

Council accepts comments on agenda items during the meeting. Please fill out a form identifying the item(s) you wish to speak on prior to the meeting starting, if possible, or prior to the agenda item beginning and turn it into the City Recorder. (The exception is formal land use hearings, which requires a specific public hearing process.)

CITY OF NEWBERG
UPDATED - CITY COUNCIL AGENDA
DECEMBER 21, 2009
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET

I. CALL MEETING TO ORDER*

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. CITY MANAGER'S REPORT

V. PUBLIC COMMENTS

(30 minutes maximum which may be extended at the Mayor's discretion; an opportunity to speak for no more than 5 minutes per speaker allowed)

VI. CONSENT CALENDAR

1. Consider a motion [appointing Janet Irish, Thomas Barnes, and Deanna Moore to the Budget Committee](#) for terms expiring December 31, 2012. (Pgs.
2. Consider a motion [appointing David Maben and Tony Rourke to the Citizen Rate Review Committee](#) for terms expiring December 31, 2012.
3. Consider a motion [appointing Lon Wall and Warren Parrish](#) for terms expiring December 31, 2012; [appoint Thomas Barnes](#) for a term expiring December 31, 2010; and [ratify the Newberg Urban Area Management Commission \(NUAMC\) appointment of Sally Dallas](#) for a term expiring December 31, 2012, to the NUAMC.
4. Consider a motion approving [City Council Minutes](#) for November 16, 2009.

VII. PUBLIC HEARING

Consider a motion to approve [Order No. 2009-0025](#) approving the findings that the proposed annexation and concurrent zone change meet the applicable Newberg Development Code criteria and approve [Ordinance No. 2009-2722](#) annexing property located at 1409 South Sandoz Road and scheduling the annexation for the May 18, 2010, General Election.
(Quasi-Judicial Hearing)

VIII. NEW BUSINESS

Consider a motion approving [Resolution No. 2009-2880](#) consenting to the transfer of control of the Verizon Cable TV Franchise to Frontier.

*The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

IX. COUNCIL BUSINESS

1. *Executive Session pursuant to ORS 192.660(2)(a) relating to employment of a public officer – Municipal Judge Recruitment.*
2. *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 – Initiative Petition.*

X. ADJOURNMENT

INDEX OF ORDERS, ORDINANCES AND RESOLUTIONS:

ORDERS:

Order No. 2009-0025 finding that property located at 1409 S. Sandoz Rd., Yamhill County tax lot 3229-100, meets the applicable Newberg Development Code criteria to be annexed into the city, and meets the applicable code criteria to change the zoning designation from Yamhill County Af-10 and HI to City M-3 and M-2, with an interim industrial use overlay on the northern part of the site within the bypass route.

ORDINANCES:

Ordinance No. 2009-2722 declaring property located at 1409 S. Sandoz Road, Yamhill County tax lot 3229-100, be annexed into the City of Newberg and withdrawn from the Newberg Rural Fire Protection District subject to a public vote, and authorizing and directing the city elections officer to certify to the Yamhill County Clerk a ballot title for the measure to be submitted to the electorate of the City of Newberg for their approval of an annexation for this same property.

RESOLUTIONS:

Resolution No. 2009-2880 consenting to the transfer of control of the franchisee and of the Cable Franchise granted to Verizon Northwest, inc. to Frontier Communications Corporation, with conditions.

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Manager's office of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact Norma Alley, City Recorder, at (503) 537-1283.

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(30 minutes maximum which may be extended at the Mayor's discretion; an opportunity to speak for no more than 5 minutes per speaker allowed)

VI. CONSENT CALENDAR

1. Consider a motion [appointing Janet Irish, Thomas Barnes, and Deanna Moore to the Budget Committee](#) for terms expiring December 31, 2012. (Pgs. 3-6)
2. Consider a motion [appointing David Maben and Tony Rourke to the Citizen Rate Review Committee](#) for terms expiring December 31, 2012. (Pgs. 7-10)
3. Consider a motion [appointing Lon Wall and Warren Parrish](#) for terms expiring December 31, 2012; [appoint Thomas Barnes](#) for a term expiring December 31, 2010; and [ratify the Newberg Urban Area Management Commission \(NUAMC\) appointment of Sally Dallas](#) for a term expiring December 31, 2012, to the NUAMC. (Pgs. 11-15)
4. Consider a motion approving [City Council Minutes](#) for November 16, 2009. (Pgs. 17-22)

VII. PUBLIC HEARING

Consider a motion to approve [Order No. 2009-0025](#) approving the findings that the proposed annexation and concurrent zone change meet the applicable Newberg Development Code criteria and approve [Ordinance No. 2009-2722](#) annexing property located at 1409 South Sandoz Road and scheduling the annexation for the May 18, 2010, General Election. (Pgs. 23-88)
(Quasi-Judicial Hearing)

VIII. NEW BUSINESS

Consider a motion approving [Resolution No. 2009-2880](#) consenting to the transfer of control of the Verizon Cable TV Franchise to Frontier. (Pgs. 89-103)

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*The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: December 21, 2009

Order ___ Ordinance ___ Resolution ___ Motion XX Information ___
No. No. No.

SUBJECT: Appoint Janet Irish, Thomas Barnes, and Deanna Moore to the City of Newberg Budget Committee.

Contact Person (Preparer) for this Motion: **Bob Andrews, Mayor**

Dept.: **Administration**
File No.:

RECOMMENDATION:

To consent to the appointment, by the Mayor, of Janet Irish, Thomas Barnes, and Deanna Moore for three positions with terms expiring December 31, 2009, on the Newberg Budget Committee. The new terms will run from January 1, 2010, to December 31, 2012.

EXECUTIVE SUMMARY:

The Newberg Budget Committee is a seven member committee that has three positions with expiring terms effective December 31, 2009. Public notice of this vacancy was posted in City buildings, advertised in the local Newberg Graphic, and posted on the City's website. Four applications were received prior to the final deadline of 5:00 p.m., Friday, November 20, 2009, from:

| Name | Council District |
|----------------|------------------|
| Thomas Barnes | 6 |
| Janet Irish | 4 |
| Dianna Cotter | 6 |
| Robert Hurford | 6 |

The Deadline was extended to 5:00 p.m., Tuesday, December 8, 2009, and The City received one application from:

| Name | Council District |
|--------------|------------------|
| Deanna Moore | 6 |

All applications were considered and the Mayor has selected Janet Irish, Thomas Barnes, and Deanna Moore to fill the vacant positions.

FISCAL IMPACT:

None

STRATEGIC ASSESSMENT:

The Committee provides a valuable service to the City of Newberg.

**BUDGET COMMITTEE
CITIZEN MEMBERSHIP LIST
January 2009**

| District No. | Member/Address | Phone | Term Appointments |
|---------------------|-------------------------------|--------------|---|
| 3 | Joel Perez, Vice-Chair | | Term: 3 years Appointed: 1/16/06 Re-Appointed: Expires: 12/31/09 |
| 4 | Andrew Smith | | Term: 3 years Appointed: 1/16/07 Re-Appointed: Expires: 12/31/09 |
| 3 | Darlyn Adams | | Term: 3 years Appointed: 1/22/02 Re-Appointed: 3/21/05, 12/17/07 Expires: 12/31/10 |
| 6 | Ernie Amundson, Jr. | | Term: 3 years Appointed: 3/21/05 Re-Appointed: 12/17/07 Expires: 12/31/10 |
| 6 | John (Jack) Reardon | | Term: 3 years Appointed: 12/5/05 Re-Appointed: 12/15/08 Expires: 12/31/11 |
| 2 | Lon Wall, Chair | | Term: 3 years Appointed: 1/21/03 Re-Appointed: 12/5/05, 12/15/08 Expires: 12/31/11 |
| 6 | Thomas Barnes | | Term: 3 years Appointed: 1/16/06 Re-Appointed: Expires: 12/31/09 |

Budget Committee: Positions Opening - 3

The City of Newberg's Budget Committee is a forum of City Council members and an equal number of non-council citizen members whose duties are to review, analyze, and discuss the annual budget proposed by the City staff. The minimum age requirement is 18, must be a registered voter, and the applicants must live in the City of Newberg. This committee meets between the months of January and June.

Among revenues and expenditures is the proposed budget Property Tax distribution. The committee has an important impact on where those dollars go and which services benefit the community the most.

The City has three (3) openings for applicants for a three-year term beginning January 1, 2010. Three seats of the non-council members are vacant due to their terms ending.

Applications for the Budget Committee openings need to be received by November 20, 2009 at 5pm for consideration on December 21, 2009, by the City Council. If you have further questions please contact Janelle Nordyke, Finance Director at Janelle.nordyke@newbergoregon.gov or call 503-537-1216.

Applications are available on the City of Newberg's website
<http://www.newbergoregon.gov/citycouncil/application-serve-committee>

Original applications are retained in the City
Recorder's Office.

Please call (503) 537-1283 to request a copy.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: December 21, 2009

Order ___ Ordinance ___ Resolution ___ Motion XX Information ___
No. No. No.

SUBJECT: Appoint David Maben and Tony Rourke to the City of Newberg Citizen Rate Review Committee.

Contact Person (Preparer) for this Motion: **Bob Andrews, Mayor**

Dept.: **Administration**
File No.:

RECOMMENDATION:

To consent to the appointment, by the Mayor, of David Maben and Tony Rourke for two positions with terms expiring December 31, 2009, on the Newberg Citizen Rate Review Committee. The new terms will run from January 1, 2010, to December 31, 2012.

EXECUTIVE SUMMARY:

The Newberg Citizen Rate Review Committee is a seven member committee that has two positions with expiring terms effective December 31, 2009. Public notice of this vacancy was posted in City buildings, advertised in the local Newberg Graphic, and posted on the City's website. Three applications were received prior to the final deadline of 5:00 p.m., Friday, November 20, 2009, from:

| Name | Council District |
|---------------|------------------|
| Tony Rourke | 4 |
| Dianna Cotter | 6 |
| David Maben | 3 |

All applications were considered and the Mayor has selected David Maben and Tony Rourke to fill the vacant positions.

FISCAL IMPACT:

None

STRATEGIC ASSESSMENT:

This Committee provides a valuable service to the City of Newberg.

CITIZENS RATE REVIEW COMMITTEE LIST

Updated: November 4, 2009

| District No. | Member/Contact Info | Term Appointments |
|--------------|---------------------------|--|
| 5 | Charles Zickefoose | Term: 3 years Appointed: 11/7/2005 Re-Appointed: 12/17/2007 Expires: 12/31/2010 |
| 6 | Mike Gougler | Term: 3 years Appointed: 2/6/2006 Re-Appointed: 12/17/2007 Expires: 12/31/2010 |
| 6 | Ernie Amundson, Jr. | Term: 3 year Appointed: 2/20/2001 Re-Appointed: 2/2003, 11/2005, 1/5/2009 Expires: 12/31/2011 |
| 4 | Matson Haug, Chair | Term: 3 years Appointed: 4/6/1998 Re-Appointed: 2/2003, 11/7/2005, 1/5/2009 Expires: 12/31/2011 |
| 5 | Beth Keyser | Term: 3 years Appointed: 1/5/2009 Re-Appointed: Expires: 12/31/2011 |
| 3 | David Maben | Term: 3 years Appointed: 2/20/2001 Re-Appointed: 3/5/2007 Expires: 12/31/2009 |
| 4 | Tony Rourke | Term: 3 years Appointed: 3/17/2008 Re-Appointed: Expires: 12/31/2009 |

Citizen Rate Review Committee: Positions Opening - 3

The City of Newberg's Citizen Rate Review Committee is a forum of City Council members and an equal number of non-council citizen members whose duties are to review, analyze, and discuss the annual budget proposed by the City staff. The minimum age requirement is 18, must be a registered voter, and the applicants must live in the City of Newberg. This committee meets between the months of January and June.

Among revenues and expenditures is the proposed budget Property Tax distribution. The committee has an important impact on where those dollars go and which services benefit the community the most.

The City has three (3) openings for applicants for a three-year term beginning January 1, 2010. Three seats of the non-council members are vacant due to their terms ending.

Applications for the Citizen Rate Review Committee openings need to be received by November 20, 2009 at 5pm for consideration on December 21, 2009, by the City Council. If you have further questions please contact Janelle Nordyke, Finance Director at Janelle.nordyke@newbergoregon.gov or call 503-537-1216.

Applications are available on the City of Newberg's website
<http://www.newbergoregon.gov/citycouncil/application-serve-committee>

Original applications are retained in the City
Recorder's Office.

Please call (503) 537-1283 to request a copy.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: December 7, 2009

Order ___ Ordinance ___ Resolution ___ Motion XX Information ___
No. No. No.

SUBJECT: Appoint Lon Wall, Warren Parrish, and Thomas Barnes to the Newberg Urban Area Management Commission (NUAMC) and ratify the NUAMC vote to appoint Sally Dallas as the member-at-large position.

Contact Person (Preparer) for this Motion: **Bob Andrews, Mayor**

Dept.: **Administration**

RECOMMENDATION:

To consent to the appointment, by the Mayor, of Lon Wall as the City of Newberg Planning Commissioner representative for a term expiring 12/31/2012, Warren Parrish as the Newberg Citizen Advisory Committee representative for a term expiring 12/31/2012, and Thomas Barnes as the alternate Newberg Planning Commissioner/Citizen Advisory Committee representative for a term expiring 12/31/2010 on the Newberg Urban Area Management Commission (NUAMC); and ratify the NUAMC vote to appoint Sally Dallas as the member-at-large position for a term to expire 12/31/2012.

EXECUTIVE SUMMARY:

The NUAMC is a seven member commission. It consists of three members appointed by the City Council, three appointed by the Yamhill County Board of Commissioners, and one at large position appointed by NUAMC, which is ratified by the two governing bodies. We currently have the below four positions, with terms expiring December 31, 2009, that need to be filled.

Planning Commission Representative:

The Planning Commission met on Thursday, December 10, 2009, and recommends Thomas Barnes as the alternate for both positions. The Mayor concurs with this recommendation.

Citizen Advisory Committee Representative:

Public notice for this position was posted in City buildings, advertised in the local Newberg Graphic, and posted on the City's website. One application was received prior to the deadline of 5:00 p.m. on Friday, December 6, 2009, from Warren Parrish. Warren Parrish has served on NUAMC in this capacity since 2006. The Mayor has decided to appoint Warren Parrish to continue his service to the NUAMC as the Citizen Advisory Committee representative.

Alternate Planning Commission/Citizen Advisory Committee Representative:

This position attends the NUAMC meeting in case the regular Planning Commission representative or the regular citizen advisory representative cannot attend a meeting. The Planning Commission met on Thursday, December 10, 2009, and recommends Thomas Barnes as the alternate for both positions. The Mayor concurs with this recommendation.

Member At Large Position:

One of the members of the Commission shall be a member-at-large chosen by the NUAMC members and ratified by the City Council and County Board. This member shall reside either within the City of Newberg Urban Growth Boundary or the City's area of influence. NUAMC chose Sally Dallas to serve as the member-at-large, subject to ratification by the Newberg City Council and the Board of Yamhill County Commissioners. This person resides within the City of Newberg Urban Growth Boundary, as required by the Rules. The position will have a term expiring December 31, 2012.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

The Newberg Urban Management Commission serves a very important role in the betterment of our community. NUAMC will be asked to consider a number of important legislative and quasi-judicial matters in the future. A Commission with no vacancies will help prevent cancellation of meetings for lack of a quorum. A legally authorized Commission will be less subject to appeals arising from failure to observe the adopted Rules governing the Commission.

NEWS RELEASE

DATE: October 2, 2009

CONTACT: Barton Brierley (503-537-1212)

SUBJECT: Vacancies on Newberg Planning Commission, Urban Area Management Commission & Downtown Revitalization Committee

RELEASE DATE: Immediate

The City of Newberg is seeking applications from citizens to serve on the Planning Commission, Newberg Urban Area Management Commission (NUAMC), and the Downtown Revitalization Committee (NDRC). This is an opportunity to serve your community and be part of the decision-making team that governs your community. These positions will be open as of December 31st, 2009. Members may also participate on other City-wide committees.

Newberg Urban Area Management Commission (NUAMC)

There will be one position available. The Commission hears requests for Urban Growth Boundary Amendments and other land use items in the Newberg Urban Growth Boundary and Urban Reserve Area. Its duties are to hold hearings, make findings, and present its recommendation to the Board of Yamhill County Commissioners and the Newberg City Council. The Commission usually meets quarterly, or as needed.

The seven-member Commission includes three members designated by the Board of Yamhill County Commissioners, three members appointed by the City, and one member-at-large chosen by the other members of NUAMC and ratified by the City Council and County Board. All members of the Commission serve without compensation. The vacancy is for the position of Newberg citizen involvement representative, which has a three-year term of office.

If you would like to participate on the Planning Commission, NUAMC, or NDRC, please stop by the Planning and Building Office at 414 E. First Street, or call 503-537-1240 and we will be happy to provide you with an application. An application also is available at the City's website www.newbergoregon.gov/citycouncil/council-forms.gov (or look under the Departments/City Council/Committee Applications heading). Applications are due by 5 p.m. on **Friday, November 6, 2009**. The City reserves the right to accept applications after this due date at the Mayor's discretion.

The Mayor of Newberg appoints Planning Commission, NUAMC and NDRC members with the consent of the City Council. Applicants will be notified of the date the City Council will consider the appointment and should plan on attending.

Information detailing the NDRC and Planning Commission have been removed from this advertisement to conserve space.

NUAMC MEMBER LIST 2009
NEWBERG URBAN AREA MANAGEMENT COMMISSION
REVISED 1/9/2009

| Dist. No. | Member/Contact Info | Seat | Represents | Status |
|------------------|--|-------------|--|--|
| County | Leslie Lewis Yamhill County Commissioner | Seat #1 | Yamhill County Board of Comm. | County appt'd 12/2005 |
| 6 | Robert Larson | Seat #2 | Newberg City Council Term Expires | City appointed 1/5/2009 12/31/2010 |
| 4 | Matson Haug, Chair | Seat #3 | Newberg Planning Com Reappointed: Term Expires | City appointed 12/04/2006 12/04/2006 12/31/2009 |
| 2 | Alan Halstead | Seat #4 | Yamhill County Planning Commission | County appt'd 2/1/2001 |
| County | Michael Sherwood, V.Chair | Seat #5 | Newberg/Dundee P.A.C. | County appt'd |
| County | Warren Parrish 30450 NE Wilsonville Rd Newberg, OR 97132 | Seat #6 | Newberg Citizen Advisory Committee Term Expires | City Appointed 12/31/2009 |
| 1 | Sally Dallas | Seat #7 | Member at Large NUAMC app Ratified by Term Expires | City & County 5/30/2009 |
| 2 | Alternate for Newberg Citizen Advisory Committee and Planning Commission representative: Philip Smith | | | City appointed 4/17/2006 |

Original applications are retained in the City
Recorder's Office.

Please call (503) 537-1283 to request a copy.

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: December 21, 2009

Order ___ Ordinance ___ Resolution ___ Motion XX Information ___
No. No. No.

SUBJECT: Approve the November 16, 2009, City Council Meeting minutes.

Contact Person (Preparer) for this Motion: **Norma Alley, City Recorder**

Dept.: **Administration**

File No.:

(if applicable)

RECOMMENDATION:

Approve the November 16, 2009, City Council minutes for preservation and permanent retention in the City's official records.

EXECUTIVE SUMMARY:

On November 16, 2009, the City of Newberg City Council held a public meeting. At that meeting, minutes were recorded in text.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

None.

**CITY OF NEWBERG CITY COUNCIL MINUTES
NOVEMBER 16, 2009
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET**

Work Session was held prior to the meeting. A report and update was given by the Information Technology Department on the new website. No decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:00 PM.

II. ROLL CALL

Members

| | | | |
|----------|-------------------|--------------|-----------------------------------|
| Present: | Mayor Bob Andrews | Denise Bacon | Bob Larson |
| | Stephen McKinney | Bart Rierson | Marc Shelton (arrived at 7:01 PM) |
| | Wade Witherspoon | | |

Staff

| | | |
|----------|---|--------------------------------------|
| Present: | Daniel Danicic, City Manager | Terrence Mahr, City Attorney |
| | Barton Brierley, Planning and Building Director | Norma Alley, City Recorder |
| | Howard Hamilton, Public Works Director | Jennifer Nelson, Recording Secretary |
| | Janelle Nordyke, Finance Director | |

Others

Present: Pat Haight, Marc Willcuts, Mike Willcuts, Matt Willcuts, Steven Salmon, Lori Petersen, and Jerry Dale

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, spoke of the upcoming Citizen Rate Review Committee town hall meeting scheduled for January 13, 2010, in the Public Safety Building (PSB) at 7:00 PM; preparations for the high wind alerts expected this evening, and circulating a card for signatures to be given to Dr. Paula Radich, Superintendent of Newberg School District, in recognition of her being awarded the 2010 Oregon Superintendent of the Year.

V. PUBLIC COMMENTS

Ms. Pat Haight discussed her concerns for city events and important government decisions not being placed in The Newberg Graphic in a timely manner. She was especially concerned about the City's recent loan for two million dollars (\$2,000,000.00) to purchase property from Baker Rock Resources. She wondered if the information was not being given to The Newberg Graphic in a timely manner by city staff, or if the local paper was just not printing it in a timely manner. She commented that lots of information can be found on the City's website, but noted many people (especially those on Social Security benefits) are choosing to cancel their internet access because of tough economic times. She felt the City Council representatives should not be working for the City of Newberg or City Hall, but for the people of Newberg and the attitudes towards

government officials would improve if officials were more transparent and working for the citizens who are not prospering in this economy.

VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2009-2875** connecting Newberg 911 communications center and radio equipment to Washington County Consolidated Communications Agency.

This item was removed from the Consent Calendar and heard under Old Business.

2. Consider a motion approving a proclamation supporting the Census 2010.
3. Consider a motion approving City Council Minutes for October 19, 2009.

MOTION: Larson/Witherspoon to approve the Consent Calendar including a proclamation supporting the Census 2010 and the City Council Minutes for October 19, 2009 as amended. (7 Yes/0 No) Motion carried.

VII. OLD BUSINESS

Consider a motion approving **Resolution No. 2009-2875** connecting Newberg 911 communications center and radio equipment to Washington County Consolidated Communications Agency.

TIME – 7:16 PM

Mr. Brian Casey, Police Chief, presented the staff report (see official meeting packet for full report).

Mayor Andrews asked for the actual cost of connecting to the Washington County Consolidated Communications Agency (WCCCA). Staff replied the cost was estimated to be \$344, 410.00 and directed his attention to a cost breakdown on page six (6) of the council packet.

Councilor Bob Larson asked if this money was coming out of this fiscal year's budget or next year's. Staff replied it was coming out of the current fiscal year's budget.

Ms. Janelle Nordyke, Finance Director, added the funds are under the equipment replacement fund and includes the increased expenditures for WCCCA which is part of Exhibit A on pages 27 -8 of the packet; these are existing funds set aside by the police department.

Councilor Stephen McKinney stated this was the clarification he needed as well as the assurance this money cannot be spent for any other purpose other than radio replacement. Staff stated this was correct.

Councilor Marc Shelton asked about the \$60,000.00 annual fee in addition to the one time connection fee and if there were funds to continue paying this as well as replacing the radios.

Chief Casey replied this was correct and the cost of replacing the radios is \$290.00 per radio. He clarified that the \$60,000.00 annual fee is currently budgeted for this year and next year's budget; that line is an ongoing annual expense which is offset by the \$20,000.00 worth of maintenance being done yearly on the current system that will no longer have to be done, so the actual cost really ends up being only \$40,000.00 per year for operation.

Councilor Larson asked when the system transfer would be taking place. Chief Casey replied it was weather contingent and permits also needed to be obtained from the federal government; but, he hoped to be completed and ready to go on July 1, 2010.

Councilor Bart Rierson asked if part of that connection cost and ongoing maintenance fee will also go towards replacing the hand-held and mobile radios. Staff said no, a significant part of the radio system that sits on the tower controller and the radio system itself needs the upgrading; the actual mobile and portable units will be replaced by doing a couple per year. The service and maintenance is to the radio tower and the cost of replacing the radios with digitally compatible units is separate, but once we are on the system and the digital conversion takes place the rest is taken care of by WCCCA by our annual fee.

Mayor Andrews asked if there is already a radio replacement contingency now. Staff replied there is and some of it is being used for this switch and there will be money existing in the budget and contingency which will be built on in future budgets.

MOTION: Larson/McKinney to approve **Resolution No. 2009-2875** connecting Newberg 911 communications center and radio equipment to Washington County Consolidated Communications Agency. (7 Yes/0 No) Motion carried.

VIII. PUBLIC HEARING

Consider a motion approving **Resolution No. 2009-2874** approving Supplemental Budget #1 for the 2009/2010 Fiscal Year.

TIME – 7:34 PM

Mayor Andrews called for any conflicts of interest or abstentions. None appeared.

Ms. Nordyke presented the staff report (see official meeting packet for full report).

Councilor Wade Witherspoon asked for further explanation of the costs to move the finance office from the PSB to City Hall.

Mr. Danicic explained the bulk of the costs come from the need to purchase and create cubicle partitions within the office space at City Hall as well as the electrical work and computer switches for each section; combined totals come to about \$30,000.00. This is why we are not looking into moving utility billing, which would be another \$30,000.00. Since none of this was budgeted, intermediate steps are being taken to mitigate the security issue within the police department.

Councilor McKinney asked if the money is coming out of an existing fund or does a revenue stream need to be created. Staff replied the money comes out of existing funds, but they are being taken from resources that were not allocated.

Councilor McKinney also asked about Fund 23 and the recent Council action to film meetings; he wondered if there could be any savings realized there by not doing the filming. Staff explained this was for the purposes of enhancing our public outreach and the expenditure on the videos created a \$10,000.00 item for which we are obligated under contract and the \$38,000.00 goes towards re-establishing the Cable Access channel and the necessary equipment for videos or slideshows, creating an opportunity to get information out to the public.

Mayor Andrews opened public testimony.

Ms. Haight spoke of her displeasure at how the city budgets the citizens' money, stating that additional monies in the general fund should go towards funding the extra police officers rather than charging \$3.00 extra on the monthly water bills, which is hard for people on a fixed income. She also suggested extra monies should be going against the balance of the loan from the Baker Rock property purchase in order to save the people from paying for the interest. She spoke of people living out of their cars in town and wondered how the city could justify putting its citizens into financial trouble. She recommended the Council obtain more public input before adopting this resolution.

Mayor Andrews closed public testimony. Staff recommended adopting the resolution. The hearing was closed.

MOTION: Witherspoon/Larson to approve **Resolution No. 2009-2874** approving Supplemental Budget #1 for the 2009/2010 Fiscal Year. (7 Yes/0 No) Motion carried.

IX. COUNCIL BUSINESS

1. Presentation from Marc Willcuts updating on the Orchard Lair Development.

TIME – 8:01 PM

Mr. Marc Willcuts, Mr. Matt Willcuts, and Mr. Mike Willcuts, of Coyote Homes, Inc. and Willcuts Company Realtors, presented updates and statistics from their Orchard Lair Development and affordable housing projects.

Mr. Steven Salmon, Salmon Concrete, shared with the Council the benefits experienced by his company and his employees as a result of being able to work as a subcontractor for the Orchard Lair development. He stated that in the thirty years he has lived and run his business in the area business has never been as slow as it has been and he thanked the Council for working with the community to create this opportunity. He shared that he was able to put employees back to work that had been laid off for four months; all of which live, work, and shop in Newberg. He spoke of conversations with other people in the industry who are out of work and said that Newberg seemed to be the only place where things are happening; he felt good to be a part of this community.

Ms. Lori Petersen, Valley Mortgage, shared how her company has helped put people in homes within the Orchard Lair development through the path to ownership program. She spoke of how they meet with people and create a customized plan according to their individual credit situations; even placing them into their homes while they work through the process to clean up their credit and obtain a mortgage loan.

Mr. Marc Willcuts concluded by stating that without the Council's decision to roll back the fees, this unique opportunity to provide affordable houses and work to so many families would not have been possible.

4. Sportsman Airpark

Mr. Danicic discussed the desire for Council's support of an application for a Connect Oregon III grant by the owners of the Sportsman Airpark for a project to extend the runway.

Mr. Jerry Dale, owner of Sportsman Airpark, apologized for the short time line and presented some more details as to the nature of the project, working with the Oregon Department of Transportation (ODOT), and the application process. The goal is to extend the runway two hundred feet from the end of the pavement to the property line and build a retaining wall, creating a safety zone for pilots and preserving an intended area for the proposed bypass.

MOTION: Andrews/Rierson to be in support of the project and grant application to extend a portion of the runway at Sportsman Airpark with ODOT and Connect Oregon. (7 Yes/0 No) Motion carried.

2. Discussion on McClure Annexation Process.

Mr. Terrence Mahr, City Attorney, gave updates on the McClure annexation process and appeal, noting the next possible dates for election if Council desired to place the annexation on the ballot. There has been no change in litigation and the next free election would be in May 2010, so another reminder will occur around February 2010.

3. Discussion on presentation of City Council Packet to the public and Council.

Discussions took place concerning the distribution of the City Council Packet to the Council and to the public electronically vs. hard copy. Mr. Mahr wanted to be sure the Councilors did not feel at any time they are hindered from being fully informed with the large volumes of information sometimes included within the Council Packets. Some of the larger documents are hard to email or print off, so they are made available online; but this requires Councilors to look at those links in order to read every attachment. Several Councilors wished to continue to receive attachments in hardcopy. Councilor Rierson suggested purchasing digital document readers at some point as well. Staff said they would try to be judicious in selecting what items are included in order to keep the volume down as much as possible.

5. Barrel of Dreams

Mayor Andrews asked if Councilors desired to participate in the Barrel of Dreams fundraiser again by providing a selection of wines for auction. All agreed to participate, suggestions were to include other items, such as chocolates as well as wine in the basket.

X. EXECUTIVE SESSION

Executive Session pursuant to ORS 192.660(2)(e) relating to a real property transaction – SP Newsprint.

TIME – 9:06 PM

Executive Session was held and recorded. No decisions were made.

XI. ADJOURNMENT

The meeting adjourned at 9:29 PM.

ADOPTED by the Newberg City Council this 21st day of December, 2009.

Norma I. Alley, City Recorder

ATTEST by the Mayor this ___ day of December, 2009.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: December 21, 2009

Order XX Ordinance XX Resolution ___ Motion ___ Information ___
 No. 2009-0025 No. 2009-2722 No.

SUBJECT: Annexation of one parcel (approx. 19.68 acres) located at 1409 S. Sandoz Rd, with concurrent zone change from Yamhill County AF-10 (Agriculture/Forestry Small Holding) and HI (Heavy Industrial) zoning to City M-3 (Heavy Industrial), M-2 (Light Industrial), with an Interim Industrial Use overlay for the portion of the site within the Bypass route.

Contact Person (Preparer) for this Order: **Steve Olson, AICP**

Dept.: **Planning & Building**

File No.: ANX-09-001

HEARING TYPE:

ORDER: LEGISLATIVE QUASI-JUDICIAL
ORDINANCE: LEGISLATIVE QUASI-JUDICIAL

RECOMMENDATION:

Adopt **Order No. 2009-0025**, approving the findings that the proposed annexation and concurrent zone change meet the applicable City of Newberg Development Code criteria.

Adopt **Ordinance No. 2009-2722**, annexing property located at 1409 S. Sandoz Road (Yamhill County tax lot 3229-100) subject to a public vote, and scheduling this item for the May 18, 2010 general election.

EXECUTIVE SUMMARY:

Request: Annexation of a 19.68 acre parcel into the City of Newberg with concurrent zone change from Yamhill County AF-10 (Agriculture/Forestry Small Holding) and HI (Heavy Industrial) zoning to City M-3 (Heavy Industrial), M-2 (Light Industrial), with an Interim Industrial Use overlay for the portion of the site within the Bypass route. The City of Newberg is the applicant. The site is the former Baker Rock property, and is located at 1409 S. Sandoz Road. It is currently a hazelnut orchard. The concept development plan for the site shown in Exhibit F shows the wastewater treatment plant expansion on the western part, the animal shelter in the southeast corner, the Public Works Maintenance yard on the eastern part, and the planned Newberg-Dundee Bypass right-of-way on the northern part of the site.

Zoning/Comprehensive Plan designations: The site has an Industrial (IND) designation in Newberg's Comprehensive Plan, with an Airport Overlay and Bypass Interchange overlay. The Airport Overlay primarily limits the height of developments near the airport, and the Bypass Interchange Overlay primarily limits the uses permitted near the future Newberg-Dundee Bypass interchanges. The proposed City zoning for the site, as shown in Exhibit E, will be primarily M-3 (Heavy Industrial), with an M-2 (Light Industrial) buffer zone along the eastern edge of the site to buffer the nearby residents from the Heavy Industrial (M-3) zoning.

Bypass Route: The current design of the Newberg-Dundee Bypass right-of-way covers the northern part of the site. An Interim Industrial Use overlay will be placed on the northern part of the site, which will allow it

to be used for storage, parking and other uses that don't require structures, while not obstructing the future construction of the bypass.

Animal shelter: The City has applied to Yamhill County for a conditional use permit to construct an animal shelter in the southeast corner of the site. If the conditional use permit application is approved then any conditions placed on the project by Yamhill County will still apply if the site is annexed into the city. The City has begun the conditional use permit process with the County before annexing the site into the city because we would like to begin construction of the animal shelter soon. The annexation process takes quite a while to complete. If the annexation application goes to the city voters on May 18, 2010 and is approved then the site will officially be within the city in June, 2010.

Utilities:

Sanitary Sewer: There are no sanitary sewer lines in Wyooski Street or Sandoz Road near the site. The project will install a grinder pump and forced main line to the wastewater treatment plant west of the site upon annexation. This is similar to the systems used by the industrial uses south of the site.

Water/Stormwater: There is a city water line in Sandoz Road, and a stormwater ditch along Sandoz Road.

Roads: The site is adjacent to and will take access from Sandoz Road, a dead-end local street. Sandoz Road provides access to Wyooski Road, a major collector. As part of the animal shelter project, the City has dedicated additional right-of-way along the Sandoz Road frontage and constructed street improvements adjacent to the animal shelter site. Yamhill County has requested that the City take jurisdiction of Sandoz Road upon annexation of this site.

One public comment was concerned about increased traffic from future development. The proposed uses would generate less than 40 trips during the PM peak hour. Sandoz Road is a dead-end, and is not a busy road. Wyooski Road is a major collector and has adequate capacity. Staff's conclusion is that even if the site is fully developed as shown on the concept plan it would not have a significant impact on area transportation facilities. ODOT has commented that they concur with this finding for the proposed uses, but they are concerned that other potential uses allowed in the M-2 and M-3 zones could generate a higher level of traffic and result in significant impacts to area transportation facilities. ODOT recommended that the City adopt a limited use overlay or other enforceable condition that would limit use of the property to the City's proposed uses. Staff understands ODOT's concern but does not recommend adopting a limited use overlay zone because of its lack of flexibility. The City's existing design review process will require the transportation impact of any future development to be considered, and ODOT will be part of the review process. This will allow ODOT the opportunity to comment on future proposed developments, and makes the limited use overlay unnecessary.

Planning Commission recommendation: The Planning Commission held a public hearing on this request on November 12, 2009. They approved Resolution 2009-271, which recommended that the City Council approve the requested annexation and concurrent zone change, withdraw the parcel from the Newberg Rural Fire Protection District, and, if the annexation is approved by the voters, recommended that the Council initiate a request to Yamhill County to transfer jurisdiction of Sandoz Road to Newberg.

FISCAL IMPACT: The proposed annexation will shift police and fire services to the city. The property will be developed for public uses, so it will not generate additional tax revenues. The proposed projects for this site are necessary expansions of City facilities, however, and are (or will be) needed to provide adequate public services to the city.

STRATEGIC ASSESSMENT: Approval of the annexation will bring in needed land for public

services and will facilitate development of the City. This annexation will enable the future expansion of the city's wastewater treatment plant, while providing a buffer of light industrial uses for the residents east of the site. It will also allow the Public Works Maintenance yard to move from its current site on W. 3rd Street, which it has outgrown. Approving the annexation is in the best interests of the community.

ATTACHMENTS:

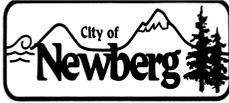
Order 2009-0025

- Exhibit "A": Findings
- Exhibit "B": Annexation Map
- Exhibit "C": Legal Description
- Exhibit "D": Comprehensive Plan Map
- Exhibit "E": Zoning Map
- Exhibit "F": Concept Development Plan

Ordinance 2009-2722

- Exhibit "A": Annexation Map
- Exhibit "B": Legal Description

1. Planning Commission Staff Report with Planning Commission Resolution 2009-271 (as adopted) with:
 - a. Exhibit "A": Findings (by reference)
 - b. Exhibit "B": Annexation Map (by reference)
 - c. Exhibit "C": Legal Description (by reference)
 - d. Exhibit "D": Comprehensive Plan Map (by reference)
 - e. Exhibit "E": Newberg Zoning Map (by reference)
2. November 12, 2009 Planning Commission meeting minutes
3. Location overview
4. Location map
5. Aerial Photos
6. Correspondence/written testimony received
7. ANX-08-003 application
8. Newberg Comprehensive Plan & Development Code (by reference)



ORDER No. 2009-0025

AN ORDER FINDING THAT PROPERTY LOCATED AT 1409 S. SANDOZ RD., YAMHILL COUNTY TAX LOT 3229-100, MEETS THE APPLICABLE NEWBERG DEVELOPMENT CODE CRITERIA TO BE ANNEXED INTO THE CITY, AND MEETS THE APPLICABLE CODE CRITERIA TO CHANGE THE ZONING DESIGNATION FROM YAMHILL COUNTY AF-10 AND HI TO CITY M-3 AND M-2, WITH AN INTERIM INDUSTRIAL USE OVERLAY ON THE NORTHERN PART OF THE SITE WITHIN THE BYPASS ROUTE

RECITALS:

1. On September 29, 2009, City of Newberg staff submitted an application to annex one parcel (approximately 19.68 acres) located at 1409 S. Sandoz Road, Yamhill County tax lot # 3229-100, into the City of Newberg with a concurrent zone change from County AF-10 and HI to City M-3 and M-2, with an Interim Industrial Use overlay on the northern part of the site within the Bypass route.
2. The Newberg Planning Commission heard the annexation request on November 12, 2009, took public testimony, and found that the request met the applicable Newberg Development Code criteria. The Planning Commission recommended approval of the annexation and concurrent zone change, withdrawal of the parcel from the Newberg Rural Fire Protection District, and, if the annexation is approved by the voters, recommended that the City Council initiate a request to Yamhill County to transfer the jurisdiction of Sandoz Road to Newberg.
3. After proper notice, on December 21, 2009, the Newberg City Council held a hearing to consider the annexation request.
4. The City Council finds that the applicable criteria have been met, and that approval of the annexation is in the best interests of the community.

THE CITY OF NEWBERG ORDERS AS FOLLOWS:

1. The City Council finds that the annexation and concurrent zone change meet the Newberg Development Code criteria and adopts the findings, which are attached hereto as Exhibit "A" and is hereby adopted and by this reference incorporated.
2. Annexation requires the City Council to adopt an ordinance annexing the property, and requires approval at a public vote. If the annexation is approved through these procedures, then the City orders the following:
 - A. The zoning of the property described in Exhibit "C" is changed to portions of M-2 (Light Industrial) and M-3 (Heavy Industrial), with an Interim Industrial Use overlay for the portion of the site within the bypass route as shown in Exhibit "E". Exhibits "C" and "E" are hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: December 22, 2009.

ADOPTED by the City Council of the City of Newberg, Oregon, this 21st day of December, 2009.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 23rd day of December, 2009.

Bob Andrews, Mayor

QUASI-JUDICIAL HISTORY

By and through the Planning Commission Committee at 11/12/2009 meeting.
(committee name) *(date)*

Exhibits:

- Exhibit "A": Findings
- Exhibit "B": Annexation Map
- Exhibit "C": Legal Description
- Exhibit "D": Comprehensive Plan Map
- Exhibit "E": Zoning Map
- Exhibit "F": Concept Development Plan

EXHIBIT A: FINDINGS

Annexation of 19.68 acres located at 1409 S. Sandoz Road

I. APPLICABLE ANNEXATION REGULATIONS – NEWBERG DEVELOPMENT CODE § 151.261 CONDITIONS FOR ANNEXATION

(A) The subject site must be located within the Newberg Urban Growth Boundary or Newberg Urban Reserve Areas.

FINDING: The site is within Newberg’s urban growth boundary.

(B) The subject site must be contiguous to the existing city limits.

FINDING: The subject site is contiguous to the existing city limits along its west, south and east sides.

II. APPLICABLE ANNEXATION REGULATIONS – NEWBERG DEVELOPMENT CODE § 151.262 QUASI- JUDICIAL ANNEXATION CRITERIA

(A) The proposed use for the site complies with the Newberg comprehensive plan and with the designation on the Newberg comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Newberg comprehensive plan.

FINDING: The comprehensive plan designation for the site is Industrial (IND), with an Airport Overlay and a Bypass Interchange Overlay. The proposed zoning for the site is partly M-3 (Heavy Industrial) and partly M-2 (Light Industrial), with an Interim Industrial Use overlay on the route of the Newberg-Dundee Bypass (the northern approx. 6.7 acres, as shown in Exhibit E).

The M-2 and M-3 zones correspond with the Industrial comprehensive plan designation. The proposed wastewater treatment plant expansion shown on the concept plan is planned for the M-3 portion of the site, where it is an allowed use. The public works maintenance yard would be placed primarily within the M-2 portion of the site, although it would be an allowed use within either the M-2 or M-3 zones. The animal shelter project will probably already be built by the time the property is annexed, and will be within the M-2 zone in the southeast corner. The animal shelter is an allowed use in the M-2 zone. The Airport Overlay primarily limits the height of structures near the airport; all of the projects shown on the concept plan will be able to comply with the Airport Overlay requirements.

The Bypass Interchange Overlay prohibits certain commercial uses:

151.531.4 PROHIBITED USES.

(A) Several commercial types of uses are permitted outright or with conditional use approval in Newberg’s Industrial Districts (M 1, M 2, and M 3). The area within the Newberg UGB near the Oregon 219 interchange is generally planned for industrial use. To protect the interchange area from commercial development, the following uses are prohibited within the M 1, M 2, and M 3 Districts within the boundaries of the Bypass Interchange Overlay.

- (1) Automobile sales, new and used.*
- (2) Billboards.*
- (3) Car washes.*
- (4) Convenience grocery stores.*

- (5) *Restaurants larger than 2000 square feet or with drive-up service windows.*
- (6) *Service stations.*
- (7) *Drive-in theaters.*
- (8) *Auction sales.*
- (9) *Bakeries, retail.*
- (10) *Building material sales.*
- (11) *Driving ranges.*
- (12) *Feed and seed stores.*
- (13) *Miniature golf courses.*
- (14) *Skating rinks.*

(Ord. [2004-2602](#), passed 9-20-04)

All of the proposed uses for the site are allowed by the Bypass Interchange Overlay.

The City recently created an Interim Industrial Use Overlay zone. The purpose of this overlay is to allow interim use of industrially zoned properties in areas that are planned for future acquisition for right-of-way, such as the Newberg-Dundee bypass. The overlay allows non-structural uses of the land, such as parking and storage. The overlay also reduces requirements for permanent site improvements, such as parking and landscaping, which would be removed upon acquisition of the right-of-way. The northern part of this 19.68 acre parcel is within the most current design of the bypass right-of-way, so the Interim Industrial Use Overlay should apply to the northern part of this site upon annexation (approx. 6.7 acres, as shown in Exhibit E).

ODOT has commented that they support placing the Interim Industrial Use Overlay on the northern part of the site.

Wetlands/wildlife habitat: The National Wetlands Inventory map does not show any wetlands or riparian corridors on this site. Staff walked the site to check the existing conditions. The site is currently a hazelnut orchard, and is generally flat. The northeast corner of the site has a grove of tall oak trees, which surround a clearing where a house used to be located. There are blackberry bushes and grass under the oak trees. There is little vegetation on the site beneath the hazelnut trees, so there were no plants that indicated potential wetlands. There were no wet spots, soft spots or dry streambeds to indicate potential wetlands on the site. Staff therefore did not determine a need to apply a protective stream corridor or wetland overlay on any portion of the site. The wildlife habitat on the site is limited because of the lack of vegetation other than hazelnut trees on most of the site.

(B) An adequate level of urban services must be available, or made available, within three years time of annexation, except as noted in division (E) below. An adequate level of urban services shall be defined as:

- (1) Municipal sanitary sewer and water service meeting the requirements enumerated in the Newberg comprehensive plan for provision of these services.*
- (2) Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three-year time period, the city shall note requirements such as dedication of right-of-way, waiver of remonstrance against assessment for road improvement costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. The city shall also consider public costs for improvement and the ability of the city to provide for those costs.*

FINDING: As explained below, public facilities will have adequate capacity to accommodate the demands of the site within three years time of annexation.

Water: The animal shelter and other future development can connect to an existing water line within Sandoz Road. This line will probably be extended west along the southern property line of the parcel to connect to another city water line, and complete a loop.

Stormwater: Development on the eastern edge of the site (animal shelter) will be able to drain stormwater from gutter and parking areas towards Sandoz Road, where a ditch will take the stormwater to a catchbasin on Wyooski Street.

Sanitary Sewer: Development on the property will be able to install grinder pumps with forced mains to the wastewater treatment plant west of the site. There is no sanitary sewer line in Wyooski south of the site, or in Sandoz Road east of the site. If the animal shelter has already constructed a septic tank prior to annexation then it will be decommissioned after annexation and installation of a grinder pump/force main system.

Roads: The site is adjacent to and will take access from Sandoz Road, a dead-end local street. Sandoz Road provides access to Wyooski Road, a major collector. Sandoz Road has a 60 foot right-of-way south of the site, and a 50 foot right-of-way adjacent to the site. The City will dedicate an additional 10 feet of right-of-way along the western side of Sandoz Road to match the right-of-way to the south. The west side of Sandoz Road adjacent to the animal shelter project will be improved with additional paving, curb, gutter and sidewalk as part of the animal shelter project. If the Public Works Maintenance yard is developed north of the animal shelter then the portion of Sandoz Road adjacent to the project will be improved to city standards at that time.

One public comment was concerned about increased traffic from future development. The proposed future development on the site will have a low impact on transportation facilities in the area. The animal shelter will have only a few employee or visitor trips in any given day. The wastewater treatment plant expansion on the western part of the site is unlikely to add staff or trips to the site. If the WWTP expansion did add trips they would be through the existing wastewater treatment plant driveway on Wyooski Road, which is some distance west of Sandoz Road. The Public Works Maintenance yard could add approx. 30 to 40 trips during the PM peak hour on Sandoz Road. Sandoz Road is a dead-end, however, and is not a busy road. Wyooski Road is a major collector and has adequate capacity. Staff's conclusion is that even if the site is fully developed as shown on the concept plan it would not have a significant impact on area transportation facilities.

Yamhill County commented that Newberg should take jurisdiction of Sandoz Road upon annexation. If the proposed annexation is approved by the voters then staff recommends that the City Council initiate a request to Yamhill County to transfer the jurisdiction of Sandoz Road to Newberg.

State Transportation Planning Rule:

660-012-0060

Plan and Land Use Regulation Amendments

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of

correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Finding: As noted above, the development of the site with the proposed City uses would have a low impact on existing transportation facilities and will comply with the Transportation Planning Rule. ODOT has commented that they concur with this finding for the proposed uses, but they are concerned that other potential uses allowed in the M-2 and M-3 zones could generate a higher level of traffic and result in significant impacts to area transportation facilities. ODOT recommended that the City adopt a limited use overlay or other enforceable condition that would limit use of the property to the City's proposed uses. Staff understands ODOT's concern but does not recommend adopting a limited use overlay zone because of its lack of flexibility. For example, if the City decided in the future to add a storage building for city archives on the site it would first require a zone change to the limited use overlay, even though the building would add very little traffic to the site.

The existing design review process has provisions that should address ODOT's concerns. The Newberg Development Code requires all development on the site after annexation to be reviewed under a Type II design review process. This process requires new development that will generate more than 40 trips in the PM peak hour to submit a traffic study that examines the impact of the project on area transportation facilities and determines any needed improvements. A copy of the design review application would be routed to ODOT for comments because of the bypass interchange overlay on the site. If the City develops the site as proposed on the concept development plan then the transportation impact will be low. If for some reason the City wants to develop different uses on the site in the future that generate more traffic then a traffic impact study will be required as part of the design review process, which will determine any needed improvements to mitigate the impact to area transportation facilities. In either case, ODOT will receive a copy of the design review application for review and comment.

In conclusion, adequate transportation facilities will be available to serve the proposed uses.

(C) Findings documenting the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.

Finding: Police services are currently provided to the area by Yamhill County Sheriff's Office. Fire service is provided by Newberg Rural Fire District. The proposed annexation will shift police and fire services to the city. The property will be developed for public uses, so it will not generate additional revenues. The City added three police officers in the General Fund budget for 2008-09, and has established a city-wide public safety fee that will fund an additional three officers. The proposed development on this site would not generate additional need for parks or school services. The proposed projects for this site are necessary expansions of City facilities, however, and are (or will be) needed to provide adequate public services to the city.

The new animal shelter on the site will improve one aspect of Newberg's public safety services. Overall,

adequate public facilities and services exist to support the proposed annexation.

(D) The burden for providing the findings for divisions (A), (B) and (C) of this section is placed upon the applicant.

FINDING: The applicant has provided written findings for this section.

(E) The City Council may annex properties where urban services are not and cannot practically be made available within the three year time frame noted in division (B) above, but where annexation is needed to address a health hazard, to annex an island, to address sewer or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the Council shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available.

FINDING: This criterion is not applicable to this property.

Positive and Negative effects of the annexation

FINDING: This annexation will have several positive effects. It will enable the expansion of the city's wastewater treatment plant, which will be a critical need in the future. It will also allow the Public Works Maintenance yard to move from its current site on W. 3rd Street, which it has outgrown. The annexation and subsequent development will improve the western half of Sandoz Road, widen the Sandoz Road right of way by 10 feet, and improve the water system in the area. The developments fronting Sandoz Road will have landscaped front yards at least 20 feet deep to soften the appearance of any development, and will provide a buffer between the wastewater treatment plant to the west, and the residential developments east of Sandoz Road. One negative effect of the annexation is that the hazelnut orchard will be removed as the site develops. The orchard is part of the local hazelnut industry. The site is within the Urban Growth Boundary, however, and is targeted for eventual urban development. Developing farmland within the UGB ultimately saves more farmland outside the UGB by constraining leapfrog development. The tall oak trees in the northeast corner of the site will probably be removed by the construction of the Newberg-Dundee bypass; this will be a negative effect of the bypass, however, and not of the annexation. On the whole, the positive effects of the annexation are much more substantial than the negative effects.

CONCLUSION:

The proposed annexation of this 19.68 acre parcel meets the criteria for annexation into the City of Newberg and should therefore be approved and sent to the voters at the May, 2010 election.

EXHIBIT B: ANNEXATION MAP

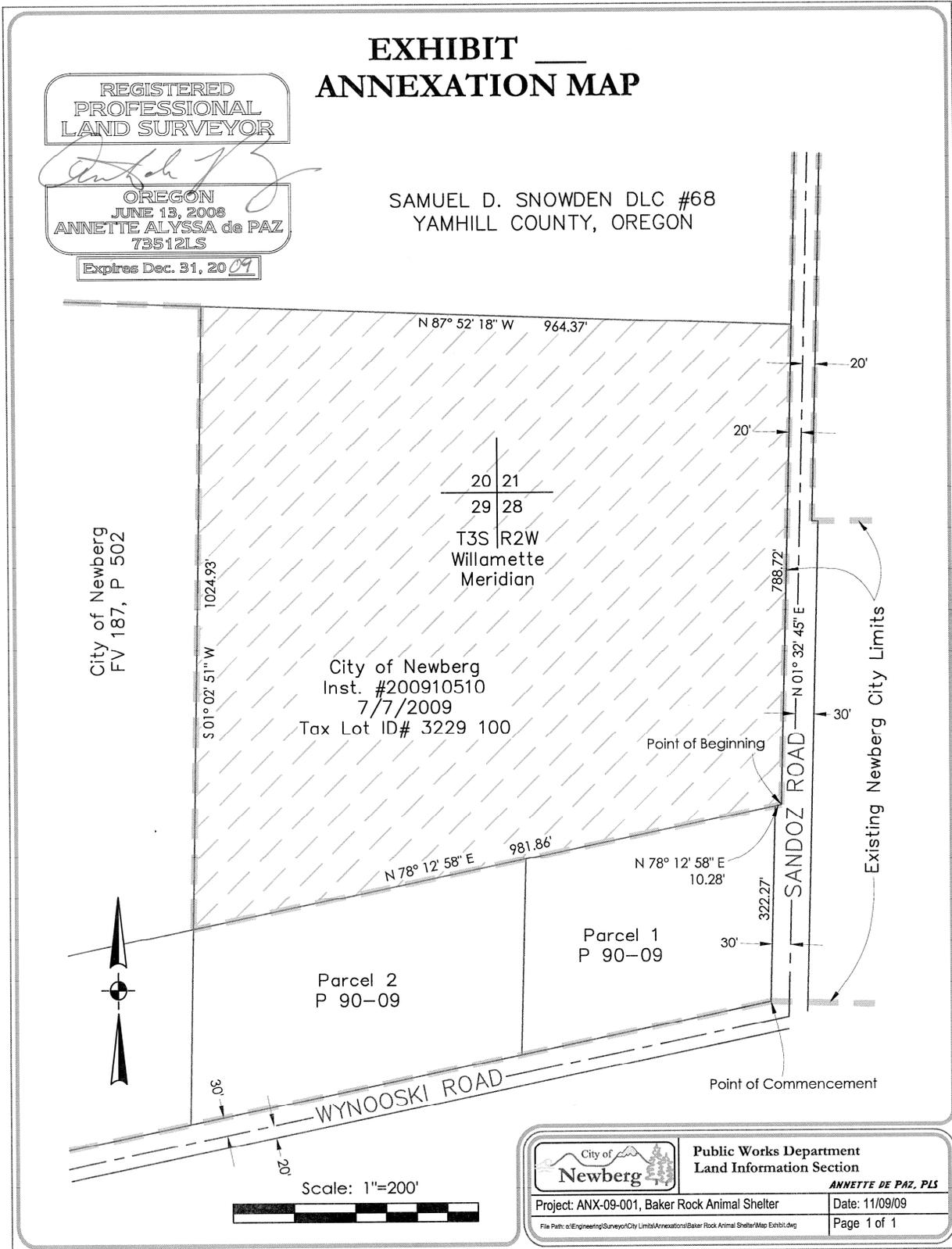


EXHIBIT C: LEGAL DESCRIPTION

City of Newberg Annexation

BEING a tract of land in Sections 20, 21, 28, and 29 of Township 3 South Range 2 West of the Willamette Meridian in Yamhill County, Oregon, and being a portion of the Samuel D. Snowden Donation Land Claim Number 68, and also being all of that land described by deed to City of Newberg, an Oregon Municipal Corporation, recorded as Instrument Number 200910510, Official Yamhill County Records, on July 7, 2009, and said tract of land being more particularly described as follows;

COMMENCING at the southeast corner of Parcel 1 of Yamhill County Partition No. 90-09, said corner being at the intersection of the northerly line of Wynooski Road and the west line of Sandoz Road;

THENCE North 01° 32' 45" East, along the west line of Sandoz Road, a distance of 322.27 feet to the northeast corner of said Parcel 1, said corner being on the Newberg City Limit and on the south line of said City of Newberg tract of land recorded as Instrument Number 200910510;

THENCE North 78° 12' 58" East, along the southerly line of said City of Newberg tract of land and along the Newberg City Limit, a distance of 10.28 feet to the southeast corner of said City of Newberg tract, said corner being a corner of the Newberg City Limit and 20.00 feet from, as measured perpendicular to, the centerline of Sandoz Road, and said corner also being the TRUE POINT OF BEGINNING;

THENCE North 01° 32' 45" East, along a line being 20.00 feet west of and parallel to the centerline of Sandoz Road, said line being along the Newberg City Limit, a distance of 788.72 feet to the northeast corner of said City of Newberg tract of land;

THENCE North 87° 52' 18" West, along the north line of said City of Newberg tract of land, a distance of 964.37 feet to the northwest corner of said City of Newberg tract of land, said corner being a corner of the Newberg City Limit and also being the northeast corner of that tract of Land described by deed to City of Newberg, a Municipal Corporation of the State of Oregon, recorded in Film Volume 187, Page 502 of the Deed Records of Yamhill County;

THENCE South 01° 02' 51" West, along the east line of said City of Newberg tract recorded in Film Volume 187, Page 502, said line being along the Newberg City Limit, a distance of 1024.93 feet to a point on the northerly line of said Partition Number 90-09, said point being a corner of the Newberg City Limit;

THENCE North 78° 12' 58" East, along the northerly line of said Partition Number 90-09 and the Newberg City Limit, a distance of 981.86 feet to the POINT OF BEGINNING.

Prepared by Annette de Paz, PLS #73512

City of Newberg, Land Information Section

O:\Engineering\Surveyor\City Limits\Annexations\Baker Rock Animal Shelter\Legal Descr Exhibit.docx

Last Revised: 11/9/09

EXHIBIT D: COMPREHENSIVE PLAN MAP

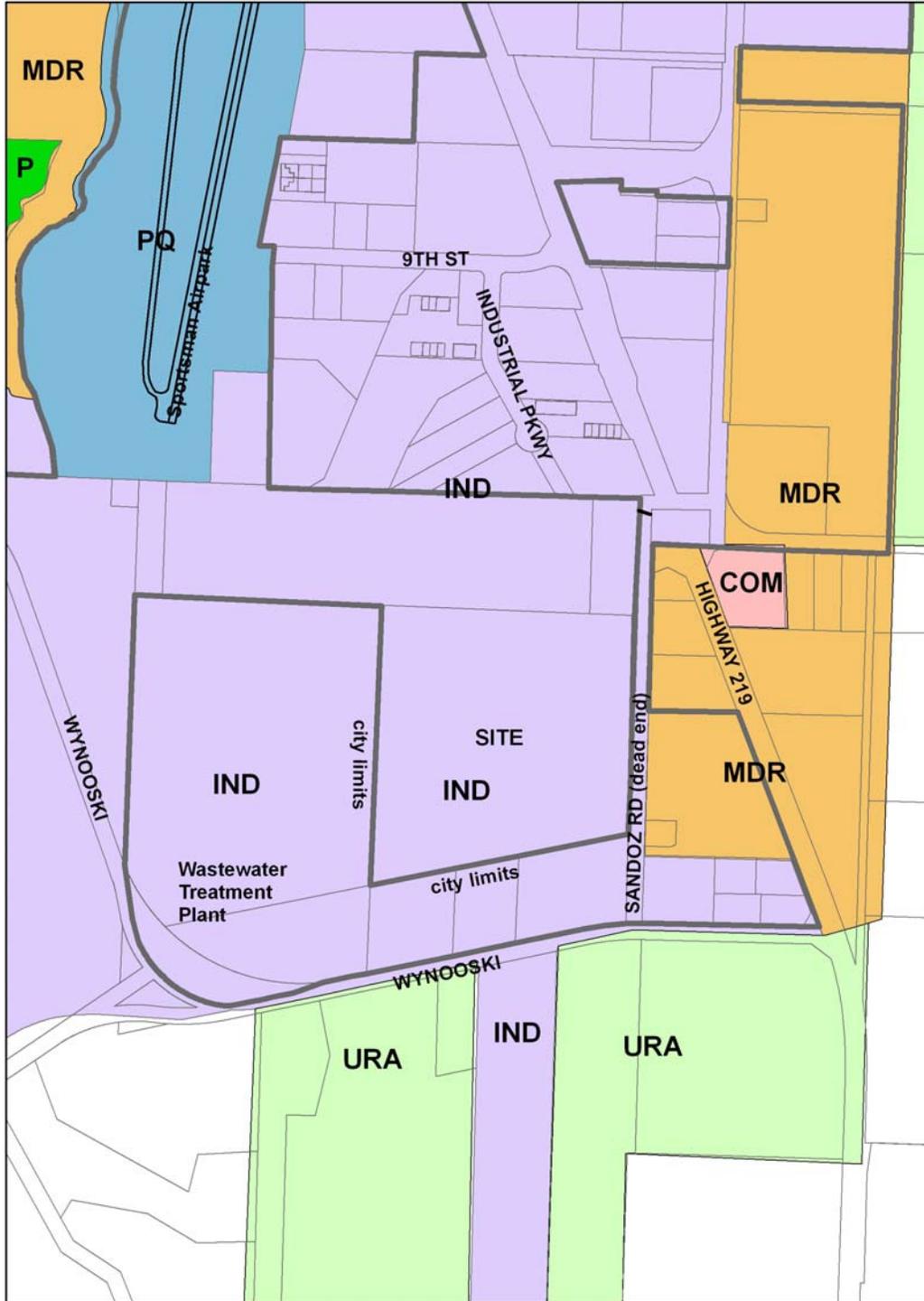


EXHIBIT E: ZONING MAP

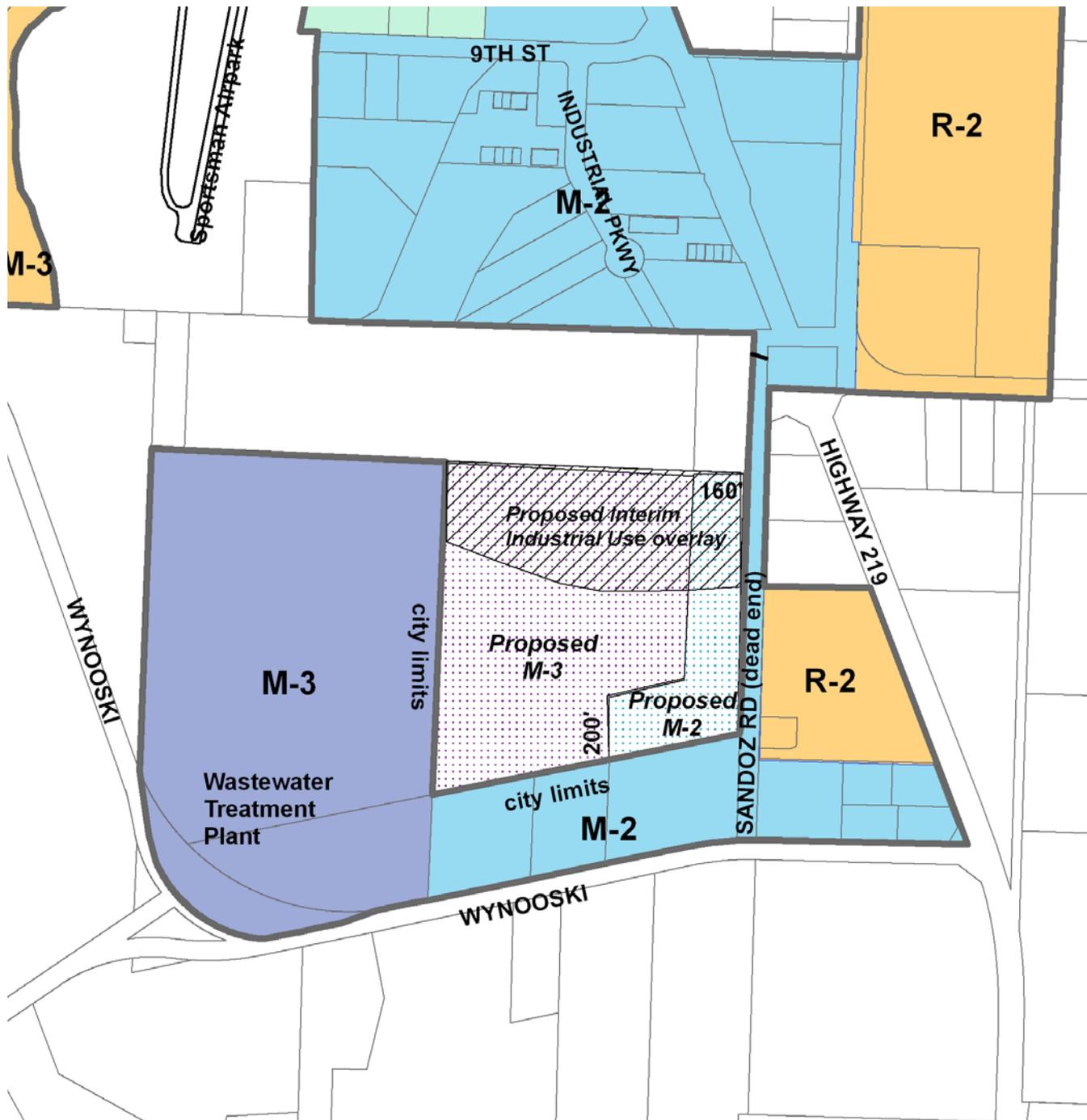
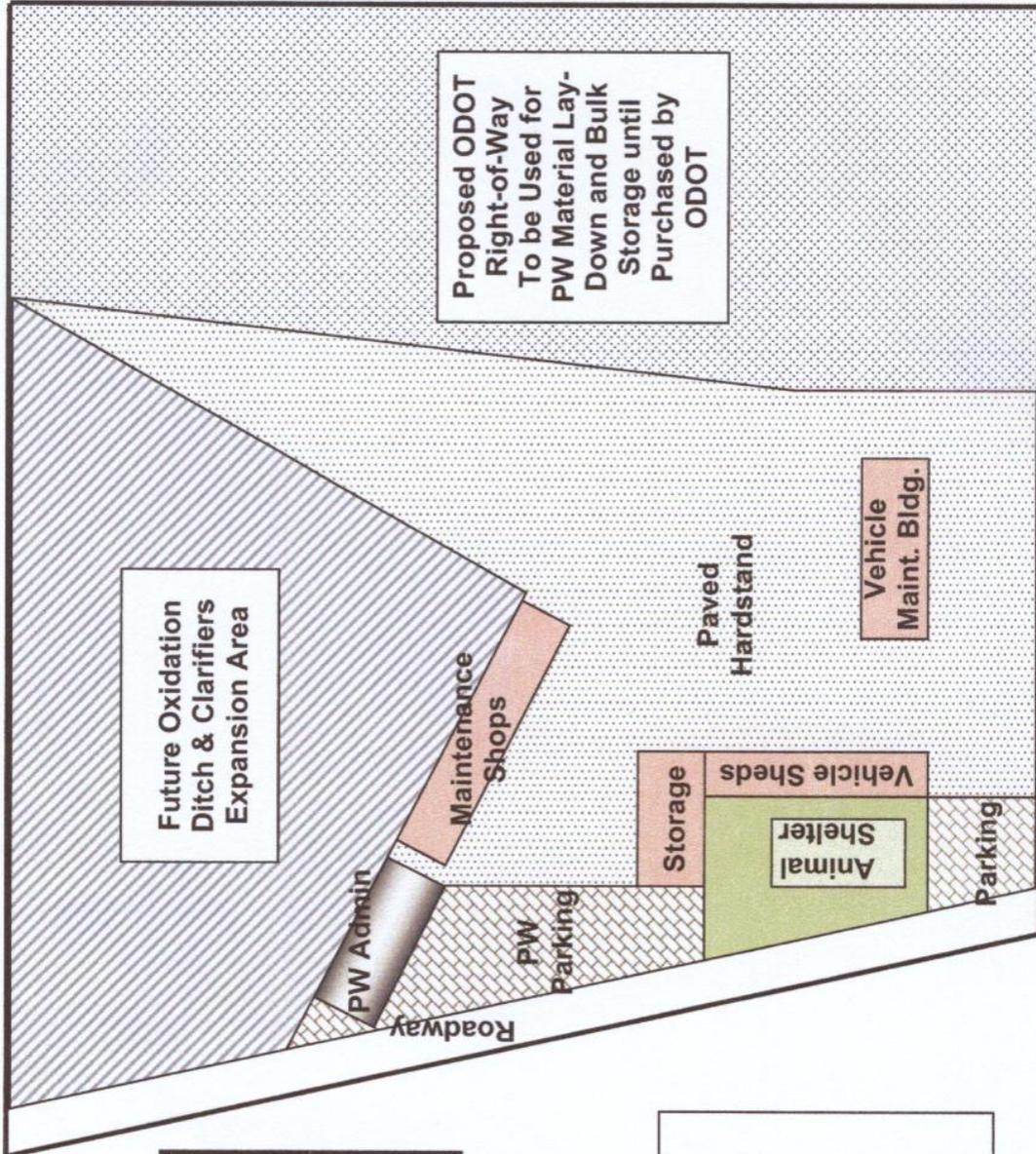


EXHIBIT F: CONCEPT DEVELOPMENT PLAN

NORTH



Proposed ODOT Right-of-Way To be Used for PW Material Lay-Down and Bulk Storage until Purchased by ODOT

Future Oxidation Ditch & Clarifiers Expansion Area

PW Admin

Maintenance Shops

PW Parking

Storage

Paved Hardstand

Vehicle Sheds

Animal Shelter

Vehicle Maint. Bldg.

Parking

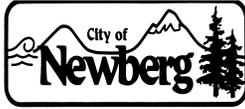
Roadway

Sandoz Road

Proposed Animal Shelter Site Plan
 L. B. Fain 5-11-09



| | |
|---------------------|-------------------|
| Total Area - | 19.8 acres |
| WWTF Exp. - | 4.9 acres |
| PW Maint. Yard - | 5.7 acres |
| Future ODOT - | 6.7 acres |
| Animal Shelter - | 0.9 acres |
| Roadway - | 0.8 acres |
| PW Admin - | 0.2 acres |
| Other - | 0.6 acres |



ORDINANCE No. 2009-2722

AN ORDINANCE DECLARING PROPERTY LOCATED AT 1409 S. SANDOZ ROAD, YAMHILL COUNTY TAX LOT 3229-100, BE ANNEXED INTO THE CITY OF NEWBERG AND WITHDRAWN FROM THE NEWBERG RURAL FIRE PROTECTION DISTRICT SUBJECT TO A PUBLIC VOTE, AND AUTHORIZING AND DIRECTING THE CITY ELECTIONS OFFICER TO CERTIFY TO THE YAMHILL COUNTY CLERK A BALLOT TITLE FOR THE MEASURE TO BE SUBMITTED TO THE ELECTORATE OF THE CITY OF NEWBERG FOR THEIR APPROVAL OF AN ANNEXATION FOR THIS SAME PROPERTY

RECITALS:

1. On September 29, 2009, City of Newberg staff submitted an application for annexation of property located at 1409 S. Sandoz Road, Yamhill County tax lot 3229-100.
2. After proper notice, on December 21, 2009, the City Council held a public hearing on the item: accurately stated objections to jurisdiction, bias, and ex-parte contact; considered public testimony; examined the record; heard the presentation from staff; examined and discussed the appropriate criteria to judge the project (as listed in the staff report); considered all relevant information regarding the item; and deliberated.
3. On December 21, 2009, the City Council adopted Order 2009-0025 which affirmed that the annexation met the applicable Newberg Development Code criteria.
4. The City of Newberg Charter requires that territory may be annexed into the City of Newberg only upon approval by a majority vote among the electorate of the City.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. The question of annexing the property shown in Exhibit "A" and described in Exhibit "B" shall be submitted to the electorate of the city at the May 18, 2010 general election. Exhibits "A" and "B" are hereby adopted and by this reference incorporated.
2. The City Council directs that all costs associated with placing the item on the ballot be paid for by the applicant/owners. This includes but is not limited to noticing, signage, advertising, and costs assessed by the Yamhill County Clerk to place the item on the ballot.
3. The City Elections Officer is hereby authorized and directed to certify to the Yamhill County Clerk the ballot title for the annexation measure to be placed before the voters. Further, the City Elections Officer is directed to give all necessary notices of the ballot title and do all other necessary acts and deeds which may be required to place the matter before the voters of the City of Newberg at said election.
4. The City Attorney is directed to have prepared and review the explanatory statement which shall be

submitted to the Yamhill County Clerk with the ballot title. Such explanatory statement shall be filed with the City Elections Officer and the City Elections Officer is further directed to certify this explanatory statement to the Yamhill County Clerk.

5. The City Elections Officer is authorized to do all other necessary acts and deeds which may be required to conduct the election concerning this measure.
6. Should this annexation request be approved by a majority of the electorate of the City of Newberg at the identified election date, the property shown in Exhibit "A" and described in Exhibit "B", shall be annexed and withdrawn from the Newberg Rural Fire Protection District, and the following events will occur:
 - A. The City of Newberg land use inventory data and GIS data, including the comprehensive plan map and zoning map, will be updated to reflect the new addition.
 - B. The Recorder of the City of Newberg is hereby authorized and directed to make and submit to the Secretary of State, the Department of Revenue, the Yamhill County Elections Officer, and the Assessor of Yamhill County, a certified copy of this ordinance.
 - C. The City will request that Yamhill County transfer the jurisdiction of Sandoz Road to Newberg.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: January 21, 2010.

ADOPTED by the City Council of the City of Newberg, Oregon, this 21st day of December, 2009, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Norma I. Alley, City Recorder

ATTEST by the Mayor this 23rd day of December, 2009.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through Planning Commission Committee at 11/12/2009 meeting.
(committee name) (date)

Exhibits:

- Exhibit "A": Annexation Map
- Exhibit "B": Legal Description

EXHIBIT A: ANNEXATION MAP

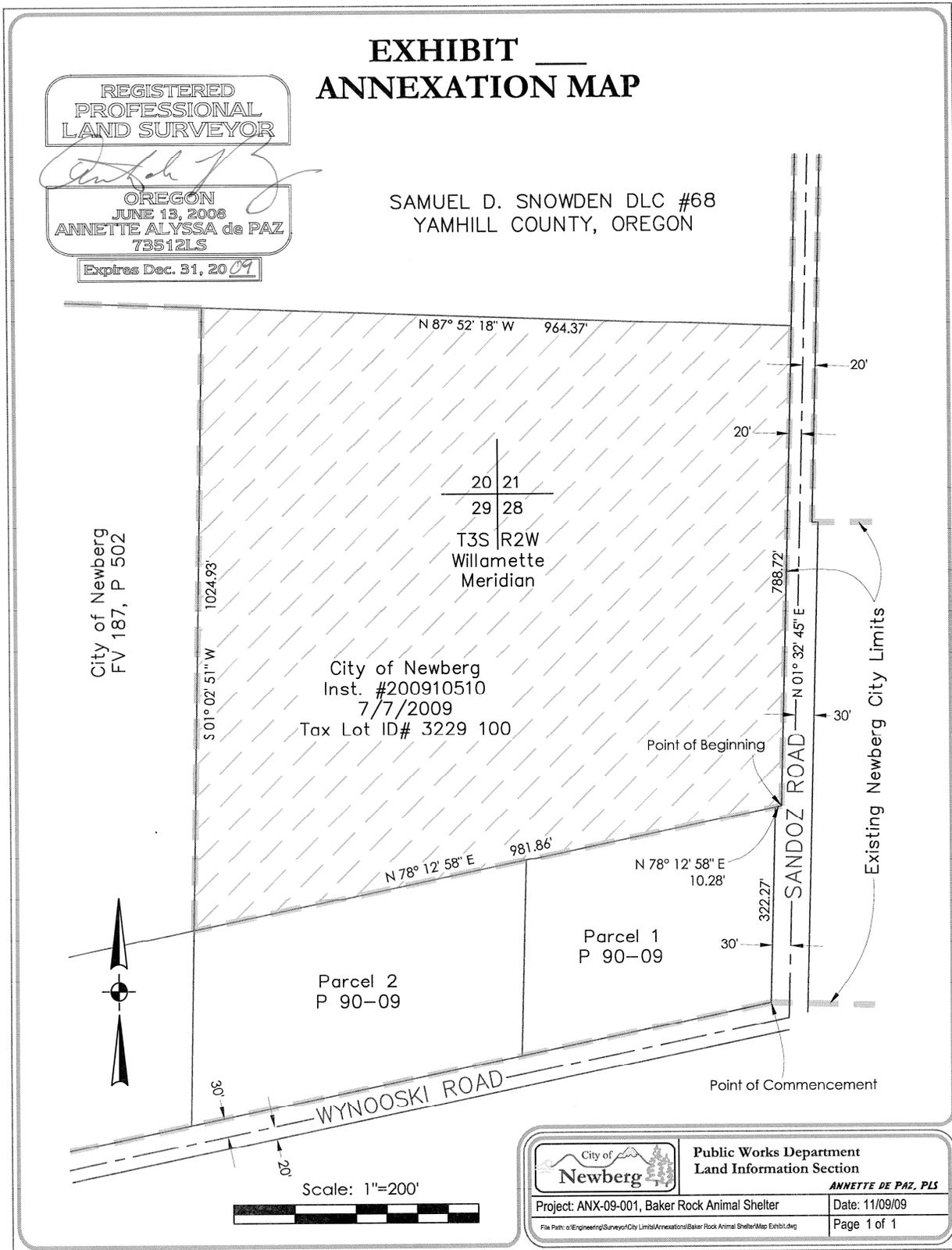


EXHIBIT B: LEGAL DESCRIPTION

City of Newberg Annexation

BEING a tract of land in Sections 20, 21, 28, and 29 of Township 3 South Range 2 West of the Willamette Meridian in Yamhill County, Oregon, and being a portion of the Samuel D. Snowden Donation Land Claim Number 68, and also being all of that land described by deed to City of Newberg, an Oregon Municipal Corporation, recorded as Instrument Number 200910510, Official Yamhill County Records, on July 7, 2009, and said tract of land being more particularly described as follows;

COMMENCING at the southeast corner of Parcel 1 of Yamhill County Partition No. 90-09, said corner being at the intersection of the northerly line of Wyooski Road and the west line of Sandoz Road;

THENCE North 01° 32' 45" East, along the west line of Sandoz Road, a distance of 322.27 feet to the northeast corner of said Parcel 1, said corner being on the Newberg City Limit and on the south line of said City of Newberg tract of land recorded as Instrument Number 200910510;

THENCE North 78° 12' 58" East, along the southerly line of said City of Newberg tract of land and along the Newberg City Limit, a distance of 10.28 feet to the southeast corner of said City of Newberg tract, said corner being a corner of the Newberg City Limit and 20.00 feet from, as measured perpendicular to, the centerline of Sandoz Road, and said corner also being the TRUE POINT OF BEGINNING;

THENCE North 01° 32' 45" East, along a line being 20.00 feet west of and parallel to the centerline of Sandoz Road, said line being along the Newberg City Limit, a distance of 788.72 feet to the northeast corner of said City of Newberg tract of land;

THENCE North 87° 52' 18" West, along the north line of said City of Newberg tract of land, a distance of 964.37 feet to the northwest corner of said City of Newberg tract of land, said corner being a corner of the Newberg City Limit and also being the northeast corner of that tract of Land described by deed to City of Newberg, a Municipal Corporation of the State of Oregon, recorded in Film Volume 187, Page 502 of the Deed Records of Yamhill County;

THENCE South 01° 02' 51" West, along the east line of said City of Newberg tract recorded in Film Volume 187, Page 502, said line being along the Newberg City Limit, a distance of 1024.93 feet to a point on the northerly line of said Partition Number 90-09, said point being a corner of the Newberg City Limit;

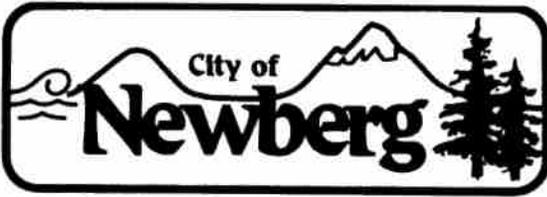
THENCE North 78° 12' 58" East, along the northerly line of said Partition Number 90-09 and the Newberg City Limit, a distance of 981.86 feet to the POINT OF BEGINNING.

Prepared by Annette de Paz, PLS #73512

City of Newberg, Land Information Section

O:\Engineering\Surveyor\City Limits\Annexations\Baker Rock Animal Shelter\Legal Descr Exhibit.docx

Last Revised: 11/9/09



Planning and Building Department
P.O. Box 970 • 414 E First Street • Newberg, Oregon 97132
503-537-1240 • Fax 503-537-1272 • www.ci.newberg.or.us

ANNEXATION STAFF REPORT

FILE NO.: ANX-09-001

REQUEST: Annexation of one parcel (approximately 19.68 acres) to the City of Newberg with concurrent zone change from Yamhill County AF-10 (Agriculture/Forestry Small Holding) and HI (Heavy Industrial) zoning to City M-3 (Heavy Industrial), M-2 (Light Industrial), with an Interim Industrial Use overlay for the portion of the site within the Bypass route.

LOCATION: 1409 S. Sandoz Road (former Baker Rock property)

TAX LOTS: 3229-100

APPLICANT/ OWNER: City of Newberg

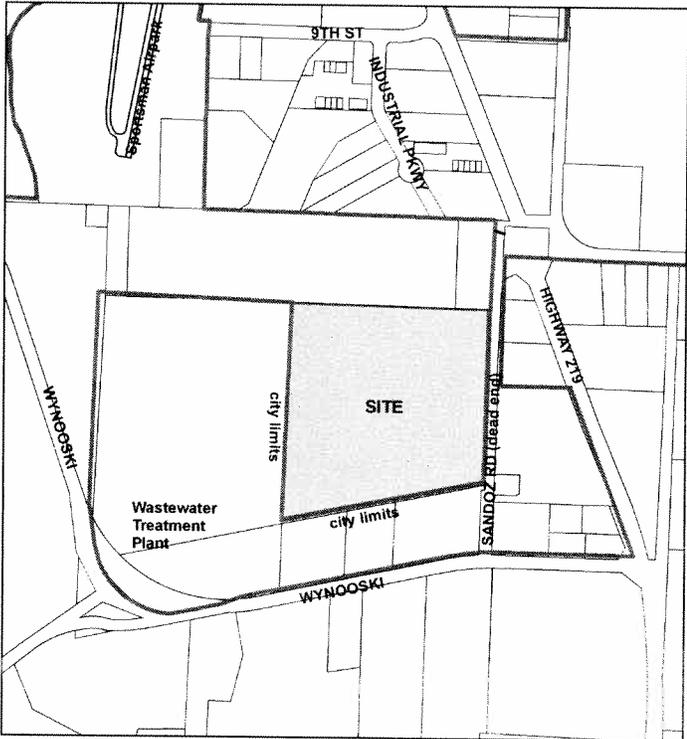
ZONE: Yamhill County AF-10 (Agriculture/Forestry Small Holding), HI (Heavy Industrial)

COMPREHENSIVE PLAN DESIGNATION: IND (Industrial), with an Airport Overlay and Bypass Interchange Overlay

DATE OF HEARING: November 12, 2009

ATTACHMENTS:

- Reso. 2009-271 with
- Exhibit A: Findings
 - Exhibit B: Annexation Map
 - Exhibit C: Legal Description
 - Exhibit D: Comprehensive Plan Map
 - Exhibit E: Zoning Map
1. Aerial Photo - Vicinity
 2. Aerial Photo - Site
 3. Aerial Photo with topography
 4. Existing Yamhill County zoning
 5. Concept development plan
 6. Latest ODOT bypass design
 7. Application
 8. Newberg Comprehensive Plan (by reference)
 9. Newberg Development Code (by reference)
 10. Comments received



A. PROCESS: The applicant's request for approval of an annexation is being processed through the provisions of Newberg Development Code § 151.024 as follows:

| | |
|------------------|--|
| October 22, 2009 | Public notice was mailed to property owners within 500 feet of the site for comment. |
| October 29, 2009 | Notice was posted on the site. |
| October 29, 2009 | Notice was posted in four public places. |
| October 24, 2009 | Notice was published in the Newberg Graphic. |
| October 29, 2009 | The Director determined the application was complete. |

B. CRITERIA: The Planning staff has determined that the following criteria apply to the subject proposal. The Planning Commission or other interested parties should direct their comments to the criteria listed or state why they feel other criteria may apply. The Newberg City Council has the authority to make the final decision on this matter. The Planning Commission has an advisory role.

NDC § 151.262 QUASI-JUDICIAL ANNEXATION CRITERIA

The following criteria shall apply to all annexation requests:

(A) The proposed use for the site complies with the Newberg comprehensive plan and with the designation on the Newberg comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Newberg comprehensive plan.

(B) An adequate level of urban services must be available, or made available, within three years time of annexation, except as noted in subsection (E) below. An adequate level of urban services shall be defined as:

(1) Municipal sanitary sewer and water service meeting the requirements enumerated in the Newberg comprehensive plan for provision of these services.

(2) Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three-year time period, the city shall note requirements such as dedication of right-of-way, waiver of remonstrance against assessment for road improvement costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. The city shall also consider public costs for improvement and the ability of the city to provide for those costs.

(C) Findings documenting the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.

(D) The burden for providing the findings for divisions (A), (B) and (C) of this section is placed upon the applicant.

(E) The City Council may annex properties where urban services are not and cannot practically be made available within the three year time frame noted in subsection (B) above, but where annexation is needed to address a health hazard, to annex an island, to address sewer or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the Council shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available.

C. SITE INFORMATION:

1. Request: Annexation of a 19.68 acre parcel into the City of Newberg with concurrent zone change from Yamhill County AF-10 (Agriculture/Forestry Small Holding) and HI (Heavy Industrial) zoning to City M-3 (Heavy Industrial), M-2 (Light Industrial), with an Interim Industrial Use overlay for the portion of the site within the Bypass route.
2. Zoning/Comprehensive Plan designations: The site currently has Yamhill County zoning and is primarily HI (Heavy Industrial), with a 160 foot deep AF-10 (Agriculture/Forestry Small Holding) buffer zone along the southern and eastern boundaries. The site has an Industrial (IND) designation in Newberg's Comprehensive Plan, with an Airport Overlay and Bypass Interchange overlay. The Airport Overlay primarily limits the height of developments near the airport, and the Bypass Interchange Overlay primarily limits the uses permitted near the future Newberg-Dundee Bypass interchanges.
3. The City recently created an Interim Industrial Use Overlay. The purpose of this overlay is to allow interim use of industrially zoned properties in areas that are planned for future acquisition for right-of-way, such as the Newberg-Dundee bypass. The overlay allows non-structural uses of the land, such as parking and storage. The overlay also reduces requirements for permanent site improvements, such as parking and landscaping, which would be removed upon acquisition of the right-of-way. The northern part of this 19.68 acre parcel is within the most current design of the bypass right-of-way, so the Interim Industrial Use Overlay should apply to the northern part of this site upon annexation (approx. 6.7 acres, as shown in Exhibit E).
4. The City is also in the process of applying to Yamhill County for a conditional use permit to construct an animal shelter in the southeast corner of the site. If the conditional use permit application is approved then any conditions placed on the project by Yamhill County will still apply if the site is annexed into the city. The City has begun the conditional use permit process with the County before annexing the site into the city because we would like to begin construction of the animal shelter soon. The annexation process takes quite a while to complete. If the annexation application goes to the city

voters in May, 2010 and is approved then the site will officially be within the city in June, 2010.

5. Site: The site is currently a hazelnut orchard with mature trees. The topography is generally flat, with a slight slope to the northwest. There is a grove of tall oak trees in the northeast corner, where a house used to be located.
 6. Surrounding uses:
West: City wastewater treatment plant, within city limits. M-3 (Heavy Industrial) zoning.
South: Two light industrial uses, vacant industrial lot. Inside city limits. M-2 (Light Industrial) zoning.
East: Manufactured home park, inside city limits. R-2 (Medium Density Residential) zoning.
Northeast: Single family home, outside city limits. County VLDR-2.5 (Very Low Density Residential) zoning.
North: Single family home with pasture, outside city limits. County AF-10 (Agriculture/Forestry Small Holding) zoning.
 7. Ownership: The City of Newberg recently purchased the parcel from Baker Rock.
 8. Utilities: The animal shelter project will probably begin construction before annexation. Any wells and septic systems on the site will be decommissioned after annexation.
Sanitary Sewer: The project will install a grinder pump and forced main line to the wastewater treatment plant west of the site upon annexation. This is similar to the systems used by the industrial uses south of the site. There are no sanitary sewer lines in Wyooski Street or Sandoz Road near the site.
Water: The animal shelter project will connect to the city water line in Sandoz Road. This line will probably be extended west along the southern property line when the remainder of the property is developed to connect to another city water line, and complete a loop.
Stormwater: Stormwater from the animal shelter roof and paved area will be directed to Sandoz Road, where a ditch will carry it to Wyooski Street and a city catch basin.
 9. Roads: The site is adjacent to and will take access from Sandoz Road, a dead-end local street. Sandoz Road provides access to Wyooski Road, a major collector. Sandoz Road has a 60 foot right-of-way south of the site, and a 50 foot right-of-way adjacent to the site. The City will dedicate an additional 10 feet of right-of-way along the western side of Sandoz Road to match the right-of-way to the south. The west side of Sandoz Road adjacent to the animal shelter project will be improved with additional paving, curb, gutter and sidewalk as part of the animal shelter project.
- D. AGENCY COMMENTS:** The proposal was referred to the following public agencies: City Manager, Planning and Building Director, Public Works Director, Public Works Surveyor, Maintenance Supt., Legal, Building, Police, Fire, Finance, NW Natural Gas, Newberg School District, PGE, Comcast, Verizon, Newberg Garbage, Chehalem Park and Rec. District, Newberg Rural Fire District, Postmaster, Yamhill County Planning, Yamhill County Roads, and ODOT.

The following responded:

Reviewed; no conflict: Fire Dept., Newberg Rural Fire Protection District, Police Dept., School District, Newberg Garbage, Finance.
Reviewed, no comment: City Manager.

Yamhill County, Dept. of Planning and Development commented:

Re: **Docket No. ANX-09-001, Proposed annexation of Tax Lot 3229-100**

Dear Mr. Olson:

Thank you for the referral related to annexation of the 19.68 acres addressed as 1409 S. Sandoz Road. As part of the annexation the City will need to take over jurisdiction and maintenance of Sandoz Road. The Yamhill County Transportation Plan Section 5.2.2 has Goals and Policies that deal with the issue of Annexations. Goals 5 and 6 of this section state:

5. County policy will encourage the expeditious transfer of jurisdiction of roadways to incorporated cities in conjunction with annexation. It is the policy of Yamhill County that developers of property who propose annexation and who have frontage on a road that does not meet city road standards shall have the primary responsibility for upgrading the road to city standards. Roads shall be upgraded at the time of annexation, or the developer shall sign an agreement with the city to upgrade the road at the time of development. Transfer of jurisdiction shall require the approval of both the County and the City in accordance with the provisions in Oregon Revised Statutes 373.270.

6. It is the policy of Yamhill County to require the transfer, or an agreement to transfer with specific time lines and milestones as part of the agreement, of jurisdiction of County roadways within urban growth boundaries to their respective cities at the time of annexation.

In reading through the application packet I did not notice findings related to the future jurisdiction and maintenance of Sandoz Road. Please contact the Yamhill County Public Works Department and Yamhill County Counsel's office to formalize an agreement to transfer jurisdiction of Sandoz Road to the City.

Please also consider Yamhill County to be a party to the application and please send future public notices to the following departments:

Yamhill County Public Works
John Phelan, Road Director
2060 NE Lafayette Avenue
McMinnville, OR 97128

Yamhill County Public Works
Bill Gille, Engineer
2060 NE Lafayette Avenue
McMinnville, OR 97128

Yamhill County Planning Dept.
Ken Friday, Planning Div. Manager
525 NE 4th Street
McMinnville, OR 97128

Yamhill County Counsel
Rick Sanai, Assistant Co. Counsel
434 NE Evans Street
McMinnville, OR 97128

If you have any questions, please contact this office at (503) 434-7516.

Sincerely,



Kenneth P. Friday
Planning Division Manager

cc (via e-mail):Board of Commissioners
John Phelan, Road Director
Bill Gille, Engineer
Rick Sanai, Assistant Co. Counsel
Mike Brandt, Planning Director
Barton Brierley, Newberg Planning Director

Oregon Department of Transportation commented:

SUBJECT: Comments on ANX-09-001 (City of Newberg)

Dear Mr. Olson:

Thank you for referring the subject application to the Oregon Department of Transportation (ODOT) for review and comment. ODOT staff have reviewed the proposed City of Newberg annexation application and supporting documents and our comments are provided below.

The application is a request by the City of Newberg for annexation of 19.68 acres into the City. A concurrent zone change from the Yamhill County AF-10 (Agriculture/Forest Small Holding) and HI (Heavy Industrial) zoning to the City's M-3 (Heavy Industrial) and M-2 (Light Industrial) districts is also proposed. The City's Comprehensive Plan designates the property "Industrial." The subject property is located west of Sandoz Road north of its intersection with Wynooski Road. The City currently has an application pending with Yamhill County for the construction of an animal shelter on the southeast corner of the site. Other uses proposed for the site include and expansion of the City's wastewater treatment facility and a public works maintenance yard.

The proposed Newberg-Dundee Bypass crosses the northern portion of the property. The Comprehensive Plan applies a Bypass Interchange overlay to that property. The City is currently considering a development code amendment that would create an Interim Industrial Use Overlay that, if adopted, would be applied to the portion of the site crossed by the proposed bypass alignment and would limit use of the property subject to the overlay to interim and non-structural uses.

The application materials include proposed findings related to compliance with Statewide Planning Goal 12 and the Transportation Planning Rule (OAR 660-012-0060). The findings pertaining to "Roads" conclude, "*The future development on the site will have a low impact in transportation facilities in the area.*" ODOT staff concur with this finding as it relates to the uses described in the application. Other uses allowed in the M-2 and M-3 zoning districts could, however, generate a level of traffic that could result in significant impacts to area transportation facilities. ODOT recommends that the City adopt a limited use overlay or other enforceable condition on the zone change that would limit use of the property to those described in the application materials. This condition will ensure that proposed findings for the Transportation Planning Rule can be met.

As a final matter, ODOT supports the actions proposed by the City to limit development of the northern portion of the site that is crossed by the proposed Newberg-Dundee Bypass alignment. The proposed Interim Industrial Use overlay, as described in the application, will serve to allow a level of development on the site while protecting the property for future acquisition.

This letter should be included in the record as ODOT testimony. ODOT should be considered a party to the hearing and be entitled to notices of future hearings, or hearing continuances or extensions. Please provide me with a copy of the City's decision, including findings and conditions of approval.

Sincerely,



Daniel L. Fricke
Senior Transportation Planner

DLF:

cc: Cyndi Buswell, ODOT Region 2
Terry Cole, ODOT Region 2
Steve Oulman, DLCD

PUBLIC COMMENTS: One public comment was received during the two week public comment period. It is summarized below and addressed within the findings. The full text of the comment is included in Attachment 10.

Gene & Lynda Spaugh, 1500 S. Sandoz Road, were concerned about buffering the noise and view of future development on the site, the impact of increased traffic, and that development include parking within the site.

General response: The parking and buffering issues will be addressed in detail when any future development on the site applies for design review approval. The concept development plan shown for the site is not being approved as part of the annexation; it only shows an example of how the site could develop. The design review process for future development will include public notice and a public comment period, so there will be an opportunity for neighbors to review and comment on any specific development proposals. In general, however, the Newberg Development Code will require any future development to provide off-street parking on the site (typically 1 parking space for every 500 square feet of building for industrial uses), and will require at least a 20 foot deep

landscaped front yard along Sandoz Road to buffer the view of future development. The animal shelter project that is currently being reviewed by Yamhill County also includes a 20 foot deep landscaped front yard along Sandoz Road, a 100 foot building setback from Sandoz Road to minimize noise, and an off-street parking lot. The traffic concerns are addressed within the transportation findings.

E. ISSUES:

1. Animal shelter conditional use approval by Yamhill County: The County review of the animal shelter conditional use permit is a separate process and is currently underway. If Yamhill County approves the conditional use permit then City staff will apply for building permits and begin construction. If the annexation proposal is approved by the City Council and by the voters then all future development of the site would be reviewed under the City design review criteria in the Newberg Development Code.
2. Bypass Route: The most current design of the Newberg-Dundee Bypass right-of-way covers the northern part of the site. The site would not have direct access to the bypass. The Interim Industrial Use overlay would allow some use of the northern portion of the site but not obstruct the future construction of the bypass.
3. The existing Yamhill County zoning on the site has an AF-10 zone to buffer nearby properties from the Heavy Industrial zone that covers most of the site. The City's Comprehensive Plan designation for the entire site is Industrial. The City is proposing a Light Industrial (M-2) buffer zone along the eastern edge of the site to buffer the nearby residents from the Heavy Industrial (M-3) zone on the remainder of the site.

F. PRELIMINARY STAFF RECOMMENDATION: The preliminary staff recommendation is made in the absence of public hearing testimony, and may be modified subsequent to the close of the public hearing. At this writing, the staff recommends the following motion:

- Move to adopt Planning Commission Resolution 2009-271, which recommends to the City Council approval of the requested annexation.

PLANNING COMMISSION RESOLUTION NO. 2009-271

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWBERG RECOMMENDING THAT THE CITY COUNCIL APPROVE FILE ANX-09-001, AN ANNEXATION OF 19.68 ACRES LOCATED AT 1409 S. SANDOZ RD., TAX LOT 3229-100.

WHEREAS, On September 29, 2009, City of Newberg staff submitted an application requesting annexation and concurrent zone change for a 19.68 acre property located at 1409 S. Sandoz Road, Yamhill County tax lot # 3229-100; and

WHEREAS, On October 22, 2009, notice of this proposed annexation/zone change and withdrawal from the Newberg Rural Fire Protection District was mailed to the owner of record as identified in Yamhill County Assessor's Office, and all adjoining property owners within a distance of 500 feet, and on October 29, 2009 notice of the proposal was posted on the site; and

WHEREAS, Notice was published in *The Newberg Graphic* newspaper on October 24, 2009, which is at least ten days prior to the public hearing before the Planning Commission on November 12, 2009, and on October 29, 2009, notice of the Planning Commission hearing was posted at four public places to comply with Oregon Revised Statute requirements for annexations.

WHEREAS, On November 12, 2009, a hearing was held by the Newberg Planning Commission.

WHEREAS, The Planning Commission finds that the application meets the applicable criteria, and would be in the best interest of the citizens of Newberg.

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Newberg that it recommends that the City Council:

1. Approve the requested annexation of this parcel, with concurrent zone change from Yamhill County AF-10 (Agriculture/Forestry Small Holding) and HI (Heavy Industrial) zoning to Newberg M-3 (Heavy Industrial), M-2 (Light Industrial), with an Interim Industrial Use overlay for the portion of the site within the Bypass route, as shown on Exhibit E.
2. Withdraw the parcel from the Newberg Rural Fire Protection District.
3. If the annexation is approved by the voters, initiate a request to Yamhill County to transfer the jurisdiction of Sandoz Road to Newberg.

This recommendation is based on the staff report, findings and testimony.

DATED this 12th day of November, 2009.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

ATTEST:


Planning Commission Secretary


Planning Commission Chair

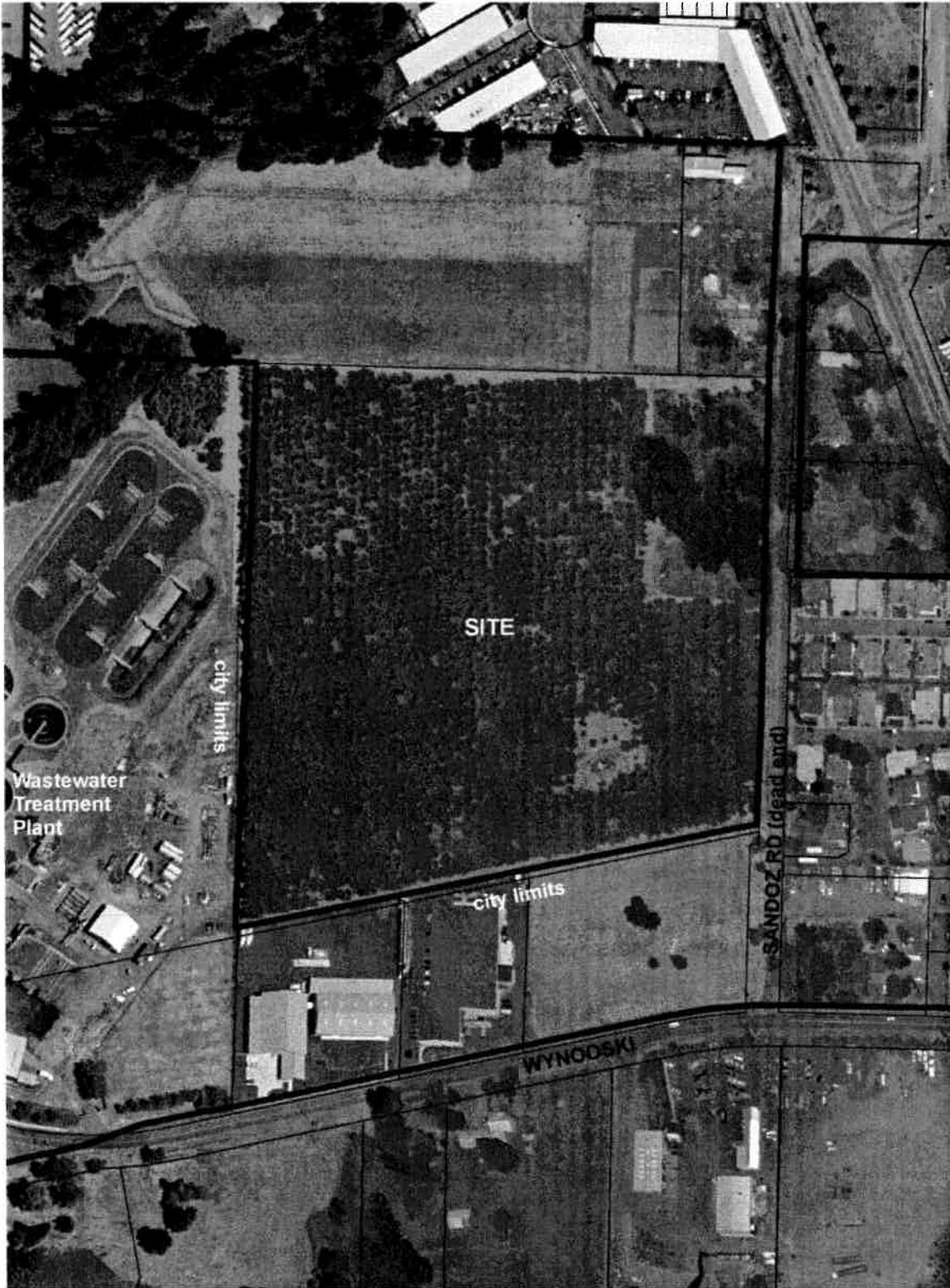
Exhibits

- Exhibit A: Findings
- Exhibit B: Annexation Map
- Exhibit C: Legal Description
- Exhibit D: Comprehensive Plan Map
- Exhibit E: Zoning Map

ATTACHMENT 1: AERIAL PHOTO - VICINITY



ATTACHMENT 2: AERIAL PHOTO - SITE



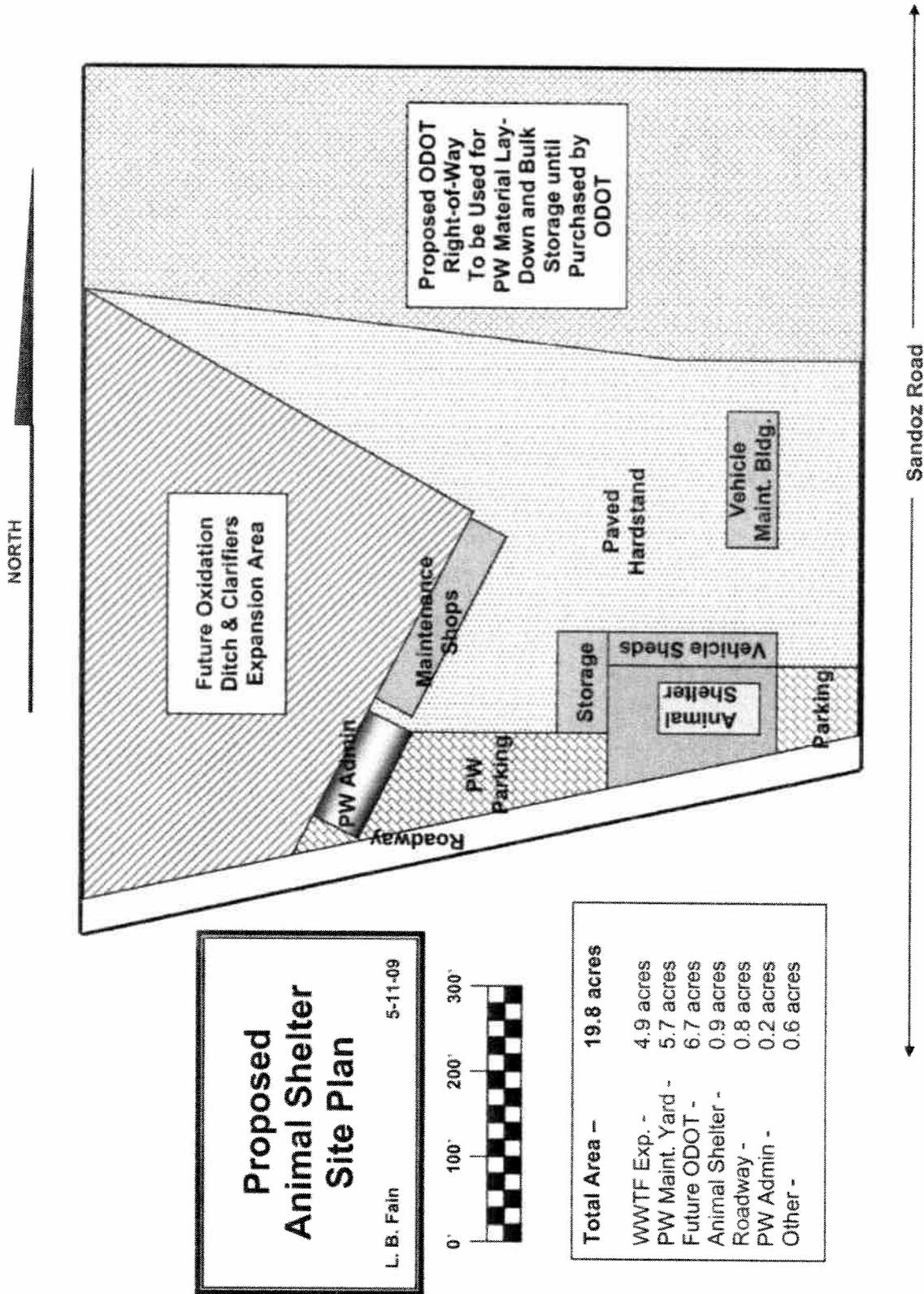
ATTACHMENT 3: AERIAL PHOTO WITH TOPOGRAPHY
Elevation – 2 foot contours



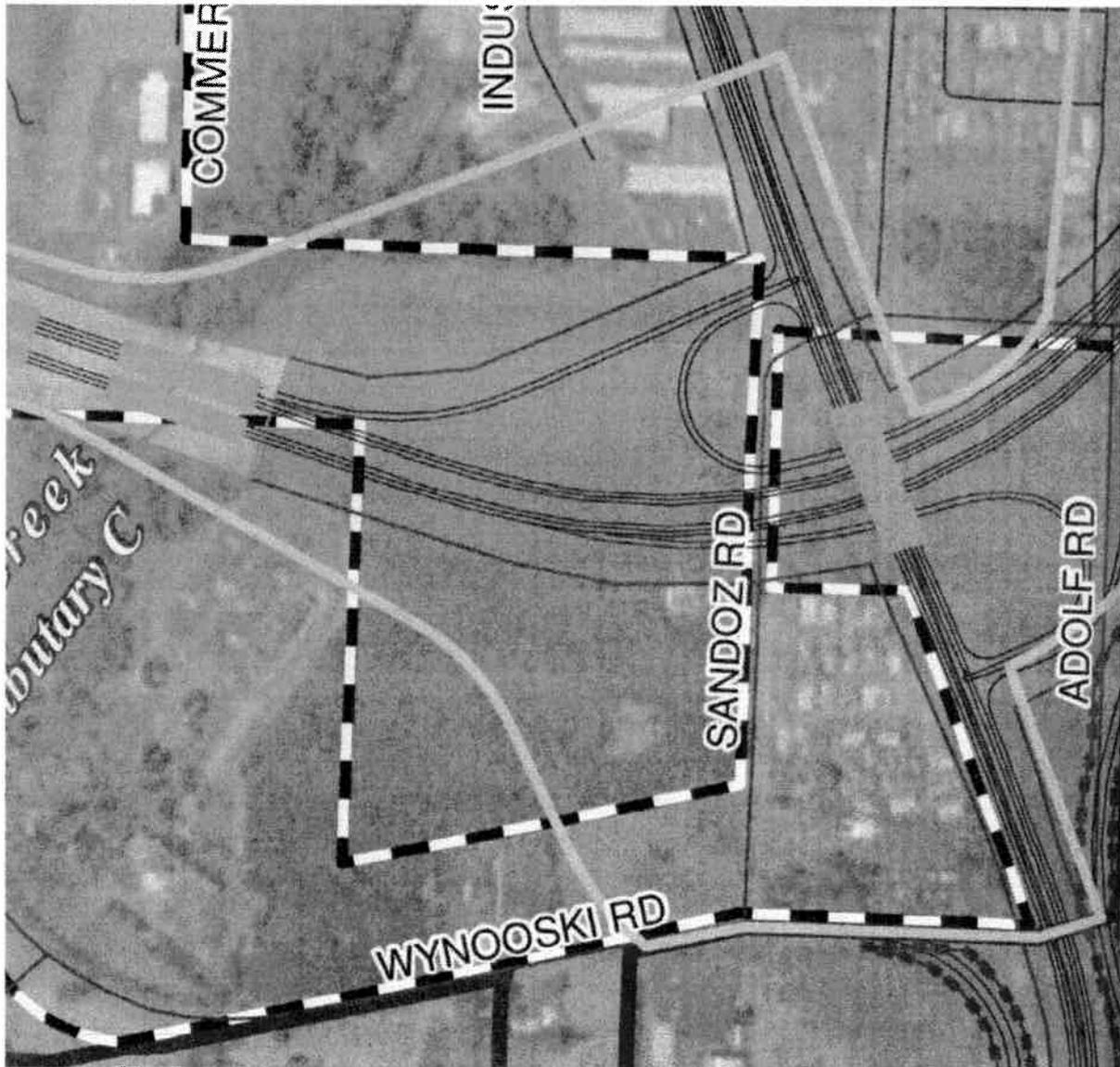
ATTACHMENT 4: EXISTING YAMHILL COUNTY ZONING



ATTACHMENT 5: CONCEPT DEVELOPMENT PLAN



ATTACHMENT 6: LATEST ODOT BYPASS DESIGN (8/28/08)



Chair Wall opened the public hearing and read ORS 197.763. He asked the Commissioners for any abstentions, conflicts of interest, and objections to jurisdiction. None were brought forward. Steve Olson, Associate Planner, presented the staff report (see official meeting packet for full report) and passed out Exhibit B Annexation Map & Exhibit C Legal Description that will become an official part of the resolution if approved.

Public Testimony:

Chair Wall opened the public testimony portion of the hearing. There were no proponents or opponents present. Councilor Bart Rierson, who also serves on the Animal Shelter Sub-Committee, was in attendance and made himself available for any questions. Councilor Rierson explained there is expansion room available for growth at the shelter. The Planning Commission discussed the zone change for this property and the future changes south of Wynooski.

Deliberation:

Chair Wall opened the deliberation portion of the hearing and asked for final comments and recommendation from staff. Staff concluded with a recommendation to approve Resolution 2009-271, which recommends to the City Council approval of the requested annexation with concurrent zone change, withdrawal of the parcel from the Newberg Rural Fire Protection District, and that if the annexation is approved by the voters then recommend Council initiate a request to Yamhill County to transfer jurisdiction of Sandoz Road to Newberg. Chair Wall asked for additional comments from Commissioners and after hearing none, closed the public hearing.

MOTION #2: Haug/Tri to adopt **Resolution 2009-271**, recommending to the City Council approval of the requested annexation. (7Yes/ 0 No) Motion carried.

VI. LEGISLATIVE PUBLIC HEARINGS:

APPLICANT: City of Newberg
REQUEST: Consider changes to the Newberg Development Code to support the development of more affordable housing; allow duplexes in R-1; allow more flexibility for accessory dwelling units; allow multiple second-story residences in C-1; incentivize more affordable dwelling units in PUDs; allow legal non-conforming duplex and mutli-family units to be reconstructed if destroyed; and reduce and provide flexibility to parking standards for affordable housing projects.
FILE NO.: G-09-007 **RESOLUTION NO.:** 2009-272
CRITERIA: Newberg Development Code § 151.122(B)

TIME: 7:42 PM

Opening of the Hearing:

Chair Wall opened the public hearing and asked the Commissioners for any abstentions, conflicts of interest, and objections to jurisdiction. None were brought forward. David Beam, Economic Development Planner, presented the staff report (see official meeting packet for full report) and handed out the proposed December 2007 Newberg Development Code Changes as reference for the Commissioners. This was the same information sent to them by email earlier in the week. Commissioner Haug commented that he liked the staff presentation, as it clarified many points. He expressed he wished he had this information prior to the meeting. He also asked how affordable housing affect property values of surrounding developments. Mr. Beam handed out a copies of an item printed off the internet from Habitat for Humanity. The handout lays out a collection of studies from

various groups regarding how affordable housing affects property values. The vast majority of the studies have shown that affordable housing does not negatively affect existing property values. Mr. Haug stated he would like to have seen other viewpoints about this issue other than Habitat for Humanity.

TIME – 8:10 PM

Public Testimony:

Chair Wall opened the public testimony portion of the hearing. Roger Grahn stated he is both a proponent and opponent. His belief is that low-income housing will never be built in Newberg under current conditions. He's tried to build affordable housing himself, without success. Land is too expensive, as well as the cost of permits. Building affordable housing is a worthwhile cause, but the City needs to participate in the effort financially by subsidizing the land cost and/or reducing fees. It's more beneficial for him to build in Portland because the permit fees are significantly less. Portland offers density bonuses for certain issues, such as safety. Mr. Grahn suggested using a method by which a builder would write a check to the City for a portion of the fees and then pay to the City a certain percentage of the gross for 10 years after the project has been built and keeps its deed restriction. Mr. Grahn will write down his suggestions and forward to City staff. Mr. Grahn doesn't believe affordable housing will have a serious effect on property values, if managed properly.

Proponent Lee Means, Executive Director of YCAP, which is a social services agency serving low-income seniors and disabled individuals and families in Yamhill County. They run Harvest House, which is a transitional shelter home in Newberg for homeless families, and are the managing owners of Camelia Court, an affordable housing complex in Newberg. There is a lot to be said for spreading out affordable housing and not concentrating it all in one area. Ms. Means spoke to the humanitarian side, stating that as wonderful as Yamhill County is, people don't realize the extent of the low-income housing problem. In the last three months, they've seen a 48% increase in the number of people seeking help so they can stay in their homes. This county is in desperate need of affordable housing. YCAP is a funnel for state and federal housing to assist people with paying rent. Ms. Means just did a study on how much of that money is spent in each of the communities and it showed Newberg has significantly less affordable housing to refer people in need to. She spoke to the parking issue and stated many families have single parents and normally only have one car if any at all, as well as disabled individuals with one or no car.

Closing Comments from Staff:

Chair Wall asked for final comments from the Commissioners and recommendations from staff. Mr. Beam stated staff recommends the adoption of Resolution 2009-272 that recommends that the City Council adopt the proposed amendments to the Newberg Development Code, as detailed in Exhibit A in the resolution. Staff will also define "special needs housing" and will bring that definition back to the Commission for their consideration in the near future.

Commissioner Haug suggested moving some of these suggested development code changes along more slowly. For example, for ADUs in the R-1 zone, we could loosen some of the rules, but we should keep the conditional use in place so individual neighborhoods can be involved in these changes. If successful, then later we could make them outright permitted. This proposal has a number of changes all at once.

Barton Brierley explained that the change before the Planning Commission tonight would be changing accessory dwelling units in the R-1 zone from a conditional use to a permitted use. About eight years

ago, ADUs were put into the Development Code and at that time, they were made a conditional use in the R-1 zone. In essence, it already has been a gradual process. The recommendation before the Commission came from the Affordable Housing Ad Hoc Committee. Mr. Brierley noted there are two sides to this story. On one side, a conditional use would give opportunities for neighbors to comment and issues could be addressed. On the other hand; the conditional use process costs the applicant time and money. There have only been three requests for ADUs in R-1 in the last eight years. Concerning duplexes in R-1 there hasn't been any in the last 8-year period.

Chair Wall closed the public hearing and recessed at 9:04 PM for a five-minute break.

Deliberation:

TIME – 9:09 PM

Chair Wall opened the deliberation portion of the hearing.

MOTION #3: Haug/Tri to adopt **Resolution 2009-272**, recommending the City Council adopt the proposed amendments to the Newberg Development Code, as detailed in Exhibit A.

The Planning Commission reviewed the proposed changes and actions (pages 73 – 74 of the official meeting packet).

Commissioner Haug referred to Action 4.2I and believes it's more reasonable to reduce the square footage, but keep that change as a conditional use in order to see how it impacts neighborhoods.

MOTION #4: Commissioner Haug amended the motion; and moved to change Action 4:2I allowing duplexes in R-1, keeping them as a conditional use. No second was given; motion failed.

Commissioner Stuhr is concerned with Action 4.2C and the possibility of everyone adding accessory dwelling units, which can add demands to sewer, parking, water, etc. This application to existing homes where this wasn't anticipated or planned is something different from planning for future developments. She isn't convinced this won't affect livability.

Commissioner Smith stated he isn't persuaded by the Habitat for Humanity study, as many of the studies are too dated. He referred to Mr. Grahn's testimony and is intrigued by his idea of spreading payments for fees out over time. He noted that Lee Means spoke regarding the homeless count and it would be a great mistake to equate the need for the homeless with the need for affordable housing, since it is far larger and includes many different income levels. The Affordable Housing Action Plan is large and complicated and that is why the Commission is only hearing it bit by bit and not as a whole. ADUs only address a small part of the need for affordable housing. Also, keeping affordable housing all in the same area is a social disaster and is better to place it within other housing stock. He doesn't agree with the comments in Roger Currier's letter (see official meeting packet). Commissioner Smith is sympathetic to Commissioner Haug and Commissioner Stuhr's concerns, but is in support of this proposal. He also stated he believes the proposed parking standards are sufficient.

Chair Wall will vote for this resolution but understands the concerns voiced. City Council will need to make the political decision on this.

Commissioner Haug stated when you waive fees and permits, you do it on new development SDCs. However, that cost to build new systems is still there, and therefore, those costs are just transferred to existing residents living in the city. Mr. Haug is also the Chair of the Citizen Rate Review Committee and stated there is a lack of reserve funds for the Wastewater Treatment Plant. A 20% annual rate increase is needed per year over the next several years and asked the Commission to keep the SDCs needs in mind.

Vote on Motion #3: (5 Yes / 2 No [Haug, Stuhr]) Motion carried.

VIII. ITEMS FROM STAFF:

Update on Council items:

Barton Brierley stated the City Council did approve one small UGB amendment on the south side of Wyooski Rd. for 1.2 acres. At the next City Council meeting on December 7, 2009, they will be considering the Planning Commissioner appointments; there are two spots available and three applicants.

The next Planning Commission Meeting: December 10, 2009 and the Commission will be hearing more of the affordable housing amendments and an update to the Economic Opportunities Analysis.

Holiday Dinner Plans:

Barton Brierley stated the Commission needs to discuss the date and place for the holiday dinner. Commissioner Smith suggested the Yamhill Grill where they can have a private room for dinner. Mr. Brierley will suggest dates and the Commissioners can respond by email.

Other reports, letters, or correspondence:

The Electronic Sign Committee has had three meetings so far and Mr. Brierley is pleased with the group and the variety of opinions, thoughts, and interests. At this point, they've focused time on reviewing other cities' codes and interviewed three of the pilot program participants. At least three to four meetings are left, including a field trip to see existing signage.

IX. ITEMS FROM COMMISSIONERS:

None.

X. ADJOURN:

Chair Wall adjourned the meeting at 10:14 PM.

Approved by the Planning Commission this 10th day of December, 2009.

AYES:

NO:

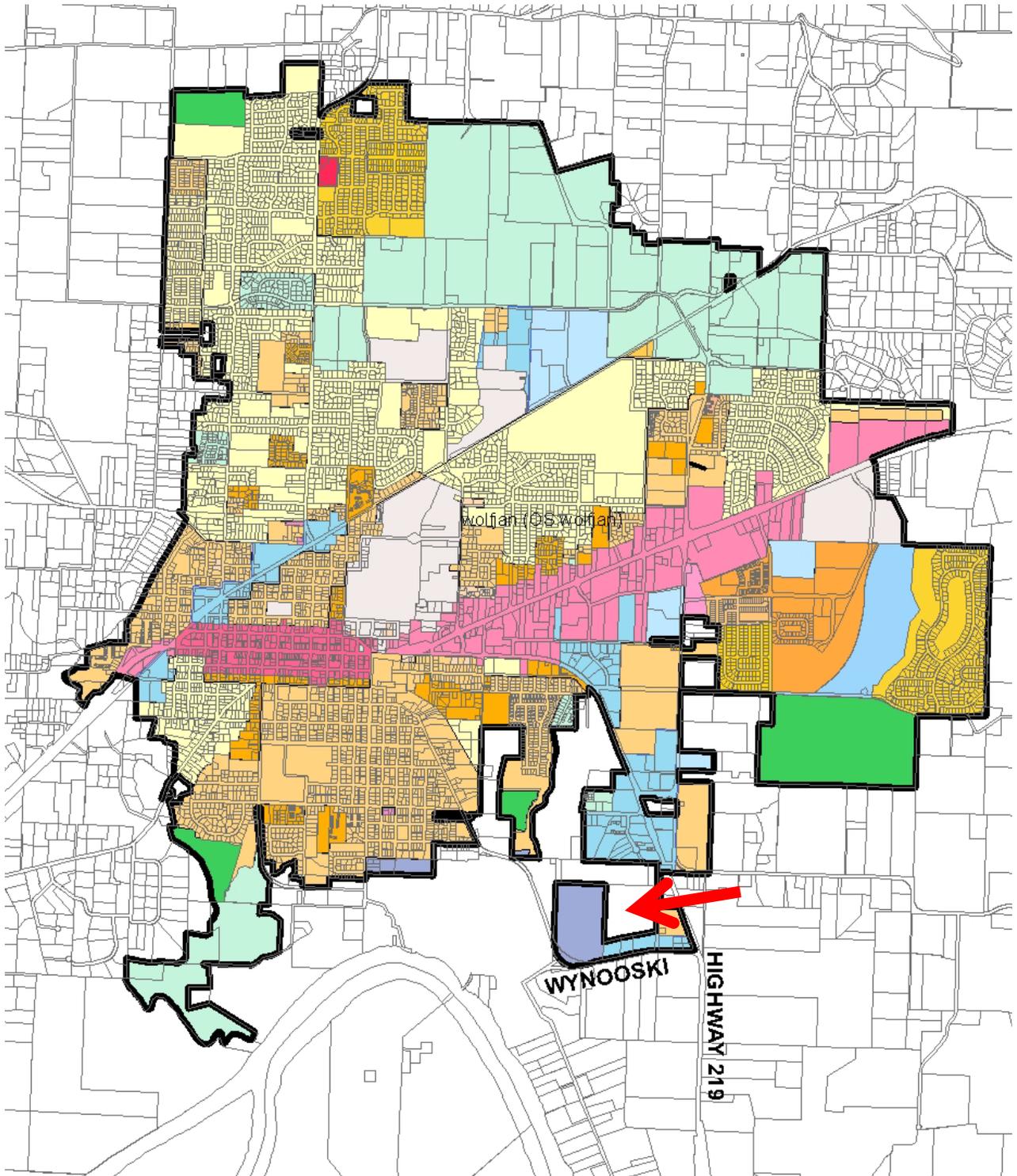
ABSENT:
(List Name(s))

ABSTAIN:
(List Name(s))

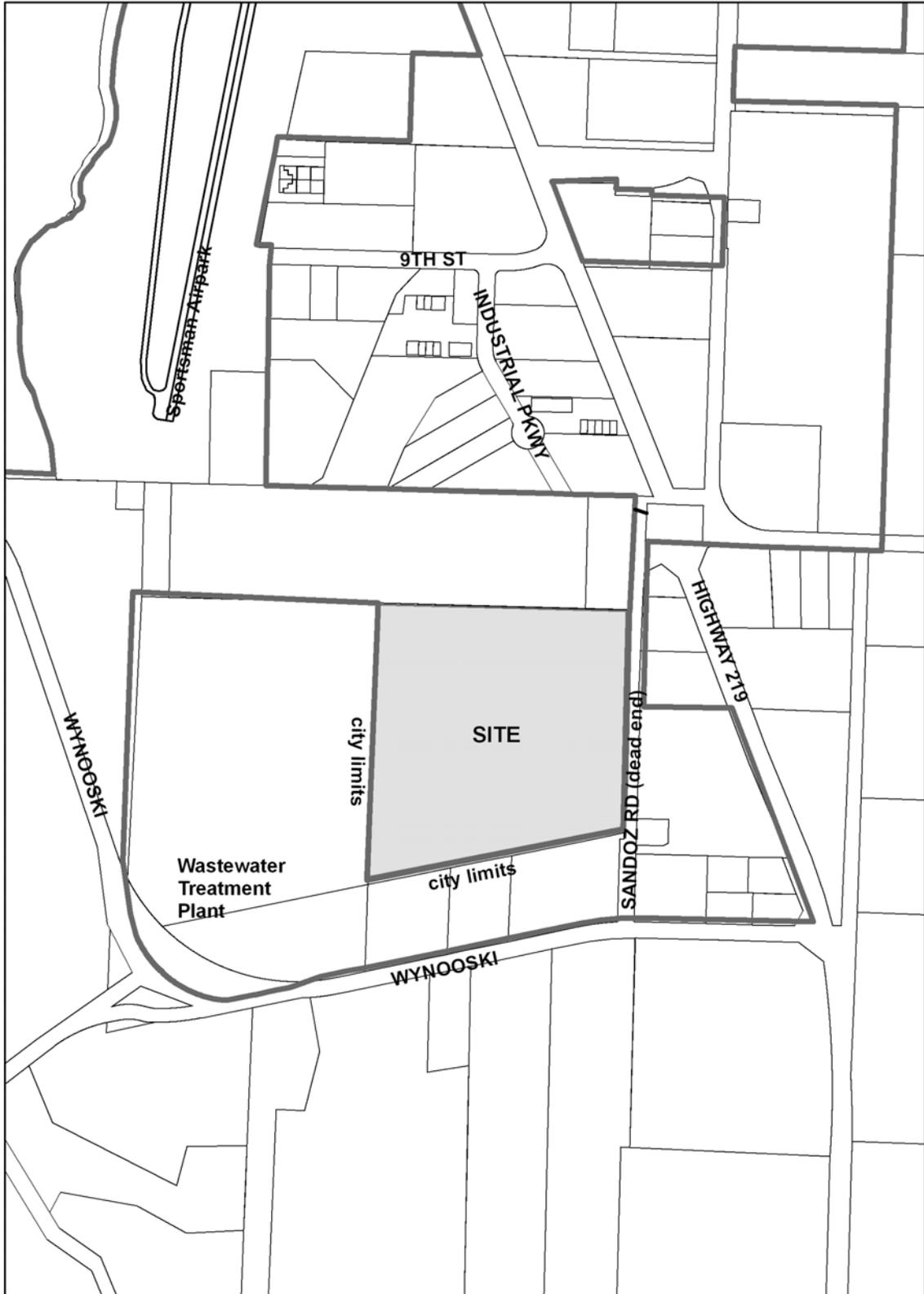
Planning Recording Secretary

Planning Commission Chair

ATTACHMENT 3: LOCATION OVERVIEW



ATTACHMENT 4: LOCATION MAP



ATTACHMENT 5: AERIAL PHOTOS





Yamhill County

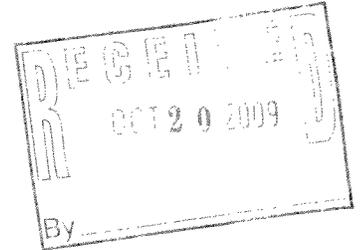
Attachment 6

DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET • McMinnville, Oregon 97128

Phone: (503) 434-7516 • Fax: (503) 434-7544 • TTY 1-800-735-2900 • Internet Address: <http://www.co.yamhill.or.us/plan/>

October 19, 2009



Newberg Planning and Building Department
Attn: Steve Olson
P.O. Box 970
Newberg, OR 97132

Re: **Docket No. ANX-09-001, Proposed annexation of Tax Lot 3229-100**

Dear Mr. Olson:

Thank you for the referral related to annexation of the 19.68 acres addressed as 1409 S. Sandoz Road. As part of the annexation the City will need to take over jurisdiction and maintenance of Sandoz Road. The Yamhill County Transportation Plan Section 5.2.2 has Goals and Policies that deal with the issue of Annexations. Goals 5 and 6 of this section state:

5. County policy will encourage the expeditious transfer of jurisdiction of roadways to incorporated cities in conjunction with annexation. It is the policy of Yamhill County that developers of property who propose annexation and who have frontage on a road that does not meet city road standards shall have the primary responsibility for upgrading the road to city standards. Roads shall be upgraded at the time of annexation, or the developer shall sign an agreement with the city to upgrade the road at the time of development. Transfer of jurisdiction shall require the approval of both the County and the City in accordance with the provisions in Oregon Revised Statutes 373.270.

6. It is the policy of Yamhill County to require the transfer, or an agreement to transfer with specific time lines and milestones as part of the agreement, of jurisdiction of County roadways within urban growth boundaries to their respective cities at the time of annexation.

In reading through the application packet I did not notice findings related to the future jurisdiction and maintenance of Sandoz Road. Please contact the Yamhill County Public Works Department and Yamhill County Counsel's office to formalize an agreement to transfer jurisdiction of Sandoz Road to the City.

Please also consider Yamhill County to be a party to the application and please send future public notices to the following departments:

Yamhill County Public Works
John Phelan, Road Director
2060 NE Lafayette Avenue
McMinnville, OR 97128

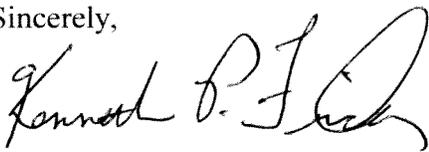
Yamhill County Public Works
Bill Gille, Engineer
2060 NE Lafayette Avenue
McMinnville, OR 97128

Yamhill County Planning Dept.
Ken Friday, Planning Div. Manager
525 NE 4th Street
McMinnville, OR 97128

Yamhill County Counsel
Rick Sanai, Assistant Co. Counsel
434 NE Evans Street
McMinnville, OR 97128

If you have any questions, please contact this office at (503) 434-7516.

Sincerely,



Kenneth P. Friday
Planning Division Manager

cc (via e-mail):Board of Commissioners

John Phelan, Road Director
Bill Gille, Engineer
Rick Sanai, Assistant Co. Counsel
Mike Brandt, Planning Director
Barton Brierley, Newberg Planning Director



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation

Region 2 Headquarters

455 Airport Road SE Building B

Salem, Oregon 97301-5395

Telephone (503) 986-2600

Fax (503) 986-2630

October 19, 2009

Mr. Steve Olson, Assistant Planner
City of Newberg Planning and Building Department
414 E. First Street
PO Box 970
Newberg, OR 97132

SUBJECT: Comments on ANX-09-001 (City of Newberg)

Dear Mr. Olson:

Thank you for referring the subject application to the Oregon Department of Transportation (ODOT) for review and comment. ODOT staff have reviewed the proposed City of Newberg annexation application and supporting documents and our comments are provided below.

The application is a request by the City of Newberg for annexation of 19.68 acres into the City. A concurrent zone change from the Yamhill County AF-10 (Agriculture/Forest Small Holding) and HI (Heavy Industrial) zoning to the City's M-3 (Heavy Industrial) and M-2 (Light Industrial) districts is also proposed. The City's Comprehensive Plan designates the property "Industrial." The subject property is located west of Sandoz Road north of its intersection with Wynooski Road. The City currently has an application pending with Yamhill County for the construction of an animal shelter on the southeast corner of the site. Other uses proposed for the site include and expansion of the City's wastewater treatment facility and a public works maintenance yard.

The proposed Newberg-Dundee Bypass crosses the northern portion of the property. The Comprehensive Plan applies a Bypass Interchange overlay to that property. The City is currently considering a development code amendment that would create an Interim Industrial Use Overlay that, if adopted, would be applied to the portion of the site crossed by the proposed bypass alignment and would limit use of the property subject to the overlay to interim and non-structural uses.

The application materials include proposed findings related to compliance with Statewide Planning Goal 12 and the Transportation Planning Rule (OAR 660-012-0060). The findings pertaining to "Roads" conclude, "*The future development on the site will have a low impact in transportation facilities in the area.*" ODOT staff concur with this finding as it relates to the uses described in the application. Other uses allowed in the M-2 and M-3 zoning districts could, however, generate a level of traffic that could result in significant impacts to area transportation facilities. ODOT recommends that the City adopt a limited use overlay or other enforceable condition on the zone change that would limit use of the property to those described in the application materials. This condition will ensure that proposed findings for the Transportation Planning Rule can be met.

Mr. Steve Olson
City of Newberg
October 19, 2009
Page 2 of 2

As a final matter, ODOT supports the actions proposed by the City to limit development of the northern portion of the site that is crossed by the proposed Newberg-Dundee Bypass alignment. The proposed Interim Industrial Use overlay, as described in the application, will serve to allow a level of development on the site while protecting the property for future acquisition.

This letter should be included in the record as ODOT testimony. ODOT should be considered a party to the hearing and be entitled to notices of future hearings, or hearing continuances or extensions. Please provide me with a copy of the City's decision, including findings and conditions of approval.

Sincerely,



Daniel L. Fricke
Senior Transportation Planner

DLF:

cc: Cyndi Buswell, ODOT Region 2
Terry Cole, ODOT Region 2
Steve Oulman, DLCD

October 30, 2009

City of Newberg
Planning and Building Department
P.O. Box 970
Newberg, OR 97132

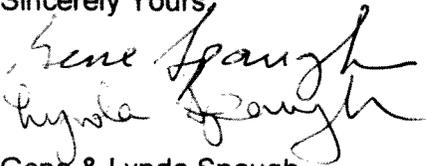
Ref: File No. ANX-09-001

Dear Sir:

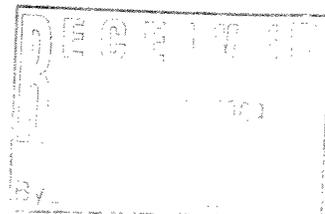
To fully support the proposed annexation we need to be assured that the City will:

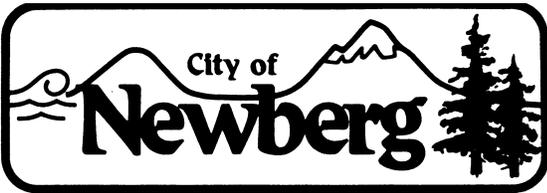
1. Develop the property such that there will be a buffer between the adjacent residents and the facility, especially for noise and view.
2. Perform a traffic survey before designing the facility entrance or entrances so that local traffic will not be severely impacted. If this requires a common entrance for all of the city facilities, it will receive consideration. A single common entrance might be located away from the recycle yard facility entrances and be used for the treatment plant, animal shelter, and maintenance facilities with interior separate gates to each.
3. Design the facilities to include available parking inside the facility site.

Sincerely Yours,



Gene & Lynda Spaug
1500 S. Sandoz Rd.
Newberg, OR 97132





Planning and Building Department
P.O. Box 970 • 414 E First Street • Newberg, Oregon 97132
503-537-1240 • Fax 503-537-1272 • www.ci.newberg.or.us

ANNEXATION APPLICATION: 1409 S. Sandoz Road

REQUEST: Annexation of one parcel (approximately 19.68 acres) to the City of Newberg with concurrent zone change from Yamhill County AF-10 (Agriculture/Forestry Small Holding) and HI (Heavy Industrial) zoning to City M-3 (Heavy Industrial), M-2 (Light Industrial), with an Interim Industrial Use overlay for the portion of the site within the Bypass route.

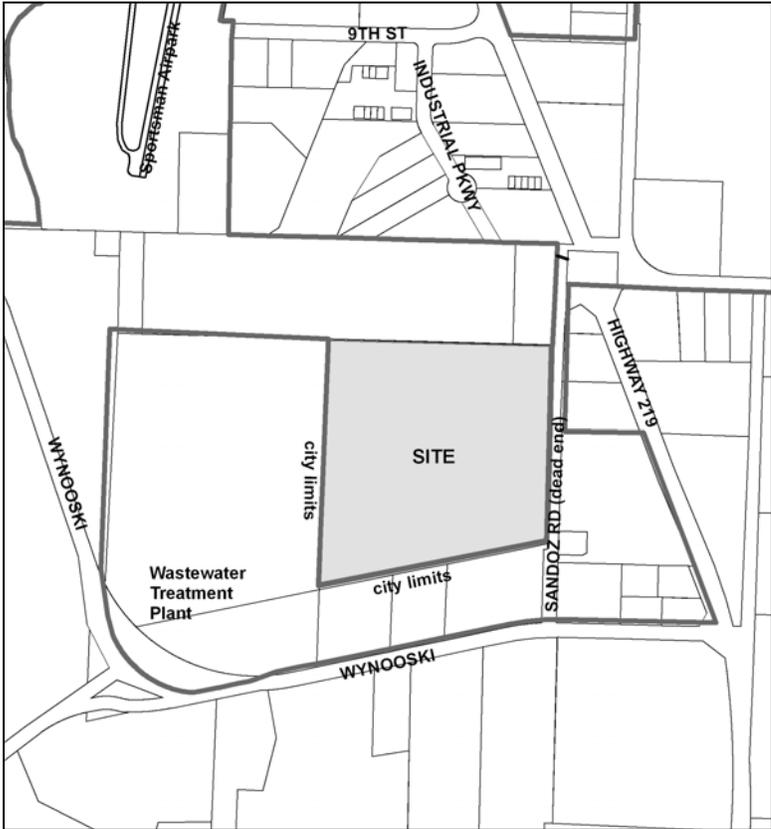
LOCATION: 1409 S. Sandoz Road (former Baker Rock property)

TAX LOTS: 3229-100

**APPLICANT/
OWNER:** City of Newberg

ZONE: Yamhill County AF-10 (Agriculture/Forestry Small Holding), HI (Heavy Industrial)

COMPREHENSIVE PLAN DESIGNATION: IND (Industrial), with an Airport Overlay and Bypass Interchange Overlay



OVERVIEW:

1. Request: Annexation of a 19.68 acre parcel into the City of Newberg with concurrent zone change from Yamhill County AF-10 (Agriculture/Forestry Small Holding) and HI (Heavy Industrial) zoning to City M-3 (Heavy Industrial), M-2 (Light Industrial), with an Interim Industrial Use overlay for the portion of the site within the Bypass route.
2. Zoning/Comprehensive Plan designations: The site currently has Yamhill County zoning and is primarily HI (Heavy Industrial), with a 160 foot deep AF-10 (Agriculture/Forestry Small Holding) buffer zone along the southern and eastern boundaries. The site has an Industrial (IND) designation in Newberg's Comprehensive Plan, with an Airport Overlay and Bypass Interchange overlay. The Airport Overlay primarily limits the height of developments near the airport, and the Bypass Interchange Overlay primarily limits the uses permitted near the future Newberg-Dundee Bypass interchanges.
3. The City is currently considering a Development Code amendment that would create an Interim Industrial Use Overlay. The purpose of this overlay would be to allow interim use of industrially zoned properties in areas that are planned for future acquisition for right-of-way, such as the Newberg-Dundee bypass. The overlay allows non-structural uses of the land, such as parking and storage. The overlay also reduces requirements for permanent site improvements, such as parking and landscaping, that would be removed upon acquisition of the right-of-way. The northern part of this 19.68 acre parcel is within the most current design of the bypass right-of-way. If the Interim Industrial Use Overlay is created by the City Council then it should apply to the northern part of this site upon annexation (approx. 6.7 acres, as shown in Exhibit G). The code amendment would also make sewage treatment plants and pounds allowed uses in M-3, and a pound an allowed use in M-2.
4. The City is also in the process of applying to Yamhill County for a conditional use permit to construct an animal shelter in the southeast corner of the site. If the conditional use permit application is approved then any conditions placed on the project will still apply if the site is annexed into the city. The City has begun the conditional use permit process with the County before annexing the site into the city because we would like to begin construction of the animal shelter within a few months. The annexation process takes quite a while to complete. If the annexation application goes to the city voters in May, 2010 and is approved then the site will officially be within the city in June, 2010.
5. Site: The site is currently a hazelnut orchard with mature trees. The topography is generally flat, with a slight slope to the northwest. There is a grove of tall oak trees in the northeast corner, where a house used to be located.
6. Surrounding uses:
West: City wastewater treatment plant, within city limits. M-3 (Heavy Industrial) zoning.
South: Two light industrial uses, vacant industrial lot. Inside city limits. M-2 (Light Industrial) zoning.
East: Manufactured home park, inside city limits. R-2 (Medium Density Residential) zoning.

Northeast: Single family home, outside city limits. County VLDR-2.5 (Very Low Density Residential) zoning.

North: Single family home with pasture, outside city limits. County AF-10 (Agriculture/Forestry Small Holding) zoning.

7. Ownership: the City of Newberg recently purchased the parcel from Baker Rock.
8. Utilities: The animal shelter project will probably begin construction before annexation. Any wells and septic systems on the site will be decommissioned after annexation.
Sanitary Sewer: The project will install a grinder pump and forced main line to the wastewater treatment plant west of the site upon annexation. This is similar to the systems used by the industrial uses south of the site. There are no sanitary sewer lines in Wynooski Street or Sandoz Road near the site.
Water: The project will connect to the city water line in Sandoz Road. This line will probably be extended west along the southern property line of the parcel to connect to another city water line, and complete a loop.
Stormwater: Stormwater from the animal shelter roof and paved area will be directed to Sandoz Road, where a ditch will carry it to Wynooski Street and a city catch basin.
9. Roads: The site is adjacent to and will take access from Sandoz Road, a dead-end local street. Sandoz Road provides access to Wynooski Road, a major collector. Sandoz Road has a 60 foot right-of-way south of the site, and a 50 foot right-of-way adjacent to the site. The City will dedicate an additional 10 feet of right-of-way along the western side of Sandoz Road to match the right-of-way to the south. The west side of Sandoz Road adjacent to the animal shelter project will be improved with additional paving, curb, gutter and sidewalk as part of the animal shelter project.

EXHIBIT A: FINDINGS

Annexation of 19.68 acres located at 1409 S. Sandoz Road

**I. APPLICABLE ANNEXATION REGULATIONS – NEWBERG DEVELOPMENT CODE § 151.261
CONDITIONS FOR ANNEXATION**

(A) The subject site must be located within the Newberg Urban Growth Boundary or Newberg Urban Reserve Areas.

FINDING: The site is within Newberg’s urban growth boundary.

(B) The subject site must be contiguous to the existing city limits.

FINDING: The subject site is contiguous to the existing city limits along its west, south and east sides.

**II. APPLICABLE ANNEXATION REGULATIONS – NEWBERG DEVELOPMENT CODE § 151.262
QUASI-JUDICIAL ANNEXATION CRITERIA**

(A) The proposed use for the site complies with the Newberg comprehensive plan and with the designation on the Newberg comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Newberg comprehensive plan.

FINDING: The comprehensive plan designation for the site is Industrial (IND), with an Airport Overlay and a Bypass Interchange Overlay. The proposed zoning for the site is partly M-3 (Heavy Industrial) and partly M-2 (Light Industrial), with an Interim Industrial Use overlay on the route of the Newberg-Dundee Bypass (the northern approx. 6.7 acres, as shown in Exhibit G).

The M-2 and M-3 zones correspond with the Industrial comprehensive plan designation. The proposed wastewater treatment plant expansion shown on the concept plan is planned for the M-3 portion of the site, where it can be permitted as a conditional use. The public works maintenance yard would be placed primarily within the M-2 portion of the site, although it would be an allowed use within either the M-2 or M-3 zones. The animal shelter project will probably already be built by the time the property is annexed, and will be within the M-2 zone in the southeast corner. The animal shelter will be a preexisting conditional use in the M-2 zone. The Airport Overlay primarily limits the height of structures near the airport; all of the projects shown on the concept plan will be able to comply with the Airport Overlay requirements.

The Bypass Interchange Overlay prohibits certain commercial uses:

151.531.4 PROHIBITED USES.

(A) Several commercial types of uses are permitted outright or with conditional use approval in Newberg’s Industrial Districts (M 1, M 2, and M 3). The area within the Newberg UGB near the Oregon 219 interchange is generally planned for industrial use. To protect the interchange area from commercial development, the following uses are prohibited within the M 1, M 2, and M 3 Districts within the boundaries of the Bypass Interchange Overlay.

- (1) Automobile sales, new and used.*
- (2) Billboards.*

- (3) Car washes.
- (4) Convenience grocery stores.
- (5) Restaurants larger than 2000 square feet or with drive-up service windows.
- (6) Service stations.
- (7) Drive-in theaters.
- (8) Auction sales.
- (9) Bakeries, retail.
- (10) Building material sales.
- (11) Driving ranges.
- (12) Feed and seed stores.
- (13) Miniature golf courses.
- (14) Skating rinks.

(Ord. [2004-2602](#), passed 9-20-04)

All of the proposed uses for the site are allowed by the Bypass Interchange Overlay.

The City is currently considering a development code amendment that would create an Interim Industrial Use Overlay. The purpose of this overlay would be to allow interim use of industrially zoned properties in areas that are planned for future acquisition for right-of-way, such as the Newberg-Dundee bypass. The overlay allows non-structural uses of the land, such as parking and storage. The overlay also reduces requirements for permanent site improvements, such as parking and landscaping, that would be removed upon acquisition of the right-of-way. The northern part of this 19.68 acre parcel is within the most current design of the bypass right-of-way. If the Interim Industrial Use Overlay is created by the City Council then it should apply to the northern part of this site upon annexation (approx. 6.7 acres, as shown in Exhibit G). The code amendment would also make sewage treatment plants and pounds allowed uses in M-3, and a pound an allowed use in M-2.

Wetlands/wildlife habitat: The National Wetlands Inventory map does not show any wetlands or riparian corridors on this site. Staff walked the site to check the existing conditions. The site is currently a hazelnut orchard, and is generally flat. The northeast corner of the site has a grove of tall oak trees, which surround a clearing where a house used to be located. There are blackberry bushes and grass under the oak trees. There is little vegetation on the site beneath the hazelnut trees, so there were no plants that indicated potential wetlands. There were no wet spots, soft spots or dry streambeds to indicate potential wetlands on the site. Staff therefore did not determine a need to apply a protective stream corridor or wetland overlay on any portion of the site. The wildlife habitat on the site is limited because of the lack of vegetation other than hazelnut trees on most of the site.

(B) An adequate level of urban services must be available, or made available, within three years time of annexation, except as noted in division (E) below. An adequate level of urban services shall be defined as:

- (1) Municipal sanitary sewer and water service meeting the requirements enumerated in the Newberg comprehensive plan for provision of these services.*
- (2) Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three-year time period, the city shall note requirements such as dedication of right-of-way, waiver of remonstrance against assessment for road improvement costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. The city shall also consider public*

costs for improvement and the ability of the city to provide for those costs.

FINDING: As explained below, public facilities will have adequate capacity to accommodate the demands of the site within three years time of annexation.

Water: The property can connect to an existing water line within Sandoz Road. This line will probably be extended west along the southern property line of the parcel to connect to another city water line, and complete a loop. If the animal shelter project has already installed a well prior to annexation then it will be decommissioned.

Stormwater: Development on the eastern edge of the site (animal shelter) should be able to drain stormwater from gutter and parking areas towards Sandoz Road, where a ditch will take the stormwater to a catchbasin on Wyooski Street.

Sanitary Sewer: Development on the property will be able to install grinder pumps with forced mains to the wastewater treatment plant west of the site. There is no sanitary sewer line in Wyooski south of the site, or in Sandoz Road east of the site. If the animal shelter has already constructed a septic tank prior to annexation then it will be decommissioned after annexation and installation of a grinder pump/force main system.

Roads: The site is adjacent to and will take access from Sandoz Road, a dead-end local street. Sandoz Road provides access to Wyooski Road, a major collector. Sandoz Road has a 60 foot right-of-way south of the site, and a 50 foot right-of-way adjacent to the site. The City will dedicate an additional 10 feet of right-of-way along the western side of Sandoz Road to match the right-of-way to the south. The west side of Sandoz Road adjacent to the animal shelter project will be improved with additional paving, curb, gutter and sidewalk as part of the animal shelter project. If the Public Works Maintenance yard is developed north of the animal shelter then the portion of Sandoz Road adjacent to the project will be improved to city standards at that time.

The proposed future development on the site will have a low impact on transportation facilities in the area. The animal shelter will have only a few employee or visitor trips in any given day. The wastewater treatment plant expansion on the western part of the site is unlikely to add staff or trips to the site. If the WWTP expansion did add trips they would be through the existing wastewater treatment plant driveway on Wyooski Road, which is some distance west of Sandoz Road. The Public Works Maintenance yard could add approx. 30 to 40 trips during the PM peak hour on Sandoz Road. Sandoz Road is a dead-end, however, and is not a busy road. Wyooski Road is a major collector and has adequate capacity. Staff's conclusion is that even if the site is fully developed as shown on the concept plan it would not have a significant impact on area transportation facilities.

State Transportation Planning Rule:

660-012-0060

Plan and Land Use Regulation Amendments

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume

to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:

- (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
- (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
- (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Finding: As noted above, the potential development of the site would have a low impact on existing transportation facilities. The annexation will therefore not have a significant impact on transportation facilities, and will comply with the Transportation Planning Rule.

In conclusion, adequate transportation facilities will be available to serve the proposed uses.

- (C) Findings documenting the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.

Finding: Police services are currently provided to the area by Yamhill County Sheriff's Office. Fire service is provided by Newberg Rural Fire District. The proposed annexation will shift police and fire services to the city. The property will be developed for public uses, so it will not generate additional revenues. The City added three police officers in the General Fund budget for 2008-09, and has established a city-wide public safety fee that will fund an additional three officers. The proposed development on this site would not generate additional need for parks or school services. The proposed developments for this site are necessary expansions of City facilities, however, and are (or will be) required to provide adequate public services to the city. Overall, adequate public facilities and services exist to support the proposed annexation.

- (D) The burden for providing the findings for divisions (A), (B) and (C) of this section is placed upon the applicant.

FINDING: The applicant has provided written findings for this section.

- (E) The City Council may annex properties where urban services are not and cannot practically be made available within the three year time frame noted in division (B) above, but where annexation is needed to address a health hazard, to annex an island, to address sewer or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted

specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the Council shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available.

FINDING: This criterion is not applicable to this property.

Positive and Negative effects of the annexation

FINDING: This annexation will have several positive effects. It will enable the expansion of the city's wastewater treatment plant, which will be a critical need in the future. It will also allow the Public Works Maintenance yard to move from its current site on W. 3rd Street, which it has outgrown. The annexation and subsequent development will improve the western half of Sandoz Road, widen the Sandoz Road right of way by 10 feet, and improve the water system in the area. The developments fronting Sandoz Road will have landscaped front yards at least 20 feet deep to soften the appearance of any development, and will provide a buffer between the wastewater treatment plant to the west, and the residential developments east of Sandoz Road. One negative effect of the annexation is that the hazelnut orchard will be removed as the site develops. The orchard is part of the local hazelnut industry and has been a quiet neighbor for the residential properties along Sandoz Road. The site is within the Urban Growth Boundary, however, and is targeted for eventual urban development. Developing farmland within the UGB ultimately saves more farmland outside the UGB by constraining leapfrog development. The tall oak trees in the northeast corner of the site will probably be removed by the construction of the Newberg-Dundee bypass; this will be a negative effect of the bypass, however, and not of the annexation. On the whole, the positive effects of the annexation are much more substantial than the negative effects.

CONCLUSION:

The proposed annexation of this 19.68 acre parcel meets the criteria for annexation into the City of Newberg and should therefore be approved and sent to the voters at the May, 2010 election.

LEGAL DESCRIPTION: Real property in the County of Yamhill, State of Oregon, described as follows:

Situate, lying and being in Yamhill County, Oregon, and being a part of the Donation Land Claim of Samuel D. Snowden, Claim No. 68, Notification No. 1476, in Township 3 South, Range 2 West of the Willamette Meridian, in said County and State, said part herein conveyed being more particularly described as follows:

Beginning at an iron pipe at the Northeast corner of said Donation Land Claim, and running thence South 7' West along County Road 6.39 chains and which is the Southeast corner of an 18 acre tract conveyed by Martin J. Conrad to Mary Jane Conrad on December 23, 1910, for a place of beginning of the tract herein conveyed; thence North 89° 20' West 28.17 chains to an iron pipe and the Southwest corner of said Mary Jane Conrad tract of 18 acres; thence South 22' West 18.895 chains to an iron pipe; thence North 76° 41' East 29.00 chains to center of County Road, said true corner being shown by an iron pipe 2 inches X 24 inches set 20 feet South 76° 41' West from said corner; thence North 7' East along said County road 11.875 chains to the place of beginning of the tract herein conveyed.

EXCEPTING THEREFROM that portion conveyed to Spaulding Pulp & Paper Co., by deed dated June 8, 1974 and recorded June 12, 1974 in Film Volume 100, Page 1211, Deed and Mortgage Records.

ALSO EXCEPTING THEREFROM that portion conveyed to City of Newberg, a Municipal Corporation of the State of Oregon, by deeds recorded June 22, 1984 in Film Volume 187, Pages 501 and 503, Deed and Mortgage Records.

EXHIBIT B: AERIAL PHOTO - VICINITY



EXHIBIT C: AERIAL PHOTO - SITE



EXHIBIT D: AERIAL PHOTO WITH TOPOGRAPHY
Elevation – 2 foot contours

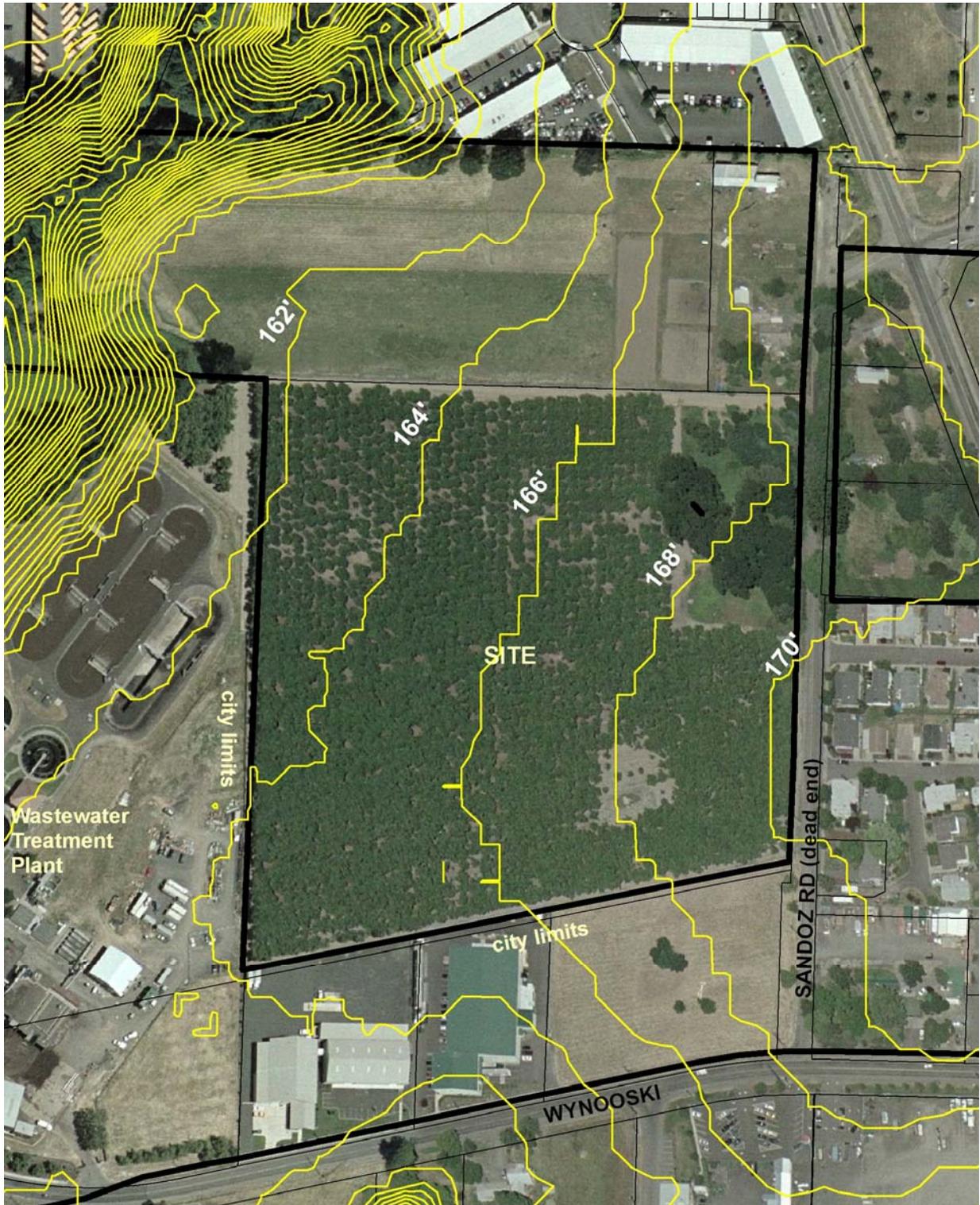


EXHIBIT F: NEWBERG COMPREHENSIVE PLAN MAP

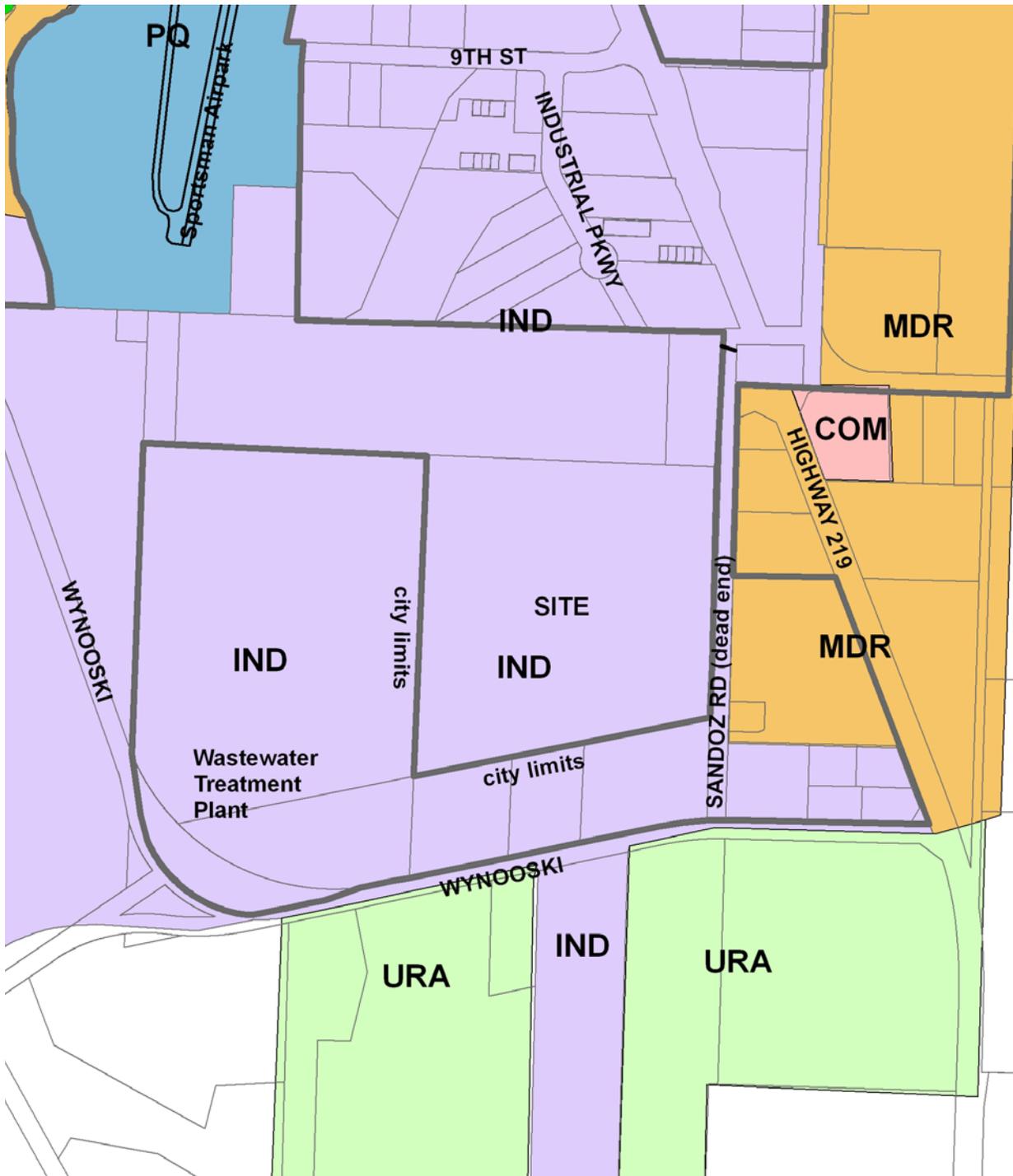


EXHIBIT G: NEWBERG ZONING MAP – EXISTING & PROPOSED

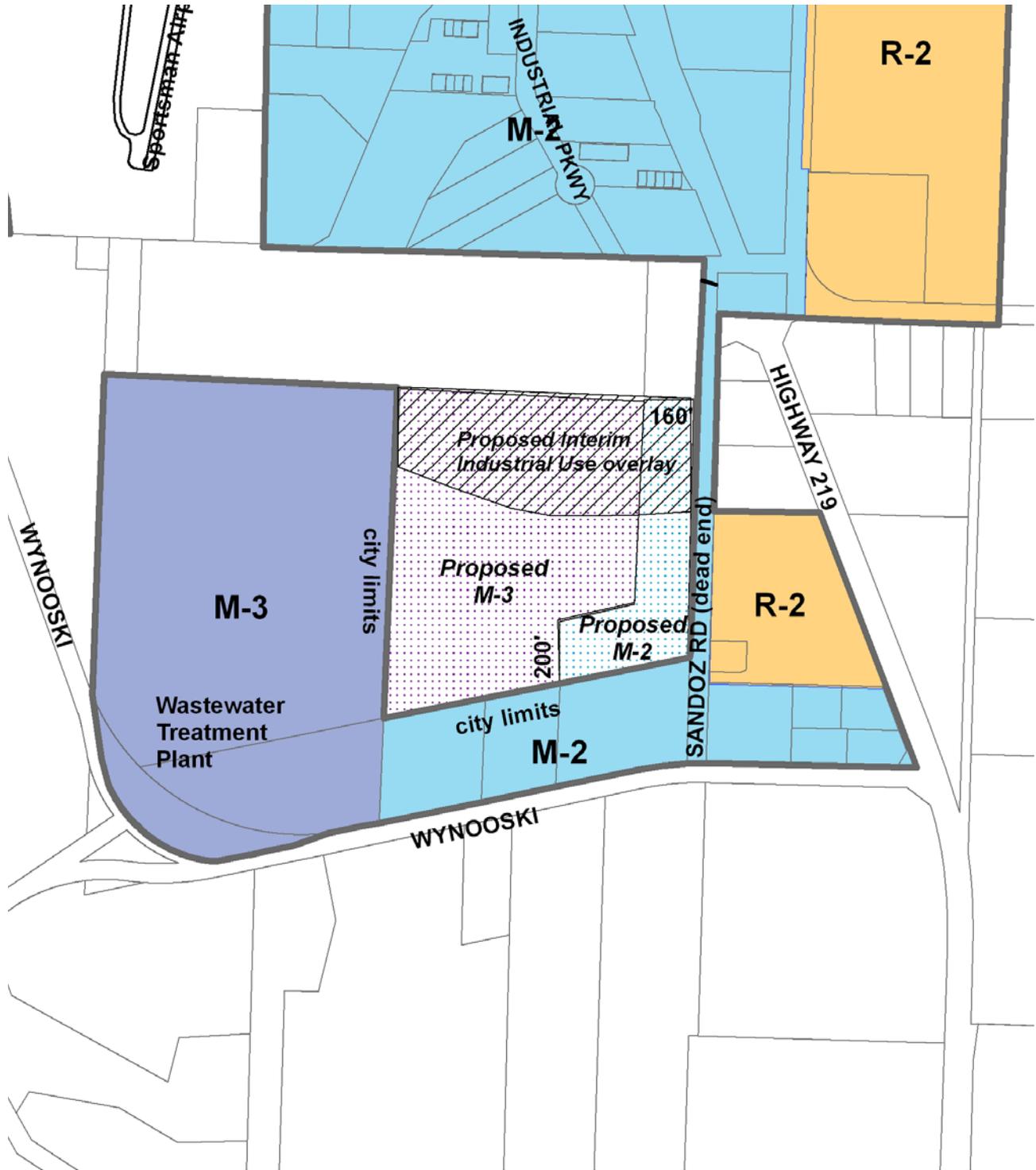


EXHIBIT H: CONCEPT DEVELOPMENT PLAN

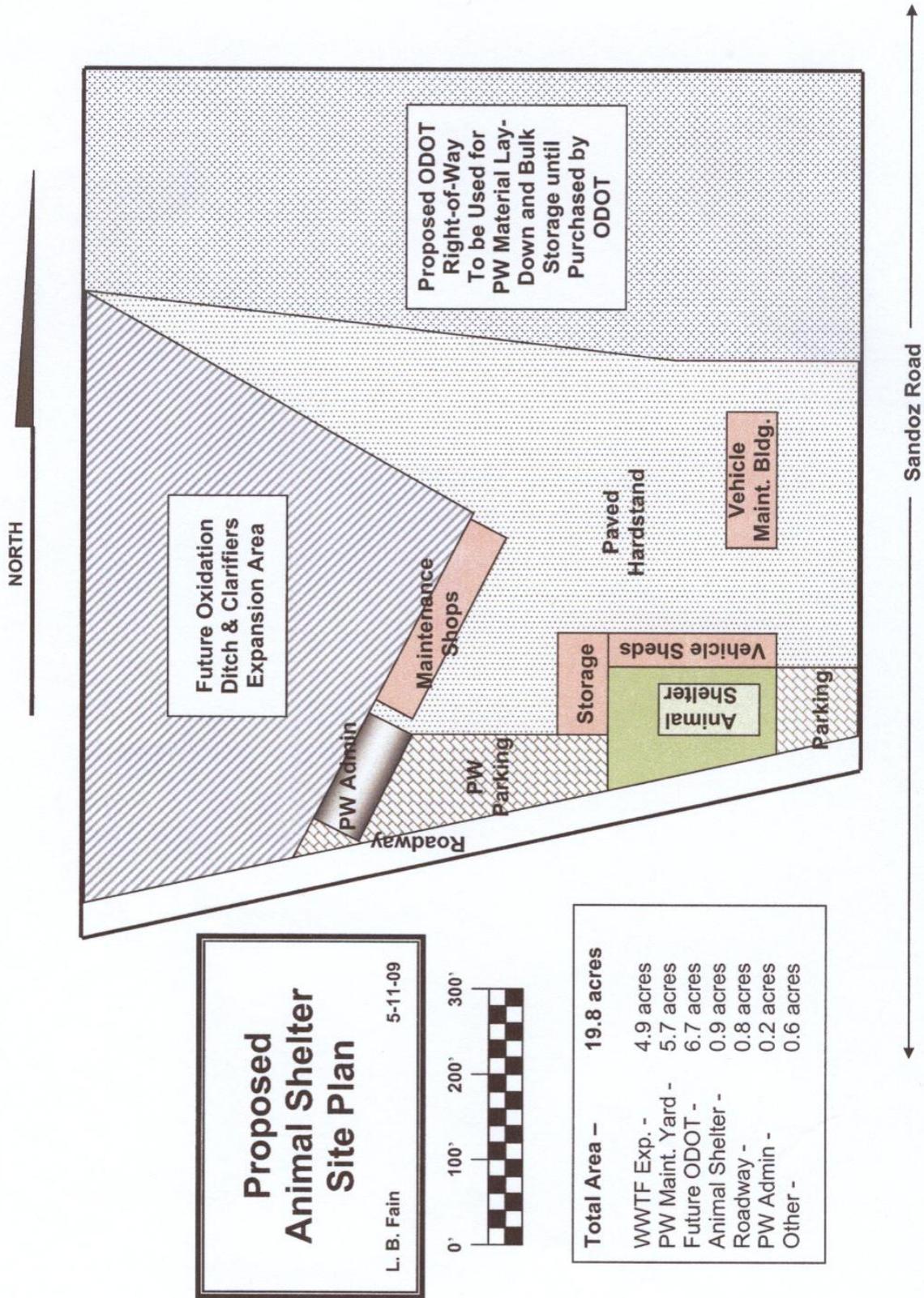


EXHIBIT I: LATEST ODOT BYPASS DESIGN (8/28/08)



REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: December 21, 2009

Order ____ Ordinance ____ Resolution XX Motion ____ Information ____
No. No. No. 2009-2880

SUBJECT: Consent to the transfer of control of franchisee and the cable franchise granted to Verizon and Frontier.

Contact Person (Preparer) for this
Resolution: Dawn Wilson

Dept.: City Attorney's Office

File No.:
(if applicable)

RECOMMENDATION:

Adopt **Resolution No. 2009-2880** to transfer control of cable TV franchise to Verizon and Frontier.

EXECUTIVE SUMMARY:

Form 394 Application (Request to Transfer Control of Cable TV Franchise):

On June 1, 2009, the City received Form 394 Application by Verizon/Frontier to transfer control of Verizon Northwest, Inc. to Frontier Communications Corporation. The Form 394 went to the cities and counties with Verizon cable franchises. In Oregon, that is Newberg, McMinnville, Sherwood, Wilsonville, 11 of the 14 Metropolitan Area Communications Commission jurisdictions (including Washington County), 4 of the Mt Hood Cable Regulatory Commission cities (Gresham, Fairview, Troutdale and Wood Village) and Clackamas County. A total of 13 states received the same notice.

The application (Form 394) provided a comprehensive explanation of Verizon/Frontier's merger, business plan, financial data, credentials, transferee's technical qualifications, etc. Form 394 (governed by federal law) indicated that the various jurisdictions had 30 days to request further information and 120 days to deny or approve such transfer of control.

The closing transaction between Verizon and Frontier is presently anticipated during the second quarter of 2010.

Consortium:

The City immediately requested further financial qualifications, technical qualifications, legal qualifications, and additional merger plan information, as well as reserved its rights, under federal law, to the 120-day timeframe allowed to review the transfer applications, which would not begin until the City has received a complete Application. This action mirrored that of the Multnomah Area Communications Commission ("MACC"). Subsequently, the City joined a consortium with the MACC, which is represented by the law firm of BEERY, ELSNER & HAMMOND, LLP.

*** Special Notation of Recognition & Appreciation: ***

The MACC, namely Fred Christ, (policy and regulatory affairs manager) and Bruce Crest (administrator), have been absolutely spectacular to work with on this matter. Their communications with the City have been extremely thorough, efficient, friendly, and professional.

Thank you Fred and Bruce for all of your outstanding work on this transfer of control.

Extensions for City's Decision:

Two extensions were applied for and granted by Verizon due to the fact that more time to review the Application in its entirety and thus inform the Council. The first extension was needed because the City was following in the MACC's business tracks and needed to wait for their commissioners to meet and hear the matter. The second extension was necessary because Verizon needed additional time to submit additional agreements that they previously agreed to.

Frontier Communications - Background:

Frontier is a Connecticut-based business with offices also located in New York and is currently offering a full range of telecommunications in 24 states to rural, smaller cities, and suburban areas. Their 2008 revenue exceeded \$2.2 billion. Verizon tells us "The transaction is expected to strengthen Frontier's position as a premier rural communications provider and return a total value of \$8.6 billion to Verizon and its shareholders..."

Frontier - Business Operations:

So, how does this affect the City of Newberg's Cable Television Franchise? On the surface, it doesn't really have any affect at all. The transaction (or transfer of control) should be transparent to subscribers because Verizon and Frontier have assured the City that they will continue service status quo with a guarantee for the first year.

As a matter of fact, the City Attorney's and Manager's Offices met with Verizon Northwest and Frontier Communications (Renee Willer, Ann Burr and Larry Manion) to meet and greet Administrative staff on July 21, 2009. Verizon wanted to assure the City that Frontier will continue to provide the same level of customer and technical service to subscribers as what Verizon currently provides. Frontier will retain Verizon employees for at least 18 months and will provide 24-hour customer service.

Technical Quasi-Concern:

One concern that shouldn't be overlooked is that Frontier has very little experience running a cable system. Frontier's experience has been with direct TV (dish) rather than a cable system. In some cases, the system was taken over with a cable system in place, but the cable system was then discontinued and the subscribers were offered direct TV instead. The problem with this is that all local channels are lost as well as the ability for local access. Franchise fees are also lost since they would no longer operate in the right-of-way. In addition to those issues, the subscribers when moving to direct TV have an initial large investment for equipment.

Regardless, the City may only deny such transfer of control based upon legal, technical, or financial ability of the new company to fulfill the obligations of the outgoing company. Even though this would be a technical reason for denial, the MACC has not found anything that would indicate that Frontier wouldn't have such ability to fulfill its franchise obligations.

Additional Information:

Please see the Executive Summary by the MACC, which is attached to this RCA.

FISCAL IMPACT: None.

STRATEGIC ASSESSMENT: There are certainly adherent risk factors in business acquisitions, such as Frontier Communications acquiring Verizon's FiOS assets, but the MACC has thoroughly researched the requested transfer of control. Subsequently, the based on the Legal, Technical, and Financial ability of the new company to fulfill the obligations of the outgoing company pursuant to the authority of the cable Franchise and Federal Law, the MACC's findings indicate that Frontier meets these criteria.

**MACC
EXECUTIVE SUMMARY**

**VERIZON COMMUNICATIONS INC.
REQUEST FOR TRANSFER OF CONTROL OF VERIZON NORTHWEST INC.
TO
FRONTIER COMMUNICATIONS CORPORATION**

In the six months since Verizon Communications Inc. (Verizon Communications) requested approval of the MACC jurisdictions to transfer control of Verizon NW Inc. (Verizon NW) and its franchises to Frontier Communications Corporation (Frontier), MACC has been reviewing Frontier's legal, financial, and technical qualifications to own and operate the Verizon FiOS cable system. This effort has involved a number of meetings between Verizon and Frontier representatives, the Commission, MACC staff, legal counsels, and consultants. Over that time, MACC staff has learned much about how Frontier would operate a cable system here. As important, we believe the transfer process has helped Frontier to focus on how its cable service will work in the MACC area and elsewhere. This will benefit its customers in the short and long term.

Staff recommends that the Commission recommend approval of Verizon Communication's Application to transfer the franchise to Frontier Communications. The following is an executive summary of the attached full staff report on the proposed transaction.

Summary of MACC's Review and Actions

Verizon Communications filed its FCC Form 394 Transfer Application with MACC and the 11 affected member jurisdictions on June 1, 2009. Over the next five months, MACC submitted three subsequent follow-up Requests for Information (RFI) as allowed under applicable Federal Law, resulting in over 100 pages of answers and commitments. MACC staff, legal counsel, and consultants met in person and via telephone with both companies on numerous occasions. The Commission and Executive Committee also met three times with Frontier and Verizon representatives.

Since our last formal report to you at the September 10 Commission meeting, most staff efforts have involved Verizon and Frontier (the companies) providing needed information about the transaction. The companies' execution of several business agreements in the last few weeks was critical to our decision to bring an approval recommendation to the Commission. Most of the information received concerns Frontier's technical and financial qualifications to own and operate the Verizon FiOS cable system.

The time needed by the companies to produce this information resulted in the cancellation of the October MACC Special meeting and a mutual agreement to reset the review timeline under Federal Law from November 30, 2009 to January 31, 2010. This timeline is reflected in the attached staff report and recommendation for the November

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20th Regular Commission meeting. Below is a summary of the technical and financial issues that were concerns discussed at the September Commission meeting and how the companies and MACC staff and legal counsel have worked to resolve them in the last 60 days:

- Transport and Network Lease Agreements – Frontier has demonstrated that it has the technical qualifications to assume the Verizon franchise. Staff reviewed internal, confidential documents detailing the post-close relationship between Frontier and Verizon Communications. The documents show that Frontier has committed to the video business, through investment in equipment, planning and agreements to lease capacity and otherwise create the required network elements to transport video signals. We believe these actions show that Frontier will be ready to provide cable service upon the closing of the merger transaction, and intends to provide that service long-term.
- Programming and provider contracts – In addition to the above hardware-related commitments, we asked that Frontier demonstrate that it would also provide a viable cable product to customers. Frontier has kept us fully apprised of its effort to secure contracts for programming from the large content providers and local broadcasters. Frontier has also agreed to condition any approval of the transfer on showings of acceptable progress in this area in January (a report to MACC) and March (a certification that most programming has been secured).
- Financial Review – Frontier has demonstrated that it has the financial qualifications to assume the Verizon franchise. Frontier cooperated with one of our local partners, the Mt. Hood Cable Regulatory Commission (MHCRC), in providing financial information to its consultant, KFA Services, which allowed them to report on Frontier’s financial stability. The KFA report provided assurances that Frontier can meet its financial responsibilities after it acquires the Verizon business. Finally, from KFA and other sources, we now understand that there are substantial financial benefits to Frontier from offering its own cable service using the FiOS structure that cannot be gained from partnering with a satellite provider.

In addition, Frontier has agreed to provide a new \$250,000 letter of credit to MACC for five years following the close of the merger as a further safeguard to MACC and the affected jurisdictions.

- Customer Service/Staffing – Frontier clarified its plans for customer service and for the Verizon employees they will acquire during the transaction.

Several conditions were negotiated to ensure Frontier’s performance. These conditions are part of the “recommending resolution” to be considered by the Commission on November 20th. The same conditions would appear in the resolutions considered by each of the eleven affected jurisdictions. These negotiated conditions, which have been accepted by Frontier and Verizon representatives, would have to be met for the Transfer

approval to become effective. Some of the more significant conditions (see Exhibit A of Report - Resolution 2009-05) include:

- The \$250,000 Letter of Credit mentioned above. This would be available to MACC during the first five years of Frontier's operation "to secure the payment of franchise fees and any penalties." This amount is based on one calendar quarter's payment of franchise fees to MACC.

This Letter of Credit was negotiated with Frontier in lieu of a corporate parent guarantee of the franchise suggested by KFA Services.

- Approvals of the transaction by all required federal agencies and the Oregon Public Utility Commission (OPUC).

The OPUC is expected to make a decision on the telephone portion of this transaction in January 2010. Without the OPUC authorization to operate a telephone system in Oregon, Frontier will be unable to provide those services over the MACC-area FiOS system.

- Frontier will be responsible for all franchise non-compliance issues, including the underpayment of any franchise fees before or after the close of the transaction (closing is presently anticipated during the 2nd quarter of 2010).

Although this is a fairly standard provision of transfers, it is very important in this case since MACC will not be able to complete a review of Verizon's past franchise fee payments prior to the close.

- Frontier will report to MACC on their progress in obtaining programming agreements between now and the close.

These "touchstones" will assure MACC that programming is being obtained for subscribers.

Finally, in response to Commission concerns about Verizon Franchise Section 13.9 "Early Termination of the Franchise," Frontier has provided a separate "side-letter" (see Exhibit B of Report - "Frontier Side-Letter") stating, it "...does not intend to exercise..." this provision of the agreement. Section 13.9 was a standard provision of all Verizon franchises which allowed them to "walk away" from poorly-performing franchises.

Report Conclusion

After reviewing the proposed transfer of control of the Verizon Franchise, we have determined that Frontier has the legal, financial, and technical qualifications to own and operate the FiOS cable system. Although certain risks exist for the jurisdictions, MACC, and in some cases for subscribers, staff feels that with the safeguards we have negotiated with the companies, the remaining level of risk is acceptable. We also understand that

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Frontier will need to compete in a very competitive local environment with Comcast, satellite providers, and local broadcast stations. We believe that Frontier should be able to compete in our service area, and may actually provide better customer service response than the much larger Verizon Communications.

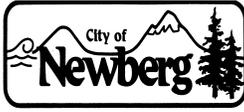
The MACC IGA Process

MACC's Intergovernmental Agreement (IGA) with its member jurisdictions provides for MACC to administratively handle reviews of proposed transfers of ownership and for the Commission to make a formal recommendation on the transfer (via a recommending resolution) to the affected jurisdictions. Once the Commission makes a recommendation MACC staff takes that recommendation to the Board of Commissioners of Washington County, and to the councils of the affected MACC member cities. MACC's IGA requires that every affected jurisdiction must approve the Commission's recommendation (via ordinance or resolution) for it to be valid. If one jurisdiction votes no, it vetoes the MACC recommended action for all jurisdictions.

On November 20th, following the public hearing on the proposed Transfer; the MACC staff report; a presentation by the companies' representatives; and, your questions/comments, you will be asked to consider passage of **MACC Resolution 2009-05 - Recommending Approval by the Affected MACC Member Jurisdictions of the Transfer of Control of the Franchisee and of the Cable Franchises Granted to Verizon Northwest, Inc. to Frontier Communications Corporation, With Conditions.** The passage of this resolution requires a simple majority vote of all members present at the meeting.

Staff would be happy to answer any questions you have.

Attachment: Staff Report on Verizon Communications Request for Transfer of Control of Verizon NW to Frontier Communications Corporation



RESOLUTION No. 2009-2880

A RESOLUTION CONSENTING TO THE TRANSFER OF CONTROL OF THE FRANCHISEE AND OF THE CABLE FRANCHISE GRANTED TO VERIZON NORTHWEST, INC. TO FRONTIER COMMUNICATIONS CORPORATION, WITH CONDITIONS

RECITALS:

1. The Metropolitan Area Communications Commission, hereinafter “MACC,” is an intergovernmental commission formed under ORS Chapter 190, with the membership of Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard and Tualatin.
2. Verizon Northwest, Inc., a subsidiary of Verizon Communications, Inc. is the Franchisee under a Cable Franchise Agreement approved by MACC and granted by the City in 2007 for a period of 15 years.
3. On June 1, 2009 MACC and the City received a Federal Communications Commission Form 394 Application by which Verizon Communications, Inc., the corporate parent of Franchisee, and Frontier Communications Corporation (“Frontier” or “Transferee”) requested approval from MACC and the affected member jurisdictions of a proposed transfer of control of the Franchisee and its franchise to Frontier.
4. Following the completion of the transactions constituting the transfer of control, Frontier would assume control of the local cable operations of the Franchisee, but must also secure certain other facilities and agreements to provide a comparable cable service to that currently provided by Franchisee.
5. Federal law and Section 11 of the Franchises authorize MACC and its member jurisdictions to review any proposed transfer of control, including the proposed transaction as described in the Application and as clarified in answers to questions presented by MACC to the Franchisee and Frontier to determine the impact on the Franchisee’s ability to perform the Franchise obligations based on the legal, financial, and technical qualifications of the transferee.
6. Section 11 of the Franchises also authorizes MACC and its member jurisdictions to condition approval of a transfer upon such terms and conditions as they deem reasonably appropriate within the legal, financial, and technical framework provided by the Franchise and federal law.
7. MACC has reviewed the materials provided by the Franchisee and Frontier in the Application and in response to an RFI originally provided to the companies on June 25, 2009 and subsequently revisited and further investigated on numerous occasions through October 30, and undertook additional joint review of the proposed transferee’s financial qualifications in cooperation with the Mt. Hood Cable Regulatory Commission (MHCRC).

8. MACC conducted a duly noticed public hearing concerning the proposed transfer on November 20, 2009 wherein it received public testimony and written communications.
9. The review now being completed except for certain issues necessarily addressed in a prospective manner through conditions, the MACC Commission adopted Resolution No. 2009-05, which is hereby attached as Exhibit "A" and by this reference incorporated, recommending that the affected member jurisdictions approve the Application, provided those conditions and assurances are obtained from the companies.
10. The City Council deems it to be in furtherance of the public interest and the welfare of its citizens to consent to the transfer request, subject to appropriate conditions.
11. The City had a discussion with Ann Burr, chairman of Frontier Communications of Rochester, on December 14, 2009, in regards to Frontier providing the City with \$10,000 annually to operate the community access channel, which is known as Public, Education and Governmental ("PEG") access funding. This is comparable to what Comcast has done for the City. Ms. Burr was very receptive and thought that this could be acceptable by Frontier.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

Section 1. Legal, Technical and Financial Qualifications of the Transferee. The findings of MACC in the attached Exhibit "A" demonstrate that the Franchisee and Transferee have the necessary legal, technical and financial qualifications to perform the required duties under the Franchise Agreement, provided certain conditions are imposed on the proposed transfer of control.

Section 2. Consent to the Transfer of Control. The City of Newberg hereby consents to the transfer of control of the franchisee and of the franchise as set forth in the Federal Communications Commission Form 394, subject to the conditions set forth in Section 3, below.

Section 3. Conditions to the Transfer of Control. The approval of the proposed transfer of control will not take effect until such time as each of the following conditions is met:

1. The Verizon/Frontier merger transaction must close with all material terms substantially consistent with the Agreement and Plan of Merger, which is hereinafter referred to as the "Merger Agreement." This Merger Agreement is hereby attached as Exhibit "B" and by this reference incorporated.
2. The Verizon/Frontier merger transaction is approved by all required federal agencies and the Oregon Public Utility Commission.
3. Franchisee, under the control of Transferee, agrees to remedy any franchise non-compliance issues, including any underpayment of franchise and PEG fees by Verizon, regardless of whether such non-compliance issues are discovered prior to or following the close of the Transfer of Control. Franchisee, under the control of Transferee, will remain responsible for any and all Franchise requirements (including but not limited to payment of Franchise fees and other amounts due under the Franchise, and indemnification of the Grantor as provided in the Franchise) and non-

compliance issues under the Franchise or any obligation that may now exist or may later be discovered to have existed during the term of the Franchise, even if prior to the closing of this Transfer.

4. Franchisee shall comply with all valid local laws, agreements, and Franchise requirements consistent with applicable federal and state law including all terms of the City of Newberg/Verizon Franchise Agreement. In all respects and without exception, Franchisee, under the control of Transferee agrees to continue to abide by all terms of the existing Franchise and acknowledges that the transfer of control will not affect, diminish, impair or supersede the binding nature of the Franchise and any other valid ordinances, resolutions, and agreements applicable to the operation of the cable system in the MACC member jurisdictions.
5. Franchisee, under the control of Transferee, provides and maintains an irrevocable letter of credit or performance bond in a form acceptable to the City in the amount of \$250,000 pro rata ♦ to secure the payment of franchise fees and any penalties, for a period of five years after closing of the Verizon/Frontier merger transaction.
6. Transferee provides current contact information for notice recipients.
7. Transferee provides a current “Franchisee Parent Structure,” reflecting the one provided to the MACC in their Exhibit “E.”
8. The City’s consent to the transfer of control will not be construed to constitute a waiver or release of any rights they may have under the Franchise and any separate written agreements with the Franchisee and Franchisee’s lawful successors.
9. During the week ending January 15, 2010, Transferee will provide the City with a progress report of its acquisition of content, including a listing of national and local content providers and their associated channels, and video on demand providers, with which: (1) Transferee has signed agreements; (2) Transferee has pending agreements being negotiated; and (3) Transferee is pursuing agreements. By March 31, 2010, Transferee will have delivered certification by a Corporate officer that it has acquired rights to distribute linear video, broadcast, and video on demand programming content from vendors, which rights: (a) include at least 75% of the channels provided by Franchisee on November 1, 2009; (b) include all nine (9) Portland area local broadcasters; and (c) include commitments to carrying the majority of this content for a period of not less than two years. Transferee will provide the City with a complete projected channel lineup no later than 30 days prior to the close of the transaction.
10. Transferee acknowledges these conditions of approval of the transfer of control in writing in a form and by a date acceptable to the City.

♦ \$250,000 pro rata amount: The MACC has eleven (11) jurisdictions. The MACC is being issued an irrevocable letter of credit or performance bond in the amount of \$250,000, which is intended to cover the eleven (11) jurisdictions. The \$250,000 pro rata amount being issued to the City is a proportion of the MACC’s \$250,000 amount because the City is not a member jurisdiction of the MACC. Therefore, the exact proportioned amount to be issued to the City is \$25,000.

11. Approvals granted by the City will be valid until the Verizon/Frontier merger's Hart-Scott-Rodino Approval ("HSR") expires. Currently, the HSR expires on September 1, 2010. If the merger is not completed prior to the expiration of the HSR, Verizon and Frontier will meet with City representatives and advise them on the status of the merger. The City will consider the information provided by Verizon and Frontier and consider whether to extend the previously granted approvals. Such extensions shall not be unreasonably withheld.

12. During the term of the current cable franchise, Frontier will provide the City with \$10,000 annually to operate the community access channel, which is known as Public, Education and Governmental ("PEG") access funding. The details of this condition are to be worked out between Frontier and the City. The city manager is hereby delegated the authority by the City Council to negotiate and modify such condition; enter into a contract/franchise amendment or letter agreement with Frontier; execute this amendment or agreement on behalf of the City of Newberg; or waive such condition. The city manager will report to the City Council any such amendment or agreement.

Section 4. Authorization to Execute and File Resolution. The mayor and his designee(s) are authorized to execute and file a copy of this Resolution with the MACC.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: December 22, 2009.

ADOPTED by the City Council of the City of Newberg, Oregon, this 21st day of December, 2009.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 24th day of December, 2009.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through City Council (executive session) at 07/06/2009 meeting. Or, ___ None.

By and through City Council (City Manager's Report) at 12/07/2009 meeting. Or, ___ None.

METROPOLITAN AREA COMMUNICATIONS COMMISSION

RESOLUTION 2009-05

**A RESOLUTION RECOMMENDING APPROVAL BY THE AFFECTED MACC
MEMBER JURISDICTIONS OF THE TRANSFER OF CONTROL OF THE
FRANCHISEE AND OF THE CABLE FRANCHISES GRANTED TO VERIZON
NORTHWEST, INC. TO FRONTIER COMMUNICATIONS CORPORATION,
WITH CONDITIONS**

WHEREAS, the Metropolitan Area Communications Commission, hereinafter "MACC," is an intergovernmental commission formed under ORS Chapter 190, with the membership of Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard and Tualatin; and

WHEREAS, certain MACC jurisdictions granted cable television franchises to Verizon Northwest, Inc., ("Franchisee") a subsidiary of Verizon Communications, Inc. in 2007 for a period of 15 years; and

WHEREAS, the jurisdictions that granted a franchise to Verizon are Washington County and the cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard and Tualatin (the "Affected Jurisdictions"); and

WHEREAS, on June 1, 2009 MACC received a Federal Communications Commission Form 394 Application ("Application") by which Verizon Communications, Inc., the corporate parent of Franchisee, and Frontier Communications Corporation ("Frontier" or "Transferee") requested approval from MACC and the Affected Jurisdictions of a proposed transfer of control of the Franchisee and its franchises to Frontier; and

WHEREAS, following the completion of the transactions constituting the transfer of control, Frontier would assume control of the local cable operations of the Franchisee, but must also secure certain other facilities and agreements to provide a comparable cable service to that currently provided by Franchisee; and

WHEREAS, Federal law and Section 11 of the Franchises authorize MACC and its member jurisdictions to review any proposed transfer of control, including the proposed transaction as described in the Application and as clarified in answers to questions presented by MACC to the Franchisee and Frontier to determine the impact on the Franchisee's ability to perform the Franchise obligations based on the legal, financial, and technical qualifications of the transferee; and

WHEREAS, Section 11 of the Franchises also authorizes MACC and its member jurisdictions to condition approval of a transfer upon such terms and conditions as they

deem reasonably appropriate within the legal, financial, and technical framework provided by the Franchise and federal law; and

WHEREAS, MACC has reviewed the materials provided by the Franchisee and Frontier in the Application and in response to an RFI originally provided to the companies on June 25, 2009 and subsequently revisited and further investigated on numerous occasions through October 30; and

WHEREAS, the review now being completed except for certain issues necessarily addressed in a prospective manner through conditions, MACC has determined that it should recommend approval of the Application, provided those conditions and assurances are obtained from the companies; and

WHEREAS, pursuant to Section 4(E) of the MACC Intergovernmental Agreement, final approval would be granted only if all eleven Affected Jurisdictions also approve the Application as recommended by MACC; and

WHEREAS, the Commission conducted a duly noticed public hearing concerning the proposed transfer on November 20, 2009;

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION:

Section 1. Commission Action on Form 394 Application.

The Commission hereby approves the Application for Transfer of Control, as submitted on June 1, 2009, subject to the conditions contained in Section 3 below.

Section 2. Recommendation to Member Jurisdictions.

The Commission hereby recommends that each of the Affected Jurisdictions approve the Application for Transfer of Control by duly authorized enactment of each jurisdiction's governing body, subject to the conditions set forth in Section 3, below.

Section 3. Conditions to the Transfer of Control.

The approval recommended herein shall not take effect until such time as each of the following conditions is met:

1. All eleven affected MACC member jurisdictions approve the transfer of control.
2. The Verizon/Frontier merger transaction must close with all material terms substantially consistent with the Merger Agreement, as well as the information provided to MACC or the Mount Hood Cable Regulatory Commission (MHCRC) in public

documents and responses to Requests for Information submitted by MACC and the MHCRC.

3. The Verizon/Frontier merger transaction is approved by all required federal agencies and the Oregon Public Utility Commission.

4. Franchisee, under the control of Transferee, agrees to remedy any franchise non-compliance issues, including any underpayment of franchise and PEG fees by Verizon, regardless of whether such non-compliance issues are discovered prior to or following the close of the Transfer of Control. Franchisee, under the control of Transferee, shall remain responsible for any and all Franchise requirements (including but not limited to payment of Franchise fees and other amounts due under the Franchise, and indemnification of the Grantor as provided in the Franchise) and non-compliance issues under the Franchise or any obligation that may now exist or may later be discovered to have existed during the term of the Franchise, even if prior to the closing of this Transfer.

5. Franchisee shall comply with all valid local laws, agreements, and Franchise requirements consistent with applicable federal and state law including all terms of the MACC/Verizon Franchise Agreement. In all respects and without exception, Franchisee, under the control of Transferee agrees to continue to abide by all terms of the existing Franchise and acknowledges that the transfer of control will not affect, diminish, impair or supersede the binding nature of the Franchise and any other valid ordinances, resolutions, and agreements applicable to the operation of the cable system in the MACC member jurisdictions.

6. In addition to the current obligations of the franchise Section 13.6, "Letter of Credit", Franchisee, under the control of Transferee, provides and maintains an irrevocable letter of credit or performance bond in a form acceptable to MACC in the amount of \$250,000, to secure the payment of franchise fees and any penalties, for a period of five years after closing of the Verizon/Frontier merger transaction.

7. Verizon has paid MACC all reimbursement costs due as a result of review of the transfer of control application, consistent with the separate agreements concerning those costs.

8. Transferee provides current contact information for notice recipients under Section 16.5 of the Franchise.

9. Transferee provides a new Exhibit E, "Franchisee Parent Structure."

10. MACC and its member jurisdictions' consent to the transfer of control shall not be construed to constitute a waiver or release of any rights they may have under the Franchise and any separate written agreements with the Franchisee and Franchisee's lawful successors.

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11. During the week ending January 15, 2010, Transferee will provide MACC with a progress report of its acquisition of content, including a listing of national and local content providers and their associated channels, and video on demand providers, with which: (1) Transferee has signed agreements; (2) Transferee has pending agreements being negotiated; and (3) Transferee is pursuing agreements. By March 31, 2010, Transferee shall have delivered certification by a Corporate officer that it has acquired rights to distribute linear video, broadcast, and video on demand programming content from vendors, which rights: (a) include at least 75% of the channels provided by Franchisee on November 1, 2009; (b) include all nine Portland area local broadcasters; and (c) include commitments to carrying the majority of this content for a period of not less than two years. Transferee will provide MACC with a complete projected channel lineup no later than 30 days prior to the close of the transaction.

12. Transferee acknowledges these conditions of approval of the transfer of control in writing no later than November 20, 2009.

13. Approvals granted by MACC and its member jurisdictions shall be valid until the Verizon/Frontier merger's Hart-Scott-Rodino Approval ("HSR") expires. Currently, the HSR expires on September 1, 2010. If the merger is not completed prior to the expiration of the HSR, Verizon and Frontier shall meet with MACC representatives and advise them on the status of the merger. MACC and its member jurisdictions shall consider the information provided by Verizon and Frontier and consider whether to extend the previously granted approvals. Such extensions shall not be unreasonably withheld.

Section 4. Effective Date.

This Resolution shall be effective upon its adoption by the Commission and signature by the MACC Chair.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION THIS 20TH DAY OF NOVEMBER, 2009.

Chris Barhyte, MACC Chair

MERGER AGREEMENT

(Total of 146 pages, which includes the July 24, 2009 Amendment)



- The Merger Agreement is located on the City’s Web site at:
<http://www.newbergoregon.gov/citycouncil/event/city-council-business-meeting-30>
 - Click [HERE](#) to view the Merger Agreement.

- To receive a hard copy, please contact the city recorder at (503) 537-1283 or <mailto:norma.alley@newbergoregon.gov>.

NEWBERG CITY COUNCIL MEETING INFORMATION

DATE of Meeting: December 21, 2009

Prepared by: Norma Alley

| Councilors | Roll Call | MOTION Topic: Consent Calendar – Council Minutes for 11/16/09 | ORDER NO. 2009-0025 Topic: Animal Shelter Development Code Changes | ORDINANCE NO. 2009-2722 Topic: Animal Shelter Annexation | RESOLUTION NO. 2009-2880 Topic: Cable TV Franchise Transfer | Res/Ord/Order # _____ Topic: | Res/Ord/Order # _____ Topic: | Res/Ord/Order # _____ Topic: |
|--|-----------|--|---|---|--|--|--|--|
| ANDREWS, Bob, Mayor | X | YES | YES | YES | YES | | | |
| BACON, Denise | X | YES | YES | YES | YES | | | |
| LARSON, Bob | X | YES | YES | YES | YES | | | |
| McKINNEY, Stephen | X | YES | YES | YES | YES | | | |
| RIERSON, Bart | X | YES | YES | YES | YES | | | |
| SHELTON, Marc | X | YES | YES | YES | YES | | | |
| WITHERSPOON, Wade | X | YES | YES | YES | YES | | | |
| ROLL CALL VOTES | | YES: 7 NO: 0 Absent: 0 Abstain: 0 | YES: 7 NO: 0 Absent: 0 Abstain: 0 | YES: 7 NO: 0 Absent: 0 Abstain: 0 | YES: 7 NO: 0 Absent: 0 Abstain: 0 | YES: NO: Absent: Abstain: | YES: NO: Absent: Abstain: | YES: NO: Absent: Abstain: |
| Department: | | | No | No | Yes | | | |
| MOTION (1st/2nd): | | Witherspoon/ Larson | Larson/ Rierson | Rierson/ Shelton | Rierson/ Shelton | | | |