

CITY OF NEWBERG CITY COUNCIL MINUTES
MARCH 1, 2010
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET

A Work Session was held prior to the meeting. A presentation was given on the Chamber of Commerce Visitor's Center contract and State Representative Kim Thatcher discussed legislative happenings. No decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:10 PM.

II. ROLL CALL

Members

Present:	Mayor Bob Andrews	Denise Bacon	Bob Larson
	Stephen McKinney	Bart Rierson	Marc Shelton
	Wade Witherspoon		

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Barton Brierley, Planning and Building Director	Norma Alley, City Recorder
	Janelle Nordyke, Finance Director	Jennifer Nelson, Recording Secretary
	Leah Griffith, Library Director	

Others

Present: Joanne Wiitala, Pat Haight, Peter P. Backus, Jamie Nibler, Larry Holman, Rich Gaston, and Marla Sweeney

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, announced the ribbon cutting ceremony at the Cultural Center will be on March 18, 2010, at 3:30 PM; the drug take-back program will be held on Saturday, March 13, 2010, from 9:00 AM to 1:00 PM for anyone needing to drop off unused prescription drugs to be disposed of properly; he spoke of Community Awards to be given at the Chamber of Commerce banquet on April 8, 2010; and he gave procedural updates on the State Economic Recovery Zone funding bond.

V. PUBLIC COMMENTS

Ms. Joanne Wiitala, Newberg Animal Shelter Friends (NASF), announced the election of their new President, Ms. Jan Floren and the profits from their recent Astor House Waffle Buffet Breakfast fundraiser, which was approximately \$880.00. The Annual Yard Sale at Zion Lutheran Church will be coming up on May 7-8, 2010, from 8:00 AM to 2:00 PM. The total in the building fund is at \$439,941.82.

Ms. Pat Haight asked the City Manager for updates on the repairs to the sidewalks in front of the Post Office. She also suggested the Council look further into all the tests and properties regarding access routes in the flood plain and traffic impacts rather than spending more money on a consultant.

Mr. Danicic responded to the questions about the sidewalk irregularities in front of the post office by stating the Code Enforcement Officer contacted the Post Office already and they are getting a contractor to address the issue. According to municipal code the public has 90 days to come up with a resolution, after which citations can be issued. Although, federal properties are not subject to local building and municipal code laws, so the City may not have leverage to cite them. The Post Office is currently waiting on their contractor to schedule the repairs when the weather is nice.

VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2010-2889** supporting the City's application to the State of Oregon's Transportation Growth Management Grant Program for transportation planning of Highway 99W and the south industrial area.
2. Consider a motion approving **Resolution No. 2010-2890** amending Resolution No. 2009-2857 pertaining to the Affordable Housing Action Committee Membership Criteria.
3. Consider a motion approving **City Council Minutes** for February 1, 2010.

MOTION: Shelton/Larson to approve **Resolution No. 2010-2889** supporting the City's application to the State of Oregon's Transportation Growth Management Grant Program for transportation planning of Highway 99W and the south industrial area, **Resolution No. 2010-2890** amending Resolution No. 2009-2857 pertaining to the Affordable Housing Action Committee Membership Criteria, and the City Council Minutes for February 1, 2010. (7 Yes/0 No) Motion carried.

VII. PUBLIC HEARING

1. Consider a motion approving **Order No. 2009-0023** affirming the hearings officer's decision and denying an appeal request for an existing non-conforming billboard sign, owned by CBS Outdoor Inc., to remain at the Newberg Auto Electric site at 616 West First Street.

TIME – 7:21 PM

Mayor Andrews opened the public hearing and called for any abstentions, biases, ex parte contact, or conflicts of jurisdiction. He also stated he has driven by the site in question and he also received a letter from Ms. Jamie Nibler.

Councilor Bob Larson said he received the letter but did not respond or have any contact with either Ms. Nibler or CBS Outdoor, Inc.

Councilor Wade Witherspoon stated he did not receive the letter sent by Ms. Nibler.

Councilor Bart Rierson said he has driven by the site and also had conversations with Planning Commissioners Lon Wall and Matson Haug when the sign code ordinance was forwarded to City Council.

Mr. Terrence Mahr, City Attorney, discussed the legal liabilities and procedure for dealing with ex parte contact like the letter sent by Ms. Nibler to the Council. In order to resolve any future issues concerning ex parte contact, he recommended having the record re-opened and accepting all written correspondence received into the record.

Councilor Stephen McKinney stated he also received the letter and had conversations with staff.

Councilor Denise Bacon stated she received the letter but did not read it. She has also driven by the site.

MOTION: Rierson/Shelton to re-open the public record and accept all written correspondence received as well as additional verbal testimony. (7 Yes/0 No) Motion carried.

Mr. Mahr stated the letter from Ms. Nibler just invited the Councilors to visit the property; he did inform her Councilors were not ignoring her, but they were not able to have contact with her off the public record because of hearing procedure.

Mr. Barton Brierley presented the staff report and recommended upholding the decision to deny the request for an appeal and to order removal or modification of the sign to meet the code requirements (see official meeting packet for full report).

Councilor Larson asked staff to address discrepancies about the overall square footage of the sign. Staff stated previous information was incorrectly presented and the sign measures 240 square feet; exceeding the required 100 square feet.

Mayor Andrews referred to page 24 and asked about the significance of the sign not being registered in 1998. Staff replied one of the conditions was that the sign was registered with the City; if it was not registered it was not eligible to remain and needed to be removed.

Councilor Marc Shelton said if the sign was not registered then there would have been no way to notify the owner that the ten year period had started. Staff agreed and added they also would not have a way to notify the owners at the end for compliance.

Councilor Shelton asked if there was a record that either the landowners or CBS, Inc. received the notice the sign was non-conforming. Staff said they did have a record that a registration was returned, but not for the billboard, just for the attached sign to the billboard.

Mayor Andrews asked about the relevance of the hearing officer's findings concerning parking spaces and striping. Staff spoke of the criteria for other elements of the site to be well-maintained and attractive, the hearing officer did not find the site met this criteria. Further discussion followed concerning page 33 and the need of the sign to come into compliance if the base of the sign changed; how significant the source of income for the sign was; and if the sign had been registered by a previous owner.

Councilor Larson asked who was responsible for registering the sign, the owner of the land or CBS, Inc. Staff said they think it is the responsibility of the land owner.

Mayor Andrews recessed from 7:53PM to 8:00PM to review the CBS, Inc. letter, and opened public testimony.

Mr. Peter Backus said he was in support of Ms. Nibler who he has known for fourteen years. He said he has driven past the sign in question for the past fifteen years he lived in Newberg and he understands it has been in its current location for twenty-five years. He felt the sign was in a good location and pointed out the sign provides a source of income for Ms. Nibler; he hoped the Council would take that under consideration in these economic times. He asked the sign to remain in tact.

Ms. Jaime Nibler, Newberg Auto and Electric, said she did try to send a letter to all the Councilors and she apologized if everyone did not receive it. She said she painted the parking lines herself and has worked on keeping things orderly. She hoped the Council would support local businesses that contribute to the tax base and create jobs. She said she has worked hard to improve the appearance of her property and spent thousands of dollars installing arborvitae and making improvements in the hopes of satisfying the Planning Director, only to have her efforts to settle this issue rejected. She said points have been raised that make it seem as if the community does not want or is somehow harmed by the presence of the sign so she circulated a petition to see if

this was true; with the over one hundred neighbors and business owners who signed the petition, not one person opposed the sign and they signed to support allowing the sign to remain. She implored the Council to allow her to keep the sign and submitted photos to show the improvements (see official meeting packet for full report).

Councilor Shelton asked when she acquired the property and if she heard anything about the ordinance at that time. He also asked if she owned any other property which would have received notice as well.

Ms. Nibler replied she acquired the property around 2002-2003 and did not know about the ordinance until she got notice in 2008. She said she owns another residential property, but it would not have received this notice.

Mayor Andrews asked what "substantial income" she receives from the sign.

Ms. Nibler replied the actual amount is confidential but she would say she receives several thousand dollars.

Mr. Larry Holman also stated his support for Ms. Nibler. He spoke of her late husband running the business until his untimely passing and how she inherited a lot of things she was not aware of; he asked for her to be given some slack. He added according to information he has, 95% of the billboard's advertising content has been reflecting Newberg businesses or public service announcements. He felt the sign was good for the citizens and also was impressed with all the improvements she made in good faith for settling with the City. He urged Council to keep the sign.

Mr. Rick Gaston, CBS Outdoor, Inc., gave details of his company's leasing procedures and requirements. He said the billboard leases provided long term guaranteed payments to the landowners regardless of advertising use. He stated he did not know the late Mr. Larry Nibler other than his reputation for being fiercely loyal to his family and community, proud of the jobs he created, the contributions he made to the tax base, and what he was able to build in his lifetime. Mr. Gaston said he did not feel the Niblers were given due process and notification even though his company's logo is visibly noticeable for contact and the lease is recorded in Yamhill County. He did not feel appropriate steps were made to notify either the landowner or his company for compliance. He also mentioned two other court cases and issues of just compensation and amortization. He brought up concerns for the City's request to install trees as not being financially feasible by his company and the alternations already made showing good faith. He said he was opposed to the staff recommendation.

Councilor Shelton asked if CBS, Inc. did not want to work in the Oregon Department of Transportation (ODOT) right-of-way to install landscaping.

Mr. Gaston replied his company felt it was a liability to work off the premises and they did not feel the chances of the trees surviving in the right-of-way were very good. The cost would be too great a hardship on the company.

Councilor Shelton also asked what the implications would be for both CBS, Inc. and the property owner in order to reduce the sign to meet the 100 square foot requirement.

Mr. Gaston said other than the cost of demolishing the original sign and installing a new one they had objections in the long run to downsize the sign based on the traffic volume and speed limits. This would greatly reduce the income received by the property owner and she would need to be justly compensated.

Mayor Andrews asked about the terms of the current lease.

Mr. Gaston replied the current lease with Ms. Nibler is a twenty-one year lease expiring in 2021. After that it can continue on a year to year basis or it can be renewed for another ten to twenty years.

Ms. Haight said she did not feel there was a cause for concern since it has been there for twenty-five years. She felt the City could be spending its money more wisely elsewhere instead of targeting business owners. She felt the large number of "A" frame signs throughout downtown Newberg were more of a problem than this sign. She felt in a time when people are struggling to pay bills, taking away any portion of a business owner's income was not justified and the Council should reverse the hearings officer's decision. She also felt it was extortion for the City to require them to install expensive adult trees in order to keep the sign.

Ms. Marla Sweeney said she was a resident of Newberg for fifteen years. She views the City as unfriendly to businesses and felt that attacking business owners and using them as a source of income to help get out of financial ruts looked mercenary. She argued the area was a business area and none of the neighbors seemed bothered by it, especially since she did not think it was the biggest eye sore in Newberg. She said the City's actions look like they are preying on a widow, that it was ridiculous, and that she hoped it stops.

Mayor Andrews closed the public comments.

Mr. Brierley stated staff is currently dealing with a number of signs in the community that are not compliant and other business owners are replacing them or modifying them in order to meet the current Code standards. He said there were a lot of good conversations that took place; he also appreciated the issue of not wanting to work offsite and hoped to find solutions to that issue.

Mr. Mahr clarified some of the legal issues raised during Mr. Gaston's testimony concerning just compensation and amortization by referring to cases in the City of Salem; he felt there concerns were more over the issue of restricting 1st Amendment rights, which did not apply here. He did have some concerns as to proving proper notification and due process.

Mr. Brierley recommended adoption of the order as proposed. Mr. Mahr reviewed the legal statements concerning the applicant's waiver of the right to submit further written testimony. Mr. Gaston stated they waived their rights so deliberation could begin. Mayor Andrews closed the public hearing.

MOTION: Rierson/Witherspoon to deny Order No. 2009-0023 by not affirming the hearings officer's decision and accepting an appeal request for an existing non-conforming billboard sign, owned by CBS Outdoor, Inc. to remain at the Newberg Auto Electric site at 616 West First Street.

Councilor Rierson argued there was no documentation of the notification to the Niblers or to CBS, Inc. of the ten year period of compliance and he felt they acted in good faith to make the improvements needed. He did not think it was realistic for the City to request trees to be planted on the property not owned by the applicant. He did not see this particular sign as being a problem because it is placed at the edge of the city limits but he also did not wish to see any more signs like it in Newberg. He did not support the staff recommendation to uphold the hearing officer's decision.

Councilor Larson agreed and added he was impressed with the improvements made. He felt since the sign has been there for twenty-five years without being a bother to anyone they should not be spending any more time on the matter. He supported the motion.

Councilor Witherspoon said he felt the signs history made it worthy of being grandfathered in which was also supported by the petition received with over one hundred signatures. He did not feel precedence was being set with this sign and said he did not agree with the hearing officer's findings regarding criteria two and four because they were too subjective. He agreed the size criteria was not met but also argued it is not clearly stated that all four criteria must be met in order to be approved to remain non-conforming. There was no safety or economic issue and he supported the motion from an ethical stance as well.

Councilor McKinney said he supported the motion with some reluctance because he had concerns for not wanting any more signs like this in Newberg. He also had issues with the term “sun-setting” or “grandfathering” and wished to allow the sign to remain “non-conforming”; but, he questioned if this would make it permanently non-conforming or if it would be brought into compliance in the future upon change of ownership.

Councilor Bacon supported the motion because she did not feel the owner or CBS, Inc. was properly notified and because Ms. Nibler made every attempt to improve the other areas of concern.

Councilor Shelton agreed with the issue of due process. He supported the motion because notice was not given, not because the sign ordinance is not valid. He also felt it needed to be determined if this falls into the non-conforming sign status like the other nine that were approved by the hearing officer process.

Councilor Rierson clarified his comments were in no way meant to negate the efforts of City staff as they acted in the best interest to support the ordinance as approved; he felt there were special circumstances surrounding this sign.

VOTE: To deny **Order No. 2009-0023** and the hearings officer’s decision and accepting an appeal request for an existing non-conforming billboard sign, owned by CBS Outdoor Inc., to remain at the Newberg Auto Electric site at 616 West First Street. (7 Yes/0 No) Motion carried.

Councilor Rierson asked staff to come back with an order adopting this as a non-conforming sign. A stipulation would be if it is torn down and rebuilt for any reason in the future, then it would have to be installed according to the sign ordinance criteria. He also wished for there to be a plan for the City to extend the additional landscaping beyond the property lines because it is not appropriate to ask CBS, Inc. or the landowner to do this.

Mayor Andrews recessed for five minutes at 9:20 PM.

2. Consider a motion approving **Ordinance No. 2010-2719** amending the Comprehensive Plan for flood hazard policies, amend the Development Code to create flood plain development standards, and adopt the current Yamhill County Flood Insurance Study and associated Flood Insurance Rate Map.

TIME – 9:25 PM

Mayor Andrews opened the hearing and called for any conflicts of interest or abstentions; none appeared.

Mr. Brierley presented the staff report and recommended adopting the maps and the study with one change to including an emergency clause to make the ordinance effective at tonight, March 1, 2010 (see official meeting packet for full report).

Councilor Shelton asked about the effect to the proposed industrial area. Staff said the area is in the flood plain but within the stream corridors so there would not be any practical affect.

Mayor Andrews opened and closed the public testimony, as there were no citizens present to testify. Staff recommended adoption and the public hearing was closed.

MOTION: Larson/Rierson to approve **Ordinance No. 2010-2719** amending the Comprehensive Plan for flood hazard policies, amend the Development Code to create flood plain development standards, and adopt the current Yamhill County Flood Insurance Study and associated Flood Insurance Rate Map; to be read by title only; and include the emergency clause containing an effective date of March 1, 2010. (7 Yes/0 No) Motion carried.

VIII. COUNCIL BUSINESS

Continued Discussion of Council Goals (Time Permitting)

TIME – 9:47 PM

No discussion was held on Council Goals.

Mr. Danicic discussed the purchase of property at 211 N. School Street for a potential library expansion and how contingencies could be used to negotiate a sale quickly as there is some urgency for the owner to sell immediately.

MOTION: Larson/Witherspoon to allow the City Manager to enter into negotiations to purchase property at 211 N. School Street for final approval by City Council. (7 Yes/0 No) Motion carried.

Mr. Danicic discussed a request for a proclamation for Farm Worker Awareness Week and Cesar Chavez day proclamation. Council agreed with acknowledging the contributions made by farm workers and celebrating the efforts of Cesar Chavez but they wished to highlight the positive cultural recognition without creating any political issues with federal policies. The use of automated answering services to help with the burden of having a live person answering the general number was discussed. The majority supported the main number continuing to be answered by a person rather than an automated service.

Councilor McKinney asked if there was any interest in sponsoring a table at the Faith in Action dinner. Prices and attendance was discussed. Consensus was met to sponsor a Council table.

IX. ADJOURNMENT

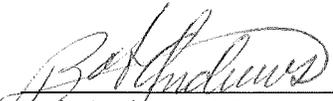
The meeting adjourned at 10:35 PM.

ADOPTED by the Newberg City Council this 5th day of April, 2010.



Norma I. Alley, City Recorder

ATTEST by the Mayor this 8th day of April, 2010.



Bob Andrews, Mayor