg. 2

I've attached photos in order for you to "see" the location of the shed and how the houses "lay out".

1. Exhibit One, Aerial photo: Please note the shed is behind trees which block the complainant's view of the shed. I've circled the shed
2. Exhibit Two: Photo showing we are five feet off the property line of the complainant. Please note trees blocking the view.
3. Exhibit Three: Picture of shed to show it's a nice looking shed, not an eye sore or a nuisance.
4. Exhibit Four: If we remove the gutter, the measurement between our shed and the neighbor to the East is 4' 6".
5. Exhibit Five: Jim Nichols (Complainant) is irritated because we asked him to trim his arborvitae's which were 20 feet tall. As you can see from the picture, he massacred them, making them look as ugly as possible. His Arborvitae intrude into our yard up to three feet. In the 15 years we've lived in our home, he's never trimmed his Arborvitae. He's complaining about our shed, even though its five feet off the property line yet his bushes intrude into our yard up to three feet.
6. Exhibit Six: Picture showing how far over the fence into our yard his arborvitae's intrude, (three feet) they're mostly in our yard.
7. Exhibit Seven: Letter of support from Jim Courson (Neighbor to the East)



EXHIBIT ONE



NOTE TREE BLOCKING VIEW OF SHED

FIVE FEET TO PROPERTY LINE

EXHIBIT TWO

NICE LOOKING SHED, NOT A NUISANCE

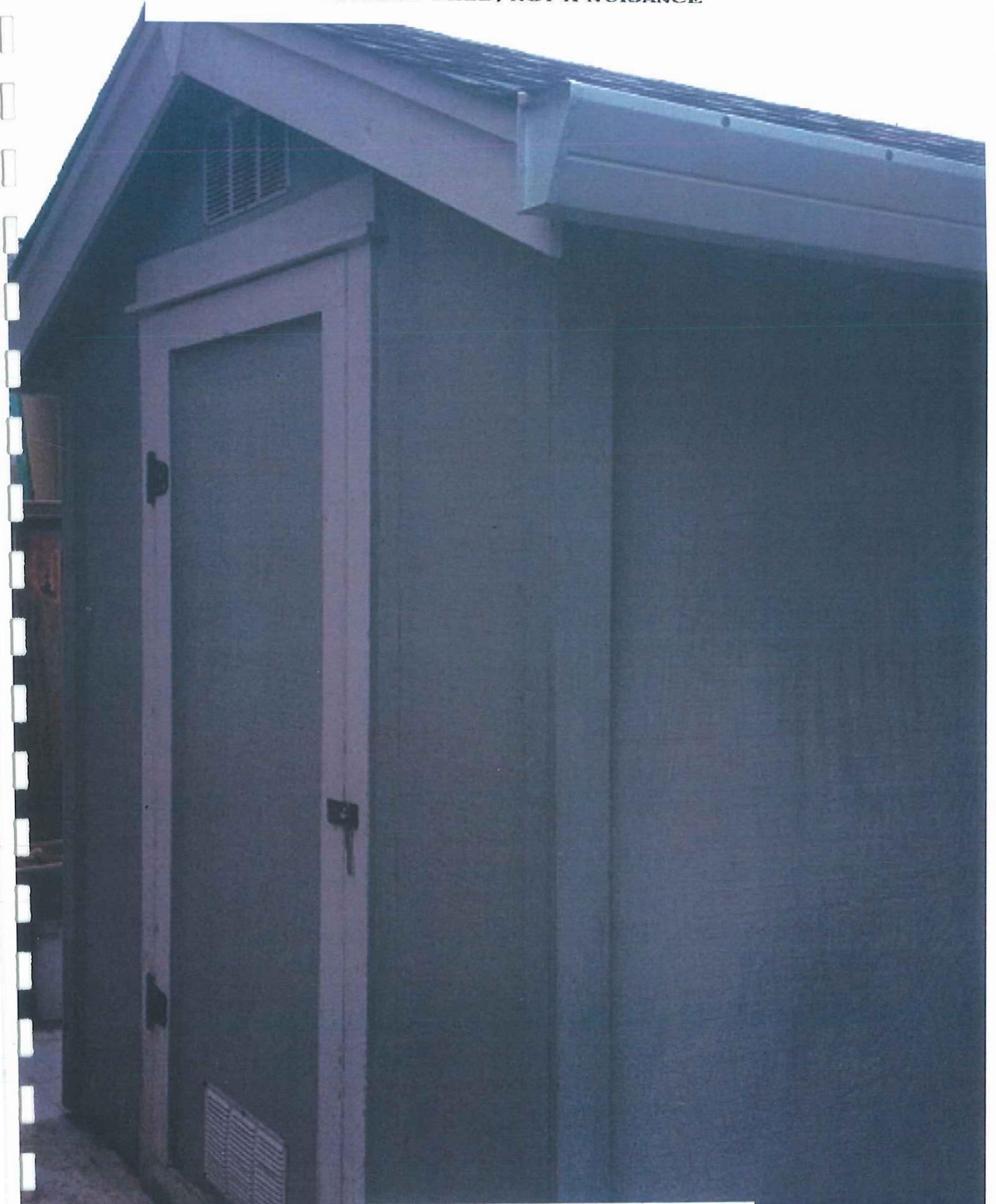


EXHIBIT THREE

**IF GUTTER WAS REMOVED, WE WOULD BE
FOUR FEET SIX INCHES FROM EAST
PROPERTY LINE**



EXHIBIT FOUR

**JIM NICHOLS
HOUSE**

**HIS TREES
OVER HANGING
INTO OUR YARD**

OUR HOUSE

SHED

**MASSACRED
ARBORVITAE**

**PROPERTY LINE
SHOWING HOW FAR HIS BUSHES
INTRUDE ONTO OUR PROPERTY**

EXHIBIT FIVE

COMPLAINANTS ARBORVITAE
EXTENDING THREE FEET
INTO OUR YARD

FENCE

EXHIBIT SIX

February 21, 2015

To whom it may concern--

This letter is written to let the appropriate parties know that the small shed-structure in the backyard of Russ & Sandy Mitchell is absolutely of no concern or problematic to us. We share a backyard property and fence-line with them and the shed is near that line. It has not caused any difficulty for us in any way whatsoever.

The Mitchells have been stellar neighbors. They and their home are a wonderful addition to our neighborhood. We count it a privilege to live next door to them.

If you have any more need for inquiry please feel free to contact us.

Sincerely,



Jim & Julie Courson
213 E. Oxford St.
Newberg, OR 97132

phone-- 503-330-1088

From: Brad Allen
Sent: Tuesday, February 24, 2015 2:50 PM
To: Sue Ryan
Subject: FW: Information for city council meeting on Jim Nicol property(PDF below)
Attachments: 1817_001.pdf; ATT00001.htm

The email below as well as the attached letter were submitted by Jim Nicol in regards to Mar 2nd council agenda item (Order 2015-0036). Please include them in the packet.

Thanks,

Brad Allen
Code Compliance Officer
503-554-7709

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From: Jim Nicol [<mailto:jnicolfishon@hotmail.com>]
Sent: Tuesday, February 24, 2015 12:59 PM
To: Brad Allen
Subject: Information for city council meeting on Jim Nicol property(PDF below)

I'm sorry I can't be at this meeting, I'm scheduled to be working out of town most of March. I have listed some of my concerns and history with Mr. Mitchell.

Here is my concern. I bought this property in 1998. The Michell's home was not built. The yellow home to the east of Mr. Mitchell had a outbuilding with a five foot set back and the home directly east of mine had a shed with a again a five foot set back. I wasn't crazy about having two sheds in my backyard, but they did comply with code and I new I could cover up the shed to the east through the planting of the right tree. Leaving me only one shed in my backyard that would be visible. Then Mr. Mitchell builds on the lot and puts a shed that requires me to put up additional trees that now looks over grown for the given area. All of this too try and protect the value and appearance of my backyard. I don't believe I should be forced to plant multiple trees to protect the view in my backyard. Three sheds with ONE not being to code effects the value of my investment. Based on code I don't see how Mr. Mitchell's shed and RV can both be located in that small area. As I understand, codes are to protect the Homeowner on a property value as well as the community from a unsafe situation where possible hazards of having a outbuilding too close to a fence line. At no point have I read that any complaint must be filed by and only by the direct property line owner. This shed has forced me too plant multiple trees in areas I never intended on and currently I want to change my landscape but I'm handicapped by a shed that

violates city code and diminishes the value of my property.

Imagine having to look at three sheds in your backyard and knowing one is not conforming to city code. This being the same city code that I've been required to abide by in four different incidents in the last 17 years.

In closing I think it's important to know that the Mr. Mitchell has threatened to file a lawsuit against me for my arborvitae not conforming to CCR (letter in PDF below). Once I realized they were not conforming to CCR, vs city code, I cut them to conforming height. Also approximately 8 years ago I tried to put an outbuilding up the same distance from his property line. I had bought the gutters and all the sides and was putting up the roof when he told me that my shed was in violation of city code being too close to property line. I lost all the money I put into that project. Unless I wanted four sheds in my backyard.

I share this bit of information with you because it seems Mr. Mitchell is serious about me conforming to codes but feels code doesn't apply to him, even when asked to move his outbuilding by the city code enforcer.

I don't think we can pick and choose what city codes to enforce and who we want to enforce them upon.

I do appreciate all your time and consideration on this matter.

Jim Nicol
Nicol Guide Service
[503-550-3166](tel:503-550-3166)
Sent from my iPad

Jim Nicol
Nicol Guide Service
503-550-3166
Sent from my iPad

Subject: Attached Image

October 1, 2014

authority to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any of said covenants, either to prevent the doing of such, or to recover damages sustained by reason of such violation. Failure by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3, Expenses and Attorney's Fees:

In the event any person or persons owning any real property embraced within the plat of Cottonwood Meadows including the Declarant, shall bring any suit or action to enforce these covenants, the prevailing property shall be entitled to recover all costs and expenses incurred by him in connection with such suit or action, including such amounts as the court may determine to be reasonable attorney's fees at trial and upon any appeal thereafter.

Sandy and I have talked to you three to four times over the last three years in regards to your Arborvitae and it is clear you have no intention of trimming them as required within the CCR's you agreed to abide by. The trees you planted in the back yard are lifting our fence and they need to be dealt with before further damage is done. The branches hanging over into our yard need to be trimmed. Since you've refused to abide by the CCR's, you leave me no alternative but to turn this matter over to an attorney.

You have until November 3, 2014 to trim your shrubs and trees to meet compliance of the CCR's for Cottonwood Meadows or I will file a lawsuit against you.

Sincerely,



James R. Mitchell