

**CITY OF NEWBERG CITY COUNCIL MINUTES  
AUGUST 16, 2010  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM  
401 EAST THIRD STREET**

Work Session was held prior to the meeting. A general discussion occurred. 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	Ryan Howard
	Stephen McKinney	Bart Rierson	Marc Shelton
	Wade Witherspoon		

Staff

Present:	Terrence Mahr, City Attorney	Larry Fain, Senior Engineer/CIP Manager
	Barton Brierley, Planning and Building Director	Dain Eichel, Acting Public Works Director
	Jason Wuertz, Civil Engineer	Norma Alley, City Recorder
		Jennifer Nelson, Recording Secretary

Others

Present: Roger Wiltshire, Edward Sullivan, Larry Kimmel, George Johnston, Brian Francis, Samuel Farris, and Gary Bliss

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**IV. CITY MANAGER'S REPORT**

Mr. Terrence Mahr, City Attorney, spoke of updates given during the work session on litigation with the initiative petition and the location for the City/County Dinner at the Inn at Red Hills or Farm to Fork restaurant was clarified.

**V. PUBLIC COMMENTS**

Mr. Roger Wiltshire spoke of comments made by the city manager at the last meeting referring to citizens as customers of the City; he argued citizens are shareholders who pay taxes, fees, charges, and all revenue received by the city and they vote for councilors like stockholders choose their board of directors. He objected to being referred to as a customer in a profit making organization and felt anyone with this opinion should rethink their position on the matter. He spoke of not becoming an egotistical hierarchy or perceiving themselves above the law and cited the City's denial of a petition submitted by Mr. Hank Grum as a denigration of the constitutional right to petition our government; he said Mr. Grum's winning the law suit should tell us something is wrong in City decision making. He felt the City squandered and wasted tax dollars trying to abort a citizen's right in a communistic manner and the person responsible should be fired or recalled from their position. He said to stop city government from squandering dollars and that he embraces capitalism, not communism.

## VI. CONSENT CALENDAR

1. Consider a motion approving a **Sound Permit** for Newberg Friends Church Outdoor Music for Families and Community event on Saturday, August 21, 2010.
2. Consider a motion approving **City Council Minutes** for June 21, 2010, and July 19, 2010.

**MOTION: Shelton/Rierson** approving a Sound Permit for Newberg Friends Church Outdoor Music for Families and Community event on Saturday, August 21, 2010 and the City Council Minutes for June 21, 2010, and July 19, 2010 as amended. (7 Yes/0 No) Motion carried.

## VII. PUBLIC HEARING

1. Consider a motion adopting **Ordinance No. 2010-2728** approving the final assessments for the Columbia Drive (Group B) Local Improvement District Project.

TIME – 7:10 PM

Mayor Andrews called for any abstentions, biases, or conflicts of interest; none appeared.

Mr. Jason Wuertz, Civil Engineer, presented the staff report (see official meeting packet for full report).

Mayor Andrews opened the public testimony.

Mr. Bill Elder said he spoke for the church located at Columbia Drive and College Street at a prior meeting raising some questions for staff. He wanted to thank the council for their reconsideration and felt an equitable assessment was reached on behalf of the church and the owner of the other two parcels.

Councilor Bart Rierson thanked the church and Mr. Elder for providing better access for the disabled community and said their willingness to participate in a Local Improvement District project helps the City to achieve their goals.

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

**MOTION: Witherspoon/McKinney** adopting **Ordinance No. 2010-2728** approving the final assessments for the Columbia Drive (Group B) Local Improvement District Project, read by title only. (7 Yes/0 No) Motion carried.

2. Consider a motion adopting **Order No. 2010-0027** affirming the Planning Commission's denial of the Fred Meyer gas station conditional use permit/design review application.

TIME – 7:17 PM

Mayor Andrews called for any conflicts of interest, abstentions, ex parte contact, or objections to jurisdiction.

Councilor Rierson mentioned emails were received through his city email account from those not supportive of the Fred Meyer gas station project for the record.

Councilor Stephen McKinney also received emails and citizens' comments.

Mayor Andrews received emails and was contacted about the matter by citizens concerned for the need to allow free enterprise, the ambient light with the drive-in theater, and traffic within the neighborhood; but, he had no extended discussions and his decision will be based on record.

Councilor Wade Witherspoon received emails.

Mr. Terrence Mahr, City Attorney, asked if everyone received the emails about the same issues as stated by Mayor Andrews. All Council members did except Councilors Denise Bacon and Ryan Howard stated they received those emails. Councilor Marc Shelton said all Councilors were named in the same mass email. Councilor McKinney added the majority of the public comments he received were in favor of the Fred Meyer gas station for more competition of gas prices in Newberg. Councilor Bacon stated she does not remember what material was received in her packet vs. what may have been in her email inbox.

Mr. Mahr made the required legal statements for quasi-judicial hearings regarding process and criteria.

Mr. Wiltshire expressed his desire to speak on this matter although he had not filled out a public comment form to do so. Mayor Andrews said it would be okay for him to speak.

Mr. Barton Brierley presented the staff report including a PowerPoint visual aide (see official meeting packet for full report).

Discussions followed about concerns for the 99W driveway approach, the traffic flow patterns, use of public streets as part of traffic circulation patterns, increase traffic volume, traffic in the neighborhood adjacent to Fred Meyer, accounting for driver error and out of town drivers, and drivers cutting around the island on Springbrook Road. Staff addressed each of the concerns and answered questions, noting that several of the mentioned concerns were part of the reason the Planning Commission denied the application. Staff also mentioned fifteen additional letters were received in the last day and a half as well and the Council may need to decide on those letters as well.

Mayor Andrews asked if an applicant must meet all of the conditions to be approved. Staff replied the applicant does need to meet all conditions unless a statement of exception is given. In large-scale retail development, those criteria do not need to be satisfied if they meet the conditional use criteria. Mayor Andrews asked if all three conditional use criteria must be met and if this is true with all prior practice; staff replied yes to both.

Councilor Shelton wanted to ensure the other evidence and emails were also brought into the record.

Mayor Andrews asked about storm water safeguards and areas of separation for potential petroleum spillage and run off. Staff said there were manholes designed to separate oil from runoff before it enters the storm drain system.

Councilor Shelton asked if the gas station across from the proposed site is protecting the water ways in the same way. Staff was unsure of what system they had in place. Councilor Shelton asked if a major spill occurred, could it wash into same drain; staff replied it could.

Councilor Rierson asked which of the original design criteria were not met that triggered the Conditional Use Permit (CUP). Staff replied it had to do with the design criteria concerning windows and façade articulation.

Councilor McKinney spoke of Fred Meyer needing the exception because it was difficult to tell how to orient a canopy towards a street and asked if the city was holding Fred Meyer to a different standard than others. Staff replied they are holding to the criteria in place when the application was submitted.

Mayor Andrews opened the public testimony.

Mr. John Bridges, Attorney for the applicant, presented a history of applicant's background using a PowerPoint. He spoke of the benefits to allowing the gas station and the customers' expectations to use the discounts they receive on gas. He showed surrounding businesses with canopies being of compatible design, spoke of intentions to do more planting and have an obscuring fence to prevent light trespass, mentioned state of the art safe operating systems and two bio-swales for protection of the stormwater system, talked about working with the Oregon Department of Transportation (ODOT) to get access permits, and using different surfaces for stopping traffic for pedestrians and improving internal traffic flow as several examples of efforts made to improve the situation while adding the gas station. He said the proposal would create a functional shopping area, improving safety and environmental impacts with all needs being met in one place.

Mayor Andrews recessed for five minutes at 8:36 PM.

Proponents:

Mr. Edward Sullivan spoke of this already being before the Planning Commission and now the Council is being asked to come to a different decision than the one already made using the same evidence. He has three issues. The first being with transportation to a small site with fourteen pumps and no direct public access, only private access creating a pinch point for traffic flow through such a large site area; he felt there would be safety risks. He felt the use of the surrounding streets was contrary to city code and felt there was too much concentration on the internal site circulation with undercounted internal trips and unverified numbers; he did not feel they established safe, efficient, and adequate onsite circulation and said it would really make things worse. He said putting in pedestrian crosswalks will not mitigate the use or conflicts with pedestrians and felt they failed to prove pedestrians will be protected. He was concerned with impact on the neighborhood with use of city streets. He wondered if the facilities are adequate to handle the volume of users when adding the gas station. He said the site is nonconforming and does not meet current design standards. He said it is an ill-considered and unsafe design that does not meet code and felt Kroger should do better for this community. He asked the Council to uphold the Planning Commission decision and deny the application.

Mr. Larry Kimmel, Vice-President Bend Oil Co., stated this gas station would create no financial impact for him and his interest is as a spectator since Fred Meyer added a fuel facility in his town with one-thousand five-hundred (1,500) to one-thousand nine-hundred (1,900) visits to the canopy and twelve (12) to fifteen (15) gallons per vehicle a day on average. He spoke of the problem with stacking and did not feel the existing site could facilitate the possible volume of traffic.

Councilor McKinney asked what the population base was in Bend, Oregon. Mr. Kimmel said it is about eighty-thousand (80,000). Councilor McKinney said Newberg's population is only about twenty-three-thousand (23,000). Mr. Kimmel added that the traffic count in front of the Fred Meyer in Bend is lower than the traffic on 99W though.

Councilor Witherspoon asked if he lived in Newberg. Mr. Kimmel said he does not live here and does not represent any enterprise in Newberg; he was asked by colleague, Mr. George Johnston, to speak because of his knowledge of other Fred Meyer gas stations.

Mr. George Johnston said he once owned a gas station in Newberg which was torn down. He said Fred Meyer will give gas percentages but not actual numbers. He gave some estimates of daily trips and gallons served based on his experiences and said his real concerns were with the removal of parking and the need for two tanker loads of gas deliveries a day to the site needing to make wide turns at the Columbia and West Coast Bank area. He felt this alone would create a nightmare and said this would be an unsafe station with too many cars at the front entrance and to the store.

Mr. Brian Francis, owner of the 99W Drive-in Theater, stated his desire to see a photometric site study and a light study on the theater's screen before and after construction to see if it measures lighter because of ambient light. He spoke of the construction of the Coyote Homes building helping to block off ambient light from the car dealerships. His main concern was for light pollution impacting his viewers' enjoyment and wished to have a record for damage that may be caused due to increasing light from the gas station if it is built.

Councilor McKinney asked what is regularly done to block light on the screen. Mr. Francis said they plant trees to create buffer zones and other businesses have installed parking lights with lower illumination.

Mr. Samuel Farris said he lives in the neighborhood adjacent to Fred Meyer and has previously testified and submitted material. He is a proponent for the Planning Commission's denial of the CUP because of safety concerns and increased traffic; but, also because of additional noise. He felt there would be a reduction in the quality of living in that area as there are backyards only a few feet away from the Fred Meyer loading dock. He felt there would be increased traffic flow around the back side of the building with the gas station as drivers try to avoid the traffic out in front, increasing the noise of traffic for those homes. He was also concerned for livability with fuel tankers going by the houses while they are sleeping and living and for the risk of fuel spillage right in their back yards. He urged Council to support the Planning Commission for the safety, livability, and increased noise of the surrounding area.

Councilor Shelton asked when he purchased his home and if he was the first owner. Mr. Farris replied he was the first owner and he purchased the home four years ago.

Mr. Gary Bliss expressed concern for drainage and environmental impacts and argued the equipment was not "state of the art" because the use of an oil separator is 1960's technology, not 2010 technology. He said this does not prohibit hydrocarbons from getting into drainage system in any way. He spoke of placing vaults with chemicals that remove 75% of hydrocarbons as better solution. He said the two bio-swales are not designed to take mass spills and if there is an electronic failure of the devices; water with oils and hydrocarbons that flows through grasses and is sieved by swales are designed for less than two years of store. He wished to emphasize his prior testimony with this additional information.

Councilor Howard asked about his area of expertise. Mr. Bliss stated he was a licensed civil engineer in the State of Oregon and has been for forty-one years.

Undecided:

Mr. Wiltshire said he would like to see the emails discussed earlier included in the public record. He spoke of some of the opinions of both the proponents and opponents on certain elements of traffic and other issues to be inaccurate and expressed his disagreement with the Planning Director concerning traffic issues at the Safeway shopping center 4-way intersection; he has never found a back-up of traffic on 99W as reported. He said he has been to many shopping centers and said there have been no major accidents or pedestrian kills, so that argument is unfounded and the statistics do not support this. He said the addition of the service station can add jobs and is what the city needs as it embarks on an affordable housing conglomeration to help people find work in this economy. He said the Council should not follow the Planning Commission's decision and he supports reversing the denial.

Councilor McKinney asked what his area of expertise is and if he was offering opinions, not studies. Mr. Wiltshire said he is a retiree and versatile in many industries, he retired as a licensed real estate broker and loan officer and is offering his opinions only.

Mayor Andrews closed the public testimony and gave the applicant an opportunity for rebuttal.

Mr. Bridges clarified the percentages of rewards card users saying that 70% of the rewards card holders qualify for a \$0.10 discount and a 3% discount is still offered even if you do not have a rewards card. The gas station would also generate twelve to twenty jobs. He pointed out that the staff did review the application and at the Planning Commission meeting recommended approval because it met the CUP criteria; staff had no conflicts and said it was a good plan, but the Planning Commission made its own choice. He said that Fred Meyer has a vested interest to make pedestrians safe and has not had problems at this location and has other locations with gas stations without problems. He added this plan would include four aisles for cars to get gas from two ways and the Bend store location only has three aisles going one way; because of this and the fact it is a larger community the problem with queuing has occurred there. The Planning Commission did a through analysis of the surrounding area and showed how this would be compatible. Regarding the light issue, it cannot be known where the light comes from; it could be from the clouds or the moon reflecting ambient light and is out of their control. It has been calculated that the light will not reach past the property line though. As far as the trip through the neighborhood, there is no obligation to have a connection there at Brutscher Road and Fred Meyer has not necessity for it, so have it cut off if it is a concern. He announced the applicant would not be waiving their rights to submit further items and would like to take advantage of submitting additional written material after the record is closed.

Councilor Howard asked how drivers would be discouraged from going behind the Fred Meyer from the fueling station; Mr. Bridges said some sort of “no access” signage was expected to be used. He also asked about measures to prevent spillage; Mr. Bridges spoke of underground tanks with double walls and auto shut-off mechanisms along with fuel/water separators which are based on the relative weight of the materials.

Councilor Shelton asked about required parking spaces and if the removal of those designated along the fueling center would allow them to remain in code; staff replied the proposed plan with the parking space removal remains within code and added even more could be removed as they are only 75% full even at Christmas.

Councilor McKinney added the original intent from staff was a recommendation to the Planning Commission was to approve this fueling station because all criteria had been met.

Mr. Brierley noted additional written material was received today and Friday afternoon.

**MOTION: Rierson/Shelton** to accept the additional written testimony into the record. (6 Yes/1 No [Witherspoon]) Motion carried.

**MOTION: Shelton/McKinney** to have the City Attorney verify all emails received by the Councilors will be included into the record. (7 Yes/0 No) Motion carried.

Mr. Mahr made legal announcements and asked if the applicant wished to further address the record.

Mr. Bridges stated the applicant would like to use their right to address the closed record and to be allowed time to submit additional written material by noon on September 2, 2010. Deliberations will be held at the next City Council meeting on September 7, 2010.

## VIII. COUNCIL BUSINESS

TIME – 10:05 PM

Mr. Mahr discussed Council’s desires regarding filing an appeal on a recent court decision. Council did not wish to take further action until they received financial backing from the League of Oregon Cities.

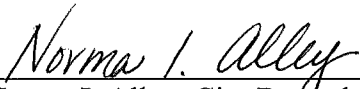
Councilor Shelton wished for staff to re-look at the parking and narrow street situation at the Sheridan Street from Meridian Street and College Street going east, especially at the intersection. Mr. Mahr suggested referring the situation to the Traffic Safety Commission.

Discussions were held briefly with the City Attorney regarding when to only note potential conflicts of interest and when to abstain.


## **IX. ADJOURNMENT**

The meeting adjourned at 10:30 PM.

**ADOPTED** by the Newberg City Council this 4<sup>th</sup> day of October, 2010.

  
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Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 7<sup>th</sup> day of October, 2010.

  
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Bob Andrews, Mayor