



City Council Special Session

January 29, 2026

6pm

Newberg Public Safety Building 401 E. Third Street

Denise Bacon Community Room

Online: <https://us06web.zoom.us/j/89536547180>

1. Call to Order
2. Roll Call
3. Executive Session
Pursuant to ORS 192.660 (2)(h) "To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed."
4. Business Session
 - 4.1. [Resolution of Crestview Crossing Lawsuit](#) *
 - a. [Exhibit A. Settlement Agreement](#) *
5. Adjournment

ADA Statement: Contact the City Recorder's Office for physical or language accommodation at least 2 business days before the meeting. Call (503) 537-1283 or email cityrecorder@newbergoregon.gov. For TTY services please dial 711.

*Indicates Supplementary Item

REQUEST FOR COUNCIL ACTION



Date Action Requested: January 29, 2026

Order Ordinance Resolution Motion Information Proclamation
No. 2026-4011

Subject: Resolution of <i>Newberg Crestview, LLC v. City of Newberg</i>	Staff: James Walker Department: Legal
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Business Session	Order On Agenda:
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Hearing Type: Legislative <input type="checkbox"/> Quasi-Judicial <input type="checkbox"/> Administrative <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>

Is this item state mandated? Yes No

If yes, please cite the state house bill or order that necessitated this action:

Recommendation: Staff recommends approval of Resolution 2026-4011, which approves the Settlement Agreement resolving *Newberg Crestview, LLC v. City of Newberg*.

Executive Summary: In August of 2022, Newberg Crestview, LLC (“Crestview”) filed a lawsuit (which was later updated by a Second Amended Complaint) in the U.S. District Court of Oregon against the City of Newberg asserting claims for an unconstitutional taking under the Fifth Amendment of the U.S. Constitution, an unconstitutional taking under Article I, Section 18 of the Oregon Constitution, an Oregon state law statutory tort, and an Oregon state law tort for negligence per se, in a case entitled *Newberg Crestview, LLC v. City of Newberg*, U.S. District Court, District of Oregon, Case No. 3:22-cv-01289-AR. On October 25, 2024, U.S. Magistrate Judge Jeffrey Armistead issued an Opinion and Order dismissing three of Crestview’s four claims with prejudice: (1) unconstitutional taking under the Oregon Constitution, (2) Oregon state law statutory tort, and (3) Oregon state law tort for negligence per se. The City denies liability for Crestview’s remaining claim for an unconstitutional taking under the U.S. Constitution.

City staff recently participated in a mediation with representatives of Crestview in an effort to resolve the case short of further litigation and trial. The mediation resulted in the Settlement Agreement included in Council’s agenda materials.

Fiscal Impact: In exchange for a release of claims, the City will make a monetary payment of \$958,936 to Newberg Crestview, LLC and issue the following System Development Charge Credits to Crestview’s affiliate, Spring Meadow South, LLC:

- Transportation SDC Credits equal to \$512,117;
- Stormwater SDC Credits equal to \$21,901;
- Wastewater SDC Credits equal to \$78,585; and
- Water SDC Credits equal to \$78,461

Council Goals:



RESOLUTION NO. 2026-4011

A RESOLUTION OF THE NEWBERG CITY COUNCIL APPROVING A SETTLEMENT AGREEMENT
BETWEEN THE CITY OF NEWBERG AND NEWBERG CRESTVIEW, LLC

Recitals:

1. Whereas, in August of 2022, Newberg Crestview, LLC (“Crestview”) filed a lawsuit (which was later updated by a Second Amended Complaint) in the U.S. District Court of Oregon against the City of Newberg asserting claims for an unconstitutional taking under the Fifth Amendment of the U.S. Constitution, an unconstitutional taking under Article I, Section 18 of the Oregon Constitution, an Oregon state law statutory tort, and an Oregon state law tort for negligence per se, in a case entitled *Newberg Crestview, LLC v. City of Newberg*, U.S. District Court, District of Oregon, Case No. 3:22-cv-01289-AR (the “Case”).
2. Whereas, in an effort to resolve the Case short of further litigation and a trial, representatives of the City and Crestview recently participated in mediation proceedings.
3. Whereas, representatives of the City and Crestview prepared the Settlement Agreement attached to this Resolution in which the City agrees to make a monetary payment to Crestview and issue System Development Charge Credits to Crestview’s affiliate, Spring Meadow South, LLC, in exchange for dismissal of all claims in the Case by both parties (the “Settlement Agreement”).

The City of Newberg Resolves as Follows:

1. The Council approves the Settlement Agreement between the City of Newberg and Crestview.
2. The City Attorney is instructed and authorized to amend and approve the terms and conditions, if necessary, in substantial compliance with this Resolution.
3. Mayor Bill Rosacker and City Manager Will Worthey are each authorized, individually or collectively, to sign the final Settlement Agreement on behalf of the City.

Effective Date of this resolution is the day after the adoption date, which is: January 29, 2026.

Adopted by the City Council of Newberg, Oregon, this 29th day of January, 2026.

Rachel Thomas, City Recorder

Attest by the Mayor this 29th day of January, 2026.

Bill Rosacker, Mayor

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into by and among NEWBERG CRESTVIEW, LLC, an Oregon limited liability company (hereinafter “Crestview”); and CITY OF NEWBERG, a municipal entity (hereinafter “City”) (collectively, the “Parties” and individually “Party”). This Agreement is effective on the date the last Party signs this Agreement (the “Effective Date”).

RECITALS

- A. At all relevant times, Crestview was the owner of property in the City of Newberg, commonly known as Crestview Crossing. Crestview applied for a Planned Unit Development (“PUD”) in 2018. On October 11, 2018, the City issued Planning Commission Order 2018-10 approving PUD18-001/CUP18-0004 for the Crestview Crossing PUD (the “2018 Order”).
- B. Issues arose between Crestview and the City regarding eligibility for and payment of System Development Charge (SDC) Credits for certain improvements required as conditions of approval in the 2018 Order.
- C. Crestview filed a lawsuit, including a Second Amended Complaint, in the U.S. District Court of Oregon against the City asserting claims for an unconstitutional taking under the Fifth Amendment of the U.S. Constitution, an unconstitutional taking under Article I, Section 18 of the Oregon Constitution, an Oregon state law statutory tort, and an Oregon state law tort for negligence per se, in the case entitled *Newberg Crestview, LLC v. City of Newberg*, U.S. District Court, District of Oregon, Case No. 3:22-cv-01289-AR (“Case”). On October 25, 2024, U.S. Magistrate Judge Jeffrey Armistead issued an Opinion and Order dismissing three of Crestview’s four claims with prejudice: (1) unconstitutional taking under the Oregon Constitution, (2) Oregon state law statutory tort, and (3) Oregon state law tort for negligence per se. The City

denied liability for Crestview's remaining claim for an unconstitutional taking under the U.S. Constitution and asserted a counterclaim for attorneys fees.

D. The Parties desire to fully settle the Case upon the below terms and conditions.

SETTLEMENT AND RELEASE

Now, therefore, in consideration of the mutual promises set forth below, it is agreed as follows:

1. Settlement Payment and Credit Issuance.

- a. City to provide System Development Charge ("SDC") Credits to Spring Meadow South, LLC ("SMS") and monetary payments to Crestview with a total value of \$1,650,000.00, as allocated below:
- b. SDC Credits issued to SMS in the total sum of \$691,064.00 and allocated as follows:
 - i. Transportation SDC Credits to be applied towards SDCs incurred in connection with the Spring Meadow Apartments Project (the "Project"): \$512,117.00;
 - ii. Stormwater SDC Credits to be applied towards SDCs incurred in connection with the Project: \$21,901.00;
 - iii. Wastewater SDC Credits to be applied towards SDCs incurred in connection with the Project: \$78,585.00;
 - iv. Water SDC Credits to be applied towards SDCs incurred in connection with the Project: \$78,461.00.
- c. Monetary payment to Crestview equal to \$958,936.00 ("Monetary Payment").

The Monetary Payment to be due upon the City's receipt of Crestview's Form W-9 and within 14 calendar days of the Effective Date of this Agreement. The

Monetary Payment, consistent with the requirements of this Section, will be made available by check made out to Newberg Crestview, LLC and available for pick up at the offices of Miller Nash LLP, 1140 SW Washington, Suite 700, Portland, Oregon 97205.

- d. The issued SDC Credits may only be applied to the same type of SDC fees as the credits are issued (i.e., they are not a universal credit), as specifically allocated above in Section 1(b).
- e. If on the date that the City issues a Building Permit for the Project, SMS holds SDC Credits that (1) are listed in Section 1(b) of this Agreement and (2) exceed the SDC's arising from the Project, then SMS will notify the City in writing of the excess credits within 14 days after the City's issuance of the Building Permit (the "Notice"). If the City receives a Notice as described in this Section, then the City will make a monetary payment to SMS equal to the difference between the SDC Credit issued and the pertinent SDC arising from the Project. The City will make payment under this Section upon the City's receipt of SMS's Form W-9 and within 14 calendar days of receiving the Notice.

2. No Admission of Liability.

This Agreement is not and may not be construed in any way as an admission or acknowledgement of liability or wrongdoing on the part of any Party. Each Party expressly denies all liability ever alleged or claimed against that Party.

3. Dismissal of Case.

Crestview and City agree to dismiss all claims and counterclaims in *Newberg Crestview, LLC v. City of Newberg*, U.S. District Court, District of Oregon, Case No. 3:22-cv-01289-AR with

prejudice and without fees or costs to any Party. Crestview will file a stipulated general judgment of dismissal in a form agreeable to the City within five (5) calendar days of Crestview's receipt of the Monetary Payment.

4. Release of Claims.

Except for the rights and obligations set forth in this Agreement, City and Crestview, and their related departments, boards, companies, affiliated companies or divisions, subsidiaries, all of its present and former councilors, representatives, owners, affiliates, shareholders, officers, directors, members, managers, employees, principals, agents, trustees, attorneys, insurers, sureties, bonds, successors, administrators and assigns, do hereby unconditionally release and forever discharge the other, and their related departments, boards, companies, affiliated companies or divisions, subsidiaries, all of its present and former councilors, representatives, owners, affiliates, shareholders, officers, directors, members, employees, principals agents, trustees, attorneys, insurers, sureties, bonds, successors, administrators and assigns, of and from every claim, obligation, cause of action or liability of any kind whatsoever (including but not limited to fraud or fraud in the inducement), whether known or unknown, vested or contingent, in law, equity or otherwise, that each may now or hereafter have against each other, for any claims or counterclaims asserted in the Case and for any other claims or counterclaims that could have been asserted arising from the 2018 Order or based upon the facts alleged in the Case.

Except for the rights and obligations set forth under of this Agreement, SMS shall fully release the City from any and all claims that could be asserted based on the facts alleged in the Case and specifically with respect to any claim for an unconstitutional taking or SDC Credit.

5. Non-assignment of Claims.

The Parties represent and warrant that they have not assigned or transferred any portion of the

claims released under this Agreement to any other person, firm, corporation, limited liability company, or other entity. The Parties also represent that no person firm, corporation, limited liability company, or other entity has any lien or interest in any such claims.

6. Miscellaneous.

a. This Agreement may not be changed orally. No modification, amendment, or waiver of any of the provisions contained in this Agreement or any future representation, promise or condition in connection with the subject matter of this Agreement shall be binding on any Party to this Agreement unless made in writing and signed by each Party or a duly authorized officer or agent of such Party.

b. This constitutes the entire fully integrated agreement between the Parties regarding the settlement of the Case. The Parties acknowledge that any prior representations or promises, if they are not contained herein, are of no force and effect. The Parties also acknowledge that they have entered into this Agreement for the promises and obligations expressed herein, and that no prior representation or promise has induced the Party to enter into this Agreement.

c. All Parties acknowledge that they have reviewed this Agreement prior to signing, that they have each carefully read it, that they have been represented by competent counsel, that they fully understand its binding effect, and that they have voluntarily signed the document with the full intent of releasing claims as set forth above and performing their respective duties as set forth above.

d. Should any provision of this Agreement be determined by any court to be illegal or invalid, the court shall reform such provision to the least and narrowest extent necessary to render it legal and valid, and shall then enforce such reformed provision. If such provision

cannot reasonably be reformed, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected thereby, and said illegal or invalid part, term, or provision will be deemed not to be part of this Agreement. Any reformed Agreement must satisfy the intent of the unreformed Agreement with respect to the total value owed.

e. This Agreement may be executed in separate counterparts, which together constitute a single instrument. Counterparts may be executed by electronic, facsimile, or digital signature. Copies made or transmitted by electronic or other reliable means will be effective as originals.

f. This Agreement shall be governed by the laws of the state of Oregon, without regard to principles of choice of law.

g. This Agreement shall be considered as drafted by the Parties jointly, and as such it shall not be interpreted against any particular Party merely because that Party drafted the Agreement.

h. Each person signing below covenants and warrants that he or she is authorized to sign on behalf of the party purportedly represented, and that such party is authorized to enter into this Agreement.

[Continued on Next Page]

IT IS SO AGREED:

NEWBERG CRESTVIEW, LLC

By:

Title:

Dated: _____

By:

Title:

Dated: _____

By:

Title:

Dated: _____

[Continued on Next Page]

CITY OF NEWBERG

Dated: _____

By: _____

Title: _____

Authorizing Act: _____