

Council accepts comments on agenda items during the meeting. Fill out a form identifying the item you wish to speak on 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  
CITY COUNCIL AGENDA  
MARCH 1, 2010  
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 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. (Pgs. 3-5)
2. Consider a motion approving **Resolution No. 2010-2890** amending Resolution No. 2009-2857 pertaining to the Affordable Housing Action Committee Membership Criteria. (Pgs. 7-13)
3. Consider a motion approving **City Council Minutes** for February 1, 2010. (Pgs. 15-22)

**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. (Pgs. 23-73)  
**(Quasi-Judicial Hearing)**
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. (Pgs. 75-99)  
**(Legislative)**

\*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.

## VIII. COUNCIL BUSINESS

Continued Discussion of Council Goals (Time Permitting)

## IX. ADJOURNMENT

### INDEX OF ORDERS, ORDINANCES AND/OR RESOLUTIONS:

#### ORDERS:

**Order No. 2009-0023** denying an appeal for an existing non-conforming billboard sign, owned by CBS Outdoor, Inc., to remain at the Newberg Auto Electric site at 616 W. First Street.

#### ORDINANCES:

**Ordinance No. 2010-2719** adopting a comprehensive plan text amendment revising existing flood hazard policies, adopting a development code amendment to create flood hazard area development standards, and adopting the Yamhill County Flood Insurance Study and associated National Flood Insurance Rate Maps dated march 2, 2010.

#### RESOLUTIONS:

**Resolution No. 2010-2889** approving the submission of a grant application to the State Of Oregon's Transportation Growth Management Program for transportation planning of Highway 99W at the east end of Newberg and the South Industrial Master Plan area.

**Resolution No. 2010-2890** Amending Resolution No. 2009-2857 (Affordable Housing Action Committee) by changing the membership requirement that a majority of the members be residents of the city to encourage residency but not requiring it, and further reaffirming the appointment of the present committee members.

*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.*

Public testimony will be heard on all agenda items at the Council meeting. The City Council asks written testimony be submitted to the City Recorder before 5:00 p.m. on the preceding Thursday. Written testimony submitted after that will be brought before the Council on the night of the meeting for consideration and a vote to accept or not accept it into the record.

\*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: March 1, 2010

Order \_\_\_\_ Ordinance \_\_\_\_ Resolution XX Motion \_\_\_\_ Information \_\_\_\_  
No. No. No. 2010-2889

**SUBJECT: Application to State of Oregon's Transportation Growth Management (TGM) grant program for transportation planning of Highway 99W and the south industrial area**

Contact Person (Preparer) for this  
Resolution: **David Beam, AICP**  
**Economic Development Planner**

Dept.: Planning and Building

File No.: **GR-10-001**  
*(if applicable)*

## RECOMMENDATION:

Adopt **Resolution No. 2010-2889** supporting the City of Newberg's application to State of Oregon's Transportation Growth Management (TGM) grant program for transportation planning of Highway 99W and the south industrial area.

## EXECUTIVE SUMMARY:

The State of Oregon is currently accepting applications for grant funding under their TGM program. Applications are due March 12, 2010.

On February 1, 2010, the City Council adopted a revised Economic Opportunity Analysis (EOA) as part of the City's Comprehensive Plan. Included in the EOA was a demonstrated need for developable industrial land. On November 2, 2009, the City Council accepted the development vision of the South Industrial Master Plan. This area includes land in the Newberg UGB, the Urban Reserve area, and land that is proposed for inclusion in the UGB. A road network plan has been developed, but modeling is needed to officially include the road network into the TSP.

Planning for access to Highway 99W on the east edge of Newberg is a challenge. The current access includes several very poor intersections. The Newberg-Dundee bypass is planned to cross this area. Future growth will add significant traffic. Several options have been explored, but no single cost effective solution has been determined.

Given the transportation issues described above for Highway 99W and the South Industrial Master Plan area, planning staff recommends that the City submit a TGM grant application to request funding to accomplish the following:

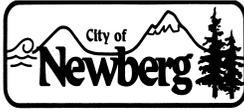
- To amend the Newberg TSP to include a transportation network to serve the Newberg South Industrial Area. This will do transportation modeling for the area to confirm the planned roadway network and to allow inclusion of the planned improvements into the Newberg TSP.
- To create a plan for future local access along Highway 99W from Providence Drive east to Veritas Lane. The plan will explore a number of different options, determine general feasibility and cost estimates for each, and compare the options for decision makers to decide which to select.

**FISCAL IMPACT:**

Planning staff recommends requesting \$100K in grant funds from TGM. Of those funds, \$85K would be used for a consultant assisting with the project and \$15K would be used help pay for staff time needed for project administration and implementation. Also, the City would dedicate an estimated \$15K worth of additional staff time towards the project as part of the required local match by the TGM grant program.

**STRATEGIC ASSESSMENT:**

A well-functioning transportation system is critical in achieving a high quality of life in Newberg. Planning for the future transportation needs of these two important areas of our community will help us reach this goal.



# RESOLUTION No. 2010-2889

**A RESOLUTION APPROVING THE SUBMISSION OF A GRANT APPLICATION TO THE STATE OF OREGON'S TRANSPORTATION GROWTH MANAGEMENT PROGRAM FOR TRANSPORTATION PLANNING OF HIGHWAY 99W AT THE EAST END OF NEWBERG AND THE SOUTH INDUSTRIAL MASTER PLAN AREA**

**RECITALS:**

1. The State of Oregon is currently accepting applications for grant funding under their TGM program. Applications are due March 12, 2010.
2. On February 1, 2010, the City Council adopted a revised Economic Opportunity Analysis (EOA) as part of the City's Comprehensive Plan. Included in the EOA was a demonstrated need for developable industrial land. On November 2, 2009, the City Council accepted the development vision of the South Industrial Master Plan. This area includes land in the Newberg UGB, the Urban Reserve area, and land that is proposed for inclusion in the UGB. A road network plan has been developed, but modeling is needed to officially include the road network into the TSP.
3. Planning for access to Highway 99W on the east edge of Newberg is a challenge. The current access includes several very poor intersections. The Newberg-Dundee bypass is planned to cross this area. Future growth will add significant traffic. Several options have been explored, but no single cost effective solution has been determined.

**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City of Newberg shall submit a grant application for transportation planning of the eastern end of Highway 99W and the South Industrial Master Plan area.
2. The City Manager is authorized to negotiate and execute a grant contract with State of Oregon if the grant application is successful.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: March 2, 2010.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 1<sup>st</sup> day of March, 2010.

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 4<sup>th</sup> day of March, 2010.

\_\_\_\_\_  
Bob Andrews, Mayor

**LEGISLATIVE HISTORY**

By and through \_\_\_\_\_ Committee at \_\_\_\_ / \_\_\_\_ /200x meeting. Or, X None. (committee name) (date) (check if applicable)

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 1, 2010

Order \_\_\_ Ordinance \_\_\_ Resolution XX Motion \_\_\_ Information \_\_\_  
No. No. No. 2010-2890

**SUBJECT: Amend Resolution No. 2009-2857, which established the Affordable Housing Action Committee, by amending the committee membership criteria that requires a majority of the members to be residents of the city.**

Contact Person (Preparer) for this Resolution: Dawn Wilson

Dept.: City Attorney's Office

File No.:  
*(if applicable)*

## RECOMMENDATION:

Adopt **Resolution No. 2010-2890**, which amends Resolution No. 2009-2857, the Affordable Housing Action Committee, by changing the criteria requirement that a majority of the members shall be members of the city giving preference to applicants who are residents of the city and requiring applicants to have community connections.

## EXECUTIVE SUMMARY:

The City passed Resolution No. [2009-2857](#) on July 20, 2009, which is attached. The resolution established the Affordable Housing Action Committee. The Mayor appointed the members of the committee, which was with the consent of the city council. The members of the committee were representatives from certain groups as set out in the membership criteria. All applicants were appointed to the committee. The committee has functioned very well and consists of members who have an interest in affordable housing.

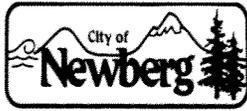
However, the criteria that the majority of the members should be residents of the city was not met. Eight of them have Newberg addresses. All members have a connection to the city through their business, profession, or community service activities. This amendment to the resolution will emphasize that preference should be given to residents of the city if they should apply for membership. It shall further reconfirm the membership of committee after being aware of the oversight in appointment.

## FISCAL IMPACT:

None.

## STRATEGIC ASSESSMENT:

To work towards affordable housing, implement Newberg affordable housing action plan, and not disrupt the excellent work done by the committee.



## RESOLUTION No. 2009-2857

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### A RESOLUTION ESTABLISHING THE AFFORDABLE HOUSING ACTION COMMITTEE

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#### RECITALS:

1. The City of Newberg has recognized that the community has an affordable housing issue. On May 8, 2008, the Newberg City Council passed Resolution No. 2008-2781, establishing the Housing for Working Families Ad Hoc Committee. The charge of the Committee was to "... identify and recommend tools appropriate for the Newberg community this are intended to encourage the development of housing for working families." On May 4, 2009, the Committee presented the *Newberg Affordable Housing Action Plan* to the City Council. At that meeting, City Council passed Resolution No. 2009-2843, stating their acceptance of the Plan.
2. As stipulated in Resolution No 2008-2781 that established the Ad Hoc Committee, the creation of the *Newberg Affordable Housing Action Plan* was Phase One of a longer process to help bring more affordable housing to Newberg. Phase Two of the City's comprehensive approach to this issue will include multiple efforts. In this phase, some of the actions outlined in the plan are ready to implement relatively quickly. Other affordable housing tools identified in the plan will require further development and refinement prior to their implementation.

#### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Establishment and Role. There is hereby established an Affordable Housing Action Committee. This advisory committee of the Newberg City Council will recommend specific directions to help with the implementation of various actions identified in *Newberg Affordable Housing Action Plan*.
2. Committee Task. The Committee shall develop and refine various tools identified in the *Newberg Affordable Housing Action Plan* that will assist with the implementation of the Plan. Tools to be worked on that will encourage the development and retention of affordable housing include:
  - Reductions of development fees and property tax abatements
  - Expansion of existing city housing rehabilitation program
  - Creation of housing trust fund
  - Development of appropriate legislation
  - Development of housing education/outreach programs
  - Support for transitional and group housing

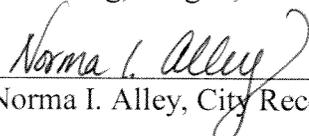
Subcommittees will be created from members of the full Committee as needed. Persons outside of the Committee and subcommittee memberships that may be of assistance to their respective task may be invited to participate.

The subcommittee organized to address the issue of potential development fee reductions shall consist of two members from the full Committee and members of the City's Rate Review Committee.

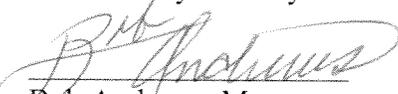
3. Membership.
  - A. The Newberg Mayor will appoint members of the Committee, with the consent of the Newberg City Council.
  - B. The Committee will consist of no more than 10 members who are not employees of the City of Newberg.
  - C. The City shall solicit membership applications through advertising in the *Graphic* and through other general community announcements.
  - D. A majority of members shall be residents of the City.
  - E. In appointing members, the Mayor shall strive to include representatives from the following groups:
    - i. A city councilor;
    - ii. A planning commissioner;
    - iii. Affordable housing advocates from the public and/or private sector;
    - iv. Developers
    - v. Financial institutions;
    - vi. Citizens at-large representing a full range of income levels.
4. Organization. The Mayor will appoint a chair and vice-chair from among the membership. The Mayor shall also appoint a chair for any subcommittees.
5. Duration. The Committee will serve until it completes its task. It is anticipated that this committee will serve up to two years.
6. Meetings. The Committee will establish a meeting schedule as needed to accomplish its task.
7. Staff Support. The City staff will provide a secretary to the Committee and its subcommittees as well as other staff and consultation services as may be appropriate. The secretary will keep a record of committee proceedings.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 21, 2009.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 20<sup>th</sup> day of July, 2009.

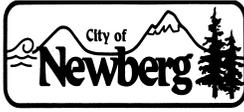
  
 \_\_\_\_\_  
 Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 23<sup>rd</sup> day of July, 2009.

  
 \_\_\_\_\_  
 Bob Andrews, Mayor

### LEGISLATIVE HISTORY

By and through \_\_\_\_\_ Committee at \_\_\_\_/\_\_\_\_/200x meeting. Or,  None.  
(committee name) (date) (check if applicable)



## *RESOLUTION No. 2010-2890*

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**A RESOLUTION AMENDING RESOLUTION NO. 2009-2857 (AFFORDABLE HOUSING ACTION COMMITTEE) BY CHANGING THE MEMBERSHIP REQUIREMENT THAT A MAJORITY OF THE MEMBERS BE RESIDENTS OF THE CITY TO ENCOURAGE RESIDENCY BUT NOT REQUIRING IT, AND FURTHER REAFFIRMING THE APPOINTMENT OF THE PRESENT COMMITTEE MEMBERS**

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### **RECITALS:**

1. The city passed Resolution No. [2009-2857](#) on July 20, 2009, establishing the present Affordable Housing Action Committee, which included paragraph 3 establishing membership criteria.
2. Paragraph 3(D) of the resolution required that, “A majority of the members shall be residents of the city.”
3. The city solicited persons interested in serving on the committee and the Mayor appointed the members with the consent of the council.
4. The appointments were made of members who represented groups as indicated in paragraph 3(E) of the resolution, which included a city councilor, planning commissioner, affordable housing advocates, developers, financial institutions, and citizens at large.
5. The criteria that a majority of members of the committee be residents was not highlighted and was overlooked when the appointments were made, although the members do have community connections through their business, profession, or community service activities.

### **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. **Amendment to Membership:** Resolution No. 2009-2857 dealing with Membership on the committee is amended as follows:  
Paragraph 3(D), which presently reads: “A majority of members shall be residents of the city” and is amended to read as follows:  

Members shall have community connections and preference for appointment to membership shall be given to applicants who are residents of the city.
2. **Remaining Provisions:** All other provisions of Resolution No. 2009-2857 shall remain in full force and effect.

3. **Membership of the Committee:** The present membership of the committee, which has worked well, is hereby reaffirmed. Attached is a Membership List of the Affordable Housing Action Committee, which is hereby attached as Exhibit "A" and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: March 2, 2010.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 1<sup>st</sup> day of March, 2010.

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 4<sup>th</sup> day of March, 2010.

\_\_\_\_\_  
Bob Andrews, Mayor

### LEGISLATIVE HISTORY

By and through City Council at 02/16/2010 meetings. Or,    None.  
(committee name) (date) (check if applicable)

**AFFORDABLE HOUSING AD HOC COMMITTEE**  
**MEMBERSHIP LIST**  
**Updated: October 20, 2009**

<b>Council District Lives In</b>	<b>Member/Contact Info</b>	<b>Term Appointments</b>
3	Denise Bacon 901 East 7th Street Newberg, OR 97132 Home: 503-537-2602 Cell: 503-840-5023 Email: denise.bacon@newbergoregon.gov	Represents: City Council Appointed: 10/19/2009
n/a Lives in County	Cathy Stuhr 31100 NE Fernwood Road Newberg, OR 97132 Home: 503-538-8703 Work: 503-702-4974 Email: mcstuhr@verizon.net	Represents: Planning Commission Appointed: 10/20/2009
n/a Lives out of City	Dennis Russell 23785 Schultz Road NE Aurora, OR 97002 Work: 503-538-3144 Cell: 503-539-0921 Email: drussell@friendsview.org	Represents: Advocate/Specialist Appointed: 10/19/2009
n/a Lives in County	Charlie Harris 19400 NE Jaquith Road Newberg, OR 97132 Home: 503-538-7350 Work: 503-537-0319 x305 Email: charris@casaoeforegon.org	Represents: Advocate/Specialist Appointed: 10/19/2009
n/a Lives in County	Rick Rogers 26725 NE Bell Road Newberg, OR 97132 Home: 503-554-9382 Work: 503-537-9938      Cell: 503-997-6094 Email: newberghabitateforhumanity@verizon.net	Represents: Advocate/Specialist Appointed: 10/19/2009

<b>Council District Lives In</b>	<b>Member/Contact Info</b>	<b>Term Appointments</b>
6	Mike Gougler 4729 Masters Drive Newberg, OR 97132 Home: 503-538-2732 Work: 503-841-5576      Cell: 503-810-5576 Email: ggoug@yahoo.com	Represents: Developer Appointed: 10/19/2009
n/a Lives in County	Mike Willcuts 11700 NE Sunny Acres Lane Newberg, OR 97132 Home: 503-538-6128 Work: 503-538-0984      Cell: 503-550-4800 Email: mike@coyotehomesinc.com	Represents: Developer Appointed: 10/19/2009
n/a Lives in County	Stuart Brown 12665 NE Dudley Road Newberg, OR 97132 Home: 503-538-1459 Work: 503-538-1072      Cell: 503-310-8982 Email: stuart@valleymtg.com	Represents: Financial Appointed: 10/19/2009
	Ken Austin PO Box 1060 Newberg, OR 97132 Home: 503-538-7053 Work: 503-537-1000      Cell: 503-537-6936 Email: raindancellamas@sprintmail.com	Represents: At-Large Appointed: 10/19/2009
n/a Lives out of City	Doug Bartlett 309 NW Alpine Dundee, OR 97115 Home: 503-538-0636 Cell: 503-899-7837 Email: bartlettdoug@hotmail.com	Represents: At-Large Appointed: 10/19/2009

**Staff Member**

David Beam, Economic Development Coordinator  
(503) 537-1213  
david.beam@newbergoregon.gov

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 1, 2010

Order \_\_\_ Ordinance \_\_\_ Resolution \_\_\_ Motion XX Information \_\_\_  
No. No. No.

SUBJECT: Approve the February 1, 2010, City Council Meeting minutes.

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

Dept.: Administration

File No.:

*(if applicable)*

## RECOMMENDATION:

Approve the February 1, 2010, City Council minutes for preservation and permanent retention in the City's official records.

## EXECUTIVE SUMMARY:

On February 1, 2010, 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  
FEBRUARY 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 by the Newberg Downtown Revitalization Committee (NDRC) for a budget proposal. No decisions were made.

**I. CALL MEETING TO ORDER**

Mayor Bob Andrews called the meeting to order at 7:01 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
	Jessica Nunley, Assistant Planner	Jennifer Nelson, Recording Secretary
	David Beam, Economic Development Planner	

Others

Present: Julie Fugate, Sid Friedman, Sydney C. Wermlinger, Lewis Schaad, Grace Schaad, Vicki Shepherd, Amy L. Does, Lee Does, Saj Jivanjee, and Ken Wegter.

**III. FLAG CEREMONY PERFORMED BY BOY SCOUT TROOP 265**

The Flag Ceremony was performed.

**IV. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**VII. APPOINTMENTS**

Consider a motion approving **Resolution No. 2010-2884** appointing Larry Blake, Jr. as the Newberg Municipal Judge.

<b>MOTION:</b> Shelton/Rierson to approve <b>Resolution No. 2010-2884</b> appointing Larry Blake, Jr. as the Newberg Municipal Judge. (7 Yes/0 No) Motion carried.
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Mayor Andrews swore in Mr. Larry Blake, Jr. as Newberg's Municipal Judge.

**V. CITY MANAGER'S REPORT**

Mr. Daniel Danicic, City Manager, gave updates on the selection process for a general contractor for the animal shelter and the money granted to the Yamhill County Housing Authority, which was received by the City of Willamina. He spoke of efforts being made with the County to develop a Continuity of Operations Plan in the

event of a natural disaster. He informed the Council the Dayton pump station overflowed this weekend because of equipment failure; the Oregon Department of Environmental Quality (DEQ) was notified and clean up efforts are being made. He noted this as an example of why the City has been putting together the rate structures it has because they have been dealing with problems like this on a regular basis.

## VI. PUBLIC COMMENTS

None.

## VIII. CONSENT CALENDAR

1. Consider a motion approving a **Proclamation** declaring the week of February 7, 2010, as Scouting Anniversary Week.
2. Consider a motion approving **City Council Minutes** for January 4, 2010.

**MOTION: Shelton/McKinney** to approve the Consent Calendar including a proclamation declaring the week of February 7, 2010, as Scouting Anniversary Week and the City Council Minutes for January 4, 2010. (7 Yes/0 No) Motion carried.

Mayor Andrews presented the proclamation to Boy Scout Troop 265.

## IX. PUBLIC HEARING

Consider a motion approving **Ordinance No. 2010-2723** adopting the revised Newberg Economic Opportunities Analysis and amends the Comprehensive Plan.

TIME – 7:17 PM

Mr. Barton Brierley, Planning and Building Director, presented the staff report assisted by Ms. Jessica Nunley, Assistant Planner (see official meeting packet for full report).

Mayor Andrews asked if some of the land parcels are owned by private parties, if those owners have prerogative, and if the City would have control over the development. Staff replied some are privately owned and each owner can decide what is appropriate for them; there could be issues with landowners who do not wish to sell.

Mayor Andrews asked for an interpretation of the growth percentage projections. Staff replied the projections were not based on a fixed number and included other components. They were adopted in 2005 and last year the actual numbers were only off by eleven people over four years, so they are really close.

Councilor Wade Witherspoon suggested three minor corrections to the report. On page 24 under new business recruitment he wished to expand the phrase “bring new wealth to the community” to include the idea of increasing livability. On page 35 in the third paragraph he asked staff to elaborate on how the shared vision for Yamhill County is being worked on together; staff replied it was a quote from the community development plan and they are doing this through things like the City/County dinner and phone calls to business prospects. Councilor Witherspoon also asked for changes to be made to page 58 to expand the phrase “Newberg continues to support Newberg School District, George Fox University, and Portland Community College” to include “all schools in Newberg”.

Councilor Marc Shelton asked if adjustments were being made to the population estimates based on the economic climate and homes not being built on land annexed into the City. Staff replied the amendments are simply to update the information from the 2006 numbers to the current 2009 data.

Councilor Stephen McKinney spoke of using the population figures now to determine livability and sustainability and to control the kind of community they all envision for Newberg when the growth and changes start to occur.

Councilor Shelton asked staff if they were adjusting the figures for utility expansion based on the current economic climate. Staff replied there may be a slight reduction in growth because of the economy but they are sticking with the numbers because they will be accurate over time.

Discussions followed as to whether or not to accept several pieces of written testimony submitted this evening. Many of the Councilors felt it was too much (over ten pages) to be comfortable accepting it into the record when they have not had time to read it.

Councilor Shelton asked the citizens who submitted the written testimony if they would be able to cover the information during their oral testimony.

Mr. Sid Friedman, representing 1000 Friends of Oregon, stated he planned to summarize the material he submitted, but would not go into the details.

Mr. Lee Does replied he was planning to give a different perspective during his oral testimony than what was in the written testimony he submitted. He also argued there was nothing published by notice or on the website that there was a deadline for submitting written testimony.

Ms. Amy L. Does stated her written testimony was exactly what she planned to say tonight.

**MOTION: Shelton/Larson** to not accept the written comments into the record.

Councilor Bart Rierson did not feel he could fairly deliberate or comment on the written material submitted this evening since it was much more than a single page. He hoped the citizens could cover the material during their verbal testimony.

Councilor McKinney spoke of upholding the actions of the previous Councils for over eight years in order to protect the integrity of the process by not accepting the written material; but, he also did not feel it nullified the citizens' efforts or points of view since they would still be heard tonight.

Councilor Witherspoon asked the City Attorney to explain what the danger was in accepting something this late when it could not be read before making a decision.

Mr. Terrence Mahr, City Attorney, explained that if it is accepted and not read, it becomes evidence that by law must be taken into account. There could be something within the material not addressed which could have changed the outcome. There is a rule in place stating the Council can reject any written testimony and the citizens are present to testify, so Council has the right to reject it.

Mr. Friedman argued the published notice in The Graphic and the website both had nothing about limiting written material and if the concern was to be able to read the material, this is a legislative hearing and there are no deadlines stating action must be taken tonight; deliberations could be extended to another evening.

Mayor Andrews stated there are published Council rules which state speakers may submit written material at a meeting but the Council can choose to consider it or not.

Councilor Shelton felt it was not necessary to accept the written testimony since the citizens were present to speak this evening.

**VOTE:** To not accept the written comments into the record. (5 Yes/1 No [Andrews]/1 Abstain [Witherspoon])  
Motion carried.

Mayor Andrews opened public testimony.

Ms. Julie Fugate, representing Dennis and Janice Pierce, Roland and Goldie Flock, and Connie Grey, said she supported the Economic Opportunities Analysis (EOA) and spoke of statewide planning goal 9 and the need to prevent a housing shortage for the high population numbers resulting from the large number of children from the Baby Boom generation. She recommended adopting the EOA and amendments as presented to plan for job growth and housing.

Opponents:

Mr. Friedman stated he had strong objections to the written testimony not being included. He spoke of targeting Newberg for manufacturing as being wishful thinking and urbanization of farmland into industrial land. He spoke of the high sales and profits from Newberg farming and the required site characteristics in the EOA being reverse engineered. He talked about the parcels sizes and how it limits smaller businesses on smaller sites. He spoke of the EOA excluding properties adjacent to large tracts of agricultural land and any truck traffic to the downtown even though 99W is considered a major arterial on the transportation plan and as a freight route on the Oregon Highway Plan which he says is inconsistent. He said the job density is lower than what is in the text and spoke of problems with the commercial site characteristics not being explained so therefore not being justified. He spoke of items not being properly coordinated with Yamhill County because they are not in the comprehensive plan or referenced in any documents. He also argued that the additional amendments to the comprehensive plan were not included in the notice for the hearings and no explanations provided for citizens to determine if they were reasonable so the amendments are not justified. Finally, he argued the rule should be sited about submitting written testimony.

Ms. Sidney Wermlinger spoke of designing roads to go from the farm to the market and access to I-5, travel time, and road to the proposed manufacturing park already being overloaded which is contrary to the report. She said farmland is a precious commodity and wished to save the farmland from the label of being “shovel ready”.

Mr. Lewis Schaad expressed concern for industrial and commercial building land citing the City of Gresham as an example of bringing in land for one purpose that goes undeveloped. He spoke of the lack of infrastructure making it difficult to make the land appealing to industry. He spoke of energy efficiency and sustainability industries that do not require large parcels of flat farmland. He said farmland needs to be protected until the time comes when the business comes and said that just because someone chooses to farm does not make that farmland.

Ms Grace Schaad testified that the EOA is being used to “reverse engineer” the destruction of prime farmland that should be used for providing food for human consumption. She spoke of characteristics being identified for industry that will be needed some time in the future and saying that saying only land within the South Industrial Master Plan meets them is bogus. She suggested looking for land already available for infill or refill to attract manufacturing to the City such as the vacated “Suntron” campus and other examples. She spoke of valuing the agricultural lands for eating locally, attracting tourists, and providing the “small town quality of life” desired.

Ms. Vicki Shepherd spoke of different areas in Oregon being known for something and stated that Newberg is known for its wine industry. She said agriculture is Oregon's second largest industry and it is a vital part of what makes Newberg the city it is. She felt we should be managing our natural resources in a way that allows future generations to produce crops to sustain their families. She encouraged Council to not approve the EOA.

Ms. Amy L. Does, Ph. D., stated the EOA has faults because it pushes acreage-intensive manufacturing that will displace agriculture. She spoke of agriculture's importance to economic sustainability and tourism and how urban growth boundaries are causing more agriculture to be lost. She encouraged the City to reevaluate the EOA and the amount of acreage really necessary for Newberg's future.

Mr. Lee Does spoke of working in robotics and the industries that survive being ones that cannot be taken overseas. He spoke of things grown here like heirloom tomatoes and how agriculture is recession proof. He spoke of what is doing well in Newberg like providing education and tourism. He did not agree with committing lands for something that does not yet exist which would cause farmers to disinvest in their property in order to hold out for the payoff from developers. He also objected to the written testimony not being accepted.

Mr. Saj Jivanjee spoke of his frustration with the analysis and the idea of creating industrial land from land that already has current value. He felt more focus should be on sustainability and spoke of the unique topography of the area not being conducive for industrial use, especially when it is successful agriculturally. He said the world is changing and people need to become smarter and more scientific about sustainability. He felt industry is archaic and felt more could be done with one computer rather than huge parcels of industrial land.

Councilor Denise Bacon spoke of California being dependent on agriculture and the problems they are experiencing with climate changes and lack of water.

Mr. Jivanjee argued California over-consumed and not they are paying the price. He felt Newberg should go with the global trend to create ways to sustain and restore natural resources, not develop fear-based models for a big factory to make everyone live happily ever after. He suggested creating something unique. He also spoke of rethinking housing so that not every person needs "one ton of metal around their neck to buy one piece of bread".

Mr. Ken Wegter said he wished to speak on behalf of the wildlife in the area. He felt the growth was limited by the nature of the area and spoke of the land's attractiveness that brings people in. He did not feel Newberg would attract the industries because of its location and felt the majority of people come here for the agriculture. He encouraged the Council to consider the wildlife.

Mr. Brierley responded to some of the comments made during the testimony about industry being adjacent to residential areas causing conflict in the past and protecting the downtown from increased truck traffic. In regards to Gresham they lacked the services and were unable to attract industry which is a lesson to be learned from for Newberg, which is why site suitability was put into the report. He spoke of the Nike apparel warehouse as an example of how Newberg benefits from their executives eating, shopping and playing golf here. He spoke of agriculture being important and mentioned a food processing business that almost had to leave Newberg because of the lack of suitable industrial sites to expand. He said he appreciated the testimony and recommended adopting the ordinance with the changes previously mentioned. On page 24 in paragraph two will change from "bring new wealth" to "bring new resources to maintain and improve the livability of the community". On page 58 in the second bullet changes are as follows "to support the Newberg School District, George Fox University, Portland Community College, and other public and private schools in efforts to train and motivate".

Councilor Shelton asked staff to elaborate on the work that was recognized by the state land use board. Staff spoke of the previous ad hoc committee on Newberg's future which held public events and received input on what residents of Newberg wanted in terms of growth and industry. The main goal was to make Newberg a place to live and work and land needed to be provided to do this. The south industrial plan areas were recommended as the vision of the ad hoc committee and as a result of this extensive public process.

Councilor Bacon asked what was being done to bring businesses here.

Mr. David Beam, Economic Development Planner, spoke of the recruitment process for potential leads being conducted by marketing teams from companies via websites. Proposals are submitted if matches are found. But the primary way is through business expansion of already established companies.

Mayor Andrews asked if the EOA was carved in stone if it is adopted tonight. Staff replied it is not permanent considering this is a revision of the 2006 version and changes are being made based on current information and in the future modifications can be made to adapt to changes.

Councilor Shelton clarified this was just an amendment to what was approved in 2006 by a previous council. Staff replied this was correct.

Mayor Andrews closed the public hearing and recessed at 9:26 PM. He reconvened at 9:35 PM.

**MOTION: Shelton/Larson to approve Ordinance No. 2010-2723** adopting the revised Newberg Economic Opportunities Analysis and amends the Comprehensive Plan read by title only.

Councilor McKinney thanked the speakers and clarified approving this motion is not asking him to vote for or against agriculture or industry and felt the EOA represented a small portion of the Council's goals. He is thankful it is a dynamic document, not static, so changes can be made in the future to reflect what actually happens. He felt this was a springboard to go from and spoke of the need for incremental steps.

Councilor Bacon said she appreciated the work done by both sides and spoke of a vision that needs to consider both the environment and the citizens without jobs. She said this decision will not pave every inch of land tomorrow. If the manufacturing comes then land will be available, until then it can be farmed. She supported the motion.

Councilor Rierson supported the ordinance based on the work that has been done before tonight and the support received from the citizens of Newberg to protect the small town quality as well as providing jobs for the families that live here.

Councilor Witherspoon recognized the work done by the Planning Commissioner (PC) which heard both sides and wrestled with the testimonies. He saw that it was a difficult process by reading minutes. He supports the ordinance.

Councilor Shelton appreciated the citizens stepping up and doing work behind the scenes. He also said he is not against agriculture at all, nor is he against business and economic opportunity. He felt staff heard the voices of the citizens of Newberg and he appreciated the vision and work that went into a plan that makes sense and works down the road.

Councilor Larson said he was on the council that approved this in 2006 and he approves of the amendments tonight. He said so much has to be done yet and so many changes have happened, but he feels it is mostly for the good.

Mayor Andrews said he also adopted the original and that these are only updates. He was concerned for viable businesses being lost from Newberg because their needs could not be met here. He is in favor of the ordinance and amendments.

**VOTE:** To approve **Ordinance No. 2010-2723.** (7 Yes/0 No) Motion carried.

**X. NEW BUSINESS**

None.

**XI. COUNCIL BUSINESS**

TIME – 9:59 PM

Brief discussions followed about rumors of making McKay Road a toll road and a comment about moving truck traffic off of 99W as a Council goal that may conflict with how the road is designated at the state level.

**XII. ADJOURNMENT**

The meeting adjourned at 10:12 PM.

**ADOPTED** by the Newberg City Council this 1<sup>st</sup> day of March, 2010.

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this \_\_\_\_ day of March, 2010.

\_\_\_\_\_  
Bob Andrews, Mayor

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 1, 2010

Order XX Ordinance \_\_\_ Resolution \_\_\_ Motion \_\_\_ Information \_\_\_  
No. 2010-0023 No. No.

**SUBJECT: Appeal of the hearings officer's decision to deny a request for an existing non-conforming billboard sign to remain at Newberg Auto Electric located at 616 W. First Street**

Contact Person (Preparer) for this Order: Barton Brierley, AICP

Dept.: Planning & Building

File No.: NCSIGN-09-005  
(if applicable)

HEARING TYPE:  LEGISLATIVE  QUASI-JUDICIAL

*Note: This hearing was continued from September 8, 2009.*

## RECOMMENDATION:

Adopt **Order No. 2010-0023** to affirm the hearings officer's decision and to deny 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 W. First Street.

## EXECUTIVE SUMMARY:

In 1998 the Newberg City Council revised the existing sign standards. Signs placed after that time had to meet the new code standards. Signs that were legally in place at that time but that did not meet the new standards, known as "non-conforming signs", were allowed to remain until 2009. This was intended to give owners and businesses plenty of time to upgrade their signs, while making use of them in the meantime. A large majority of non-conforming signs in the community have been upgraded since the adoption of the sign ordinance.

In 2009, forty-six property owners with non-conforming signs were sent a letter reminding them of the new standards and requesting that their non-conforming sign is brought into compliance with the current standards. The letter sent to the owner of 616 W. First Street may be viewed in Attachment "2". In 2009 the City Council established a process for owners of non-conforming signs to request approval for their non-conforming sign to remain. A hearings officer, not employed or affiliated with the City of Newberg, was hired to make the decision regarding the requests. Of the forty-six property owners with non-conforming signs, eleven owners applied to have their non-conforming sign remain. Hearings were held in June, 2009. Of the eleven hearings, a total of two requests were denied. One of the two denials was a request for an existing non-conforming billboard sign to remain at Newberg Auto Electric at 616 W. First Street. The site is owned by Ms. Jamie Nibler, and the non-conforming billboard sign is owned by CBS Outdoor, Inc. A location map and photos of the Newberg Auto Electric site may be viewed in Attachments "3" and "4" respectively. The existing billboard sign is non-conforming because the sign is approximately 240 square feet, twenty five feet tall, and within several feet of the property line. Signs in the C-2 zone are limited to 100 square feet maximum size, and must be set back from the property line based on the height of the sign. A sign with a height of twenty feet is required to be setback twenty feet from the front yard property line.

The hearings officer made his determination based on the criteria contained in Municipal Code§151.149(B)(2), which states:

*(B) Compliance for all other signs. The owner of any sign that was placed legally but does not*

*now conform to the requirements of this code shall either remove the sign or register it with the city on a form provided by the Director prior to January 1, 2000. All signs that do not comply with the standards of this code shall be removed prior to March 31, 2010. Exceptions are:*

*(1) Any legal, non-conforming sign that exceeds that maximum allowable size or height by less than 10% may remain.*

*(2) Prior to March 31, 2009, the owner of any legal, non-conforming sign may apply to allow the legal nonconforming sign to remain. Such requests shall be heard by a hearings officer appointed by the City Manager, and shall be approved, approved with conditions, or denied based on the following:*

*(a) The sign is in a good state of repair and maintenance.*

*(b) The number, size, and height of signs to remain is minimal and contributes to an attractive appearance to the neighborhood.*

*(c) The use of bold and bright colors, lighting, and designs is minimal.*

*(d) Other elements of the site are well maintained and attractive.*

*Except as specifically determined by the hearings officer, any sign allowed to remain under the provisions of this subsection is subject to removal under the provisions of subsections (C), (D), and (E) below.*

The hearings officer found that the request did not meet the criteria set forth above and the request was denied without conditions. The property owner and owner of the non-conforming sign subsequently filed an appeal of the decision. Written testimony from the sign owner and the property owner may be viewed in Attachment "5".

The City Council heard this matter on September 8, 2009. The Council deferred action on the appeal to allow staff and the applicant to meet. At those meetings, staff and the applicant explored two potential middle ground options. Those options were:

(1) Requiring the sign to be removed, but giving the applicant an additional year or two before the sign would have to be removed.

(2) Having the applicant install approximately 20 street trees along the north side of Highway 99W from the Chehalem Creek Bridge to the First Street intersection, and an arborvitae hedge around the perimeter of their outdoor storage and parking area, and See Attachment "7". The intent was to create a much more attractive gateway to the city for those entering and exiting the west side of Newberg, in an area that is generally devoid of street trees.

Ultimately, the applicant did not accept either of these options. The applicant has installed an arbor vitae hedge around the storage area.

**FISCAL IMPACT:** No direct impact on City budgets.

**STRATEGIC ASSESSMENT:**

The City Council should consider the following in making their decision:

1. Staff finds that the City Council intends that all four of the criteria of §151.149(B)(2) are satisfied in order to allow an existing non-conforming sign to remain. The hearings officer, and staff, find that the request did not meet two out of the four criteria – subsections (b) and (d).
2. The size of the non-conforming billboard is approximately 240 square feet. The height is approximately twenty-five to thirty feet. The area exceeds the maximum sign size permitted in the C-2 zone by approximately three hundred square feet, or three hundred percent. The sign is the largest documented non-conforming sign in the immediate area. The height in the C-2 zone is

limited to twenty feet. Signs with a height of twenty feet are required to be setback twenty feet from the front property line. This non-conforming sign is located approximately five feet from the front property line.

3. The non-conforming billboard sign is a very prominent feature heading west and east on Highway 99W. The sign is located in what is considered Newberg's west gateway area to the city and to downtown.
4. In 1998 the City Council adopted an amortization process. This ten year window allowed all owners of non-conforming signs a reasonable opportunity to use their signs and to bring the non-conforming signs into compliance with the current code. In 1998 the City Council adopted criteria for a non-conforming sign to remain. The applicant has had approximately ten years to either improve the condition of the site or non-conforming sign in order to meet the criteria for a non-conforming sign to remain. No documented evidence has been provided that any improvements have occurred since 1998.
5. Most of the owners of non-conforming signs either have removed or modified their signs to date. There are about a dozen signs that have until March 31, 2010 to come into conformity. In addition, there are several illegal signs in the community that code enforcement staff continues to deal with.

**Attachments:**

Order No. 2010-0023 with

Exhibit "A": Hearings Officer Decision and Findings

Attachment "1": September 8, 2009 Council Packet with

Attachment "2": Non-conforming notice letter

Attachment "3": Location map

Attachment "4": Site photos

Attachment "5": Written testimony

Attachment "6": Non-conforming Sign registration form

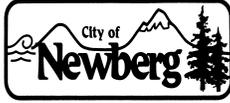
Attachment "7": Minutes from September 8, 2009 hearing

Attachment "8": Powerpoint presentation from September 8, 2009 hearing

Attachment "9": 99W Street tree planting concept plan

Attachment "10": Additional written information from the applicant

Attachment "11": Additional correspondence from Barton Brierley



# ORDER No. 2010-0023

**AN ORDER DENYING AN APPEAL FOR AN EXISTING NON-CONFORMING BILLBOARD SIGN, OWNED BY CBS OUTDOOR, INC., TO REMAIN AT THE NEWBERG AUTO ELECTRIC SITE AT 616 W. FIRST STREET**

### RECITALS:

1. Large-scale non-conforming signs are counterproductive to city ordinances that, among other things: enhance the aesthetic quality of Newberg, attract new businesses, encourage existing businesses to remain, encourage tourism, and promote pedestrian scale development.
2. The application does not meet the Municipal Code criteria in order to allow a non-conforming sign to remain. The City Council intends, and requires, that all four of the criteria of section §151.149(B)(2) of the Municipal Code are satisfied in order to allow a non-conforming sign to remain.
3. The findings and decision of the hearings officer are found to meet the intent of the Municipal Code. The hearing's officer's decision is shown in Exhibit "A". Exhibit "A" is hereby attached and by this reference incorporated.

### THE CITY OF NEWBERG ORDERS AS FOLLOWS:

1. The hearings officer's decision to deny a request to allow the existing non-conforming billboard sign to remain at the Newberg Auto Electric site at 616 W. First Street is hereby affirmed.
2. The existing non-conforming billboard sign located at 616 W. First Street shall either be removed or brought into conformance with §151.594(C) of the Municipal Code within six months of the date of decision (by September 1, 2010).

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: March 2, 2010

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 1<sup>st</sup> day of March, 2010.

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 4<sup>th</sup> day of March, 2010.

\_\_\_\_\_  
Bob Andrews, Mayor

### QUASI-JUDICIAL HISTORY

By and through Paul Norr, Hearings Officer at the 06/08/2009 meeting. Or,      None.  
(committee name) (date) (check if applicable)

## REPORT AND DECISION OF THE HEARINGS OFFICER

City of Newberg File No. NCSIGN-09-005  
(Newberg Auto Electric)

### Request for a Non-Conforming Sign to Remain

Applicant: Jamie Nibler and John Culver  
Site Address: 616 W. First Street  
Tax Lot: R3219BD03900  
Zoning: C-2  
Existing Use: Newberg Auto Electric and Advanced Diesel Service  
(vehicle repair and maintenance)  
Hearing Date: June 8, 2009

#### I. SUMMARY DESCRIPTION OF APPLICATION

The applicant requests approval for one approximately 12' x 24' sign to remain on the site adjacent to Highway 99 near 2<sup>nd</sup> Street. The sign was placed on the site in approximately 1984, making this a legal, non-conforming sign as that term is used in Newberg Development Code (NDC) Section 151.149(B)(2).

The sign is non-conforming for two reasons: (1) the sign is too big, because at 12' x 24' the sign is 288 square feet in size, which is larger than the 100 square feet maximum size allowed in the C-2 zone [NDC 151.594(B)(3)]; and (2) the is too tall, because at 28' in height the sign is taller than the 20' allowed in the C-2 zone [NDC 151.594(C)(2)].

## II. SUMMARY OF EVIDENCE

The record includes:

- A. The tape recording of the June 8, 2009, hearing;
- B. The City of Newberg Planning and Building Department letter of January 2, 2009;
- C. The application with accompanying statement, map, and photographs;
- D. Supplemental Application Information from the City of Newberg Planning and Building Department;
- E. E-mail message from Paul Norr to Duane Bosworth dated June 19, 2009; and
- F. Letter from CBS Outdoor, Inc., dated June 25, 2009, with accompanying statement and photograph.

The public hearing was held as scheduled on June 8, 2009. In attendance representing the City was Luke Pelz, Assistant Planner for the City of Newberg. Representing the applicant were Jamie Nibler and John Culver. The applicants' testimony summarized the application materials with no significant additions.

Prior to the end of the hearing the applicants requested that the record be left open to allow the owner of the sign to submit additional written comments. The Hearings Officer granted the request, and kept the record open until the close of City business on June 22, 2009, to allowed anyone to submit additional written materials on any issue in the case.

On June 19, 2009, the Hearings Officer received a request from attorney Duane Bosworth on behalf of CBS Outdoor, Inc. to extend the record closing date. The hearings officer extended the record closing date from June 22, 2009, to June 26, 2009. Exhibit F was submitted prior to the June 26, 2009, closing deadline.

The Hearings Officer visited the site on May 12, 2009, and on June 8, 2009. The purpose of these site visits was to familiarize the Hearings Officer with the general context of the sign on the site and in the general area.

///

### III. DECISION CRITERIA

Newberg Development Code Section 151.149(B)(1) and (2) contain the only applicable approval criteria for allowing a legal, non-conforming sign to remain on the site after March 31, 2010. Section 151.149(B)(2) applies to this request. Following is the Hearings Officer's evaluation of the approval criteria in this case. All approval criteria must be met for the application to be approved.

The Code's approval criteria require a determination of "minimal" impact with regard to the number, size, and height of the signs remaining on the property [Subsection (b)], and with regard to the use of bold and bright colors, lighting and design [Subsection (c)]. The Code does not define the word minimal, therefore the Hearings Officer will use the plain and ordinary meaning of "minimal" in the context of this sign code. The Hearings Officer finds that in this context "minimal" means "no significant off-site impact".

The code approval criteria below are in italics with the Hearings Officer's findings in regular type:

(a) *The sign is in a good state of repair and maintenance.*

The sign is intact with no visible defects, and therefore in good condition with no current need for repair or maintenance. This criteria is met.

(b) *The number, size, and height of signs to remain is minimal and contributes to an attractive appearance of the neighborhood.*

At this location on Highway 99 this freestanding sign is out of the norm. It is the only large billboard type sign visible from Highway 99 near the entrance to the West end of Newberg. This large sign that exceeds both the maximum size and maximum height in the C-2 zone creates an unattractive appearance. This criteria is not met.

The CBS Outdoor response argues that the size and height of this sign are consistent with other outdoor advertising signs throughout Oregon. This may or may not be so, but the City of Newberg approval criteria address the impact on and attractiveness of the neighborhood, not the rest of Oregon.

(c) *The use of bold and bright colors, lighting, and designs is minimal.*

The colors used on the billboard, and the design and lighting of the sign, are consistent with other signs in the immediate vicinity and of minimal impact at this site. This criteria is met.

(d) *Other elements of the site are well maintained and attractive.*

This site is not well maintained and attractive. There is no attractive landscaping. The parking lot is not well defined, and there are no striped parking spaces. Vehicles and vehicle parts are located outdoors in the yard areas. This criteria is not met.

The CBS Outdoor response mis-states this criteria. This criteria addresses other elements of the "site", not other elements of the "sign".

#### Additional Discussion

The CBS Outdoor, Inc., letter dated June 25, 2009, mentions potential constitutional issues, however the letter acknowledges that these constitutional issues are not part of in this case. Based on the lack of specificity in raising any constitutional issues, and the acknowledgment by CBS Outdoor that these issues are not part of this case, there are no constitutional issues to be addressed.

The applicants have raised economic issues, in particular that the denial of this application would cause a financial hardship to the applicants. CBS Outdoor also raised economic issues, although it is not clear from the June 25, 2009 letter what those specific issues might be. Nevertheless, economic hardship does not relate to any of the City's approval criteria found in NDC Section 151.149(B)(1) and (2).

#### **IV. CONCLUSIONS**

Based on the evidence in the record and the above findings, this application does not meet the criteria of Newberg Development Code 151.149(B)(2).

**V. DECISION**

It is therefore the decision of the Hearings Officer that this application is denied.

DATED: June 29, 2009.

  
\_\_\_\_\_  
Paul Norr, Hearings Officer

APPEAL INFORMATION

If you do not agree with the Hearings Officer's decision in this case you may appeal the decision for review by the Newberg City Council, who will then consider this matter. You have 14 days from the date of this decision to file an appeal. The deadline to file an appeal is Monday, July 13, 2009. The filing fee for an appeal is \$850.00. An appeal application may be obtained at Newberg City Hall, 414 E. First Street, Newberg, Oregon 97132. Additional appeal information may be obtained by telephone from the Newberg Planning Division at 503-537-1240.

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: September 8, 2009**

Order XX Ordinance \_\_\_ Resolution \_\_\_ Motion \_\_\_ Information \_\_\_  
 No. 2009-0023 No. No.

**SUBJECT: Appeal of the hearings officer's decision to deny a request for an existing non-conforming billboard sign to remain at Newberg Auto Electric located at 616 W. First Street**

Contact Person (Preparer) for this Order: **Barton Brierley, AICP**

Dept.: **Planning & Building**  
 File No.: **NCSIGN-09-005**  
(if applicable)

**RECOMMENDATION:**

Adopt **Order No. 2009-0023** to affirm the hearings officer's decision and to deny 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 W. First Street.

**EXECUTIVE SUMMARY:**

In 1998 the Newberg City Council revised the existing sign standards. Signs placed after that time had to meet the new code standards. Signs that were legally in place at that time but that did not meet the new standards, known as "non-conforming signs", were allowed to remain until 2009. This was intended to give owners and businesses plenty of time to upgrade their signs, while making use of them in the meantime. A large majority of non-conforming signs in the community have been upgraded since the adoption of the sign ordinance.

In 2009, forty-six property owners with non-conforming signs were sent a letter reminding them of the new standards and requesting that their non-conforming sign is brought into compliance with the current standards. The letter sent to the owner of 616 W. First Street may be viewed in Attachment "2". In 2009 the City Council established a process for owners of non-conforming signs to request approval for their non-conforming sign to remain. A hearings officer, not employed or affiliated with the City of Newberg, was hired to make the decision regarding the requests. Of the forty-six property owners with non-conforming signs, eleven owners applied to have their non-conforming sign remain. Hearings were held in June, 2009. Of the eleven hearings, a total of two requests were denied. One of the two denials was a request for an existing non-conforming billboard sign to remain at Newberg Auto Electric at 616 W. First Street. The site is owned by Ms. Jamie Nibler, and the non-conforming billboard sign is owned by CBS Outdoor, Inc. A location map and photos of the Newberg Auto Electric site may be viewed in Attachments "3" and "4" respectively. The existing billboard sign is non-conforming because the sign is approximately four hundred square feet, twenty five feet tall, and within several feet of the property line. Signs in the C-2 zone are limited to 100 square feet maximum size, and must be set back from the property line based on the height of the sign. A sign with a height of twenty feet is required to be setback twenty feet from the front yard property line.

The hearings officer made his determination based on the criteria contained in Municipal Code §151.149(B)(2), which states:

*(B) Compliance for all other signs. The owner of any sign that was placed legally but does not now conform to the requirements of this code shall either remove the sign or register it with the city on a*

form provided by the Director prior to January 1, 2000. All signs that do not comply with the standards of this code shall be removed prior to March 31, 2010. Exceptions are:

(1) Any legal, non-conforming sign that exceeds that maximum allowable size or height by less than 10% may remain.

(2) Prior to March 31, 2009, the owner of any legal, non-conforming sign may apply to allow the legal nonconforming sign to remain. Such requests shall be heard by a hearings officer appointed by the City Manager, and shall be approved, approved with conditions, or denied based on the following:

(a) The sign is in a good state of repair and maintenance.

(b) The number, size, and height of signs to remain is minimal and contributes to an attractive appearance to the neighborhood.

(c) The use of bold and bright colors, lighting, and designs is minimal.

(d) Other elements of the site are well maintained and attractive.

Except as specifically determined by the hearings officer, any sign allowed to remain under the provisions of this subsection is subject to removal under the provisions of subsections (C), (D), and (E) below.

The hearings officer found that the request did not meet the criteria set forth above and the request was denied without conditions. The property owner and owner of the non-conforming sign subsequently filed an appeal of the decision. Written testimony from the sign owner and the property owner may be viewed in Attachment "5".

In addition, upon further investigation, it appears that the sign does not qualify for an exception, for the following reasons:

Newberg Code § 151.149 (B) states:

*(B) Compliance for all other signs. The owner of any sign that was placed legally but does not now conform to the requirements of this code shall either remove the sign or register it with the city on a form provided by the Director prior to January 1, 2000.*

A sign registration was filed for the site, but only mentions the attached signs on the site, not the billboard (See Attachment "6").

Also, Newberg Code § 151.149 (E), states:

*(E) Sign modifications. Signs not in compliance with the provisions of this code, when replaced, relocated, modified or altered, shall be brought into compliance with this code. For purposes of this section a modification or alteration shall not include the following:*

*(1) Maintenance and repairs such as cleaning, painting, refacing, replacing damaged portions of the sign, or similar activities that do not involve a change in copy.*

*(2) A change of a panel on a sign for three or more tenants designed to have removable panels.*

*(3) A modification of the existing cabinet and/or face of the sign that results in a reduction in size and/or height of the sign and that does not involve a change in copy.*

The face of the sign has changed January 1, 2000, and thus should have been brought into compliance.

**FISCAL IMPACT:** No direct impact on City budgets.

## STRATEGIC ASSESSMENT:

The City Council should consider the following in making their decision:

1. Staff finds that the City Council intends that all four of the criteria of §151.149(B)(2) are satisfied in order to allow an existing non-conforming sign to remain. The hearings officer, and staff, find that the request did not meet two out of the four criteria – subsections (b) and (d).
2. The size of the non-conforming billboard is approximately four hundred square feet. The height is approximately twenty-five to thirty feet. The area exceeds the maximum sign size permitted in the C-2 zone by approximately three hundred square feet, or three hundred percent. The sign is the largest documented non-conforming sign in the immediate area. The height in the C-2 zone is limited to twenty feet. Signs with a height of twenty feet are required to be setback twenty feet from the front property line. This non-conforming sign is located approximately five feet from the front property line.
3. The non-conforming billboard sign is a very prominent feature heading west and east on Highway 99W. The sign is located in what is considered Newberg's west gateway area to the city and to downtown.
4. In 1998 the City Council adopted an amortization process. This ten year window allowed all owners of non-conforming signs a reasonable opportunity to use their signs and to bring the non-conforming signs into compliance with the current code. In 1998 the City Council adopted criteria for a non-conforming sign to remain. The applicant has had approximately ten years to either improve the condition of the site or non-conforming sign in order to meet the criteria for a non-conforming sign to remain. No documented evidence has been provided that any improvements have occurred since 1998.

### Attachments:

Order No. 2009-0023

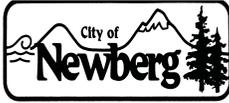
Attachment "2": Non-conforming notice letter

Attachment "3": Location map

Attachment "4": Site photos

Attachment "5": Written testimony

Attachment "6": Non-conforming Sign registration form



## ORDER No. 2009-0023

Information From  
September 8, 2009  
Council Packet

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**AN ORDER TO DENY AN APPEAL FOR AN EXISTING NON-CONFORMING  
BILLBOARD SIGN, OWNED BY CBS OUTDOOR, INC., TO REMAIN AT  
THE NEWBERG AUTO ELECTRIC SITE AT 616 W. FIRST STREET**

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### RECITALS:

1. Large-scale non-conforming signs are counterproductive to city ordinances that, among other things: enhance the aesthetic quality of Newberg, attract new businesses, encourage existing businesses to remain, encourage tourism, and promote pedestrian scale development.
2. The application does not meet the Municipal Code criteria in order to allow a non-conforming sign to remain. The City Council intends, and requires, that all four of the criteria of section §151.149(B)(2) of the Municipal Code are satisfied in order to allow a non-conforming sign to remain.
3. The findings and decision of the hearings officer are found to meet the intent of the Municipal Code. The hearing's officer's decision is shown in Exhibit "A". Exhibit "A" is hereby attached and by this reference incorporated.

### THE CITY OF NEWBERG ORDERS AS FOLLOWS:

1. The hearings officer's decision to deny a request to allow the existing non-conforming billboard sign to remain at the Newberg Auto Electric site at 616 W. First Street is hereby affirmed.
2. The existing non-conforming billboard sign located at 616 W. First Street shall either be removed or brought into conformance with §151.594(C) of the Municipal Code by March 31, 2010.

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: September 9, 2009.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 8th day of September, 2009.

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 10<sup>th</sup> day of September, 2009.

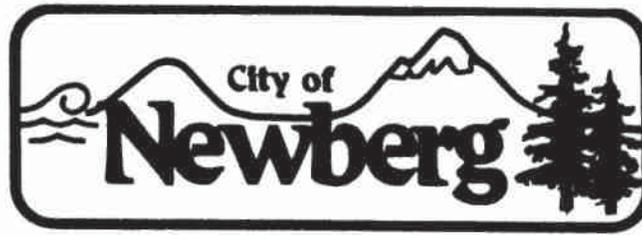
\_\_\_\_\_  
Bob Andrews, Mayor

### QUASI-JUDICIAL HISTORY

By and through Paul Norr, Hearings Officer at the 06/08/2009 meeting. Or,     None.  
(committee name) (date) (check if applicable)

Information From  
September 8, 2009  
Council Packet

**City of Newberg**  
414 E. First Street  
P.O. Box 970  
Newberg, OR 97132



**City Manager**  
(503) 537-1261  
(503) 538-5013 FAX

## Planning and Building Department

P.O. Box 970 • 414 E. First Street • Newberg, Oregon 97132 • (503) 537-1240 • Fax (503) 537-1272

January 2, 2009

Advanced Diesel Service/Newberg Auto Electric  
616 Old Highway 99W  
Newberg, OR 97132

NIBLER JAMIE L  
15495 NE QUARRY RD  
NEWBERG OR 97132

RE: Non-conforming signs at 616 Old Highway 99W

With the new year, you will have some important choices to make about signs at your place of business. This letter is to let you know about your choices. Let me first start with some background.

As you know, there are many working hard to keep Newberg's business economy strong. Recently Newberg has seen construction of a new first class golf course, upgrades to our schools, and a new hospital. The tourism industry is growing: the Chehalem Valley Chamber of Commerce recently trademarked us as "The Gateway to Oregon Wine Country." The Chamber, the Newberg Downtown Association and others have been working hard to promote the community with great events such as the First Friday Art Walk and Tunes on Tuesday. The Newberg Downtown Revitalization Committee is creating a "downtown demonstration block" with new landscaping, benches, and pedestrian features to create an inviting downtown. Newberg's Old Fashioned Festival continues to draw large crowds to the area. Businesses and individuals are doing many things on their own to promote the attractiveness and vitality of the community, such as painting buildings, fixing sidewalks, picking up trash, and remodeling.

In order to keep its edge as a destination for business, it is an economic necessity that Newberg keep its attractiveness. Run down buildings, old and worn signs, and dying landscaping simply cannot coexist with a vibrant commercial community.

To help achieve this goal of an attractive and vibrant business community, the Newberg City Council adopted an upgraded sign ordinance in 1998, and additional design standards for signs in the downtown in 2002. All signs placed after that time had to meet the new code standards. Signs that were legally in place at that time but that did not meet the new standards, known as "non-conforming signs," were allowed to remain until 2009. This was intended to give owners and businesses plenty of time to upgrade their signs, while making use of them in the meantime. A large majority of non-conforming signs in the community have been upgraded since the adoption of the sign ordinance.

There are still several signs in the community that have yet to be upgraded to the standards adopted 7-

10 years ago. We have noted that you have such non-conforming signs which are now due for upgrade. Specifically, the following signs are non-conforming:

Large billboard sign at corner of Hwy 99W and 2nd Street

The sign is non-conforming due to the following:

Sign exceeds maximum size and height allowed in the C-2 zone. Signs in the C-2 Zone are limited to 100 square feet maximum size, and must be set back from the property lines according to Newberg Code 151.594 (C).

You have four choices:

- (1) **Remove or replace the sign.** If you choose this option, you have until **March 31, 2010** to remove the sign. If you wish to replace the sign, you will need a new sign permit. A permit application is available at Newberg City Hall or on the City's website at [www.ci.newberg.or.us](http://www.ci.newberg.or.us).
- (2) **Modify the sign**, if possible, to meet the sign code. If you choose this option, you have until **March 31, 2010** to modify the sign. This may not be possible in all cases. You will need a sign permit to modify the sign. A permit application is available at Newberg City Hall or on the City's website at [www.ci.newberg.or.us](http://www.ci.newberg.or.us).
- (3) **Apply to have the sign remain.** The City Council adopted a special process where owners of non-conforming signs that are in good condition can apply to have legal non-conforming signs remain. The request will be considered by a hearings officer, who will make a determination based on specific criteria that consider the condition of the sign and the site as a whole. **If you choose to make this application, your application must be received by March 31, 2009 at 5:00 p.m.** The form for this application is attached. The application fee is \$150. Attached is additional information about this process.
- (4) If you feel this notice is in error and the signs actually do conform to Newberg's sign ordinance, then please write the Newberg Planning Division and let us know why you believe the sign does conform. Please include as much detail as possible: dimensions, height, and setbacks, pictures of the sign, permit history, and so forth. We will reply shortly with a clarification. Our address is P.O. Box 970, Newberg, OR 97132. You also can send an email to [nplan@ci.newberg.or.us](mailto:nplan@ci.newberg.or.us).

We appreciate your efforts in making and keeping Newberg "A Great Place to Grow." If you have any questions, please contact the Planning Division at 503-537-1240 or [nplan@ci.newberg.or.us](mailto:nplan@ci.newberg.or.us).

Sincerely,



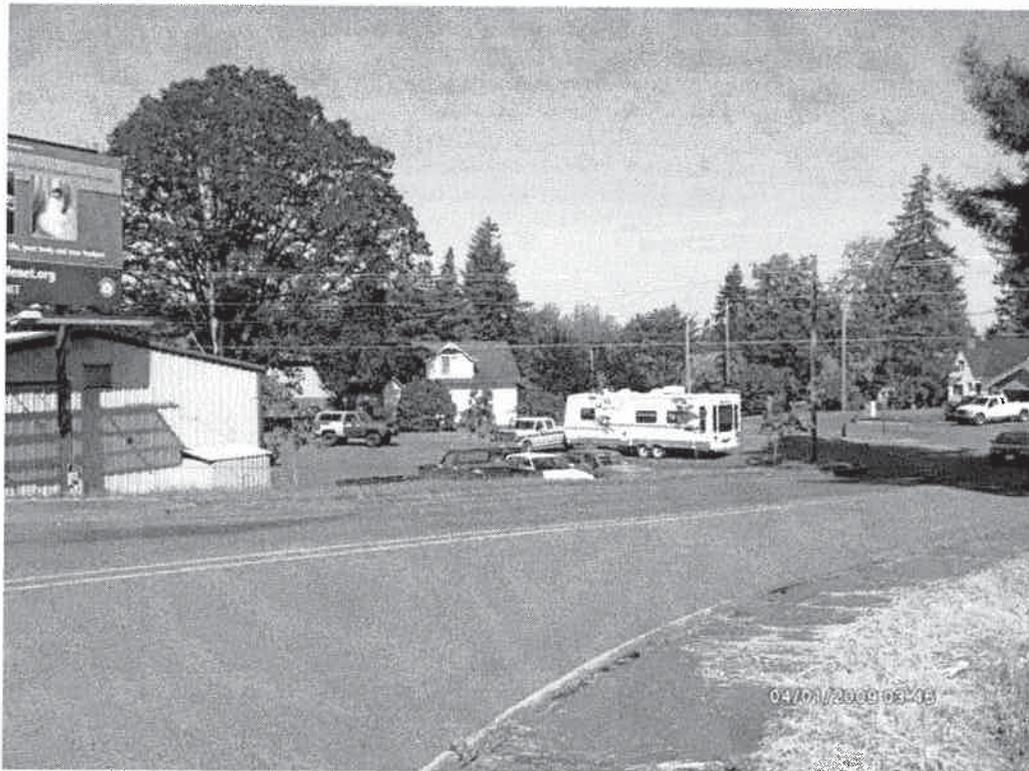
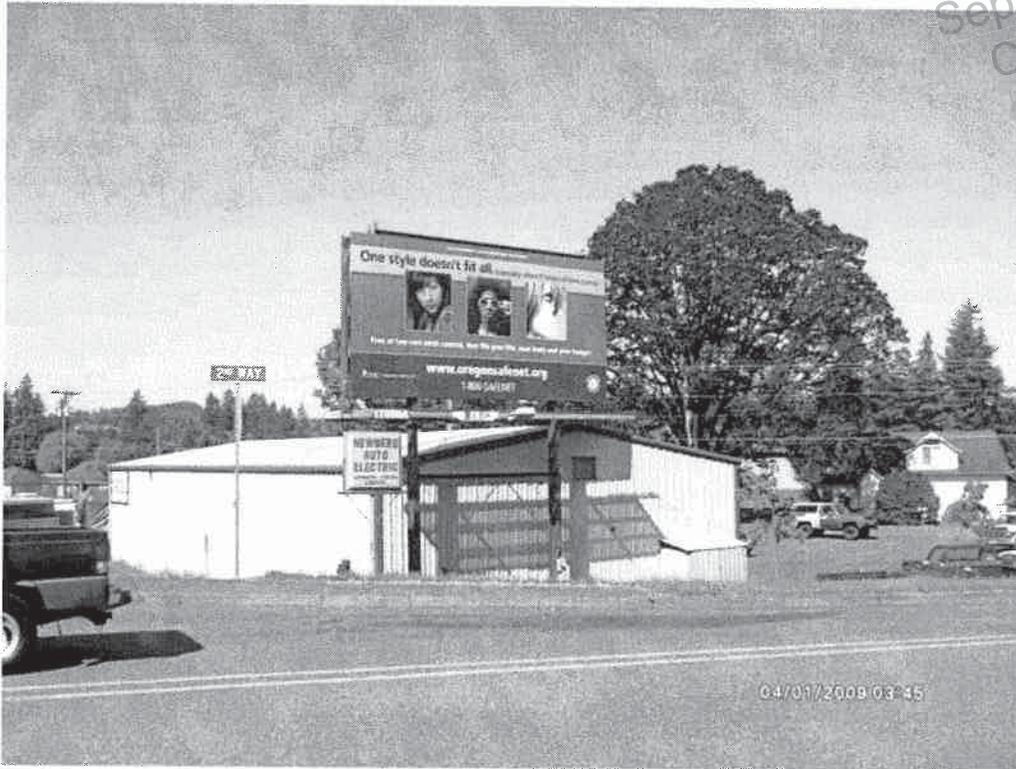
Barton Brierley, AICP  
Planning and Building Director

cc: file



Information From  
September 8, 2009  
Council Packet

Site Photos:  
Newberg Auto Electric, 615 W. First Street



Site Photos:  
Newberg Auto Electric, 615 W. First Street

Information From  
September 8, 2009  
Council Packet





August 6, 2009

Newberg City Council  
414 E. First Street  
Newberg OR 97132

**Re: Appeal of Request for Non-Conforming Sign to Remain**

Dear Council Members:

CBS Outdoor, Inc. ("CBS Outdoor") is the owner of the sign in question located at 616 W. First Street. CBS Outdoor joins in the appeal brought by the property owner, Ms. Jamie Nibler, regarding the request for a single, Non-Conforming Sign to Remain.

Before we address the decision of the hearing officer in this matter, we would like to bring attention to the local businesses which use outdoor advertising in Newberg to attract customers, announce new products and locations, and provide information to the travelling public. Our advertisers are your local restaurants, insurance agents, banks, hotels, and retailers. Our advertisers create jobs and contribute to the tax base of the city, county, state, and nation. Additionally, CBS Outdoor provides the opportunity for government and non-profit organizations to communicate messages of public service.

CBS Outdoor adds the following comments regarding the decision of the Hearings Officer in this matter.

Newberg Development Code ("Code") § 151.149(D)(2), applicable to this request for a Non-Conforming Sign to Remain, provides four criteria to be considered in approving or denying a Request to Continue a Non-Conforming Sign. The decision of the Hearings Officer ("Decision") got off to a wrong start legally with his declaration that "All approval criteria must be met for the application to be approved." Nothing in the Newberg Code supports this statement. In fact the Code simply provides four considerations to be reviewed in approving or denying a Request for a Non-Conforming Sign. If the Code were meant to state that all four of these considerations must be met, the Code would need to say so. Oregon law prohibits inserting terms or provisions into legislation which are not actually found in the plain words of the legislation. See ORS 174.010. The Hearings Officer made a legal mistake when he ruled that all four considerations must be met for the application to be approved. Such an interpretation is not supported by the existing plain words of the Newberg Code. CBS Outdoor believes it is important to bring this legal mistake to the Council's attention.

As the Council knows, the Hearings Officer fully agreed that “the sign is in a good state of repair and maintenance,” the first consideration under the Code, and that “the use of bold and bright colors, lighting, and designs is minimal,” the third consideration under the Code. These conclusions of the Hearings Officer are sound. The Hearings Officer’s conclusions about the second and fourth considerations, however, respectfully do not share that soundness.

The second consideration under the Code asks the City to consider whether “the number, size and height of signs to remain is minimal and contributes to an attractive appearance of the neighborhood.” The Decision of the Hearings Officer does not address the “attractive appearance of the neighborhood.” The Hearings Officer stated that “this large sign that exceeds both the maximum size and maximum height in the C-2 zone creates an unattractive appearance.” The Hearings Officer’s statement that the sign exceeds conforming size and height and is accordingly “unattractive” begs the very question at issue in a Request for Non-Conforming Sign and is contrary to the process of reviewing such a Request which the Code creates. The City has thoughtfully set up a process to allow a non-conforming sign to remain after consideration of specific factors. Stating that the sign in question creates “an unattractive appearance” because it “exceeds both the maximum size and maximum height in the C-2 zone” and is non-conforming is completely circular in logic and undercuts the very process which the City has set up to allow consideration of non-conformance.

Moreover, such a conclusion does not address the impact on the overall “appearance of the neighborhood,” which is the essence of the second Code consideration. With all due respect, the neighborhood in question is not a real garden spot within the City. It is at the very west end of the City. It is in zone C-2, which is defined in the Newberg Code as an area which seeks to enhance uses “typically appropriate to commercial clusters near intersections of major thoroughfares.” Newberg Code § 151.356 provides four pages of presumptively valid uses in the C-2 district, including at subparagraph 126, other uses which shall be permitted provided that they do not have “any different or more detrimental effect upon the adjoining neighborhood area and the buildings and uses specifically listed ...” Any objective overview of the neighborhood around the sign in question would conclude that the sign does not detract from the appearance of the neighborhood. Again with all due respect, if one travels west on Highway 99, for just one example, the traveler’s eye is drawn to a very large hand-lettered red “ANTIQUES” sign immediately before the sign in question here. The sign in question is always many times more professional in its appearance and is frankly more attractive than other elements of the neighborhood in question. There are no upscale buildings in the neighborhood. There is a service station directly across Highway 99. There is a car lot across the highway and east of the sign in question. CBS Outdoor respectfully asks the Council to fairly consider the actual neighborhood which surrounds the sign. CBS Outdoor suggests that the sign in question actually contributes elements of professionalism, order, and tidiness to the surrounding neighborhood.

Finally, the Hearings Officer addressed the fourth consideration, whether “other elements of the site are well-maintained and attractive” and found against the property owner and CBS Outdoor. First, there is a very significant question about whether the “site” of the sign in question includes the very large entirety of the business which the sign sits at the very edge of. The sign is in front of a business building and not attached to that building. The area

immediately around the sign is well mowed and maintained. The Hearings Officer appears to be addressing the entirety of a nearby business, including “vehicles and vehicle parts,” which are nowhere near the sign in question, and a parking lot which is “not well defined,” and which has “no striped parking spaces.” That lot is behind the building which the sign in question is in front of. Frankly, the Hearings Officer’s findings are very disappointing at its outset because the business owner together with CBS Outdoor would be happy to work with the City regarding considerations of the entire lot in question, including attractive landscaping and other issues. CBS Outdoor first questions whether the Newberg Code intends to draw in the consideration of the entirety of a nearby business in this consideration under the Code. In any event, CBS Outdoor and the property owner would have gladly talked with the City in advance, and would gladly talk with the City now, with regard to other issues concerning the broader business on which sign sits at the edge of. In short, CBS Outdoor maintains that the Hearings Officer has misstated what “site” is to be considered, and this sign consideration is not a vehicle for addressing all other issues which planning may have with the entirety of a business. Notwithstanding this, as a practical matter, issues of landscaping or parking striping seem to be issues which the property owner, CBS Outdoor, and the City might profitably be able to resolve with simple conversation.

For the above reasons, CBS Outdoor respectfully submits that the Hearings Officer’s decision was not correct. The Hearings Officer added language to the Newberg Code which is not present, when he found that all of four considerations “must” be met individually, rather than that the considerations are to be taken together in deciding whether or not to approve or deny a request for non-conforming use. The Hearings Officer was also incorrect in declaring that the non-conforming height and size “created an unattractive appearance,” both begging the process which the City has set up for non-conforming use and not addressing the actual appearance of the neighborhood in question. Finally, CBS Outdoor points out that the Hearings Officer both expansively defined the “site” of the sign in question and in any event, the parties should be able to resolve issues regarding the entirety of the business in question where the sign is located.

There is one remaining issue which CBS Outdoor wants to clearly bring to the Council’s attention. CBS Outdoor understood that the issues before this Hearings Officer were limited to considerations of the four provisions discussed in § 151.149(b)(2) of the Code. CBS Outdoor specifically said that it was not raising constitutional or economic issues before the Hearings Officer, because it did not consider that those were issues within the jurisdiction of the Hearings Officer. They are, however, issues squarely before this Council. CBS Outdoor has carefully analyzed these issues and the issue of subsequent litigation concerning constitutional matters. CBS Outdoor believes that its situation and the unique situation of Ms. Nibler present compelling facts regarding the constitutional issue of takings under both the United States and Oregon Constitutions. Ms. Nibler has stated and will further state that the loss of the sign in question and the income therefrom would have a significant impact on her life. CBS Outdoor is prepared to provide any additional information which the Council might request regarding these issues, but CBS Outdoor does want to make clear as the Council reviews this matter that it considers these issues very important and CBS Outdoor intends to pursue these issues if necessary.

We appreciate your further consideration of the request made by the property owner and by CBS Outdoor, and ask that the Request for a Non-Conforming Sign to Remain be granted.

Very truly yours,



Richard Gaston  
Real Estate Representative  
CBS Outdoor, Inc.

cc: Duane Bosworth, Davis Wright Tremaine  
Jamie Nibler, Newberg Auto Electric  
David Posy, Counsel, CBS Outdoor Inc.

Information From  
September 8, 2009  
Council Packet



Information From  
September 8, 2009  
Council Packet

June 25, 2009

Luke Pelz  
Newberg Planning Division  
414 E. First Street  
Newberg OR 97132

**Re: Written testimony in support of non-conforming Sign on Nibler property, 616 W. First Street, Newberg OR. File No. NCSIGN-09-005 (Newberg Auto Electric)**

Mr. Pelz,

Attached please find our written testimony per Newberg Code 151.149 (B)(2). We have also attached a recent photograph showing our structure in good condition and recently painted. It is our expectation that the sign shall remain in operation for many years to come. The sign provides local businesses the opportunity to attract customers, announce new products and locations, and provide information to the travelling public.

We understand that pursuant to Newberg Code 151.149(B)(2) you are to consider the application in terms of the four criteria listed in that code. We note that as a separate matter, the owner of the real property has explained in broad terms the economic hardship that would result to her if the application is not granted. Although we do not understand that this is an issue before you at this time, we want to inform that CBS Outdoor has carefully examined the federal and state constitutional issues regarding amortization and intends to use all available legal rights arising out of the facts of this matter.

If you have any questions or comments regarding our advertising structure, please don't hesitate to contact me at 541-607-9355 or via email at [rich.gaston@cbsoutdoor.com](mailto:rich.gaston@cbsoutdoor.com)

Best Regards,

Rich Gaston  
Real Estate Representative  
CBS Outdoor, Inc.

cc: Duane Bosworth, Davis Wright Tremaine  
Jamie Nibler, Newberg Auto Electric  
David Posy, Counsel, CBS Outdoor Inc.

**Written testimony in support of outdoor advertising sign at 616 W. First Street, Newberg.  
File No. NCSIGN-09-005 (Newberg Auto Electric)**

Information From  
September 8, 2009  
Council Packet

**a) The sign is in a good state of repair and maintenance.**

CBS Outdoor has consistently maintained the sign structure since construction. The sign was recently inspected and painted at our cost. That maintenance has been consistent for the life of the sign and will continue in the future.

**b) The number, height, and size of signs to remain is minimal and contributes to an attractive appearance to the neighborhood.**

CBS Outdoor operates one outdoor advertising sign in the City of Newberg. We locate our structures in commercial areas and with the intent of fitting in to the built environment. The size and height of the structure are consistent with outdoor advertising signs throughout Oregon. The sign is consistent with structures in and the appearance of this area of Newberg. We have attached a current photograph which illustrates this.

**c) The use of bold and bright colors, lighting and designs is minimal.**

CBS Outdoor maintains high standards for the creative content which is installed on our structures. The sign's illumination is consistent with outdoor advertising signs throughout Oregon. The attached photograph provides an illustrative example of the professionally designed, upscale artistic and graphic content which is displayed.

**d) Other elements of the sign are well maintained and attractive.**

CBS Outdoor will consistently maintain the sign and ensure that its appearance is attractive and consistent with the commercial area in which it is located.

Respectfully Submitted 6/25/09 by:

Rich Gaston  
CBS Outdoor  
135 Silver Ln. Ste 230  
Eugene OR, 97404

Inform  
Septem  
Cou

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ELECTRIC  
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**AD MAJORAM DEI GLORIAM**

Information From  
September 8, 2009  
Council Packet

3/17/09

Newberg Planning Division  
414 E. First Street  
P. O. Box 970  
Newberg, OR 97132

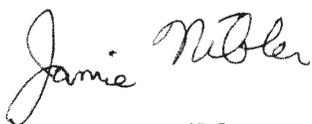
**RE: Non-confirming sign at 616 Old Hwy. 99W**

The billboard sign is pre-existing and has been there for 25 years or so. I believe it has been grandfathered. Traveling west out of town it is the last business on that side of the highway and does not block the view of anything. That sign is an important part of my income. Without this income an additional financial hardship would be created, as we are dependent on that money to make the mortgage payment each month.

This sign is in good repair. We strive to keep our grounds clean and we keep our grass mowed. Both Advanced Diesel Service and Newberg Auto Electric provide much needed services to our community.

We have been struggling ever since the death of my husband, Larry (John's father-in-law) last year. With numerous businesses in Newberg that have already closed their doors because of our depressed economy, I hope that you would take this into consideration so that we aren't next.

Sincerely,



**Jamie Nibler**  
Newberg Auto Electric  
616 Old Hwy. 99W  
Newberg, OR 97132



**John Culver**  
Advanced Diesel Service





## VII. PUBLIC HEARING

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.

President Larson called for conflicts of interest. None were stated.

Mr. Barton Brierley, Planning and Building Director, presented the staff report (see official meeting packet for full report).

Councilor Bart Rierson asked if the property is inside city limits. Mr. Brierley confirmed it was.

Jamie Nibler, owner, addressed the landscaping concerns stated by the hearings officer and listed all the improvements she has made. She stated the sign is a significant source of income for her and does not want to lose this income.

Richard Gaston, CBS Outdoor owner of the sign, clarified the size of the sign was misrepresented in the staff report and gave the correct size. He said they did not know about the issues of the sign until June, not as stated in the staff report of 1999. I recommend further investigation by the Council and to not move forward with a decision tonight. We would like to have a collaborative approach to resolve this issue.

Councilor McKinney asked Mr. Gaston how many signs they own and if the sign is the only one of its kinds. Mr. Gaston answered yes it is the only sign they own and it is the only one of its kind.

Councilor McKinney asked staff if the sign is the only one of its kind in the city. Mr. Brierley stated it was. Councilor McKinney went on to ask if the city has a procedure to grandfather in signs. Mr. Brierley stated nonconforming signs can be grandfathered in but that will change March 9th 2010.

**MOTION: Shelton/Bacon** to table **Order No. 2009-0023** until the November 2, 2009 meeting. (6 Yes/0 No/1 absent [Andrews]) Motion carried.

**MOTION: Shelton/Larson** to set the deadline to accept written testimony on **Order No. 2009-0023** for October 13th. (6 Yes/0 No/1 absent [Andrews]) Motion carried.

## VIII. NEW BUSINESS

1. Consider a motion approving **Resolution No. 2009-2867** approving a County zone change for property known as Tax Lot 3229-300 located outside city limits but within the Urban Reserve Area.

TIME – 7:40 PM

Mr. Breirley presented the staff report (see official meeting packet for full report).

Betsy and Joe Fettig, property owners spoke of their desire to have the two side-by-side parcels zones match in order to make the property usable.

# PUBLIC HEARING

APPEAL OF THE HEARINGS OFFICER  
DECISION TO DENY A NON-CONFORMING  
SIGN TO REMAIN AT 616 W. FIRST STREET

Newberg City Council

September 8, 2009

*Presented by: Planning Division Staff*

*File: NCSIGN-09-005*

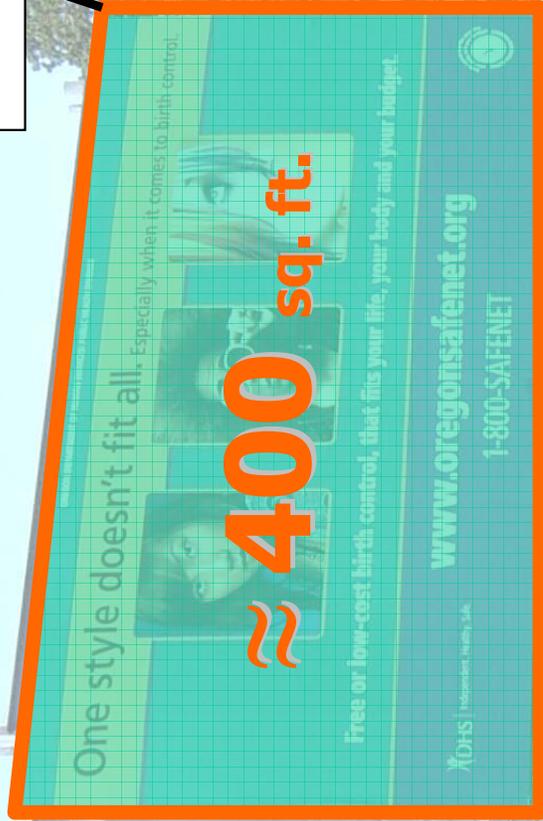
# BACKGROUND

- Newberg Sign Code update in 1998
- Amortization process established
- Owners were notified in 2008 – 46 total
  - 11 hearings held
  - 2 of the 11 were denied
  - The remainder have until 2010 to comply



# NON-CONFORMING SIGN

616 W. First Street

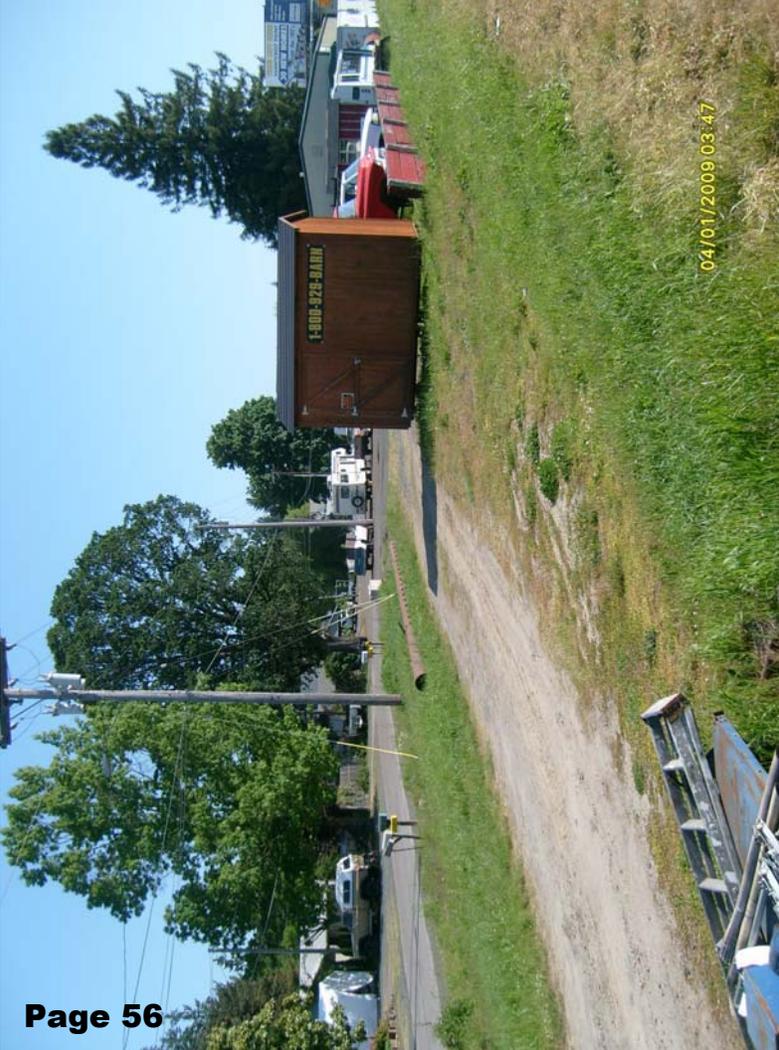


Exceeds Permitted Area  
by ≈ 300 sq. ft.



Exceeds Permitted  
Height and Setback





04/01/2009 0

04/01/2009 03:47

# DECISION CRITERIA

- A. The sign is in a **good state of repair** and maintenance.
- B. The number, size, and height of signs **contributes to an attractive neighborhood appearance.**
- C. The use of bold and bright colors, lighting, and designs is **minimal.**
- D. Other elements of the site are **well maintained and attractive.**

# FINDINGS OF THE HEARINGS OFFICER

1. The only large billboard sign in the area.
2. Exceeds sign, height, and setback standards.
3. Does not contribute to the neighborhood.
4. The site is not well maintained and attractive.

# ISSUES TO CONSIDER

1. All 4 criteria are intended to be satisfied.
2. The sign exceeds existing Code standards.
3. The sign is a prominent feature.
4. Amortization provisions were established.
5. The billboard was not registered in 1998.

# ISSUES TO CONSIDER

1. All 4 criteria are intended to be satisfied.
2. The sign exceeds existing Code standards.
3. The sign is a prominent feature.
4. Amortization provisions were established.
5. The billboard was not registered in 1998.



# ISSUES TO CONSIDER

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# ISSUES TO CONSIDER

1. All 4 criteria are intended to be satisfied.
2. The sign exceeds existing Code standards.
3. The sign is a prominent feature.
4. Amortization provisions were established.
5. The billboard was not registered in 1998.



# STAFF RECOMMENDATION

1. ADOPT ORDER 2009-0023, ORDERING:
  - a. Denial of the appeal request
  - b. Removal or modification of the sign

# PUBLIC HEARING

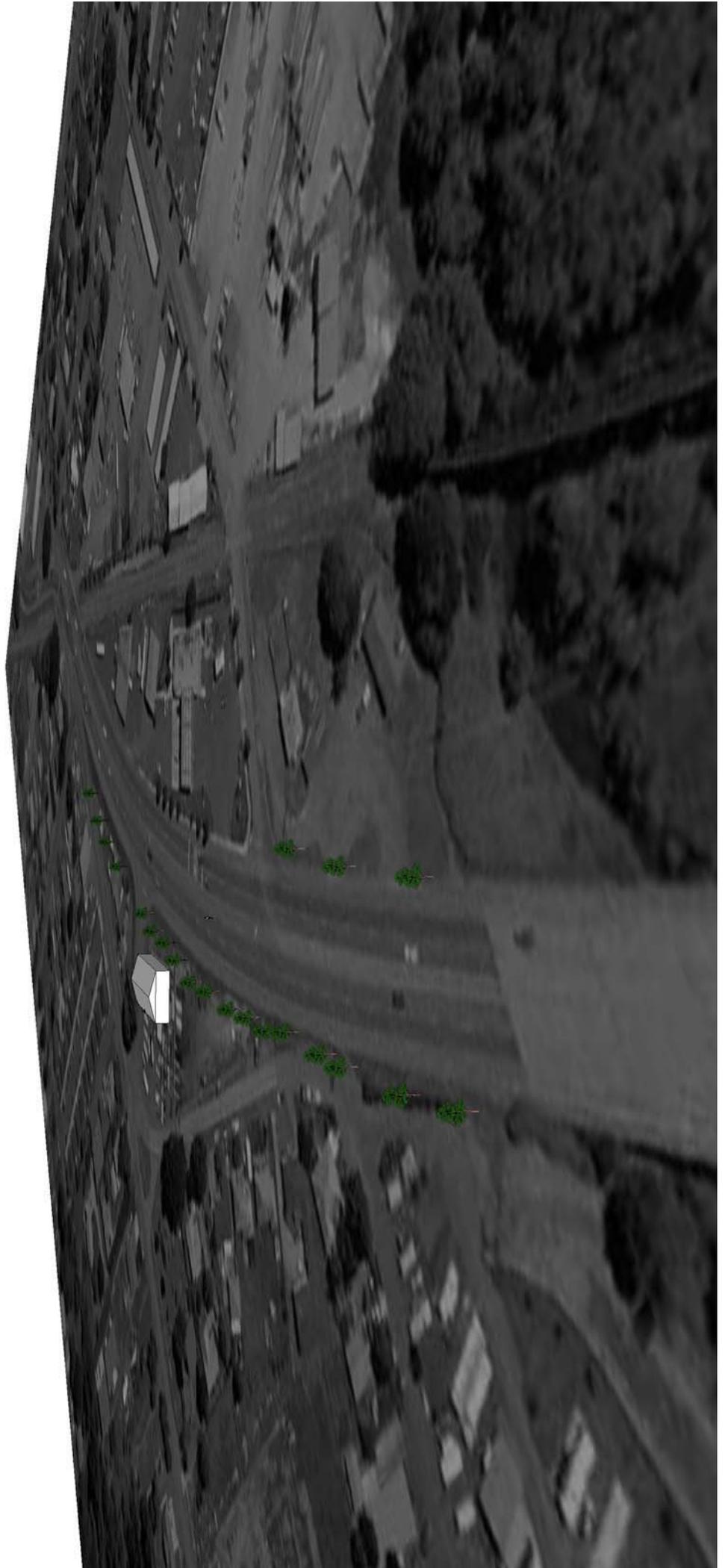
APPEAL OF THE HEARINGS OFFICER  
DECISION TO DENY A NON-CONFORMING  
SIGN TO REMAIN AT 616 W. FIRST STREET

Newberg City Council

September 8, 2009

*Presented by: Planning Division Staff*

*File: NCSIGN-09-005*





January 29, 2010

Barton Brierley  
City of Newberg  
414 E. First St.  
Newberg OR 97132

**Re: Agreement regarding final work at 616 W. 1<sup>st</sup>, Newberg Auto Electric**

Dear Barton,

As we discussed on the phone, the first phase of mitigation work has been completed at the Newberg Auto Electric site. Between the landowner and CBS Outdoor, we have already invested considerable resources to make the site more attractive.

We are prepared to complete the project with the installation of four large street trees (Corinthian Linden, 2" caliper) at the site. I have enclosed multiple photos of the site including a mock-up of the trees when they are fully grown. The trees will be located near the existing Arbor Vitae in order to be fed by the same irrigation system. I have also enclosed a current photo of the trees already installed along 2<sup>nd</sup> Way. As those trees grow we believe they will provide valuable screening for southbound Hwy 99 traffic.

At this time we would ask the following of the City:

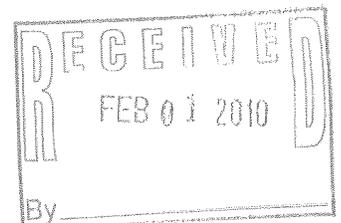
- A letter to CBS Outdoor and Newberg Auto Electric confirming that the work, as proposed, will be satisfactory in resolving this matter and that the CBS Outdoor billboard will be grandfathered and allowed to remain as-is.
- A staff recommendation to the City Council which concludes this matter under mutual agreement.

We will proceed with the final phase of work upon receipt of the letter requested above. Please let me know if you have any questions or concerns about this approach. We'd like to know if we can have agreement within the next 2 weeks in preparation for the March City Council meeting.

Best Regards,

Richard Gaston  
Real Estate Representative  
CBS Outdoor, Inc.

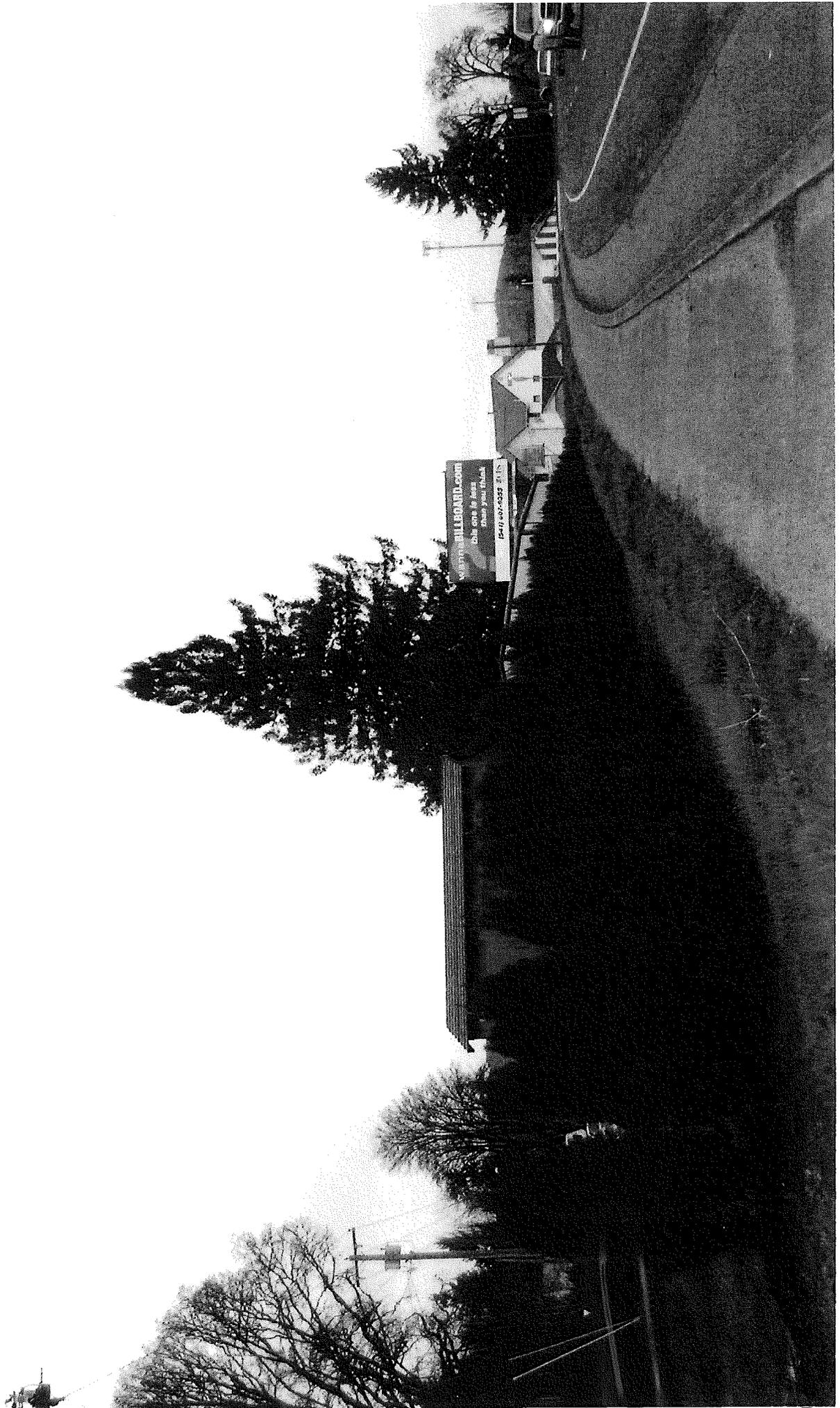
cc: Jamie Nibler, Newberg Auto Electric



*Street trees, proposed.*



*Current*

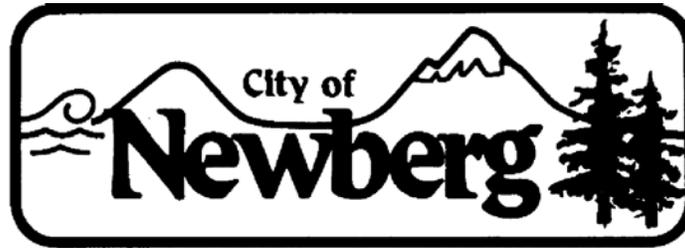




*2nd Way*

Planning and Building  
(503) 538-9421

City Attorney  
(503) 537-1206



414 East First St.  
PO Box 970  
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

February 5, 2010

Richard Gaston  
Real Estate Representative  
CBS Outdoor, Inc.  
135 Silver Lane, Suite 230  
Eugene, OR 97404

Jamie Nibler  
616 W. First Street  
Newberg, OR 97132

RE: Appeal of Sign at 616 W. First Street

Dear Richard and Jamie:

Thank you for your letter dated January 29, 2010. Also, thank you for the time and effort you have taken on this issue.

As you know, your application to have the non-conforming sign was denied by the hearings officer. You have appealed that decision, the City Council held a hearing on your appeal, but has not yet rendered a decision. I have asked the Council to continue the hearing to March 1, 2010 at 7:00 p.m. at the Newberg Public Safety Building so that you may attend and give testimony.

As I stated, I do not know whether or not the Council will approve or deny the appeal: that is up to them. It appears the Council has mixed feelings on the issue. Given that many other property owners already have removed their non-conforming signs, I believe there would need to be a very compelling reason far above the ordinary for them to allow this sign, one of the largest in the community, to remain.

I have appreciated our discussions and work on this issue. I very much appreciate the installation of arbor vitae. We worked on a concept of placing a row of trees along this property and the property to east of 2<sup>nd</sup> Way. In further evaluation, it appears feasible to place trees on the property to the east. I do not have a boundary survey of this property, but it appears there is very ample right-of-way, probably in excess of 20 feet, from the sidewalk to the property line. Thus, the trees would not be placed on private property, but in the public right-of-way. You were

● Planning and Building Dept. e-mail: [barton.brierley@newbergoregon.gov](mailto:barton.brierley@newbergoregon.gov) Fax: 503-537-1272 ●  
Admin: 537-1261 ● Building: 537-1240 ● Public Works: 537-1273 ● Finance: 538-9421 ● Fire: 537-1230  
Library: 538-7323 ● Municipal Court: 537-1203 ● Police: 538-8321 ● Maintenance: 537-1234 ● Utilities: 537-1205  
Municipal Court Fax: 538-5393 ● Public Works Fax: 537-1277 ● Library Fax: 538-9720

“Working Together For A Better Community-Serious About Service”

concerned about liability for trees beyond Ms. Nibler's property. I discussed this with the City Attorney, and we may be able to enter into some type of hold harmless agreement or other arrangement to address your concerns about liability.

As I stated on site, if you were willing to agree to this arrangement I would be willing to at least place this in front of the Council as an option for them to consider. This would allow drivers seeing the sign both ways to have a more attractive landscape to view. I have concerns that this still would not be a compelling enough reason for them to approve having the sign to remain, but I would agree to present this to them as an option. The decision is the Council's, not mine.

According to my last conversation with Ms. Nibler, she was unwilling to extend any trees beyond her site. Without these the trees to the east, or some other substantial improvement, I cannot recommend approval to the City Council.

I am certainly willing to discuss this matter further if you would like. I can be reached at 503-537-1212.

Sincerely,

Barton Brierley, AICP  
Planning and Building Director

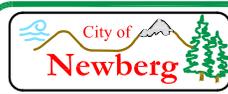
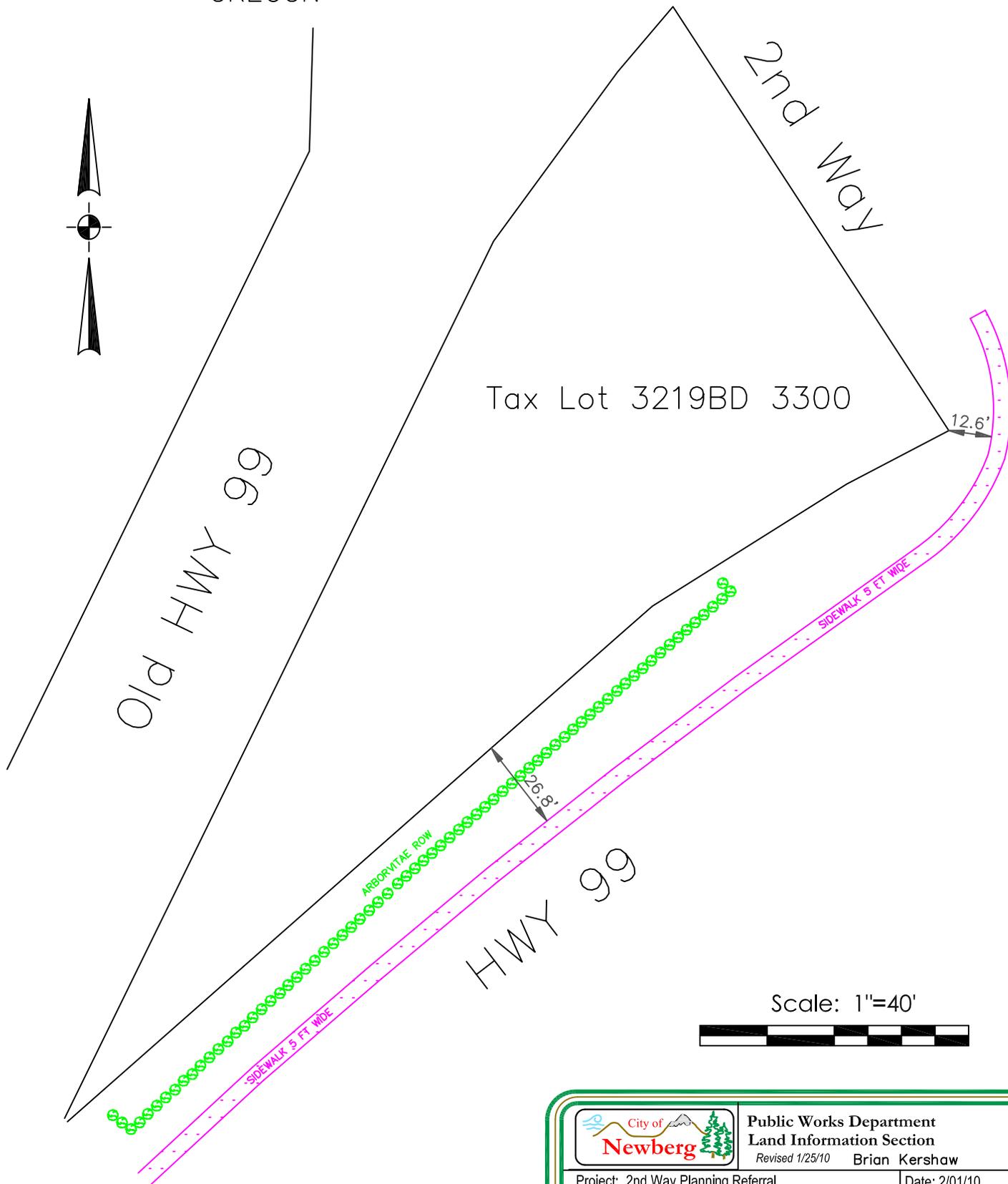
enc

Cc: Terry Mahr, Dan Danicic, Luke Pelz

Z:\SIGNS\Non-Conforming Signs\Appeal\CBS Letter 2010-0205.docx

NW QUARTER OF SECTION 19  
TOWNSHIP 3 SOUTH, RANGE 2 WEST  
WILLAMETTE MERIDIAN  
YAMHILL COUNTY  
OREGON

THIS IS NOT A SURVEY  
This map was prepared  
for illustrative purposes only,  
all dimensions are approximate.



Public Works Department  
Land Information Section  
Revised 1/25/10 Brian Kershaw

Project: 2nd Way Planning Referral

Date: 2/01/10

File Path: C:\Engineering\Surveyor\Planning Referrals\2nd Way Hwy 99 ROW

Page 1 of 1

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: March 1, 2010

Order \_\_\_\_ Ordinance XX Resolution \_\_\_\_ Motion \_\_\_\_ Information \_\_\_\_  
No. No. 2010-2719 No.

**SUBJECT:** A comprehensive plan text amendment for flood hazard policies, a Development Code amendment to create flood plain development standards, and adoption of the most current Yamhill County Flood Insurance Study and associated Flood Insurance Rate Maps.

Contact Person (Preparer) for this  
Ordinance: **Luke Pelz, AICP, Assistant Planner**

Dept.: **Planning & Building**

File No.: **CPTA-09-002**  
*(if applicable)*

HEARING TYPE:                     LEGISLATIVE                     QUASI-JUDICIAL

## RECOMMENDATION:

Adopt **Ordinance No. 2010-2719** amending the comprehensive plan Inventory of Cultural and Natural Resources to include revised flood hazard policies, amending the Development Code to create flood plain development standards, and adopting the most current Yamhill County Flood Insurance Study and associated National Flood Insurance Rate Maps.

## EXECUTIVE SUMMARY:

The Federal Emergency Management Agency (FEMA) has recently updated the Flood Insurance Study for Yamhill County and Incorporated Areas. The study is used to determine flood hazard present as well as flood zones that are used to write flood insurance. Maps are produced to illustrate the study data. The maps, known as Flood Insurance Rate Maps, are used to implement the floodplain development regulations. The last flood map revision was completed in 1983. Currently Newberg does not have floodplain management regulations. Adopting the FEMA flood insurance study, flood insurance rate maps, and floodplain development regulations will allow property owners to purchase flood insurance through the National Flood Insurance Program. The National Flood Insurance Program is a federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for state and community floodplain management regulations that reduce flood damages. The Planning Commission recommendation regarding this matter is shown in Attachment "2".

## FISCAL IMPACT:

Adopting flood hazard policies and development standards will have a net positive fiscal impact on the community. Development standards will help to: minimize public and private financial losses, minimize expenditure of public money and costly flood control projects, minimize damage to public facilities, and maintain a stable tax base by providing for the sound use and development of areas of special flood hazard.

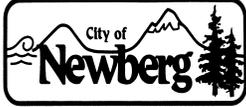
## STRATEGIC ASSESSMENT:

Policy Implications. Floodplain development in Newberg is rare because of existing local and state land use policies – the Stream Corridor Sub-District and Willamette Greenway limit most development in floodplains. There is some development that could occur in these areas such as construction of bridges or culverts. The National Flood Insurance Program was primarily established to relieve communities of the fiscal burden caused by flood relief. Amending the Development Code to provide standards for floodplain development reduces the potential for property and life loss caused by flooding. Adopting the FEMA Flood Insurance Rate Maps allows property owners within flood hazard areas to purchase flood insurance, and reduce fiscal losses for property owners and the public.

Floods, Floodplains, and Special Flood Hazard Area (SFHA). Flooding is a natural occurrence. Periodically rivers, streams, and lakes will overflow their banks and inundate adjacent land areas. These areas, known as floodplains, temporarily store this excess water. Special Flood Hazard Areas are locations where flood studies have determined that there is a likelihood of a base flood occurring. The base flood, sometimes referred to as the 100-year flood, has a 1% or greater chance of occurring in any given year. A map illustrating the location of the Special Flood Hazard Areas in Newberg is shown in Attachment “3”.

Flooding in the Newberg Area. One early settlement in this area was Champoeg. This settlement unfortunately was constructed in a floodplain. The river flooded and washed away the settlement twice. Pioneers then focused settlement in other areas, such as Newberg, which are not as prone to flooding. Larger floods can occur, but most floods in Newberg are contained within the upper banks of the streams, and in areas adjacent to the Willamette River. Localized flooding can occur because of various factors, such as blocked stream channels or storm drains. In reviewing the latest flood hazards maps, we were not able to identify any homes within the Newberg city limits that are located in a Special Flood Hazard area, though it is possible that some may exist.

Proposed Floodplain Management Regulations. Flood protection is important to prevent or minimize damage to people and property. The proposed regulations do not prohibit construction in floodplain areas, but seek to lessen the economic loss and social disruption caused by flood events. The proposed floodplain management regulations would require that any new home built in a special flood hazard area be elevated so that the floor is one foot above the base flood elevation. The regulations include specific standards for anchoring, venting, and flood-proofing affected structures and utilities constructed in a floodplain. They require that any fill or alternation within the floodway be constructed so as not to increase the risk of flooding other properties. Other city, state, and federal rules already limit development near these streams, including Newberg’s stream corridor overlay and Oregon’s removal/fill laws. Therefore in practice very few projects inside the current city limits would be affected by the floodplain management regulations.



# ORDINANCE No. 2010-2719

**AN ORDINANCE ADOPTING A COMPREHENSIVE PLAN TEXT AMENDMENT REVISING EXISTING FLOOD HAZARD POLICIES, ADOPTING A DEVELOPMENT CODE AMENDMENT TO CREATE FLOOD HAZARD AREA DEVELOPMENT STANDARDS, AND ADOPTING THE YAMHILL COUNTY FLOOD INSURANCE STUDY AND ASSOCIATED NATIONAL FLOOD INSURANCE RATE MAPS DATED MARCH 2, 2010**

**RECITALS:**

1. The flood hazard areas of Newberg are subject to periodic inundation which may result in: loss of life and property, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief.
2. Flood hazard development standards minimize the negative impacts of flooding. Currently the City of Newberg does not have development code regulations for flood hazard areas.
3. In order for local property owners to participate in the National Flood Insurance Program local governments are required to adopt the Federal Emergency Management Agency Flood Insurance Study, Flood Insurance Rate Maps, and flood hazard development regulations.

**THE CITY OF NEWBERG ORDAINS AS FOLLOWS:**

1. The City Council hereby adopts an amendment to the Newberg Comprehensive Plan as shown in Exhibit "A", which is attached. Exhibit "A" is hereby adopted and by this reference incorporated.
2. The City Council hereby adopts an amendment to the Newberg Development Code as shown in Exhibit "B", which is attached. Exhibit "B" is hereby adopted and by this reference incorporated.
3. The findings in Exhibit "C" is hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: March 31, 2010.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 1<sup>st</sup> day of March, 2010, by the following votes: **AYE:**      **NAY:**      **ABSENT:**      **ABSTAIN:**

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 4<sup>th</sup> day of March, 2010.

\_\_\_\_\_  
Bob Andrews, Mayor

**LEGISLATIVE HISTORY**

By and through the Planning Commission at 02/11/2010 meeting. Or, \_\_\_ None.

## EXHIBIT "A" COMPREHENSIVE PLAN AMENDMENTS Flood Hazard Area Map Update and Code Amendment

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The following text of the Newberg Comprehensive Plan including the Inventory of Cultural and Natural Resources shall be amended as follows:

NOTE: Proposed text shown in underline font  
Deleted text is shown with ~~striketrough font~~  
Existing text shown in regular font

### COMPREHENSIVE PLAN TEXT ORDINANCE 1967

#### II. GOALS AND POLICIES

##### F. AREAS SUBJECT TO NATURAL ~~DISASTERS AND~~ HAZARDS

GOAL: To protect life and property from flooding and other natural ~~disasters and~~ hazards.

##### POLICIES:

1. The City will coordinate with the Federal Emergency Management Agency to ensure continued compliance with federal floodplain regulations.

2. The City will adopt the most current Federal Emergency Management Agency Flood Insurance Rate Maps, the Flood Insurance for Yamhill County to ensure that property owners may participate in the National Flood Insurance Program.

3. The City will adopt floodplain development standards to:

- a. minimize public and private losses,
- b. protect human life and health,
- c. minimize expenditure of public money and costly flood control projects,
- d. minimize damage to public facilities, and
- e. help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard,
- f. to ensure property owners may participate in the National Flood Insurance Program.

~~2.~~ 3. The largest floodplain area within the Urban Growth Boundary is located within the Willamette Greenway. As such, this area will be subject to Greenway plans and regulations.

~~3.~~ 4. In other areas of potential or existing hazards, development shall be subject

to special conditions. Reasonable development may be permitted in these areas when it can be shown, based on sound engineering and planning criteria, that adverse impacts can be mitigated and kept to a minimum. Hazardous areas shall be considered to be lands with slopes 20% or greater, potential and existing slide areas, fault areas, and areas with sever soil limitations.

4. 5. The City will discourage development on hazardous slope areas and natural resource areas in the Riverfront District. (Ordinance 2002-2564, April 15, 2002)

## THE INVENTORY OF NATURAL AND CULTURAL RESOURCES

### SECTION 10 ~~AREAS SUBJECT TO HAZARDS AND NATURAL DISASTERS~~ HAZARDS

#### ~~Flood Areas~~

~~Floodplain areas are periodically subject to hazardous conditions. Damage to development during flooding is generally caused by rapid stream velocities and by prolonged high water levels. As a standard measurement, hazardous flood conditions are considered to exist when stream velocities reach three cubic feet per second and when a depth of three feet above ground level is reached.<sup>+</sup> Actual damage from flood varies with stream velocity, stream height, local soil or slope conditions and the amount of advance warning time given.~~

~~The Army Corps of Engineers identifies two categories of flood situations that provide meaningful information for land use planning: (1) the Standard Project Flood and (2) the Intermediate Regional Flood (100 Year Flood).~~

#### ~~(1) Standard Project Flood~~

~~This is the flood which can be expected as a result of the most severe combination of meteorological and hydrological conditions considered reasonably characteristic of the geographical region involved, excluding extremely rare combinations. Because of its rare occurrence, this flood has not been mapped, and no frequency is assigned. This flood could occur in any given year and generally corresponds to the Federal Insurance administration's 500 year floodplain.~~

#### ~~(2) Intermediate Regional of 100 Year Flood~~

---

~~<sup>+</sup> Floodplain Information: Willamette River, Chehalem Creek, Newberg, Oregon. U.S. Army Engineer District, Portland Corps of Engineers, 1976.~~

# EXHIBIT "A"

The 100-year flood area is a commonly used concept. It is the floodplain which is mapped by the Department of Housing and Urban Development for the Federal Floodplain Insurance Program as the base flood elevation. 100-year floodplain areas have also been mapped by the Army Corps of Engineers. These areas vary slightly from those of the FIA but are based upon the same concept. In general, 100-year floodplains are areas in which flooding could occur at any time but in which the probability of such an occurrence in any given year is one percent. Due to more extensive geographic coverage and for consistency with county mapping, Army Corps 100-year floodplain boundaries have been used on the Hazardous Areas Map.

The 100-year floodplain mapped by the Army Corp and HUD were both based upon an analysis of runoff records and of general soil and other characteristics in the are. The Corps also examined records from gauging stations along the Willamette River. During an intermediate regional flood, the Corp projects that a peak flow of 285,000 cubic feet per second and a flood elevation of about 90 to 92 feet above mean sea level are likely to occur. These figures are lower than the peak discharge of 339,000 cubic feet per second and flood elevation of 95.2 feet that were recorded during a major flood in December 1964. The reduced flows and elevation projections are a result of additional flood control measures installed since that time.<sup>2</sup>

The National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 have made flood insurance available to Newberg and other communities that apply to the Federal Insurance Administration. Under the program, communities must show that at least minimal floodplain management measures are in effect and indicate their intent to adopt additional specified measures. After acceptance, an "emergency program" is begun which enables local insurance agents to sell insurance at subsidized rates. Amounts are limited, but in some cases can equal the total value of a structure and/or its contents. A study of the community is then done to identify areas and frequency of flooding. This information is then utilized to determine rates and develop a floodplain management program. Once this is accomplished, the "emergency program" becomes a "regular program".

Newberg currently participates in the flood insurance program, but has not completed work on its management program. Once this program is implemented, an ordinance will limit future development within flood areas, reducing potential damage to life and property. To qualify for the flood insurance program, provisions of the ordinance will have to be based on the division of the 100-year floodplain into floodway and floodway fringe areas. Floodways include the channels of the streams plus adjacent areas that must be kept open in order that the heights of 100-year floods are not substantially increased. Generally, no more than one foot of additional height is permitted. Floodway fringes are those portions of floodplains that can be completely obstructed without increasing the water surface elevation of a 100-year flood more than the one foot limit. In floodway areas development is generally restricted to open space and light recreational uses. In floodway fringe areas, additional uses are frequently permitted, provided that special engineering and planning criteria are met.

Currently HUD has mapped the approximate location of the 100-Year Intermediate Regional Floodplain based on available data. The boundaries are general and certain inaccuracies are

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<sup>2</sup> Floodplain Information: Willamette River, Chehalis Creek - Newberg, Oregon. U.S. Army Engineer District, Portland Corps of Engineers, 1971.

~~evident. More precise mapping can be done but would require more detailed information concerning stream flow, elevations and cross sections of specific locations. To date, the 100-year floodplain has not been divided into floodway and floodway fringe areas.~~

## 10.2 Flood Hazard Management

### 10.2.1 Existing Waterways

The City of Newberg has four primary waterways and associated flood hazard areas – Hess Creek, Springbrook Creek, Chehalem Creek, and the Willamette River. Hess Creek originates in the southeastern part of the Chehalem Mountains approximately 2.5 miles north of the city center. It flows southerly, through the middle of the city draining approximately 4.4 square miles before joining Springbrook Creek south of the city. Springbrook Creek flows 1.4 miles until joining the Willamette River. Chehalem Creek flows generally southeasterly from its headwaters in hills approximately 9 miles northwest of Newberg. It flows along the southwestern corporate limits of the city to its confluence with the Willamette River. Elevations in the basin range from approximately 100 feet near Newberg to above 1,450 feet on the northeastern boundary in the Chehalem Mountains. The Willamette River flows just south of the Newberg corporate limits. Although it does not directly overflow into the city, it causes several smaller tributaries to back up within the city limits.

### 10.2.3 Floods, Floodplains, and Special Flood Hazard Area (SFHA)

Flooding is a natural occurrence. Periodically rivers, streams, and lakes will overflow their banks and inundate adjacent land areas. These areas, known as floodplains, temporarily store this excess water. Special Flood Hazard Areas are locations where flood studies have determined that there is a likelihood of a base flood occurring. The base flood, sometimes referred to as the 100-year flood, has a 1% or greater chance of occurring in any given year. Flooding in Newberg is rare, however flooding can occur. Most floods in Newberg are contained within the upper banks of the streams, and in areas adjacent to the Willamette River. Localized flooding can occur because of various factors, such as blocked stream channels or storm drains. In reviewing the latest flood hazards maps, the city has not identified any homes within the Newberg city limits that are located in a Special Flood Hazard area, though it is possible that some may exist.

### 10.2.2 The National Flood Insurance Program (NFIP)

The National Flood Insurance Program was primarily established by the U.S. Congress to relieve communities of the fiscal burden caused by potential flood relief. The NFIP is administered by the Federal Emergency Management Agency (FEMA), a component of the U.S. Department of Homeland Security (DHS). To participate in this program, local governments are required to adopt plan policies, development standards, and to adopt the most current FEMA flood insurance rate maps. Participating communities are provided with a Flood Insurance Rate Map (FIRM) and detailed engineering study, termed a Flood Insurance Study (FIS). Paper copies of the study and maps shall be made available for review at Newberg City Hall. A digital version of the flood insurance rate maps can be viewed on the internet at [www.fema.gov](http://www.fema.gov). If Newberg does not participate in the program, under the NFIP, flood insurance is not available for property owners within Newberg. The City of Newberg recognizes the fiscal and public health benefits of participating in the NFIP, and shall take necessary steps to ensure continued participation in the program.

# EXHIBIT "A"

## 10.2.4 Flood Hazard Management Policies

The following policies shall guide the management of flood hazards in Newberg:

- (a) The City recognizes that development standards help to: minimize public and private financial losses, minimize expenditure of public money and costly flood control projects, minimize damage to public facilities, and maintain a stable tax base by providing for the sound use and development of areas of special flood hazard. Development regulations do not prohibit construction in floodplain areas, but seek to lessen the economic loss and social disruption caused by flood events.
- (b) The City shall periodically review existing development standards to ensure consistency with best management practices and state and federal law.
- (c) The City shall participate in the National Flood Insurance Program. This requires that the City adopt plan policies, flood hazard development standards, and adopt the most current FEMA flood insurance study and flood insurance rate maps.

# EXHIBIT "B"

## EXHIBIT "B" DEVELOPMENT CODE AMENDMENTS Flood Hazard Area Map Update and Code Amendment

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The Newberg Development Code shall be amended as follows:

NOTE:	Proposed text shown in <u>underline font</u> Deleted text is shown with <del>striketrough</del> font Existing text shown in regular font
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### 151.003 DEFINITIONS.

Note: The Planning Commission recommends adding the following definitions to the section 151.003 of the Newberg Development Code. No existing definitions are recommended to be modified or deleted.
--

AREA OF SHALLOW FLOODING. Areas designated AO, or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

AREA OF SPECIAL FLOOD HAZARD. The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on flood maps always includes the letters A or V.

BASE FLOOD. The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the 100-year flood. Designation on flood maps always includes the letters A or V.

BELOW- FLOOD GRADE CRAWL SPACE. An enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.

BREAKAWAY WALL. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

CRITICAL FACILITY. A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

ELEVATED BUILDING. A nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

FLOOD OR FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters and/or

# EXHIBIT "B"

(2) The unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD INSURANCE RATE MAP (FIRM). The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

FLOODPLAIN DEVELOPMENT. Within the floodplain, any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance found at Section 151.484.2(A).

STRUCTURE, AFFECTED. A walled and roofed building including a gas or liquid storage tank that is principally above ground, that may be affected by or affect a flood.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by an affected structure whereby the cost of restoring the affected structure to its before damaged condition would equal or exceed 50 percent of the market value of the affected structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, or improvement of an affected structure, the cost of which equals or exceeds 50 percent of the market value of the affected structure either:

- (1) Before the improvement or repair is started; or
- (2) If the affected structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the affected structure.

The term does not, however, include either:

- (1) Any project for improvement of an affected structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- (2) Any alteration of an affected structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

# EXHIBIT "B"

WATER DEPENDENT. A structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

## **151.480 AREAS OF SPECIAL FLOOD HAZARD OVERLAY (FHO)**

### **151.481 PURPOSE**

(A) It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money and costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(B) In order to accomplish its purposes, this ordinance includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, and other development which may increase flood damage;
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.
- (6) Coordinating and supplementing the provisions of the state building code with local land use and development ordinances

## **151.482 GENERAL PROVISIONS**

### **151.482.1 LANDS TO WHICH THIS ORDINANCE APPLIES**

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Newberg, Oregon as designated in the Flood Insurance Study for Yamhill County and Incorporated Areas and on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) dated March 2, 2010.

## 151.482.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Yamhill County, Oregon and Incorporated Areas," dated March 2, 2010, with accompanying Flood Insurance Maps are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at Newberg City Hall. The best available information for flood hazard area identification as outlined in Section 151.482.6 (A)(4) shall be the basis for regulation until a new Flood Insurance Rate Map is issued which incorporates the data utilized under section 151.482.6 (A)(4).

## 151.482.3 PENALTIES FOR NONCOMPLIANCE

No affected structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) are subject to enforcement. Nothing herein contained shall prevent the City of Newberg from taking such other lawful action as is necessary to prevent or remedy any violation.

## 151.482.4 RELATION TO OTHER REGULATIONS

Most areas of special flood hazard in Newberg are within the existing Stream Corridor Sub-District, the Willamette Greenway, or in wetlands or waterways subject to Federal and State regulations. Therefore, it is expected that floodplain development and use of these regulations will be rare. This ordinance should not be read as allowing development that is otherwise restricted or prohibited by other city, state, or federal laws.

## 151.482.5 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Newberg, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

## 151.482.6 DUTIES OF THE LOCAL ADMINISTRATOR

The Director is hereby appointed to administer and implement this ordinance by granting or denying floodplain development permit applications in accordance with its provisions. The Director's duties are outlined below:

### (A) Information to be Obtained and Maintained

- (1) Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Section 151.483.3, obtain and record the actual elevation (in

# EXHIBIT "B"

- relation to mean sea level) of the lowest floor (including basements and below-flood grade crawlspaces) of all new or substantially improved affected structures, and whether or not the affected structure contains a basement.
- (2) For all new or substantially improved floodproofed affected structures where base flood elevation data is provided through the Flood Insurance Study, FIRM, or as required in Section 151.483.3:
    - (a) Verify and record the actual elevation (in relation to mean seal level), and
    - (b) Maintain the floodproofing certifications.
  - (3) Maintain for public inspection all records pertaining to the provisions of this ordinance.
  - (4) When base flood elevation data has not been provided (A and V Zones) in accordance with Section 151.482.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 151.484.2, SPECIFIC STANDARDS, and 151.486 FLOODWAYS.

## (B) Alteration of Watercourses

- (1) Notify adjacent communities, the Department of Land Conservation and Development and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(C) Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 151.483.5.

## **151.483 FLOODPLAIN DEVELOPMENT PERMIT PROCEDURES**

### 151.483.1 FLOODPLAIN DEVELOPMENT PERMIT REQUIRED.

Any person shall obtain a floodplain development permit before constructing or developing within any area of special flood hazard established in Section 151.482.2. The permit shall be for all affected structures including manufactured homes, as set forth in Section 151.003, and for all floodplain development including fill and other activities, also as set forth in the Section 151.003.

### 151.483.2 APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT.

Application for a floodplain development permit shall be made on forms furnished by the Planning and Building Department and may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed affected structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (A) Elevation in relation to mean sea level, of the lowest floor (including basement) of all affected structures;
- (B) Elevation in relation to mean sea level of floodproofing in any affected structure;

# EXHIBIT "B"

- (C) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential affected structure meet the floodproofing criteria in Section 151.484.2; and
- (D) Description of the extent to which a watercourse will be altered or relocated as a result of proposed floodplain development.

## 151.483.3 FLOODPLAIN DEVELOPMENT PERMIT APPLICATION REVIEW

The Director shall review all floodplain development permit applications. Floodplain development permits shall be reviewed as part of the review of applicable design review, building permit application, grading permit application, other application, or as a Type I review if no other application is concurrent. The review shall determine:

- (A) That the permit requirements and conditions of this ordinance have been satisfied.
- (B) That all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
- (C) That if the floodplain development is located in the floodway, that the encroachment provisions of Section 151.486 (1) are met.

## 151.483.4 FLOODPLAIN DEVELOPMENT VARIANCE PROCEDURE

### (A) Procedure

- (1) Any person proposing floodplain development may request a variance to the provisions of this section. The application shall be on forms and include such information as determined by the Director. Variance requests shall be processed as a Type II land use action.
- (2) The decision shall be based upon the criteria established in Section 151.483.4(C).
- (3) Those aggrieved by the decision of the Director may appeal the decision to the Planning Commission.
- (4) The Director shall report any variances to the Federal Insurance Administration upon request.
- (5) Any applicant to whom a variance is granted shall be given written notice that the affected structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

### (B) Eligibility

- (1) A variance from the elevation standard may be issued for new construction and substantial improvements.
- (2) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.

# EXHIBIT "B"

- (3) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria, and otherwise complies with Sections 151.484.1(A) through 151.484.1(C) of the GENERAL STANDARDS.
- (4) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- (5) The review body may approve variances for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, notwithstanding the application may not meet all the criteria set forth in subsection C below.

## (C) Criteria

The review body may approve, approve with conditions, or deny a floodplain development variance provided all the following criteria are met:

- (1) Exceptional hardship would result to the applicant if the variance is not granted.
- (2) Granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, victimization of the public, or conflict with existing local laws or ordinances.
- (3) No reasonable alternative location(s) exists which are not subject to flooding or erosion that may accommodate the proposed use.
- (4) The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) The characteristics are compatible with neighboring development.

## 151.483.5 APPEAL PROCEDURE

### (A) Appeal Board

The Planning Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Director in the enforcement or administration of this section. Those aggrieved by the decision of the Planning Commission may appeal such decision to the City Council.

### (B) Appeal Procedures

Appeals shall follow the Type III procedures outlined in Section 151.055.

### (C) Scope of Review

The Planning Commission shall follow the scope of review procedures established in Section 151.057. The decision shall follow the procedures in Section 151.058.

## **151.484 PROVISIONS FOR FLOOD HAZARD REDUCTION**

### 151.484.1 GENERAL STANDARDS

In all areas of special flood hazards, the following standards are required:

#### (A) Anchoring

- (1) All new construction and substantial improvements shall be anchored to prevent

# EXHIBIT "B"

flotation, collapse, or lateral movement of the affected structure.

- (2) All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

## (B) Construction Materials and Methods

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (3) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

## (C) Utilities

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
- (3) On-site waste disposal systems, if allowed, shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

## (D) Tentative Subdivision & Partition Plat Proposals

- (1) Where floodplain development is proposed or reasonably likely, all tentative subdivision and partition plat proposals shall be consistent with the need to minimize flood damage.
- (2) All tentative subdivision and partition plat proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
- (3) All tentative subdivision and partition plat proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) For any proposed affected structure, proposed subdivision or partition, and other proposed floodplain development which contains at least 50 lots or 5 acres (whichever is less), flood elevation data shall be provided.

- (E) Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (Section 151.483.3(A)(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

# EXHIBIT "B"

- (F) AH Zone Drainage. Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed affected structures. AH zones are areas that have a 1% annual chance of shallow flooding, usually in the form of a pond, with an average depth ranging from 1 to 3 feet.

## 151.484.2 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided (Zones A1-30, AH, and AE) as set forth in Section 151.482.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or Section 151.483.3, Use of Other Base Flood Data (In A and V Zones), the following provisions are required:

### (A) Residential Construction

- (1) New construction and substantial improvement of any residential affected structure shall have the lowest floor, including basement, elevated to a minimum of one foot above the base flood elevation.
- (2) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be either certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
  - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - (b) The bottom of all openings shall be no higher than one foot above grade.
  - (c) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

### (B) Nonresidential Construction

- (1) New construction and substantial improvement of any commercial, industrial or other nonresidential affected structure shall either have the lowest floor, including basement, elevated at or above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:
  - (a) Be floodproofed so that below the base flood level the affected structure is watertight with walls substantially impermeable to the passage of water;
  - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
  - (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 151.483.3(A)(2);
  - (d) Nonresidential affected structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in 151.484.2(A)(2);
  - (e) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be

# EXHIBIT "B"

rated as one foot below.

## (C) Manufactured Homes

(1) All manufactured homes to be placed or substantially improved on sites:

- (a) Outside of a manufactured home park or subdivision,
- (b) In a new manufactured home park or subdivision,
- (c) In an expansion to an existing manufactured home park or subdivision, or
- (d) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;

shall be elevated on a permanent foundation such that the finished floor of the manufactured home is elevated to a minimum 18 inches (46 cm) above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

(2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, and AE on the community's FIRM that are not subject to the above manufactured home provisions be elevated so that either:

- (a) The finished floor of the manufactured home is elevated to a minimum of 18 inches (46 cm) above the base flood elevation, or
- (b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

## (D) Recreational Vehicles

(1) Recreational vehicles placed on sites are required to either:

- (a) Be on the site for fewer than 180 consecutive days
- (b) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (c) Meet the requirements of 151.484.2(C) above and the elevation and anchoring requirements for manufactured homes.

## (E) Below- flood grade crawl spaces

(1) Below- flood grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, *Crawlspace Construction for Buildings Located in Special Flood Hazard Areas*:

- (a) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the affected structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

# EXHIBIT "B"

- (b) The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.
- (c) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.
- (d) Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
- (e) The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.
- (f) The height of the below- flood grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.
- (g) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.
- (h) The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used. For more detailed information refer to FEMA Technical Bulletin 11-01.

## **151.485 BEFORE REGULATORY FLOODWAY**

In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other floodplain development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed floodplain development, when combined with all other existing and anticipated floodplain development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

## **151.486 FLOODWAYS**

Located within areas of special flood hazard established in Section 151.482.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

# EXHIBIT "B"

- (1) Encroachments are prohibited unless evidence is provided by a registered professional civil engineer demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If Section 151.486 (1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 151.484, PROVISIONS FOR FLOOD HAZARD REDUCTION.
- (3) Projects for stream habitat restoration may be permitted in the floodway provided:
  - (a) The project qualifies for a Department of the Army, Portland District *Regional General Permit for Stream Habitat Restoration* (NWP-2007-1023); and,
  - (b) A qualified professional (a Registered Professional Engineer; or staff of NRCS; the county; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible given the goals of the project; and,
  - (c) No affected structures would be impacted by a potential rise in flood elevation; and,
  - (d) An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.
- (4) New installation of manufactured dwellings are prohibited (2002 Oregon Manufactured Dwelling and Park Specialty Code). Manufactured dwellings may only be located in floodways according to one of the following conditions:
  - (a) If the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general welfare of the public; or
  - (b) A new manufactured dwelling is replacing an existing manufactured dwelling whose original placement was permitted at the time of installation and the replacement home will not be a threat to life, health, property, or the general welfare of the public and it meets the following criteria
    - i. As required by 44 CFR Chapter 1, Subpart 60.3(d)(3), it must be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory affected structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge;
    - ii. The replacement manufactured dwelling and any accessory buildings or accessory affected structures (encroachments) shall have the finished floor elevated a minimum of 18 inches (46 cm) above the BFE as identified on the Flood Insurance Rate Map;
    - iii. The replacement manufactured dwelling is placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction;
    - iv. The replacement manufactured dwelling, its foundation supports, and any accessory buildings, accessory affected structures, or property improvements (encroachments) do not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties;

# EXHIBIT "B"

- v. The location of a replacement manufactured dwelling is allowed by local ordinances; and
- vi. Any other requirements deemed necessary by the Director as having jurisdiction.

## **151.487 STANDARDS FOR SHALLOW FLOODING AREAS (AO ZONES)**

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from 1 to 3 feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

- (1) New construction and substantial improvements of residential affected structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, a minimum of one foot above the depth number specified on the FIRM (at least two feet if no depth number is specified).
- (2) New construction and substantial improvements of nonresidential affected structures within AO zones shall either:
  - (a) Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified); or
  - (b) Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in section 151.484.2(B)(1)(c).
- (3) Require adequate drainage paths around affected structures on slopes to guide floodwaters around and away from proposed structures.
- (4) If allowed, recreational vehicles placed on sites within AO Zones on the community's FIRM either:
  - (a) Be on the site for fewer than 180 consecutive days, and
  - (b) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
  - (c) Meet the requirements of 151.487 above and the elevation and anchoring requirements for manufactured homes.

## **151.488 CRITICAL FACILITIES**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical

# EXHIBIT "B"

facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

## EXHIBIT "C" FINDINGS Flood Hazard Area Map Update and Code Amendment

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Note: The Development Code criteria are shown in *italic font*. Findings are shown in regular font.

### I. COMPREHENSIVE PLAN, ZONING MAP, AND LAND USE REGULATION AMENDMENT – CRITERIA THAT APPLY NDC § 151.122(B)(2)

*The applicant must demonstrate compliance with the following criteria:*

- (a) The proposed change is consistent with and promotes the goals and policies of the Newberg Comprehensive Plan and this Code;*
- (b) There is a public need for a change of the kind in question;*
- (c) The need will be best served by changing the classification of the particular piece of property in questions as compared with other available property.*
- (d) Compliance with the State Transportation Planning Rule (OAR 660-012-0060) for proposals that significantly affect transportation facilities.*

### FINDINGS:

The proposed amendments are consistent with the following goals of the Newberg Comprehensive Plan:

- (a) The City will coordinate with the Federal Emergency Management Agency to ensure continued compliance with federal floodplain regulations.
- (b) To protect life and property from natural disasters and hazards.
- (c) To maintain and, where feasible, enhance air, water and land resource qualities within the community.
- (d) To retain and protect wooded areas.

The amendments promote existing plan policies and will serve the public interest by helping to: minimize public and private financial losses, minimize expenditure of public money and costly flood control projects, minimize damage to public facilities, and maintain a stable tax base by providing for the sound use and development of areas of special flood hazard. The proposed amendments will not have an effect on existing or future transportation facilities.

# ATTACHMENT "2"

## *PLANNING COMMISSION RESOLUTION NO. 2010-277*

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**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL ADOPT A COMPREHENSIVE PLAN TEXT AMENDMENT REVISING EXISTING FLOOD HAZARD POLICIES, ADOPT A DEVELOPMENT CODE AMENDMENT TO CREATE FLOOD HAZARD AREA DEVELOPMENT STANDARDS, AND ADOPT THE YAMHILL COUNTY FLOOD INSURANCE STUDY AND ASSOCIATED NATIONAL FLOOD INSURANCE RATE MAPS DATED MARCH 2, 2010**

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### RECITALS:

1. The flood hazard areas of Newberg are subject to periodic inundation which may result in: loss of life and property, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief.
2. Flood hazard development standards minimize the negative impacts of flooding. Currently the City of Newberg does not have development code regulations for flood hazard areas.
3. In order for local property owners to participate in the National Flood Insurance Program local governments are required to adopt the Federal Emergency Management Agency Flood Insurance Study, Flood Insurance Rate Maps, and flood hazard development regulations.

### THE PLANNING COMMISSION OF THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The Planning Commission recommends that the City Council approve the proposed Comprehensive Plan amendments shown Exhibit "A" and the proposed Development Code amendments shown in Exhibit "B". Exhibits "A" and "B" are hereby attached and by this reference incorporated.
2. This recommendation is based on the staff report, findings shown in Exhibit "C", and public testimony.

ADOPTED by the Planning Commission of the City of Newberg, Oregon, this 11<sup>th</sup> day of February, 2010

AYES:

6

NAYS:

0

ABSTAIN:

1 (Haug)

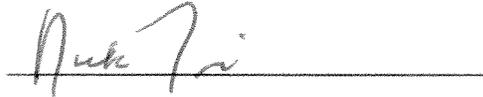
ABSENT:

0

ATTEST:



Planning Commission Secretary



Planning Commission Chair

Exhibits:

"A" Proposed Comprehensive Amendments

"B" Proposed Development Code Amendments

"C" Findings

# ATTACHMENT "3"

