

# **Order No. 2010-0027**

**Attachments 1-11**

are available to download from the  
City's website at

<http://www.newbergoregon.gov/citycouncil/event/city-council-business-meeting-19>

or

[click here](#)

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  
AUGUST 16, 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 a **Sound Permit** for Newberg Friends Church Outdoor Music for Families and Community event on Saturday, August 21, 2010. (Pgs. 3-6)
2. Consider a motion approving **City Council Minutes** for June 21, 2010, and July 19, 2010. (Pgs. 7-18)

**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. (Pgs. 19-22)
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. (Pgs. 23-984)  
**(Quasi-Judicial Hearing)**

**VIII. COUNCIL BUSINESS**

**IX. ADJOURNMENT**

\*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.

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

### ORDERS:

**Order No. 2010-0027** finding that the conditional use permit/design review application for the proposed Fred Meyer gas station at 3300 Portland Road does not meet the applicable Newberg Development Code criteria, affirming Planning Commission Resolution 2010-262, and therefore denying the application.

### ORDINANCES:

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

*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: August 16, 2010**

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

**SUBJECT: Approve a sound permit for Newberg Friends Church for Outdoor Music for Families and Community event.**

Contact Person (Preparer) for this Motion: **Chris Bolek, Captain**

Dept.: Police

File No.:  
*(if applicable)*

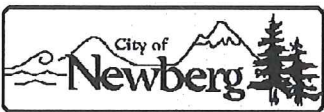
**RECOMMENDATION:** Adopt Request to approve a sound permit for Newberg Friends Church Outdoor Music for Families and Community event on Saturday, August 21, 2010.

**EXECUTIVE SUMMARY:**

1. The Outdoor Music for Families and Community event is scheduled for Saturday August 21, 2010 from 5:00 pm to 9:30 pm at the Newberg Friends Church, located at 307 S. College Street, Newberg, Oregon.
2. The City Manager is authorized to approve sound permits for events where the sound will be kept at 200 feet or less (Title IX: General Regulations, Chapter 95.39 (B) (2) and (3), Nuisances, permitted exceptions of the Newberg City Code. However, because sound from this event will travel more than 200 feet, we are seeking approval from the City Council.
3. Newberg Friends Church representative Bethany Lee has submitted a written request for the Permit as evidenced by her signature on the Sound Permit Application.
4. No alcoholic beverages will be served at this event and no fee will be charged for admittance to the event.
5. The Newberg Friends Church has met all the requirements for a sound permit. Seeing no reason to deny, the Newberg-Dundee Police Department recommends approval of the permit.

**FISCAL IMPACT:** None.

**STRATEGIC ASSESSMENT:** None.



Newberg-Dundee Police Department  
 401 E. 3<sup>rd</sup> Street  
 Newberg, Oregon 97132  
 (503) 537-1280

RECEIVED

JUL 22 2010

DANCE PERMIT APPLICATION

SOUND PERMIT APPLICATION

(Allow a minimum of 10 working days to process)

Fee: \$10.00 per dance

APPLICANT: Bethany Lee DRIVERS LICENSE # OR 5521726 DATE: 07/22/10

ADDRESS (street, city, zip code): 385 Cosmo St Lafayette, OR 97127

TELEPHONE: HOME 503-864-2284 BUSINESS: \_\_\_\_\_

EVENT SPONSOR: Newberg Friends Church

ADDRESS (street, city, zip code): 307 S College Newberg, OR 97132

EVENT LOCATION: 307 S. College Newberg, OR 97132

DATE OF EVENT: 08/21/10 DANCE: TIME: \_\_\_\_\_ to \_\_\_\_\_ SOUND: TIME: 5:00 to 9:30  
 pm pm

TYPE OR NATURE OF EVENT (please choose one of the following):

- Public Commercial or noncommercial even with audible sound OVER 200 ft. (requires City Council approval allow 30 working day minimum to process)
- Noncommercial event with audible sound of 200 ft. or less
- Public
- Private/Invitational

NUMBER OF PEOPLE EXPECTED: 75

**(All events are subject to Newberg Police Department Reserve personnel or other private security personnel)**

WILL A FEE BE CHARGED FOR ADMITTANCE TO THE EVENT? Yes  No

WILL ALCOHOLIC BEVERAGES BE PRESENT ON THE PREMISES? Yes  No

TYPE AND AMOUNT OF SECURITY PROVIDED FOR THE EVENT: \_\_\_\_\_

DESCRIBE PROVISIONS FOR THE CONTROL AND DISPENSING OF ALCOHOLIC BEVERAGES  
 (Will a licensed OLCC server be on site or will alcohol be dispensed without consumption controls and oversight?)  
Amplified music from lawn - family/community.

I have read and understand the rules contained on the back of this form. The statements and information provided above are in all respects true, complete and correct to the best of my knowledge and belief. Tentative plans must substantially conform to all standards, regulations and procedures officially adopted by the City of Newberg.

Bethany Lee  
 Applicant Signature

Bethany Lee  
 Property Owner Signature

**FOR CITY OF NEWBERG USE ONLY (comments & conditions)**

Police Services Request attached  Liquor Application attached  Insurance Certificate attached  OLCC Permit attached  
 Police NO CONDITIONS - ONCE Council Approved - Balde Date: 072910

City Manager  approved  denied Signature \_\_\_\_\_ Date: \_\_\_\_\_

City Council  approved  denied Mayor's Signature \_\_\_\_\_ Date: \_\_\_\_\_

## **REQUIREMENTS FOR PUBLIC AND INVITATIONAL DANCES Pursuant to City of Newberg Code 93**

- A license is required of any person or organization conducting or sponsoring any public or invitational dance in any building other than a private dwelling house.
- Minors under the age of 15 years, unaccompanied by a parent or legal guardian, are prohibited from attending any dance in a public dance hall within the City of Newberg.
- All dances shall be closed no later than 1:00 a.m., however, amplified sound must end at 10:00 p.m.
- The use of amplified sound requires an additional sound permit from the City of Newberg.
- All events having more than 100 persons must have a minimum of two Newberg-Dundee Police Reserve Officers or other security approved by the Chief of Police.

## **ADDITIONAL REQUIREMENTS FOR DANCES WHERE ALCOHOLIC BEVERAGES WILL BE SERVED**

- Pursuant to City of Newberg Code 93, a certificate of liability insurance in the amount of \$300,000 or greater is required for any event where alcoholic beverages are served.
- A State of Oregon Liquor License Application must be attached to this form (if required).
- All events where alcoholic beverages are served must have a minimum of two Newberg Police Reserve Officers. (Final number of Officers required will be determined by Newberg Police Department based on information provided in the application).
- Permits will be approved subject to a local records check, criminal history check, type of event and number of persons expected.

**Note: Permits are subject to revocation for violation of applicable City Ordinances and/or State Laws.**

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 16, 2010

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

**SUBJECT:** Approve the June 21, 2010, and July 19, 2010, City Council Meeting minutes.

Contact Person (Preparer) for this Motion: **Jennifer Nelson, Recording Secretary**

Dept.: **Administration**

File No.:  
*(if applicable)*

## RECOMMENDATION:

Approve the June 21, 2010, and July 19, 2010, City Council minutes for preservation and permanent retention in the City's official records.

## EXECUTIVE SUMMARY:

On June 21, 2010, and July 19, 2010, the City of Newberg City Council held public meetings. At those meetings, minutes were recorded in text.

## FISCAL IMPACT:

None.

## STRATEGIC ASSESSMENT:

None.



**CITY OF NEWBERG CITY COUNCIL MINUTES  
JUNE 21, 2010  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM  
401 EAST THIRD STREET**

Work Session was held prior to the meeting. A discussion on a Daytime Curfew occurred. No decisions were made.

**I. CALL MEETING TO ORDER**

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

**II. ROLL CALL**

Members

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

Staff

|          |   |                                      |
|----------|---|--------------------------------------|
| Present: | Daniel Danicic, City Manager                    | Terrence Mahr, City Attorney         |
|          | Barton Brierley, Planning and Building Director | Janelle Nordyke, Finance Director    |
|          | Howard Hamilton, Public Works Director          | Jennifer Nelson, Recording Secretary |
|          | David Beam, Economic Development Planner        |                                      |

Others

Present: Pat Haight, William Elder, and Hank Grum

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was not performed, as the American flag was not present.

**IV. CITY MANAGER'S REPORT**

Mr. Daniel Danicic, City Manager, spoke of upcoming items to be discussed at upcoming meetings, such as the League of Oregon Cities (LOC) legislative priorities on July 6, 2010, with a return response by July 16, 2010; Tier 2 of the Newberg-Dundee Bypass is open for public comment, a formal letter needs to be presented to the Oregon Department of Transportation (ODOT) in support or with concerns; Council Guidelines and Rules will be discussed on July 19, 2010, specifically regarding public testimony and the submission of written comments; a proposal for the Visitor Center funding will be discussed on July 6, 2010; and a review of the vision mission statements from one year ago will need to be scheduled with a Mid-Willamette Valley Council of Governments (MVCOG) representative facilitating to start towards completion in September.

**V. APPOINTMENTS**

Consider a motion to appoint Mr. Barry Horn for a term expiring June 30, 2014, and Mr. Michael Espana-McGeehon for a term expiring June 20, 2011, to the Library Board.

TIME – 7:16 PM

Mr. Barry Horn and Mr. Michael Espana-McGeehon, the two candidates for the Library Board positions each approached the Council and gave brief introductions.

Ms. Leah Griffith, Library Director, stated she has no say in the decisions made by the Library Board, but added the Library Board was very impressed with both candidates and recommended both for the vacant positions.

**MOTION: Rierson/Shelton** to ratify the Mayor's decision appointing Mr. Barry Horn for a term expiring June 30, 2014, and Mr. Michael Espana-McGeehon for a term expiring June 20, 2011, to the Library Board. (6 Yes/0 No/1 Vacant) Motion carried.

## VI. PUBLIC COMMENTS

Ms. Pat Haight spoke of her concerns for documents being taken out of the library at the May 17, 2010, meeting and she returned to ask if there has been an update from the City Manager.

Mr. Danicic responded that copies of written documents stopped being printed at the library a while ago and the transition began to have all of them available online. He spoke with the Library Director, who could not remember the last time someone asked to see these kinds of documents, but library computers were available to view them online. If a printed copy is desired, the individual can come to City Hall to make a request.

Councilor Rierson added the Library Director would also make exceptions for other resource computers to be used if others were booked and volunteer staff could help to find the information.

Ms. Haight argued that not all documents are on the computer. She understands the effort to get everything online, but until the system is ready the City is denying access to public records. She did not feel it was fair that she had to give her name just to see four pages of a public record.

Councilor Rierson said that all information will be available and he felt it was reasonable to expect a name to be given if a reply is expected.

## VII. CONSENT CALENDAR

1. Consider a motion adopting **Resolution No. 2010-2902** establishing a funded low income residential utility bill assistance program based upon information, outreach, water audits, plumbing rehabilitation, and direct utility bill credits.

*This item was pulled from the Consent Calendar and added to the agenda for discussion under Old Business.*

2. Consider a motion adopting **Resolution No. 2010-2906** amending the City of Newberg Employees Retirement Plan to authorize the Retirement Plan to make benefit payments to Al Blodgett in July 2009.

*This item was pulled from the Consent Calendar and added to the agenda for discussion under New Business.*

3. Consider a motion adopting **Resolution No. 2010-2907** amending the tax remedy benefit in the City of Newberg Employees Retirement Plan to conform to the amendment of the PERS tax remedy benefit in 2009 Oregon Laws chapter 868, section 1.
4. Consider a motion approve a **Sound Permit** for Newberg Friends Church Annual Outdoor Worship Service on July 11, 2010.

5. Consider a motion approving **City Council Minutes** for May 17, 2010.

**MOTION: Shelton/McKinney** approving the Consent Calendar including **Resolution No. 2010-2907** amending the tax remedy benefit in the City of Newberg Employees Retirement Plan to conform to the amendment of the PERS tax remedy benefit in 2009 Oregon Laws chapter 868, section 1; a Sound Permit for Newberg Friends Church Annual Outdoor Worship Service on July 11, 2010; and the City Council Minutes for May 17, 2010 as amended. (6 Yes/0 No/1 Vacant) Motion carried.

## VIII. 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 – 7:27 PM

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

Mr. Howard Hamilton, Public Works Director, presented the staff report (see official meeting packet for full report).

Councilor Bart Rierson asked for clarification from staff about the improvements being only for Group B. Staff directed their attention to page thirty-seven and pointed out which improvements were completed.

Mayor Andrews asked if the northwest corner of College Street and Columbia Drive were already improved with other development. Staff replied some improvements were part of the subdivision.

Councilor Marc Shelton asked about improvement with the Main Street improvement project being completed there. Staff replied that project is on hold because of the economic situation at this time, it is not included with the ODOT stimulus projects.

Mayor Andrews asked about the fiscal impact on the City's portion of the improvement costs and if there was a change from the initial commitment. Staff replied there was a little increase from the original commitment because of a need for a relocation of a water line, but staff did not have the original value on hand to compare those prices.

Mayor Andrews opened the public testimony.

Mr. William Elder said he lives on Main Street and is the President of the Trustees of the Presbyterian Church. He submitted a letter to the City Recorder and asked if the Council had been able to read it. It had not been received so he read it as part of his verbal testimony. His main concerns were that public works officials spoke of the costs being lower than estimated, but this was not reflected in the final assessment he received since it was one thousand dollars higher. Since he is accountable to the board of trustees, he needs to answer their questions about the improvement project, so he needs an explanation from the City first (see official meeting packet for full report).

Mayor Andrews closed the public testimony.

Mr. Hamilton further explained the water line was relocated because the plan did not show the correct depth. Once the street was opened, the water line had to be lowered, which was an additional cost. The work was all part of one project, which would not have been done if the improvement project had not come about. It was lowered just along the frontage of that property. Staff recommended approval of the final assessments.

Councilor Shelton stated there was a \$30,615.00 increase from the original estimate.

Mr. Danicic clarified with staff that letters were mailed to each individual with the estimated assessment.

Mr. Elder confirmed his receipt of the estimate but said his understanding that the bid came in less than estimated, which is what prompted him to write the letter.

Mr. Danicic suggested not adopting the final assessment this evening in order to allow staff to go back and provide answers to the participants and so the costs are thoroughly understood.

**MOTION: Witherspoon/McKinney** to postpone deliberation to July 19, 2010, on **Ordinance No. 2010-2728** and the final assessments for the Columbia Drive (Group B) Local Improvement District Project until staff researches and provides documentation to the increase; accepting the letter from Mr. Elder into the record and closing the record. (6 Yes/0 No/1 Vacant) Motion carried.

2. Consider a motion adopting **Resolution No. 2010-2898** adopting the 2010-11 Budget, and appropriating as recommended by the Budget Committee on May 25, 2010, and including election to participate in the State Revenue sharing Program.

TIME – 7:48 PM

Ms. Janelle Nordyke, Finance Director, presented the staff report (see official meeting packet for full report).

Discussions occurred concerning the percentage of the revenue sharing from previous years to this year as well as how discrepancies in the Animal Shelter Fund 24 between what was budgeted and what was spent; staff stated this will be accounted for through a Supplemental Budget in September. An assessment of property tax revenue is also anticipated for a 92% collection.

Mayor Andrews called for any conflicts of interest or abstentions; none appeared. He opened the public testimony.

Mr. Hank Grum asked about the numbers in the Animal Shelter Fund; staff explained the estimated expenditure was approximately \$255,000.00 and the remaining will be in the next fiscal year because the project will not get us that far in the design phase; all of this will be reconciled in a Supplemental Budget. Mr. Grum continued with questions about the old animal shelter property being deeded to Habitat for Humanity; he wondered what the value of the property was and if the City could really afford to donate that property when water rates are being raised to pay back the waste water treatment plant, which the animal shelter has to reimburse. Mr. Grum asked Mayor Andrews if the plan to donate the animal shelter property on Blaine Street to Habitat for Humanity was final.

Mayor Andrews referred the question to the City Manager; Mr. Danicic replied Habitat for Humanity would receive the property at no cost.

Mr. Grum asked if this meant the answer is yes and the City would donate the property.

Mayor Andrews said he had his answer.

Mr. Danicic added an assessment of the value of the property has not been performed at this point and the value of the land has not been figured into the animal shelter project at this time. Council agreed to direct staff to create a development agreement with Habitat for Humanity for an affordable housing project; this is not complete and will come to the Council for final approval. It was a policy decision to donate the land.

Ms. Haight stated that she has reviewed the budget book and noticed columns did not add up and many forwarded balances were not correct. She also spoke of effluent reuse and the cost of watering the golf course putting the City into debt by \$13,000,000.00. She felt more time needed to be taken to proof read the budget document because it is inefficient and not right.

Mayor Andrews closed the public testimony.

Mr. Terry Mahr, City Attorney, added that an assessment of the old animal shelter property has not been completed recently but there was one completed a few years ago and staff will look for that assessment.

Ms. Nordyke recommended adopting the Budget as amended.

Councilor Rierson asked staff to state for the record the results of the recent audit of the City's budget. Staff replied the fiscal year Budget ending in 2009 was prepared by an outside auditor as required by Oregon State law and they did not have any findings. There were no material misstatements or double negatives and we were in compliance. They gave an unqualified opinion, which is the highest you can get.

Councilor Stephen McKinney thanked staff for their hard work and stated he has received satisfactory answers to the questions he had. His only concerns remaining were with the denial of the Cost of Living Adjustment (COLA) for unrepresented employees.

**MOTION: Shelton/Witherspoon** adopting **Resolution No. 2010-2898** adopting the 2010-11 Budget, and appropriating as recommended by the Budget Committee on May 25, 2010, and including election to participate in the State Revenue Sharing Program as amended with the addition of a 50/50 percent allocation. (6 Yes/0 No/1 Vacant) Motion carried.

## IX. OLD BUSINESS

Consider a motion adopting **Resolution No. 2010-2902** establishing a funded low income residential utility bill assistance program based upon information, outreach, water audits, plumbing rehabilitation, and direct utility bill credits.

TIME – 8:28 PM

*This item was pulled from the Consent Calendar.*

Councilor Wade Witherspoon felt a more stringent procedure was needed to decide who is allocating the funds and how much; he felt more criteria was needed.

Councilor Rierson wondered how to direct staff to initiate a reevaluation mid-year of where the funds are expended and to give them to those who make the best use of the money.

**MOTION: Shelton/Witherspoon** adopting **Resolution No. 2010-2902** establishing a funded low income residential utility bill assistance program based upon information, outreach, water audits, plumbing rehabilitation, and direct utility bill credits.

Mayor Andrews asked if anyone can ask for a water audit. Staff replied the City has to pay for each audit and they are limiting the expense to a target group; anyone can ask, but only a qualified citizen can be recognized.

Councilor Rierson felt it would still be helpful to citizens that do not qualify. He said it is a beneficial tool for all citizens and if there is a way this can be facilitated by the City he would like to try. Staff replied the energy

trust does not provide water audits until an individual qualifies for an Investment Grade Audit (IGA) through the City.

Councilor McKinney stated he was reluctant to approve this because he happens to be one of those that falls through crack, but he is hoping in the future the City can fix this for those who are not going to be helped with this proposal tonight.

Mr. Danicic stated that staff has been directed to look with the CRRC into renters and others that do not qualify or fall into this program.

**VOTE:** To adopt **Resolution No. 2010-2902**. (6 Yes/0 No/1 Vacant) Motion carried.

**MOTION: Rierson/Witherspoon** to work with the CRRC to review agencies using the relief part of the program and look at the allocation of resources so agencies that are more effective at using the funds are given preference and to determine criteria for granting how the funds will be used and to expand the water audit program to include all water users. (6 Yes/0 No/1 Vacant) Motion carried.

## **X. NEW BUSINESS**

1. Consider a motion approving **Resolution No. 2010-2908** supporting the submission of a grant application to the State of Oregon to fund sidewalk improvements along College Street. The application would be submitted under ODOT's Bicycle and Pedestrian Grant Program.

TIME – 8:45 PM

Mr. David Beam, Economic Development Planner, presented the staff report (see official meeting packet for full report).

Discussions occurred about the sidewalk improvement locations and if contiguous sidewalk would be provided, the ability to acquire needed property, the width of the road in certain areas, and safety for bicycle and pedestrian traffic.

Councilor Rierson suggested the City Manager look into identifying areas with a narrow right-of-way and contact the property owners to convince them to deed the right-of-way to the City as a way to improve the value of their property with the incentive of a free sidewalk built with grant money. Mr. Danicic asked if Council was comfortable with the expenditure of the funds to complete this survey.

Councilor Shelton thought the costs could be lowered by using the City's own surveyor.

Councilor Rierson felt it would be a wise investment.

Mr. Danicic recalled a consultant was hired about seven years ago; he will have staff review this and prepare a report by completing the adjustments internally for an estimate.

**MOTION: Rierson/Bacon** approving **Resolution No. 2010-2908** supporting the submission of a grant application to the State of Oregon to fund sidewalk improvements along College Street. The application would be submitted under ODOT's Bicycle and Pedestrian Grant Program. (6 Yes/0 No/1 Vacant) Motion carried.

2. Consider a motion adopting **Resolution No. 2010-2906** amending the City of Newberg Employees Retirement Plan to authorize the Retirement Plan to make benefit payments to Al Blodgett in July 2009.

TIME – 8:59 PM

*This item was pulled from the Consent Calendar and added to the agenda for discussion under New Business.*

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

Discussion occurred to make sure this only addressed the overpayment made to Mr. Al Blodgett, and has no effect on the city other than to correct the error. It is a one time only adjustment to keep the City in compliance. There were concerns a precedence was being set, the City Attorney stated this was not setting a policy and is not the way the City conducts business; the record states that this is only to correct an administrative error.

**MOTION: Shelton/Witherspoon** approving **Resolution No. 2010-2906** amending the City of Newberg Employees Retirement Plan to authorize the Retirement Plan to make benefit payments to Al Blodgett in July 2009 to correct an administrative error. (6 Yes/0 No/1 Vacant) Motion carried.

## **XI. COUNCIL BUSINESS**

TIME – 9:09 PM

Mr. Danicic presented the District No. 6 vacancy rankings in order to select the top candidates for interviews.

**MOTION: Witherspoon/Shelton** to call the top five ranked candidates back for an interview at the June 28, 2010, Special Council Meeting including Ryan Howard, Ray Waller, Ernie Amundson, Jr., Dale Farris, and Robert Fitzner. (6 Yes/0 No/1 Vacant) Motion carried.

Councilor Rierson spoke of the next meeting with the school board and the importance of configuring the room to show an atmosphere of partnership regarding the daytime curfew issue. Discussions followed about past arguments and the benefits of this as a tool for the police department.

Mayor Andrews recessed for five minutes at 9:33 PM.

## **XII. EXECUTIVE SESSION**

Executive Session pursuant to ORS 192.660(2)(I) relating to performance review of the city attorney.

City Council convened into Executive Session at 9:37 PM. No decisions were made.

## **XIII. ADJOURNMENT**

The meeting adjourned at 10:13 PM.

**ADOPTED** by the Newberg City Council this 19<sup>th</sup> day of July, 2010.

Norm \_\_\_\_\_ a I. Alley, City Recorder

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

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

**CITY OF NEWBERG CITY COUNCIL MINUTES  
JULY 19, 2010  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM  
401 EAST THIRD STREET**

An Executive Session pursuant to ORS 192.660(2)(h) was held during the Work Session to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. No decisions were made.

**I. CALL MEETING TO ORDER**

Mayor Bob Andrews called the meeting to order at 7:29 PM.

**II. ROLL CALL**

Members

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

Staff

Present: Terrence Mahr, City Attorney Larry Fain, Senior Engineer/CIP Manager  
Dain Eichel, Acting Public Works Director Norma Alley, City Recorder

Others

Present: Pat Haight and Hank Grum Jennifer Nelson, Recording Secretary

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**IV. CITY MANAGER'S REPORT**

Mr. Terrence Mahr, City Attorney, replied the City Manager will be back tomorrow and tonight's agenda was intended to be light because he was not going to be here.

**V. PUBLIC COMMENTS**

Ms. Pat Haight was concerned about the recent advertisement to replace the Public Works Director and the fact that it was not required the applicant live in Newberg; she asked what the logic is behind that.

Mr. Mahr stated the City Manger hires the Public Works Director and not the Council and in the past it was a requirement that department heads live within the city, but that is no longer a requirement.

Ms. Haight also asked about the funding to maintain the streets the City is accepting jurisdiction over in Resolution No. 2010-2913. She asked about the \$77,000.00 being given to the City by the County, wondering if it was a loan, and how they can accept the responsibility of maintenance on more roads when there is no money to maintain the current ones.

Mayor Andrews replied the County is given the \$77,493.00 to the City as payment for not accepting responsibility for the roads, it is not a loan. The acceptance of maintenance is for future repairs, none are needed currently.



Ms. Haight also wanted to know more about the 2<sup>nd</sup> Street project and the change order in Resolution No. 2010-2914. She spoke of the streets being torn up for a month now and the inconvenience for all the residents living in that area; she felt this was not planned properly if there have to be two change orders.

Mr. Larry Fain, Senior Engineer/CIP Manager, explained there were challenges with the project because of an abundance of underground utilities, particularly with some high pressure existing gas lines that interfered with the project and had to be dealt with in immediate manner. Even though the lines were located and marked on the surface, but it was difficult to determine the exact elevation of the pipes; location estimates are not always completely accurate and this change in cost had to be accounted for.

Councilor Marc Shelton noted they are still under the original budgeted amount even with the change order.

Ms. Haight still felt there was a lack of communication regarding this project and felt the City should be doing a better job of informing the public of why the project is taking so long.

Councilor Bart Rierson spoke of the largest cost increase being because of the sidewalks put in on south side and asked if staff could do a press release to offer an explanation and ease frustrations.

## VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2010-2913** accepting jurisdiction over Sandoz Road and a portion of Springbrook Road.
2. Consider a motion approving **Resolution No. 2010-2914** authorizing the City Manager to execute 2<sup>nd</sup> Street Improvement Project contract change order #2 to increase the contract price to \$457,121.85.
3. Consider a motion approving **City Council Minutes** for June 7, 2010.

*The City Council Minutes for June 21, 2010, were removed from the Consent Calendar to address changes requested by a citizen, Mr. Hank Grum.*

**MOTION: Rierson/Shelton** approving the Consent Calendar including **Resolution No. 2010-2913** accepting jurisdiction over Sandoz Road and a portion of Springbrook Road; **Resolution No. 2010-2914** authorizing the City Manager to execute 2<sup>nd</sup> Street Improvement Project contract change order #2 to increase the contract price to \$457,121.85; and the City Council Minutes for June 7, 2010. (7 Yes/0 No) Motion carried.

## VII. PUBLIC HEARING

Consider a motion to continue **Ordinance No. 2010-2728** approving the final assessments for the Columbia Drive (Group B) Local Improvement District until August 16, 2010.

TIME – 7:50 PM

Mr. Fain presented the staff report requesting a postponement of the ordinance until August 16, 2010, in order to address some issues with the City Manager (see official meeting packet for full report).

**MOTION: McKinney/Witherspoon** to continue **Ordinance No. 2010-2728** approving the final assessments for the Columbia Drive (Group B) Local Improvement District until August 16, 2010. (7 Yes/0 No) Motion carried.

## VIII. COUNCIL BUSINESS

TIME – 7:51 PM

Ms. Norma Alley, City Recorder, gave updates on the League of Oregon Cities (LOC) Annual Conference and spoke about applying for scholarships and room reservations. She said the signed Bypass options letter also went out in the mail today and distributed worksheets for Council Compensation to be checked and signed.

Councilor Shelton asked about budget meetings; staff replied they do not qualify as compensated meeting according to state law.

Councilor Rierson spoke about the Animal Shelter action plan not being completed in time for the Old Fashioned Festival and wished to follow up with the City Manager regarding the pursuit of right of ways for sidewalks similar to the Columbia Drive at College Street area for other areas in the city were future projects could be completed with or without grant funds.

Mr. Mahr discussed and reviewed possible changes to the Council Guidelines & Rules regarding the submittal of written testimony and late submissions; multiple readings of action items with substantial changes to printed material; limited vs. public forum; the process of electing Planning Commission and Traffic Safety Commission members and for replacing City Council vacancies; establishing tie-breakers; adoption and standardizing of hearing formats; and evaluations of the City Manager, City Attorney, and Municipal Judge.

## IX. ADJOURNMENT

The meeting adjourned at 8:42 PM.

**ADOPTED** by the Newberg City Council this 16<sup>th</sup> day of August, 2010.

Norm \_\_\_\_\_ a I. Alley, City Recorder

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

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

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# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: August 16, 2010**

Order \_\_\_\_ Ordinance XX Resolution \_\_\_\_ Motion \_\_\_\_ Information \_\_\_\_  
 No. No. 2010-2728 No.

**SUBJECT: An Ordinance approving the final assessments for the Columbia Drive (Group B) Local Improvement District Project.**

Contact Person (Preparer) for this Ordinance: **Dain Eichel, Interim PW Director**

Dept.: **Public Works Department**

File No.:  
*(if applicable)*

**HEARING TYPE:**             **LEGISLATIVE**             **QUASI-JUDICIAL**

**RECOMMENDATION:**

Adopt **Ordinance No. 2010-2728** approving the final assessments for the Columbia Drive (Group B) Local Improvement District Project.

**EXECUTIVE SUMMARY:**

On January 7, 2008, City Council Ordinance No. 2008-2687 was adopted creating the Columbia Drive Local Improvement District (LID) Group B, establishing the estimated assessments to the benefitted properties, and providing that the final assessments shall be made at the time of completion of utility improvements. The Columbia Drive LID Project has now been completed and staff has prepared final assessments.

Notice of the City Council public hearing and a copy of the final assessments were mailed to the owners of each benefitted property. After considering any and all objections and/or comments on the final assessments, the Council shall authorize the City Manager, in accordance with City Code Chapter 36, to have these final assessments entered into the docket of City liens and the Yamhill County Deed Records as needed.

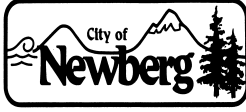
|                              | Tax Lot #3218AD6801 | Tax Lot #3218AD6800 | Tax Lot #3218AA3600 |
|------------------------------|---------------------|---------------------|---------------------|
| Initial estimated assessment | \$46,316.00         | \$84,881.00         | \$39,581.00         |
| Final assessment             | \$41,433.34         | \$75,930.57         | \$35,413.89         |

**FISCAL IMPACT:**

The total project cost was \$214,038.69. The City contributed \$61,260.89 which was budgeted in our 08/09 and 09/10 Capital Projects budgets (line items 18-5150.702155 and 04-5150.717717). The property owners will pay for the remainder of this project.

**STRATEGIC ASSESSMENT:**

Group B of this LID includes the undeveloped lots on the east end of Columbia Drive. These property owners petitioned the City to consider an LID to improve their frontage, including the frontage of the church on the corner of Columbia Drive and College Street.



**ORDINANCE No. 2010-2728**

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**AN ORDINANCE APPROVING THE FINAL ASSESSMENTS FOR THE COLUMBIA DRIVE LOCAL IMPROVEMENT DISTRICT (GROUP B) PROJECT**

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**RECITALS:**

1. On January 7, 2008, City Council Ordinance No. 2008-2687 was passed creating the Columbia Drive Local Improvement District (LID) Group B. The LID boundary is shown in Exhibit "A". Exhibit "A" is hereby attached and by this reference incorporated.
2. Bids were solicited and the project was completed.
3. Notice of the Council public hearing and a copy of the final assessments were mailed to the owners of each benefited property.
4. The City Council held a public hearing on June 21, 2010, to receive and consider objections to the final assessments. The final assessments are shown in the attached Exhibit "B". Exhibit "B" is hereby attached and by this reference incorporated.

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

The City Council does hereby authorize the City Manager to have these final assessments entered into the docket of City liens and the Yamhill County Deed Records as needed.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: September 16, 2010.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 16<sup>th</sup> day of August 2010, by the following votes:    **AYE:**            **NAY:**            **ABSENT:**            **ABSTAIN:**

\_\_\_\_\_  
Norma Alley, City Recorder

**ATTEST** by the Mayor this 19<sup>th</sup> day of August 2010.

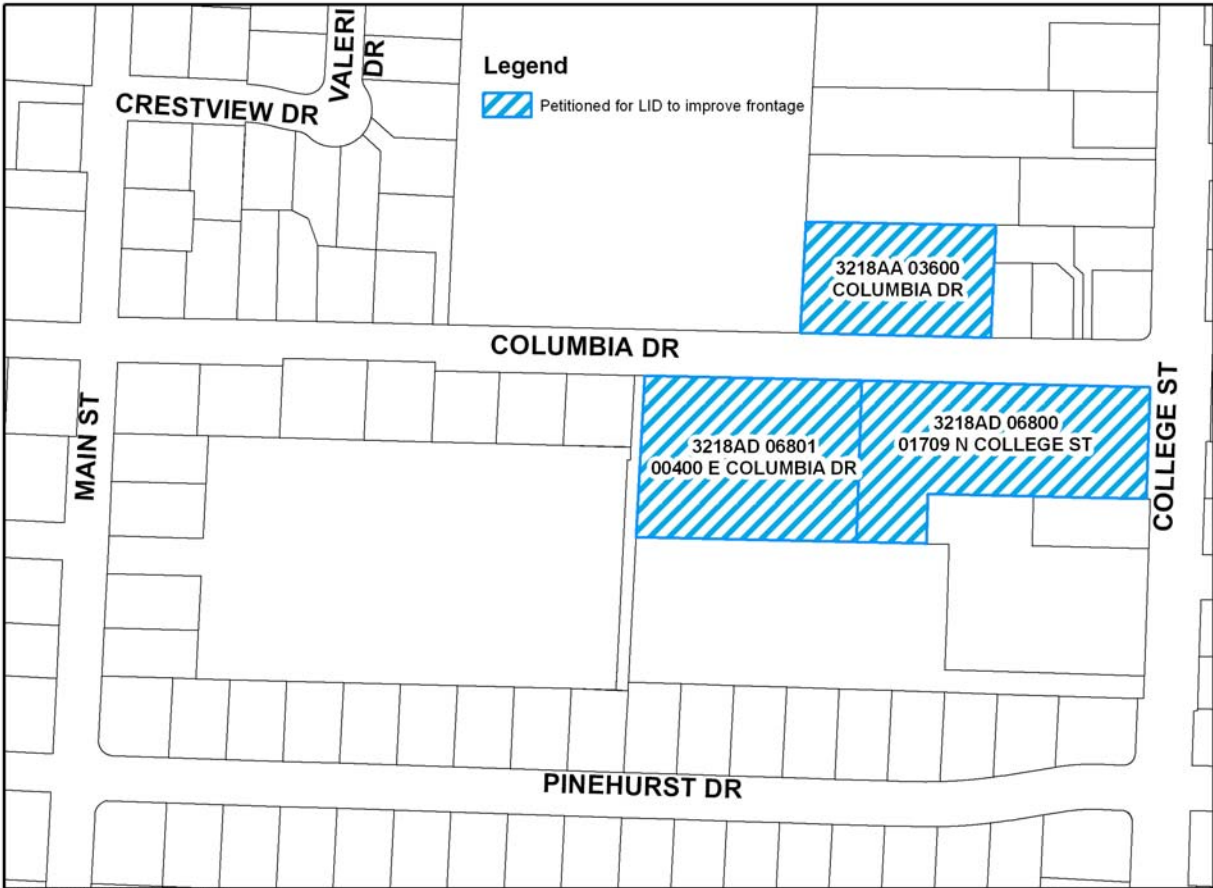
\_\_\_\_\_  
Bob Andrews, Mayor

**LEGISLATIVE HISTORY**

By and through \_\_\_\_\_ Committee at \_\_\_ / \_\_\_ /200x meeting. Or,  X  None.

**EXHIBIT "A"**  
**TO ORDINANCE NO. 2010-2728**

**COLUMBIA DRIVE  
LOCAL IMPROVEMENT DISTRICT  
GROUP B PARCELS**



Last Update: Monday, May 24, 2010  
File: P:\GIS\_Engcolumbia\_lid\_map.mxd

**CITY OF NEWBERG  
PUBLIC WORKS DEPARTMENT  
COLUMBIA DRIVE LID PROJECT  
FINAL PROJECT COSTS**

| Tax Lot #   | Frontage (feet) | % of Local Total \$ |
|-------------|-----------------|---------------------|
| #3218AD6801 | 290             | 27.12%              |
| #3218AD6800 | 531.47          | 49.70%              |
| #3218AA3600 | 247.83          | 23.18%              |
| Total:      | 1,069.30        | 100.00%             |

|   | \$ Paid by City    | Local Total \$     | \$ for Tax Lot #3218AD6801 | \$ for Tax Lot #3218AD6800 | \$ for Tax Lot #3218AA3600 |
|---|--------------------|--------------------|----------------------------|----------------------------|----------------------------|
| <b>SCHEDULE 1 GENERAL</b>                 |                    |                    |                            |                            |                            |
| SCHEDULE 1 SUBTOTAL =                     | \$30,625.00        |                    |                            |                            |                            |
| <b>SCHEDULE 2 ROADWAY IMPROVEMENTS</b>    |                    |                    |                            |                            |                            |
| SCHEDULE 2 SUBTOTAL =                     | \$96,916.96        |                    |                            |                            |                            |
| <b>SCHEDULE 3 STORMWATER IMPROVEMENTS</b> |                    |                    |                            |                            |                            |
| SCHEDULE 3 SUBTOTAL =                     | \$27,306.50        |                    |                            |                            |                            |
| <b>SCHEDULE 4 CHANGE ORDER #1</b>         |                    |                    |                            |                            |                            |
| SCHEDULE 4 SUBTOTAL =                     | \$19,248.50        |                    |                            |                            |                            |
| <b>SUBTOTAL =</b>                         | <b>\$15,312.50</b> | <b>\$15,312.50</b> | <b>\$4,152.75</b>          | <b>\$7,610.31</b>          | <b>\$3,549.44</b>          |
| <b>SUBTOTAL =</b>                         | <b>\$11,789.93</b> | <b>\$85,127.03</b> | <b>\$23,086.45</b>         | <b>\$42,308.13</b>         | <b>\$19,732.44</b>         |
| <b>SUBTOTAL =</b>                         | <b>\$0.00</b>      | <b>\$27,306.50</b> | <b>\$7,405.52</b>          | <b>\$13,571.33</b>         | <b>\$6,329.65</b>          |
| <b>SUBTOTAL =</b>                         | <b>\$7,274.00</b>  | <b>\$11,974.50</b> | <b>\$3,247.48</b>          | <b>\$5,951.33</b>          | <b>\$2,775.69</b>          |

|                     |              |
|---------------------|--------------|
| CONSTRUCTION TOTAL= | \$174,096.96 |
| STAFF TIME TOTAL=   | \$39,941.73  |
| TOTAL PROJECT =     | \$214,038.69 |

|              |             |              |             |             |             |
|--------------|-------------|--------------|-------------|-------------|-------------|
| CONST. =     | \$34,376.43 | \$139,720.53 | \$37,892.21 | \$69,441.10 | \$32,387.22 |
| STAFF TIME = | \$26,884.46 | \$13,057.27  | \$3,541.13  | \$6,489.46  | \$3,026.68  |
| PROJECT =    | \$61,260.89 | \$152,777.80 | \$41,433.34 | \$75,930.57 | \$35,413.89 |

|  |             |             |             |
|--|-------------|-------------|-------------|
| PAYMENT BY LID PARTICIPANTS (including staff time) = | \$41,433.34 | \$75,930.57 | \$35,413.89 |
|--|-------------|-------------|-------------|

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: August 16, 2010**

Order XX Ordinance \_\_\_ Resolution \_\_\_ Motion \_\_\_ Information \_\_\_  
 No. **2010-0027** No. No.

**SUBJECT: Appeal by the applicant of the Planning Commission denial of the Fred Meyer gas station proposal.**

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

Dept.: **Planning and Building**

File No.: **CUP-08-004/DR2-08-036**  
(if applicable)

**HEARING TYPE:**     LEGISLATIVE                       **QUASI-JUDICIAL**

**RECOMMENDATION:**

Adopt **Order No. 2010-0027**, which affirms Planning Commission Resolution 2010-262 denying the Fred Meyer gas station conditional use permit/design review application.

**EXECUTIVE SUMMARY:**

Process: Fred Meyer submitted a conditional use permit/design review application on January 9, 2009 to add a gas station to the western part of the site, near the garden center. The Planning Commission held a hearing on February 12, 2009, during which questions arose about whether the Oregon Department of Transportation would require other changes to the site. The hearing was continued to an undetermined date to allow the applicant time to work with ODOT, and the applicant and others time to submit additional information. The applicant obtained access permits from ODOT and submitted additional information. The Planning Commission held the continued hearing on May 13, 2010, continued it to June 10, 2010, and tentatively decided to deny the application pending revised findings. The Planning Commission adopted Resolution 2010-262 on July 8, 2010 with findings denying the conditional use permit/design review application. The applicant appealed the decision to the City Council.

Issues & Planning Commission decision: Many public comments were submitted about the potential negative impacts of the project: the impact on the 99W Drive-In from light trespass, which could make the screen hard to see; the impact of the increase in traffic on site and in surrounding neighborhoods; and the impact of increased traffic at the Springbrook/99W intersection. The applicant was able to obtain access permits from ODOT with only minor changes required to the existing 99W accesses, and also submitted a lighting model showing that the impact from the project lights would meet code and not negatively impact the drive-in. They also offered to take additional steps to control light from existing lights on site. The Planning Commission found that the proposal, with conditions, could adequately address the light trespass issue, the ODOT access issues, the Springbrook/99W intersection impact, and most of the design review criteria. The Planning Commission found that the proposal did not meet the criteria for efficient and adequate on-site circulation because it would significantly increase the number of cars driving past the main store entrance, make using the main entrance less safe for pedestrians, increase the back-up of cars along the main drive aisle, and cause drivers to use the surrounding public streets as part of the parking lot circulation pattern in order to move around the site. The Planning Commissioners found that the proposal did not meet the conditional use permit criteria because the on-site and off-site traffic circulation would have a detrimental impact on the livability of abutting properties and the surrounding neighborhood, and would not provide a functional shopping environment. The Commissioners also noted an existing problem at the right-in/ right-out driveway on Springbrook Road, where some drivers currently either make an illegal left turn to go into this entrance or use the parking area of Crossroads Plaza to turn around and access Fred Meyer. This



is an existing problem that will get worse if the gas station is approved. The Planning Commission therefore adopted Resolution 2010-262 with findings that the proposal did not meet all of the applicable criteria and was consequently denied.

Appeal by the applicant: The applicant filed an appeal application on July 21, 2010, less than two weeks after the date of the decision and before the appeal deadline. The applicant is appealing all of the Planning Commission's findings that the proposed gas station does not meet the criteria: the design review criterion for efficient and adequate on-site circulation and the conditional use permit criteria for minimum impact on livability of surrounding properties, a functional shopping environment, and the requirement that the development be consistent with the code. The applicant believes there is already substantial evidence that the fuel station meets these criteria as proposed and/or the applicant can address the Planning Commission's concerns with additional mitigation. The applicant believes that the Planning Commission's findings on those criteria were flawed and did not have substantial evidence to support the findings.

Staff recommendation: The City Council can affirm, reverse, or remand the Planning Commission's decision. The appeal application does not contain additional information to consider. Staff thinks that the Planning Commission properly identified criteria that they thought were not met and identified evidence in their findings to support their decision. Staff does not think the Planning Commission erred in their decision, and therefore recommends that the City Council affirm the Planning Commission's decision by adopting Order 2010-0027.

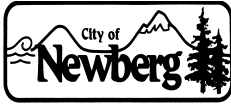
**FISCAL IMPACT:** No fiscal impact. Denial would not result in any new revenues or expenses.

**STRATEGIC ASSESSMENT:** The proposal would be a type of in-fill commercial development. In general, Newberg should be supporting in-fill development as an efficient use of resources as long as it does not result in overall detrimental impacts.

Attachments:

Order 2010-0027 with:

- Exhibit "A": Findings
  - Exhibit "B": Overall site plan
  - Exhibit "C": Fuel facility site plan
  - Exhibit "D": West 99W access drive
1. Public comments received during appeal comment period
  2. Appeal application of 7/21/10 & noticing information
  3. Notice of decision 7/12/10 & mailing lists
  4. Planning Commission Resolution 2010-262 (as adopted 7/8/10). Exhibits can be viewed on the City's website at <http://www.newbergoregon.gov/sites/default/files/Planning%20Commission%20Resolution%202010-262.pdf>:
    - Exhibit "A": Findings (by reference)
    - Exhibit "B": Overall site plan (by reference)
    - Exhibit "C": Fuel Facility site plan (by reference)
    - Exhibit "D": West 99W access drive (by reference)
  5. Minutes from Planning Commission hearings: 7/8, 6/10, 5/13, & 2/12/10.
  6. Staff report to Planning Commission 6/10/10
  7. Public comments received prior to Planning Commission decision
  8. Applicant's 5/27/10 submittal
  9. Applicant's 5/13/10 presentation
  10. Applicant's 3/10/10 submittal
  11. CUP-08-004/DR2-08-036 application
  12. Newberg Development Code can be viewed on the City's website at <http://www.newbergoregon.gov/planning/development-code> and Comprehensive Plan can be viewed on the City's website at <http://www.newbergoregon.gov/planning/comprehensive-plan> (by reference)



## ORDER No. 2010-0027

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**AN ORDER FINDING THAT THE CONDITIONAL USE PERMIT/DESIGN REVIEW APPLICATION FOR THE PROPOSED FRED MEYER GAS STATION AT 3300 PORTLAND ROAD DOES NOT MEET THE APPLICABLE NEWBERG DEVELOPMENT CODE CRITERIA, AFFIRMING PLANNING COMMISSION RESOLUTION 2010-262, AND THEREFORE DENYING THE APPLICATION**

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### RECITALS:

1. On January 9, 2009 an application was submitted by Fred Meyer Stores, Inc. requesting a conditional use permit and design review approval for a new gas station at the Fred Meyer property located at 3300 Portland Road. On February 12, 2009, a hearing was held by the Newberg Planning Commission and public testimony was accepted. The hearing was continued to February 26, 2009. This was later extended to May 4, 2009 and then to an undetermined date at the applicant's request to allow the applicant time to work with ODOT and allow the applicant and others time to submit additional information. The applicant submitted additional information on March 10, 2010 and the hearing was finally rescheduled for May 13, 2010.
2. On May 13, 2010, the Newberg Planning Commission held a public hearing, accepted public testimony, closed public testimony, and continued the hearing at the point of deliberation to June 10, 2010. They left the record open for 7 days for additional written testimony to be submitted into the record, and gave the applicant 7 days to respond to the additional testimony. On June 10, 2010, the Planning Commission continued the public hearing, deliberated, and decided that the application did not meet some of the applicable criteria, primarily due to problems with on-site traffic and circulation on neighborhood streets. The Planning Commission tentatively decided to deny the application pending revised findings.
3. On July 8, 2010 the Newberg Planning Commission adopted Resolution 2010-262, finding that the conditional use permit/design review application does not meet the applicable Newberg Development Code criteria, and therefore denying the application.
4. On July 21, 2010 the applicant appealed the Planning Commission decision to the City Council.
5. After proper notice, the Newberg City Council held a hearing on August 16, 2010 to consider the appeal application. After the staff report and public testimony, the City Council finds that the proposal does not meet the applicable Newberg Development Code criteria and affirms the Planning Commission decision, therefore denying the application.

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

1. The City Council finds that the conditional use permit/design review application does not meet the applicable Newberg Development Code criteria and adopts the findings, which are attached hereto as Exhibit “A”. Exhibits “B”, “C” and “D” are included for supplemental information. Exhibits “A”, “B”, “C” and “D” are hereby adopted and by this reference incorporated.
2. The City Council finds that the Planning Commission properly identified criteria and evidence, and that they did not err in their decision. The Council therefore affirms the Planning Commission decision denying the gas station application.

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: August 17, 2010.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 16<sup>th</sup> day of August, 2010.

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

**ATTEST** by the Mayor this 19<sup>th</sup> day of August, 2010.

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

Exhibits:

- “A”: Findings
- “B”: Overall site plan
- “C”: Fuel facility site plan
- “D”: West 99W access drive

**QUASI-JUDICIAL HISTORY**

By and through the Planning Commission Committee at the 7/8/2010 meeting.  
*(committee name)* *(date)*

**EXHIBIT “A”: CONDITIONAL USE PERMIT/DESIGN REVIEW FINDINGS**  
**CUP-08-004/DR2-08-036**  
**Fred Meyer gas station**

- I. Process:** One public comment said that the application should be considered void because state law ORS 227.178(5) requires a decision to be made within 365 days (120 day deadline for a decision, plus a maximum of 245 days of extensions), and the application is older than that. The comment also said that in *Stoloff v. City of Portland*, the Land Use Board of Appeals (LUBA) found that ORS227.178(5) renders void any decisions made after the 365 days has expired.

**Excerpt:**

**ORS 227.178 Final action on certain applications required within 120 days; procedure; exceptions; refund of fees.** (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(5) The 120-day period set in subsection (1) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

**Finding:** ORS 227.178(6) states that the 120-day period applies only to decisions wholly within the authority and control of the governing body of the city. The Planning Commission decided at the first hearing that they did not want to make a decision on the conditional use permit until they knew what ODOT’s decision on access permits would be. The applicant waived the 120 day rule at that time to allow time to apply to ODOT for access permits and return to the Planning Commission. This decision by the Planning Commission meant that the timing of the final decision was no longer under their control, and that the 120 day rule should no longer apply to the decision.

The applicant has also noted that the intent of the 120 day rule was to protect the applicant against delay by a public decision-making body. ORS 227.179 says that if the city does not take action within the required time then the applicant can file a petition for a writ of mandamus in the circuit court and request approval of the application. The applicant did not request an extension of the 120 day decision deadline in this case. They instead waived their right to the 120 day deadline. This does not make the application void.

The *Stoloff v. City of Portland* LUBA case does not actually apply to this situation. LUBA did not find in this case that ORS 227.178(5) rendered void any decision made after the 365 days has expired. LUBA noted that they did not need to address that argument because the case was under county law, and ORS 227.178 only applies to cities, not counties.

**II. Design Review Criteria That Apply - Newberg Development Code § 151.194:**

- (1) **Design compatibility.** *The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.*

**Finding:** The project will consist of a simple canopy over seven fuel dispensers, with a small cashier's kiosk. The canopy will be 18 feet tall, flat-roofed, and 43 feet wide by 126 feet long (5,418 square feet). The cashier's kiosk is a small simple box structure (96 square feet). The canopy and kiosk will be painted beige and light brown, which are similar to colors used on the existing main store building. The existing Fred Meyer store is a large simple box structure with a flat roof. It has a flat masonry wall along most of the western side and a garden center at the southwest corner. The bank building north of the proposed site has a modern design, with a similar simple canopy structure over its drive-up ATMs. The applicant has provided site plan and elevation drawings of the proposed gas station, which is sufficient information to decide if the proposed design is compatible with nearby buildings. The City does not require renderings or models for proposed new buildings. As proposed, the Fred Meyer gas station canopy structure is compatible with structures in the immediate vicinity. The structure has been designed to match the existing Fred Meyer building in style and color. Storm run-off from the roofs will be required to be directed into the storm drain system as required by building codes. Exterior lights will be directed onto the site so as to not adversely affect the adjoining properties. The overall design will blend with the surrounding area by the use of landscaping buffering and screening.

- (2) ***Parking and on-site circulation. Parking areas shall meet the requirements of § 151.610. Parking studies may be required to determine if adequate parking and circulation are provided for uses not specifically identified in § 151.610. Provisions shall be made to provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. Parking areas shall be designed so that vehicles can efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.***

**Finding:**

The proposed gas station project does not meet this criterion because it does not provide efficient and adequate on-site circulation, and does use public streets as part of the parking lot circulation pattern. The proposed on-site circulation is not efficient and adequate because it will result in significant vehicle/pedestrian conflicts and safety problems at the northern store entrance. Many gas station customers would enter from Brutscher Street or come from the northern and eastern parking areas, and would drive to the gas station by the most direct route past the store's main entrance. This would make an already very busy area even more difficult for pedestrians to cross. This would result in safety hazards. Also, vehicles stopping for pedestrians will cause backups in the main drive aisle and in the parking areas. This is not efficient or adequate.

The proposal will also use public streets as part of the parking lot circulation pattern. Drivers heading toward downtown Newberg on Highway 99W only can access the gas station site via Brutscher Street. Since this is a significant distance from the gas station, it is probable that many will miss this intersection, and turn left onto Springbrook Road toward the station. The driveway on Springbrook Road is restricted to right-in/right-out use, which means that drivers heading south on Springbrook who want to reach the gas station will need to turn east on Hayes and north on Brutscher, thereby using public streets as part of the on-site circulation. Some gas station customers could attempt U-turns on Springbrook Road, or use other driveways on Springbrook as turnarounds so as to access the driveway northbound on Springbrook. Again, this uses public streets as part of the circulation pattern, and would not be efficient and adequate.

The proposal does provide an adequate number of parking spaces. The site includes the main Fred Meyer store, the proposed fueling facility, an in-store bank, a beauty shop, a print shop, and a key

shop. The parking requirements are calculated below:

| <b>USE (square feet)</b>                         | <b>PARKING STANDARD</b> | <b>SPACES REQUIRED</b> |
|--|-------------------------|------------------------|
| Existing F.M. store (143,181 s.f.)               | 1 space per 300 s.f.    | 477.3                  |
| Fueling facility kiosk (96 s.f.)                 | 1 space per 300 s.f.    | 0.32                   |
| Bank (736 s.f.)                                  | 1 space per 400 s.f.    | 1.84                   |
| Beauty shop (1,500 s.f.)                         | 1 space per 75 s.f.     | 20                     |
| Key shop (288 s.f.)                              | 1 space per 300 s.f.    | 0.96                   |
| Print shop (1,500 s.f.)                          | 1 space per 300 s.f.    | 5                      |
|  |                         |                        |
| <b>Total required parking</b>                    |                         | <b>506</b>             |
| <b>Parking available after project completed</b> |                         | <b>666</b>             |
| <b>Surplus parking</b>                           |                         | <b>160</b>             |

The minimum number of required parking spaces for the site is 506. The proposed fueling facility and southeast pedestrian walkway would remove approximately 60 spaces, leaving a total of 666 spaces. The site would still have 160 more parking spaces than required. The reduction of surplus parking would be a positive step and make more efficient use of the site.

The surplus parking spaces near the garden center are lightly used by customers most of the year. One question that was asked at the February hearing was how the fueling facility would affect the garden center during the times when the garden center was active (typically spring and summer weekends). Staff has observed that the garden center is currently open on the weekends, and a recent visit on a Saturday afternoon showed that approx. 1/3 of the nearby parking was being used. While this was not a thorough parking study, it did not appear that adding a fueling facility near the garden center would create a parking conflict. The applicant does not expect parking conflicts to occur during peak garden center use.

One concern raised at the hearing was that there were many storage containers on the south and west portions of the site. Fred Meyer has offered to remove all storage containers from the site. Storage containers should not be placed in the parking areas, even though the applicant has surplus parking. Storage containers can reasonably be left for a time in the loading area south of the building, and a condition could be made to only allow storage containers in the loading area.

The site could be modified to provide efficient entrances and exits from the public street. As part of this project, the applicant would widen the radius of the west 99W entrance to better accommodate large vehicles, and widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive. These changes would improve the flow of vehicle traffic turning right at the access drive to reach the gas station, and keep traffic from backing up onto 99W.

The applicant supplied a drawing showing the travel path of a semi-truck (type WB-50, approx. 50 feet long) using the redesigned west access drive. The consultant also furnished a drawing showing how fuel delivery vehicles would access the site from Springbrook Road, and commented that while the delivery truck is at the fuel facility, only the two southernmost pumps will be blocked. ODOT reviewed the revised access plan and fuel delivery vehicle drawings in the March 10, 2010 submittal. The Roadway Engineer's comments on the Fred Meyer right-in approach road

improvement schematic are:

*The proposed WB-50 should be adequate for the fuel delivery design vehicle.*

*The consultant's off-tracking design looks adequate.*

*ODOT will still need to ensure that all work within ODOT right-of-way meets ODOT standards and engineering plans will need to be review and approved by ODOT, therefore the recommended condition remains the same.*

- *Prior to the insurance of a building permit for construction, the applicant shall provide evidence that all improvements required by the Oregon Department of Transportation are constructed and provide evidence of valid approach road permits to serve the new proposed use have been obtained from the Oregon Department of Transportation.*

The applicant has proposed changes to the on-site pedestrian circulation. The current pedestrian walkway from the NW corner of the Fred Meyer store to the U.S. Bank building is a long diagonal path. The diagonal walkway has been changed to two shorter walkways at right angles to vehicle traffic. The proposed gas station will substantially increase the amount of traffic going past the front of the Fred Meyer store, however, and will decrease pedestrian safety near the main entrance to the store.

**(3) Setbacks and general requirements. The proposal shall comply with §§ 151.535 through 151.540 dealing with height restrictions and public access; and §§ 151.550 through 151.568 dealing with setbacks, coverage, vision clearance, and yard requirements.**

**Exterior Lighting: 151.588 REQUIREMENTS.**

**(A) General requirements: All zoning districts.**

**(1) Low level light fixtures include exterior lights which are installed between ground level and six feet tall. Low level light fixtures are considered non-intrusive and are unrestricted by this code.**

**(2) Medium level light fixtures include exterior lights which are installed between six feet and 15 feet above ground level. Medium level light fixtures must either comply with the shielding requirements of division (B) below, or the applicant shall show that light trespass from a property has been designed not to exceed 0.5 foot-candle at the property line.**

**(3) High level light fixtures include exterior lights which are installed 15 feet or more above ground level. High level light fixtures must comply with the shielding requirements of (B) below, and light trespass from a property may not to exceed 0.5 foot-candle at the property line.**

**(B) Table of shielding requirements**

| <i>Fixture Lamp Type</i>   | <i>Shielded</i>                                 |
|--|---|
| <i>Low/High Pressure Sodium, Mercury Vapor, Metal Halide and Fluorescent over 50 watts</i> | <i>Fully</i>                                    |
| <i>Incandescent over 160 watts</i>   | <i>Fully</i>                                    |
| <i>Incandescent 160 watts or less</i>  | <i>None</i>                                     |
| <i>Fossil fuel</i>   | <i>None</i>                                     |
| <i>Any light source of 50 watts or less</i>  | <i>None</i>                                     |
| <i>Other sources</i>   | <i>As approved by § <a href="#">151.587</a></i> |

*Note: Incandescent includes tungsten-halogen (quartz) lamps*

**Finding:** The proposed canopy is 18 feet tall, setback over 70 feet from any property line, and does not create any corner vision clearance problems. The proposed freestanding sign on Springbrook

Road is close to the vision clearance area; the applicant will need to confirm at the building permit stage that the sign is outside the vision clearance setback. The C-2 zone does not have a set height limit, and only requires a 10 foot setback from the front property line. The site has public access. As conditioned, the proposed project can meet the height restrictions and public access requirements, setback, coverage, vision clearance and yard requirements of the Code.

The applicant's photometric plan shows that the proposed lighting for the fueling facility can meet the light trespass standard (maximum 0.5 foot-candles) at the property lines. The canopy lights are all located under the canopy, and do not project on the sides of the canopy. The western side of the canopy only has an internally illuminated logo sign. The underside canopy lights are required to be fully shielded, and therefore should all be recessed lights. The recessed lights will control light more effectively than the flat Encore or movable Focus light fixtures. The applicant has also offered to add shields to the existing wall-mounted lights above the garden center, which will further reduce the light impact.

Many public comments were concerned about the impact of increased ambient light on the drive-in theater to the west. This is a concern that the City shares, and is an example of why light-trespass standards were added to the Development Code in the past. The applicant will remove two tall parking lot lighting standards from the site if the gas station is built, and will provide recessed lighting under the canopy to ensure that it does not exceed the light trespass standard. As conditioned, this may actually reduced the amount of ambient light that currently comes from the site. One other light source that should be considered are the headlights of vehicles using the gas station. Some of these headlights will point west in the general direction of the theater. This impact can be controlled by a dense landscape buffer along the western edge of the site. The existing western landscape buffer is quite dense and largely meets the need for a light barrier. There are a few gaps in the buffer that should be filled in with additional evergreen trees. The applicant has agreed to add a fence along the western side of the gas station in the landscape buffer to block headlights (approx. 5-6 feet tall). The applicant will also need to ensure that construction lights are not pointed towards the drive-in during times when movies will be shown. If all of the previously mentioned conditions are required then a light study done in the field does not seem necessary. It should be noted that the proposed development site is approximately 950 feet from the drive-in screen, which will further diminish any light impact from the site. As conditioned, the proposed fueling facility can meet the light trespass standard and control the impact of lights from the facility.

**(4) *Landscaping requirements. The proposal shall comply with § 151.580 dealing with landscape requirements and landscape screening.***

**Finding:** The proposed fueling facility would remove some parking lot landscape islands and reconfigure a few others. The overall amount of landscaping coverage on site would decrease slightly to 15.47%. This exceeds the 15% minimum landscape requirement. As noted above, the western landscape buffer is in good condition and will be an effective buffer against headlights once the few gaps are filled in. The gaps without evergreen trees should be planted with evergreens similar to the existing trees. The applicant intends to plant the reconfigured parking lot landscape islands with trees and shrubs similar to the existing landscape islands in the parking lot. The landscape plan should include replacement trees along the reconfigured western 99W access drive. The existing parking lot islands elsewhere on the site should be inspected; any missing or damaged parking lot trees should be replaced. The code also requires that a parking or loading area must have at least 25 square feet of landscaping per parking space. As proposed, the site will have 666 parking spaces, which requires at



least 16,650 square feet of landscaping. The site has approx. 116,970 square feet of landscaping overall, and over 23,000 square feet of landscaping in the parking area, which exceeds the standard. As conditioned, the landscape plan and parking lot can comply with § 151.580. All areas subject to the final design review plan and not otherwise improved are landscaped.

**(5) Signs. Signs shall comply with § 151.590 et seq. dealing with signs.**

**Finding:** The existing freestanding sign on Portland Road is just under 20 feet tall, setback 25 feet from the front property line, and has 119 square feet of signage. This sign meets the height and setback requirements and is allowed to have up to 200 square feet of signage because the site is larger than 10 acres and has over 200 feet of frontage on Portland Road. The applicant is proposing to remove one panel from the sign and replace it with price signs for the fueling station. This will meet the code standards as long as the sign remains under 200 square feet in area.

The applicant is also proposing a new freestanding sign on Springbrook Road that will be 9'6" tall, setback approximately 12 feet from the front property line, and have 40 square feet of signage. The applicant will need to move the sign location slightly so that it is setback at least 15 feet from the front property line, and verify that it meets the vision clearance setback at the corner.

The canopy will have attached signs on each side. There will be a 26 square foot logo and Fred Meyer sign on each side, and an additional 60 square foot sign on the east side facing the store. The proposed signs are under the maximum size for the canopy (43 square feet on the short sides, and 126 square feet on the long sides) and are allowed.

As conditioned, the proposed signage can comply with § 151.590.

**(6) Manufactured home, mobile home and RV parks. Manufactured home, mobile home, and recreational vehicle parks shall also comply with the standards listed in §§ 151.655 et seq., in addition to the other criteria listed in this section.**

**Finding:** Not applicable - not a manufactured home, mobile home or RV park.

**(7) Zoning district compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in §§ 151.280 through 151.438. Through this site review process, the Director may make a determination that a use is determined to be similar to those listed in the applicable zoning district, if it is not already specifically listed. In this case, the Director shall make a finding that the use shall not have any different or more detrimental effects upon the adjoining neighborhood area than those specifically listed.**

**Finding:** The site is zoned C-2 Community Commercial. A service station is a permitted use in the C-2 zone.

**(8) Sub-district compliance. Properties located within sub-districts shall comply with the provisions of those sub-districts located in §§ 151.450 through 151.526.**

**Finding:** A portion of the Fred Meyer site has a Stream Corridor overlay on it. The Stream Corridor is west of the proposed fueling facility, and no development will take place within the overlay area. Erosion control measures will be required as necessary to ensure that demolition and construction will not create any short-term impacts on the stream. Following compliance with design review conditions, the project meets the provisions of §§ 151.450 through 151.526.

- 9) *Alternative circulation, roadway frontage improvements and utility improvements. Where applicable, new developments shall provide for access for vehicles and pedestrians to adjacent properties which are currently developed or will be developed in the future. This may be accomplished through the provision of local public streets or private access and utility easements. At the time of development of a parcel, provisions shall be made to develop the adjacent street frontage in accordance with city street standards and the standards contained in the transportation plan. At the discretion of the city, these improvements may be deferred through use of a deferred improvement agreement or other form of security.*

**Finding:** The proposed development would be within the existing Fred Meyer site and would use existing driveway accesses and drive aisles. The applicant has applied for and obtained access permits from ODOT for the project. One requirement was to modify the western 99W access drive (a right-in only access). The modifications would widen the radius of the entrance to better accommodate large vehicles, and would widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive. No modifications were required by ODOT at the eastern right-in/right-out 99W access drive.

No other major roadway, driveway, or utility improvements are proposed. As conditioned, the proposed development can meet the standards contained within the Transportation Plan for frontage improvements. All utilities, including telephone, cable and power, are required to be placed underground.

The Fire Department commented that the construction site cannot hinder fire access to the main building. New fire hydrants may be necessary.

The existing parking lot catch basins discharge stormwater into a vegetated bioswale located west of the parking lot. Public Works commented that all on-site utilities are to be private, constructed per the plumbing code. Provide an oil-water separator for the under canopy drainage area that is in use at all times. The utility plan does not show any water lines, but one will be needed for the water/air service area. This water line must be a private water line. If a fire hydrant is required then the hydrant and line to it will be public, and will need a public utility easement.

- (10) *Traffic study improvements. If a traffic study is required, improvements identified in the traffic study shall be implemented as required by the Director.*

**Finding:** Some public comments have said that the City is relying solely on the applicant's traffic study to identify impacts. That is incorrect. The Development Code requires projects that will generate over 40 trips in the p.m. peak hour to supply a traffic study by a professional traffic engineer. The city Planning and Engineering divisions then review the traffic study as part of their review of the proposal and decide whether they think the traffic study's analysis and conclusions are reasonable. Staff also uses the input from ODOT to determine if the traffic study results are reasonable. ODOT focuses primarily on impacts to state highways, but their input provides another valuable perspective on the project and its overall traffic impacts. The ultimate findings and conditions are based on the facts that have been judged reasonable and relevant, based on input from the applicant, the public, ODOT, and staff.

A traffic impact study was prepared for the proposed development by Group Mackenzie, a

professional engineering firm. ODOT required that the applicant change how they performed the peak hour factor analysis, queuing analysis, and TIS capacity analysis. Group Mackenzie revised the traffic study and submitted it to the city and ODOT. The study reviewed the impact of the fuel facility development on the driveways and surrounding intersections. The study also looked at the crash history in the area, completed a site distance review, and considered the queuing impact at the entrances. The review projected the traffic impact in 2009 as well as in 2025, both with and without the bypass. The study also reviewed the on-site circulation, and recommended that the traffic controls in the drive aisle north of the fuel facility be changed to an all-way stop, as mentioned above, which will both better control vehicle traffic and improve the safety of pedestrian crossings.

The study concluded that the site distances at the existing driveways exceeded AASHTO (American Association of State and Highway Transportation Officials) standards and did not require any improvements. The crash history of nearby intersections and the queuing analysis also did not indicate a need for any improvements. The queuing analysis indicates that vehicles on Springbrook may spill back to the Fred Meyer access under existing conditions, and this would continue with the addition of fuel facility trips. This does not pose a safety problem, as the Fred Meyer driveway is limited to right turns. Vehicles entering Springbrook from the Fred Meyer driveway would simply need to wait for the queue to clear before entering the roadway. This only occurs occasionally during peak times.

The trip generation study used standard ITE (Institute of Transportation Engineers) trip generation estimates, which assume that approximately 20% of the trips to the fuel facility would be internal trips or shared trips. This is probably a conservative estimate, as Fred Meyer surveys at other stores have shown that approx. 70% of the fuel customers also had Reward cards and had shopped at the store at least once in the previous month. The actual percentage of shared or internal trips may be as high as 30 or 40%. Using the conservative 20% internal trip assumption, the study estimated that the fuel facility would generate 74 new trips in the PM peak hour. These trips were assigned to nearby intersections and their impact was analyzed. The study concluded that the impact was minor and no mitigating improvements were required to meet city standards for public streets. The nearby intersections will meet City level of service standards in 2009. The Springbrook and Brutscher intersections on 99W, however, are above ODOT's desired v/c (volume to capacity ratio) of 0.75 already, and the addition of traffic from this development has some impact on intersection capacity (increases the v/c ratio by 0.01). ODOT required the applicant to propose mitigation to address the v/c increase in the revised traffic study.

The study determined that modifying the existing Springbrook lane configurations could improve the v/c ratio from 0.84 to 0.81 but would create other issues. The overall intersection performance would not improve, and the study did not recommend making these changes. Any significant mitigation would require widening and redesign of the intersection. ODOT commented that they did not support the mitigation as it would not improve the overall intersection operation, and agreed that any significant mitigation would require widening and redesign of this intersection. The study found that the 99W/Brutscher intersection could be mitigated to reduce the v/c ratio from 0.86 to 0.80 by switching the signal from a northbound/southbound common green to split phases, and changing the northbound lane configurations to a left turn only and shared left/through/right turn. ODOT has commented that they do not support the mitigation, due to expected increase in property damage crashes caused by shared left/through/right lanes and increased delays on 99W due to split-phasing the traffic lights.

ODOT commented that if the city places a condition requiring the developer to contribute towards future improvements at the Springbrook/99W intersection then that will satisfy ODOT's concerns regarding impacts from this development at those intersections. If the proposal is approved then the city will require a traffic impact fee for future improvements at the Springbrook/99W intersection, as ODOT requested, based on the impact from this development. The traffic study estimated that this project would add 45 trips during the PM peak hour to the Springbrook/99W intersection. This is approximately 8/10 of 1% of the total trips through the intersection in the peak hour. The estimated cost of a future intersection improvement is \$1,500,000.00, so the applicant's impact fee would be \$12,400.00. These funds would be used to either improve the intersection directly or indirectly by providing alternate improvements that would reduce volumes through the intersection.

The applicant has applied for and obtained access permits from ODOT for the project. One requirement was to modify the western 99W access drive (a right-in only access). The modifications would widen the radius of the entrance to better accommodate large vehicles, and would widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive. ODOT's specific comments in the access permit were:

1. The two lane right-in only approach shall be constructed so that it is long enough to ensure that traffic going to the fueling station in the right lane is not blocked by traffic turning left to go to the store. If necessary to correct any problems caused by queuing, an all-way stop shall be added to the main aisle later if it is needed.
2. The radius of the right-in approach shall be constructed in such a way that it can accommodate large vehicles without being damaged. Fred Meyer shall be required to obtain ODOT's approval for a design vehicle and approach design.

ODOT's access permit approval letter noted that two conditions would apply:

- If traffic backs up to the property line at any time, ODOT reserves the right to review approval of the right-in only approach.
- If the crash history changes due to the weaving pattern between Springbrook and the right-in only approach, ODOT reserves the right to review approval of the right-in only approach.

ODOT did not require any modifications at the eastern right-in/right-out 99W access drive. The access permit included one condition:

1. If the eastbound traffic queue backing up from the signal at Brutscher begins to block the right-in right-out approach, ODOT reserves the right to review approval of the approach and to require changes.

In the March 10, 2010 submittal the traffic engineer supplied a drawing showing the travel path of a semi-truck (type WB-50, approx. 50 feet long) using the redesigned west access drive. The consultant also furnished a drawing showing how fuel delivery vehicles would access the site from Springbrook Road, and commented that while the delivery truck is at the fuel facility, only the two southernmost pumps will be blocked. Fred Meyer has committed to limiting fuel deliveries to off-peak times. The traffic engineer also addressed comments from Robert Bernstein about the impact at the Springbrook/99W intersection and the utilization factors in the analysis. The traffic engineer summarized that the utilization factors are appropriate, consistent with ODOT standards, and that the project will add only slight delays at the intersection, not significant congestion. This seems to be a reasonable conclusion, as ODOT tends to take a conservative approach to traffic analysis and it seems unlikely that the addition of 74 new trips in the p.m. peak hour, distributed across all of the Fred Meyer accesses, could create significant additional congestion at the Springbrook/99W intersection.

ODOT reviewed the March 10, 2010 submittal, including the revised access plan and fuel delivery vehicle drawings. The Roadway Engineer's comments on the Fred Meyer right-in approach road improvement schematic are:

*The proposed WB-50 should be adequate for the fuel delivery design vehicle.*

*The consultant's off-tracking design looks adequate.*

*ODOT will still need to ensure that all work within ODOT right-of-way meets ODOT standards and engineering plans will need to be review and approved by ODOT, therefore the recommended condition remains the same.*

- *Prior to the insurance of a building permit for construction, the applicant shall provide evidence that all improvements required by the Oregon Department of Transportation are constructed and provide evidence of valid approach road permits to serve the new proposed use have been obtained from the Oregon Department of Transportation.*

The proposed modifications to the western access involve changes in the public right-of-way, which is under ODOT's jurisdiction, and on private property, which is under the City's jurisdiction. In order to ensure coordination with both ODOT and the City the condition above should be modified to state that ODOT permits for the western access drive modifications must be obtained before the City will issue a building permit for the gas station and other on-site improvements, and that the ODOT and City approved modifications must be completed before the City will approve occupancy of the gas station.

The applicant also submitted an analysis of the traffic impacts if the gas station was located on the eastern side of Fred Meyer, near the bottle return. The net result was a decrease in traffic at the Springbrook and 99W driveways, and an increase in traffic at the Brutscher driveways. This would also put the gas station farther from the drive-in and reduce the potential light impact. Staff would not recommend approving the eastern location, however, due to the increase in traffic at a busy part of the Fred Meyer site, and the potential for negative impacts on the residential properties to the south.

Several public comments were concerned about the proposal increasing the amount of traffic in the residential neighborhood south of the site and making it more dangerous for children playing outside. One neighbor collected information on traffic traveling through the townhouses southeast of the Fred Meyer store (Little Oak Street area), and stated that most of the traffic was due to Fred Meyer, and not due to neighborhood residents. It should be noted that the streets in this neighborhood are public streets that anyone may travel on, and that the neighborhood is not a cul-de-sac. When the townhouses were built the streets were already in place and connected from Hayes Street through to the existing Fred Meyer exit as an access to Brutscher Street. It would not be reasonable to expect that only neighborhood residents will use the streets, and it would also not be reasonable to make changes that would add substantial through traffic to the neighborhood streets. The traffic study determined that this proposal would only generate a small increase in trips to the Fred Meyer site, which would be split between all of the Fred Meyer driveways. The traffic engineer also thought that most trips to the fuel facility from the residential area south of the site would travel west on Hayes Street and then north on Springbrook, which would be faster than driving through the Fred Meyer site to reach the fuel facility. If traffic could be discouraged from cutting through behind Fred Meyer then that would probably reduce the amount of traffic that cuts through the neighborhood. One condition of this project should be a requirement to post the loading area behind the store "No through traffic – delivery trucks only." The 5/27/10 follow-up letter from Group Mackenzie estimated that one-half of

one percent of the trips generated by the existing Fred Meyer store cut through the Little Oak neighborhood. Applying this percentage to the additional trips from the fuel facility would only add one trip through the neighborhood during the p.m. peak. Even if Group Mackenzie's estimates are too low, and the traffic is four times larger than they estimated, then that would still be only 4 additional through trips in the neighborhood in the p.m. peak hour, which is not a substantial increase.

### III. § 151.196 ADDITIONAL REQUIREMENTS FOR DEVELOPMENT IN THE C-2 ZONING DISTRICT.

*The purpose of this section is to ensure that development in the C-2 Zoning District is designed to promote pedestrian and bicycle uses and improve aesthetics and compatibility. An applicant for a new development or redevelopment within the C-2 Zoning District, which is subject to the Site Design Review process, must demonstrate that the following site and building design elements have been incorporated into the design of the project. Exceptions to these additional development requirements may be granted if the requirements would result in construction that is out of character with surrounding development. Applicants for redevelopment of a designated landmark will not be subject to these additional requirements, except for requirements regarding parking and service drives.*

*(A) Building entrances. Each building on a lot shall have a primary pedestrian entrance oriented to the primary street. "Oriented to a street" means that the building entrance faces the street or is connected to the street by a direct and convenient pathway not exceeding 60 feet in length. "Primary street" means the street which has the highest estimated volume of pedestrian traffic. This requirement does not apply to buildings that are located behind other buildings on the lot such that 50% or more of their building frontage is blocked by the front building, as measured by sight lines that are perpendicular to the street right-of-way. Such rear buildings shall have a primary entrance oriented to an internal sidewalk or pedestrian pathway system which is internally connected and provides a connection to the primary street.*

**Finding:** The fueling facility is an unusual addition in that it does not have a pedestrian entrance. There is a pedestrian connection to the main store via internal walkways to Springbrook Road and Portland Road. Almost all customers to the fueling facility, however, will naturally be in vehicles. The only pedestrians on the site will typically be the station attendants. The applicant needs an exception to this requirement. The main Fred Meyer building does have a main entrance that faces Portland Road.

*(B) Parking and service drives. No off-street parking or service drives shall be placed within the required front yard setback. No off-street parking shall be placed between the front property line of the primary street, as defined in division (A) above, and the building. This requirement does not apply to buildings that are located behind other buildings on the lot such that 50% or more of their building frontage is blocked by the front building, as measured by sight lines that are perpendicular to the street right-of-way.*

**Finding:** The existing site does have parking between the west side of the main building and Springbrook Road. This fueling facility will remove some of this parking and bring the site closer to meeting this standard.

*(C) Exceptions. The review body may approve exceptions to the above provided there are no reasonable alternatives that would allow access to or parking on the lot.*

**Finding:** The applicant has requested an exception to the pedestrian entrance requirement, as noted above. The exception should be approved because there is no reasonable alternative to the proposed design.

*(D) Building mass. Where building elevations are oriented to the street in conformance with (A) above, architectural features such as windows, pedestrian entrances, building off-sets, projections, detailing, change in materials or similar features, shall be used to break up and articulate large building surfaces and volumes.*

**Finding:** The proposed building is a canopy and has very little mass. No architectural detailing or off-sets are needed to break up the mass of the building.

*(E) Corner lots. Buildings on corner lots shall have their primary entrance oriented to the street corner, or within 40 feet of the street corner (i.e., as measured from the lot corner). In this case, the street corner shall provide an extra-wide sidewalk or plaza area with landscaping, seating or other pedestrian amenities. The building corner shall provide architectural detailing or beveling to add visual interest to the corner.*

**Finding:** This standard does not apply, as the fueling facility is not near a corner. The corner of the lot at Springbrook/99W is dedicated to a stormwater detention pond.

*(F) Pedestrian-scale building entrances. Recessed entries, canopies, and/or similar features shall be used at the entries to buildings in order to create a pedestrian-scale.*

**Finding:** The building does not have a pedestrian entrance, so this standard does not apply.

*(G) Windows.*

*(1) On commercial building facades facing a public street, windows shall comprise a minimum of 40% of the ground floor facade. For large-scale buildings and developments meeting the standards under subsection (H) below, windows shall comprise a minimum of 20% of the ground floor facade.*

*(2) For large-scale buildings and developments meeting the standards under subsection (H) below, 50% of all required window area shall allow view into an active space. An active space is defined as any area within a building that is used for shopping, dining, office space, and so forth. Merchandise display windows with displays that change at least semi-annually shall be considered an active space. Examples of areas that are considered non-active spaces are storage and mechanical equipment areas, and windows that are obscured by shelving or material affixed to the window.*

**Finding:** The canopy does not have any walls and therefore cannot have any windows. The cashier's kiosk is a small building that is not open to the public. It does have windows, and its interior is an active space. The area under the canopy can also be considered an active space. The nature of the structure does not allow the canopy to meet this window standard, but it meets the intent of not

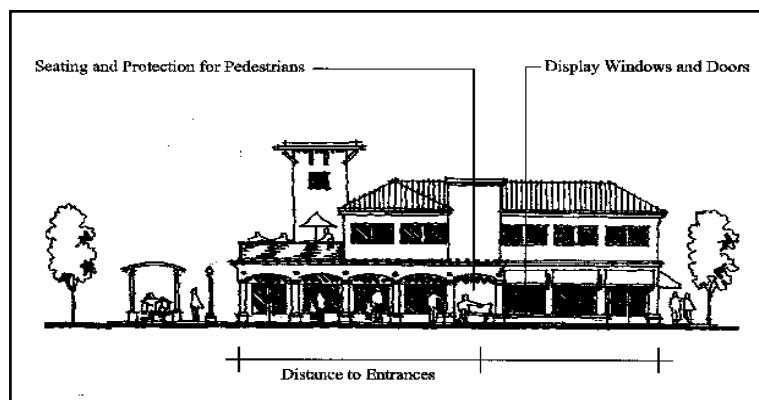
allowing a large blank wall on a structure. The fueling facility helps the main building come closer to meeting this standard by adding activity to a side of the building that is largely a blank wall.

*(H) Design of large-scale buildings and developments. All buildings on a development site shall conform to the design standards included under § 151.196 (H) where the total square footage of one commercial building exceeds 30,000 square feet of total ground floor area or all commercial buildings exceed 50,000 square feet of total ground floor area. Deviations from these standards may be approved, where appropriate, through the conditional use permit process.*

*(1) Façade articulation. Incorporate changes in building direction (i.e., articulation), and divide large masses into varying heights and sizes. Such changes may include building offsets; projections; changes in elevation or horizontal direction; sheltering roofs; terraces; a distinct pattern of divisions in surface materials; and use of windows, screening trees; small-scale lighting (e.g., wall-mounted lighting); and similar features. At least five of the following elements shall be included along each 100 feet of building frontage facing a street:*

- (a) A building offset or projection of at least 6 feet depth and width.*
- (b) An awning or roof sheltering a pedestrian walkway or seating area.*
- (c) A building façade shall be comprised of at least two building materials, with the lesser comprising not less than 10% of the total façade.*
- (d) Contrasting brick, stone, or natural wood trim.*
- (e) Pitched roofs or gable-end roofs.*
- (f) Curved arches or roof line features.*
- (g) A tower, spire, or cupola.*
- (h) A cornice.*
- (i) Second story windows that comprise a minimum of 10 percent of the second floor façade.*

*[Note: the example shown here is meant to illustrate these building design elements, and should not be interpreted as a required architectural style.]*



**Finding:** The canopy structure does not lend itself readily to an articulated façade. The applicant is requesting an exception to this standard, which requires a conditional use permit application. The canopy is not a massive structure that needs to be articulated. The canopy will help make the flat western wall of the main Fred Meyer building less visible.



*(2) Pedestrian entrance. Every building elevation facing a street with a horizontal dimension of more than 100 feet, as measured from end-wall to end-wall, shall have a building entrance no more than 100 from another entrance or end-wall; except that buildings elevations that are unable to provide an entrance due to the internal function of the building space (e.g., mechanical equipment, areas where the public or employees are not received, etc.) may not be required to meet this standard. Pathways shall connect all entrances to the street right-of-way.*

**Finding:** The fueling facility does not have a pedestrian entrance and requests an exception to this requirement.

*(3) Building facades not fronting a street. For all ground floor facades that do not face a public street, windows shall comprise a minimum of 20 % of the ground floor façade or a landscape strip shall be provided adjacent to the building. The landscape strip shall be a minimum of 5 feet in width and include a combination of trees, shrubs, and groundcover or grass. Plant material shall be selected from at least two of the different plant material groups (example: trees and shrubs, or lawn and shrubs, or lawn and trees and shrubs). The type of tree selected shall have a crown of less than 15 feet at maturity. Exceptions to this standard include building facades that abut outdoor storage areas, loading docks, and mechanical equipment areas.*

**Finding:** The canopy structure does not have walls or windows, and needs vehicle access on the east and west sides. The north and south sides will have landscape buffers nearby, but the applicant needs an exception to this standard.

*(4) Building orientation. All buildings shall be oriented to a primary street as defined in division (A) or oriented to a plaza or open space within the development site that connects to the primary street. "Oriented to a plaza or open space" means that the building entrance faces the plaza, open space, shared parking area or is connected to the plaza by a direct and convenient pathway not exceeding 60 feet in length.*

**Finding:** The nature of the fueling facility makes it difficult to meet this requirement. The applicant requests an exception to this standard.

*(5) On-site landscaping and screening.*

*(a) A continuous landscape strip, with a five foot minimum width, shall be located perpendicular to groups of 2 or more parking stalls. Within the landscape strip, at a minimum, one deciduous shade tree per seven parking spaces shall be planted to create a partial tree canopy over and around the parking area. The type of tree shall be chosen from the City of Newberg Preferred Street Tree List and have a minimum crown spread of 25 feet. This standard shall apply unless otherwise approved by the Director based on the following alternative standards:*

- 1. No more than seven parking stalls shall be grouped together without a landscape island. The landscape island shall have a width and depth no less than 5 feet and contain no less than one deciduous shade tree.*

*or*

2. *Provision of tree planting landscape islands, each of which is at least 16 square feet in size, and spaced no more than 50 feet apart on average, with a maximum of 75 feet, within areas proposed for grouped parking. For every 7 planting landscape islands, 1 shall be no less than 500 square feet in size.*

**Finding:** Most of the existing parking lot has mature landscaping. The new parking lot landscaping islands will be designed to match the existing landscaping. The western landscape buffer will have a few gaps filled in to complete a dense landscape buffer along that edge.

- (b) At a minimum 50 percent of the parking area shall drain to a storm water mitigation area. The mitigation area shall be designed using best management storm water practices including, but not limited to, bio-swailes, rain gardens, or similar design intended to reduce storm water flow and improve storm water quality.*

**Finding:** No new parking areas are being created, so this criterion does not directly apply. The fuel facility will actually remove approximately 60 parking spaces. There will be a slight increase in impervious surface from this project (approx. 900 square feet). The City Engineering Division has reviewed the application and determined that no stormwater detention is required. The stormwater drainage from the gas station location discharges to an existing vegetated bioswale that runs along the western edge of the parking lot. The applicant will add an oil/water separator to treat the stormwater collected under the canopy before it is discharged to the bioswale. The applicant needs an exception to this mitigation standard, however, as there is not enough room on the site to make half of the entire existing Fred Meyer parking lot drain to a storm water mitigation area.

Several people have commented that the applicant's stormwater proposal is substandard, does not meet City standards, and is not state of the art. This proposal has been reviewed by the City Engineering division; it is not substandard, and does meet City standards for stormwater. One public comment mentioned a filtration system that would provide better stormwater treatment than the oil/water separator. While that may be a better system, it is not required by City stormwater standards and has not been required for any other project in Newberg. The proposed gas station with oil/water separator is, in fact, superior to other gas stations in Newberg because the drainage goes to a large vegetated bioswale before entering the public stormwater system.

- (c) A 20-foot wide landscaped buffer shall be provided between the development and any adjoining residential district. The buffer shall include a continuous 6-foot high sight-obscuring fence or wall, a continuous hedge and/or berm designed to achieve a height of 6-feet upon maturity, a row of trees not more than 35 feet on-center, and shrubs or living groundcover.*

**Finding:** The site has an existing landscape buffer along most of the southern edge of the site adjacent to the residential area. The buffer includes many mature trees. The western part of the southern border only has grass, however, and is adjacent to a multifamily residential site. The applicant should add trees to this southwest buffer similar to the existing trees to the east, spaced not more than 35 feet on-center.

- (d) Outdoor storage areas, loading docks, and mechanical equipment areas shall be fenced with 75% opaque site obscuring fencing or screened with landscaping between the area and public streets.*

**Finding:** This requirement is not applicable to the fueling facility. The site is elevated above the closest streets and has landscape buffers, however, so much of the lower part of the facility will not be visible from adjoining public streets.

*(e) One square foot of interior open space or plaza space shall be required for every 5 square feet of gross floor area. The following features shall be included in the open space or plaza area:*

- 1. One linear foot of seating space shall be required for every 30 square feet of open space or plaza space.*
- 2. One tree shall be provided for every 800 square feet of plaza space or open space.*
- 3. Pedestrian scale lighting according to subsection §151.196(H)(7).*

**Finding:** The fueling facility has only one small cashier's kiosk (96 square feet). The applicant requests an exception to this requirement. There is existing pedestrian scale lighting on the western wall of the main Fred Meyer building, which would aid any pedestrians walking from the western parking lot to the main entrance.

*(6) Vehicle and pedestrian connectivity.*

*(a) Public streets may be required to be dedicated where needed to improve internal circulation, to connect to neighboring properties or streets, to break up large blocks, or to reduce travel around a site.*

*(b) At a minimum, 95% of the parking spaces shall be located within 75 feet of a private walkway or public sidewalk.*

**Finding:** The fueling facility will not create a need to dedicate internal streets. The existing parking areas will come closer to meeting these standards when the new pedestrian walkway in the SE corner of the lot is constructed as part of this project.

*(7) Pedestrian-scale lighting. Pedestrian scale lighting shall be located along all internal walkways and provide a minimum illumination of 1 foot candle. Building entrances shall have a minimum illumination of 5 foot candles. Lighting shall be fully shielded so that no light is emitted at an angle above the horizontal plane as illustrated by the lighting plan. The type of features that should be considered, but are not limited to; street lamps, light fixtures attached to buildings, and light bollards. All pedestrian scale light fixtures shall not exceed a maximum height of 15 feet as measured from grade to the fixture lamp. The lens material for all pedestrian scale lighting shall be constructed of acrylic or similar shatter resistant material as determined by the Director. Glass lenses shall not be used for any pedestrian scale lighting.*

**Finding:** There is existing pedestrian scale lighting along the western wall of the main Fred Meyer building.

*(8) Parking. The number of parking stalls shall not exceed 125 percent of the minimum number of stalls required. Parking stalls constructed of grass blocks, grasscrete, pervious asphalt or concrete, or similar pervious material shall not be counted in this limit.*

**Finding:** No additional parking is proposed as part of this project. Approximately 60 parking spaces would be removed by this project, which brings the existing site closer to meeting this standard. The site is required to have at least 506 spaces, so 125% of the minimum would be 633 spaces. The site would have 666 spaces after the completion of this project.

*(9) Existing development. Any existing legal conforming site, through future development, exceeds the square footage threshold contained in § 151.196 (H) shall follow the standards contained in § 151.140 NON-CONFORMING USES AND BUILDINGS.*

**151.144 NON-CONFORMING BUILDINGS WITH LEGALLY CONFORMING USES.**  
*Unless completely or partially destroyed, pursuant to § [151.146](#), non-conforming buildings or structures with legal, conforming uses may be altered or modified subject to any of the following requirements. This shall be processed as a Type I application for single family homes and duplexes and as a Type II application for all commercial, industrial, and multi family uses.*

- (A) The addition or modification affects a part of the structure which will meet the current setback, height, yard or similar regulations and the addition or modification will not worsen the non-conforming status of the building.*
- (B) The addition or modification provides a logical expansion of the building and is within the existing building setback lines where:
  - (1) In the opinion of the Director, the expansion or modification will not adversely affect neighboring properties;*
  - (2) Building Code requirements can be met;*
  - (3) The expansion or modification proposed is similar to other non-conforming buildings or structures in the area; and*
  - (4) Reasonable provisions have been made to minimize the impact of the non-conforming status of the building or structure.**
- (C) A building or parking area that is non-conforming to the standards of this code but otherwise conforms to the use provisions of the zoning district, may be expanded, provided that the portion of the building or parking area proposed for expansion complies with the provisions of this code.*

**Finding:** Some public comments have stated that the existing Fred Meyer store is a non-conforming use and therefore cannot be expanded and should have to be brought up to current code. That is not correct. The code distinguishes between non-conforming uses and non-conforming buildings with legally conforming uses. The existing Fred Meyer store is an allowed use in the C-2 zone. The proposed gas station is an allowed use in the C-2 zone. The city just recently changed the large-scale retail standards, and the existing store does not meet many of the design standards. That makes the existing store a non-conforming building, with a legally conforming use. This is treated differently from a non-conforming use in the Development Code. Under NDC 151.144, the new code requirements apply to any new additions, provided that they do not worsen the non-conforming status of the existing building. The new gas station has addressed the new code requirements, and, under the process allowed in the code, applied for a conditional use permit because it has requested exceptions to some standards. The gas station would not make the existing site more non-conforming, however, and would make the site come closer to meeting the maximum parking standard, would remove parking between the building and the street, would help hide the blank western wall of the main building, and would create a better landscape buffer along the western and southern edges of the site.

### III. Conditional Use Permit Criteria That Apply - Newberg Development Code § 151.210.

*The Planning Commission may grant or deny the application, or may require such changes or impose such reasonable conditions as are in their judgment necessary to ensure conformity to the conditional use permit criteria. A conditional use permit may only be granted if the proposal conforms to the following:*

- A. *The location, size, design and operating characteristics of the proposed development are such that it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the generation of traffic and the capacity of surrounding streets, and to any other relevant impact of the development.*

**Finding:** The proposed gas station is required to apply for a conditional use permit because it has requested exceptions to some of the standards for large-scale retail development.

The proposal does not meet this criterion because the on-site and off-site traffic circulation will have a detrimental impact on the livability of abutting properties and the surrounding neighborhood. The gas station location will significantly increase the amount of vehicle traffic passing by the main entrance to the store. The congestion at the front of the store will also cause some drivers to use surrounding streets or the rear loading area as a way to travel from one part of the site to another part of the site. Also, drivers southbound on Springbrook Road, or westbound on 99W past Brutscher, only can access the site via Hayes Street. This circulation will negatively impact residences and businesses along these routes. There is also an existing problem at the right-in/ right-out driveway on Springbrook Road, where some drivers currently either make an illegal left turn to go into this entrance or use the parking area of Crossroads Plaza to turn around and access Fred Meyer. This is an existing problem that will get worse if the gas station is approved.

The scale and bulk of the proposed facility is minor compared to the adjacent main Fred Meyer building. The location of the facility raised concerns that it might increase the level of ambient light that impacts the drive-in theater to the west. The facility would only have recessed lights under the canopy, however, and would improve the landscape buffer along the western edge of the site. As conditioned, the design would mitigate the impact of light from this development.

The facility would be open from 7 AM – 11 PM, which will match the hours the main store is open. One public comment was concerned that the fueling facility could be operated 24 hours a day, which would increase the noise from the site. The applicant has not applied for permission to do this, but one condition of approval could be that the operating hours are limited to from 7 am to 11 pm.

One other public comment mentioned that they had problems with noise from the loading area behind the store, which took some time to get resolved. If Fred Meyer appointed a contact person to address and resolve neighborhood issues, and posted that person's contact information on the community bulletin board in the store, then that may address some of the neighbors' concerns.

Some public comments questioned what would be done in the event of a spill. The applicant has

stated that Kroger operates 1,490 fueling stations across the United States and has a standardized safety and training program for fuel station employees. The plan includes detailed information on responding to spills and leaks. The response depends on the size of the spill, ranging from cleanup by onsite employees to complete emergency action with agencies including the Oregon Emergency Response System. Emergency contractors, including ODOT certified vacuum trucks, are pre-arranged as part of the emergency response plan. Employees are also trained to inspect equipment and identify maintenance needs.

Emergency shut-off switches are installed both inside and outside the kiosk as dictated by the fire code. The underground storage tanks will be double-walled fiberglass with leak detection sensors. The tank and piping monitoring system operates at all times and will sound alarms if any part of the system fails. The equipment to be installed will meet State and Federal environmental standards, including the latest vapor recovery standards for delivery vehicles. The facility will be staffed with full-time attendants and will have closed circuit cameras for additional security, fire extinguishers, emergency shut-off switches and an alarm system. The applicant will submit a spill containment plan for the fuel facility for review before building permits would be issued. There will also be an emergency shut-off valve located immediately downstream of the oil/water separator for stormwater. The valve will be closed during the unlikely event of a spill and during required maintenance.

Overall, the location and operating characteristics of the proposed gas station are such that it will have a significant negative impact on on-site vehicle congestion and pedestrian safety at the main entrance to the store. There is also a concern that the applicant does not appear to have addressed neighborhood complaints about the existing store promptly, which makes it less likely that future problems will be solved promptly. For these reasons, the proposed gas station does not meet the criterion that it will have a minimal impact on the livability of surrounding neighborhoods and of the remainder of the Fred Meyer site.

***B. The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping or civic environment, and will be as attractive as the nature of the use and its location and setting warrants.***

**Finding:** The fuel facility location on the Fred Meyer site would be convenient for many shoppers who already use the store. The fuel facility would be as attractive as the nature of the facility warrants, and would have extensive nearby landscape buffers that soften the view of the facility from the street. The location on the western side of the main building would cause an increase in vehicle traffic in front of the main entrance, however, and would decrease pedestrian safety near the main entrance. It would also cause an increase in drivers using surrounding roads and the rear loading area to move around the Fred Meyer site. The proposal does not meet the criterion, therefore, that it will provide a functional shopping environment.

***C. The proposed development will be consistent with this code.***

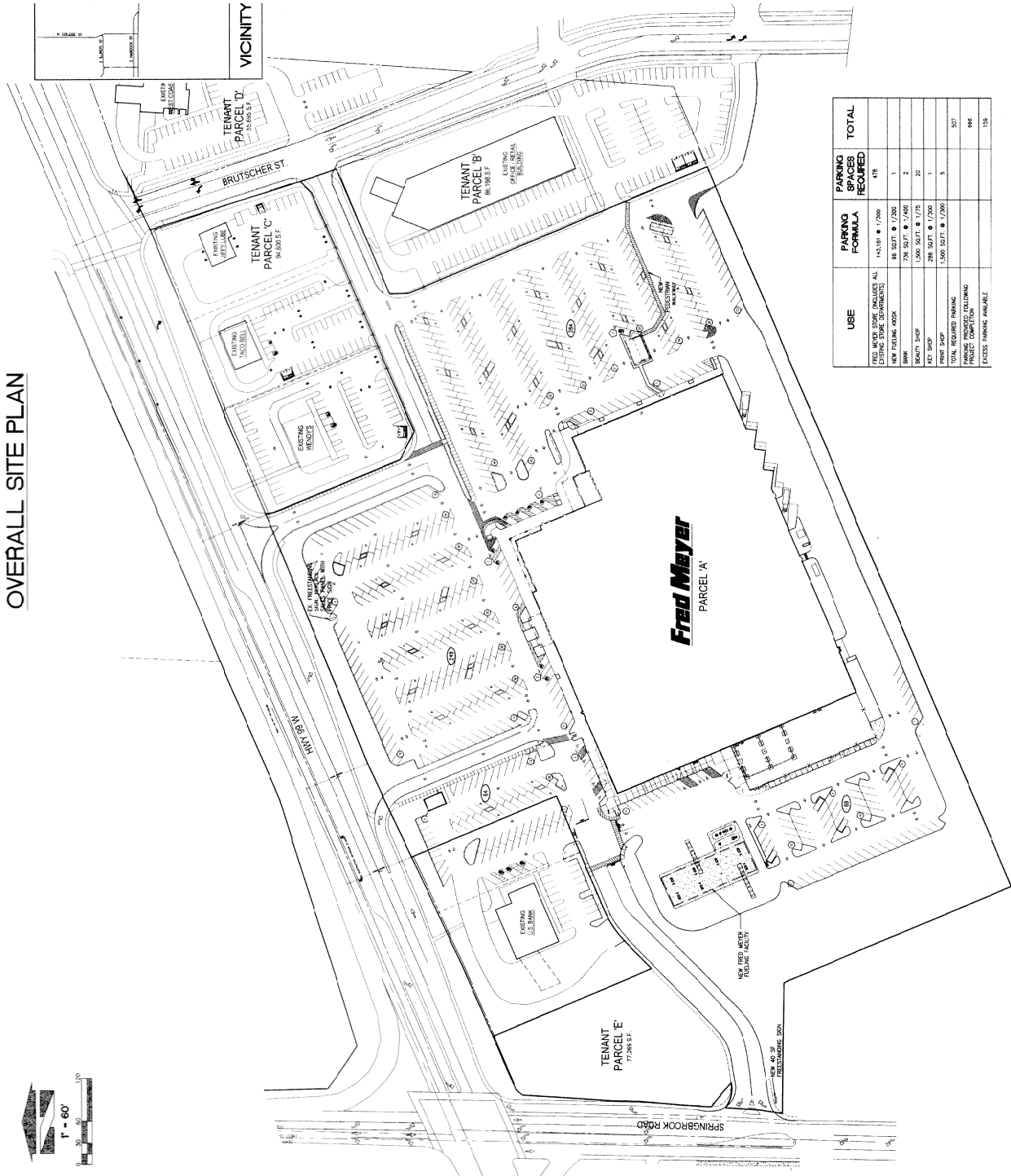
**Finding:** The preceding design review findings reviewed the development code standards that apply to this project. The proposed development will be consistent with most sections of the development code but does not meet this criterion because it will not be consistent with the requirements for on-site circulation.

#### **IV. CONCLUSION:**

Based on the above-mentioned findings, the application does not meet all of the required Conditional Use Permit/Design Review criteria within the Newberg Development Code and should therefore be denied.

# EXHIBIT "B": OVERALL SITE PLAN

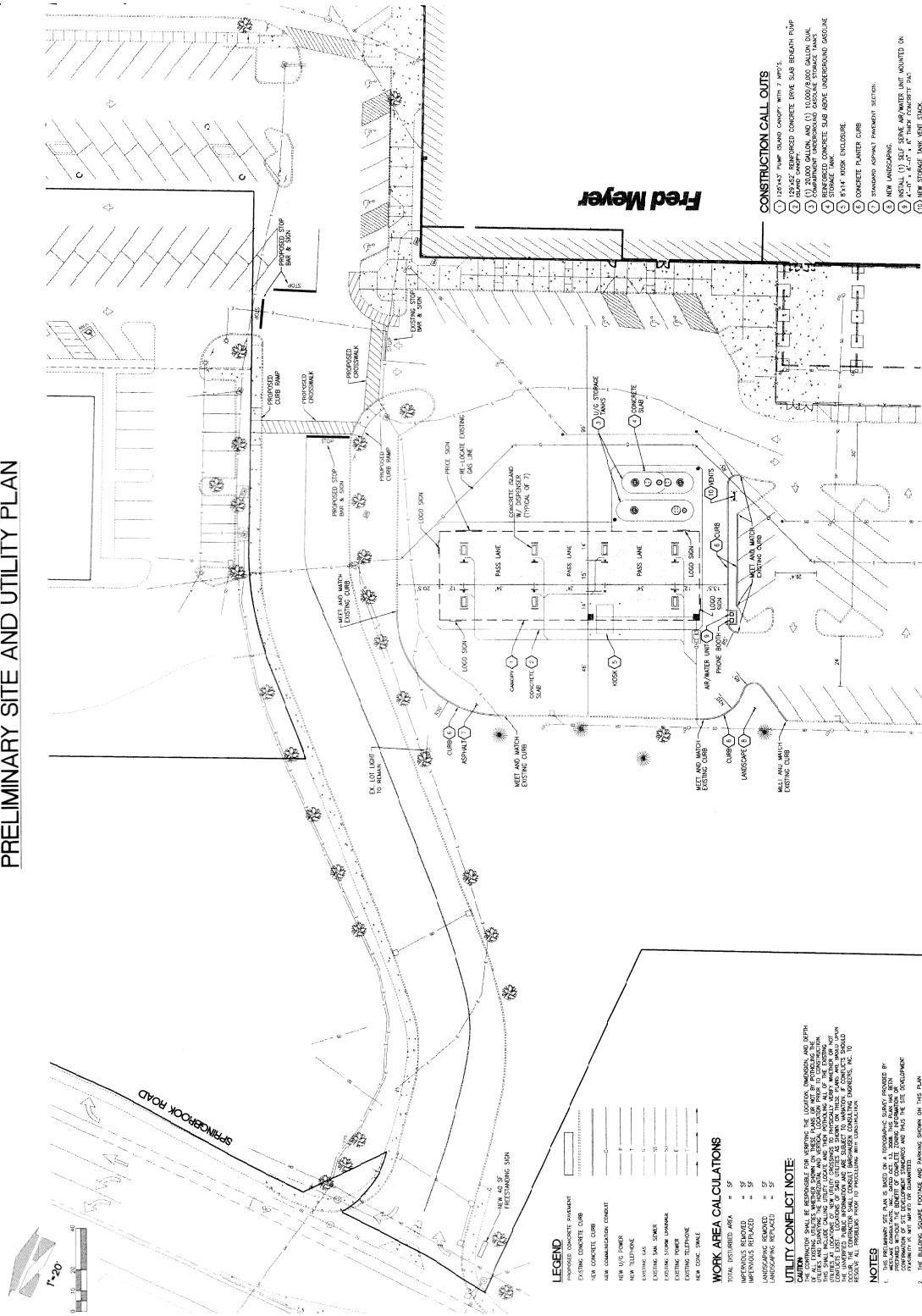
## OVERALL SITE PLAN





# EXHIBIT "C": SITE PLAN FOR FUEL FACILITY

## PRELIMINARY SITE AND UTILITY PLAN



**EXHIBIT "D": REVISED WEST 99W ACCESS**

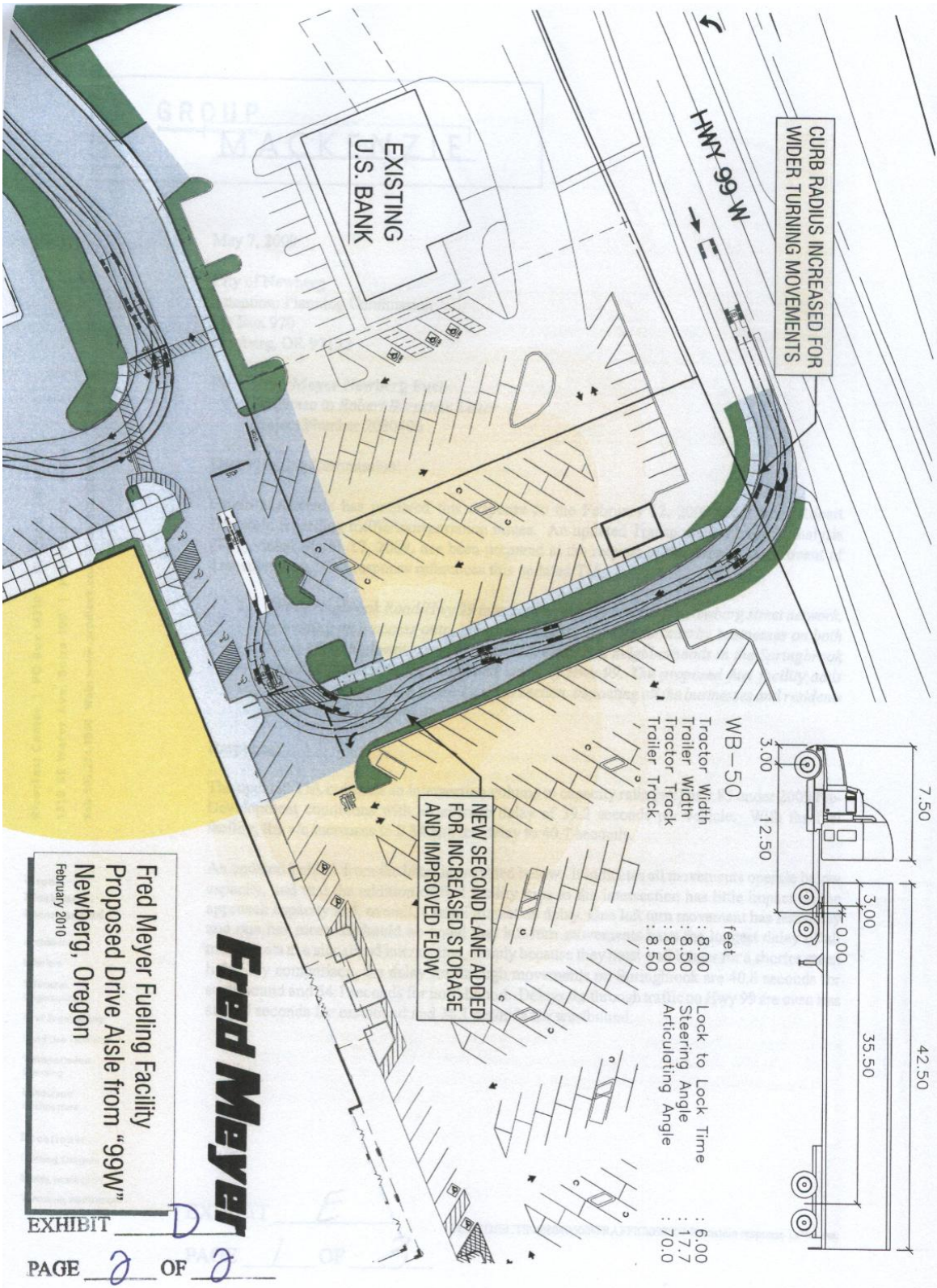


EXHIBIT **D**  
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