

RESOLUTION No. 2012-3000

A RESOLUTION AUTHORIZING A HARDSHIP REQUEST FOR WATER SERVICE TO THE CUSTOMERS OF THE EXISTING FOOTHILLS WATER COMPANY WATER DISTRICT

RECITALS:

1. The Foothills Water Company (FWC) was formed by Resolution No. 1963-0012 adopted on May 6, 1963.
2. The FWC purchased water from the City of Newberg and sold the water to their customers over the decades.
3. As of January, 2012, the operator of the Foothills Water Company discontinued service to their customers.
4. On February 6, 2012, the remaining four property owners served by the FWC submitted a written request, shown as Exhibit "A" and by this reference is hereby incorporated, for water service from the City of Newberg for the four existing residential homes currently served by the water district, as shown on Exhibit "B" and by this reference is hereby incorporated.
5. Newberg Municipal Code Chapter 13.15 authorizes the Newberg City Council to approve hardship connections to the City's water system provided certain criteria are met. Staff prepared written findings relative to the criteria and those findings are attached as Exhibit "C" and by this reference hereby incorporated.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council of the City of Newberg hereby approves the water hardship petition request, shown in Exhibit "A" and by this reference is incorporated, to the properties at 3620, 3629, 3705, and 4000 NE Aspen Way, which is shown on the vicinity map attached as Exhibit "B" and by this reference incorporated.
2. The City Council hereby adopts staff findings attached as Exhibit "C" and by this reference incorporated.

EXHIBIT A

February 6, 2012

Honorable Bob Andrews
Mayor of the City of Newberg
414 E. First ST.
PO Box 970
Newberg, OR 97132

Mr. Dan Danicic
City Manager of the City of Newberg
414 E. First ST.
PO Box 970
Newberg, OR 97132

Gentlemen;

We the undersigned four property owners hereby petition the City of Newberg to supply water to the meters that serve the houses on the properties listed. Water to these dwellings was supplied in the past by the Foothills Water District, a separate billing entity served by Oliver Springs. With the departure of Mr. and Mrs. Meyer, who have been shepherding Foothills Water District for years, the District ceases to exist. With nowhere else to turn, we the remaining users ask that the City of Newberg continue to supply water through Oliver Springs, but instead of reading the "Master" meter, establish new accounts and read the meters at each of the four properties.

Sincerely,



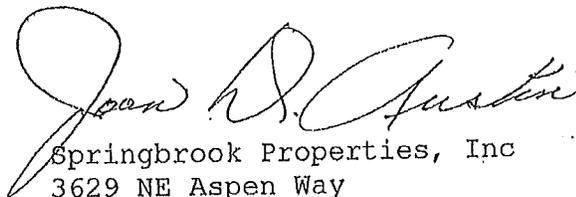
E. A. Meyer
4000 NE Aspen Way
Newberg, OR 97132



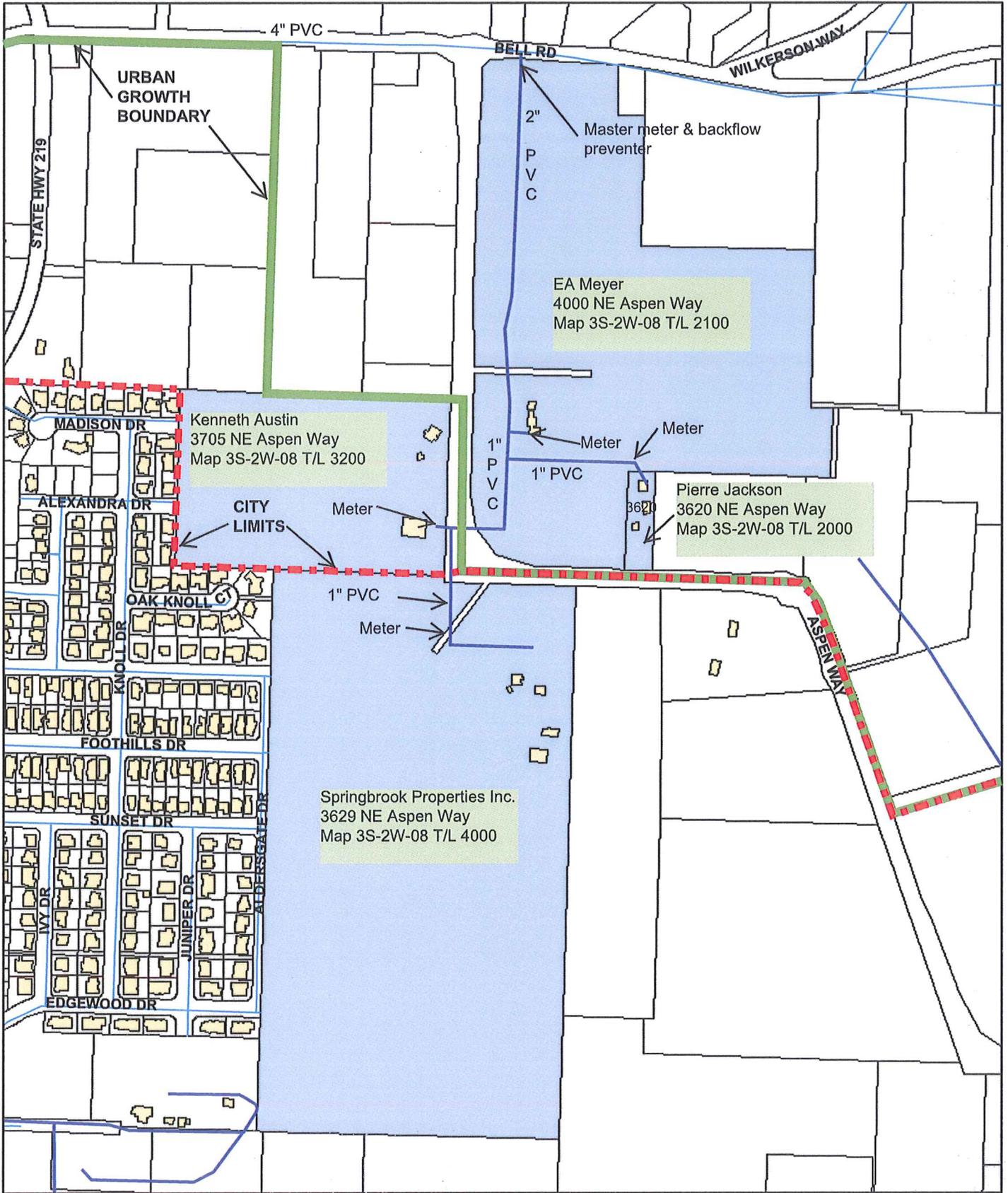
Pierre (Pete) Jackson
3620 NE Aspen Way
Newberg, OR 97132



G. Kenneth Austin III
3705 NE Aspen Way
Newberg, OR 97132



Springbrook Properties, Inc
3629 NE Aspen Way
Newberg, OR 97132



LEGEND:

- Urban Growth Boundary
- City Limits
- Water Line



EXHIBIT B
Vicinity Map

EXHIBIT C
To Resolution No. 2012-3000

WRITTEN FINDINGS
Foothills Water Company Hardship Request

TITLE 13 PUBLIC UTILITIES AND SERVICES

13.15.110 Additional users outside city.

A. Notwithstanding the provisions of this chapter relative to water service to users outside the city limits, no new or additional water connection for the purpose of providing water to a user situated outside the corporate limits of the city shall be permitted, save and except the connections as are in use or are ready for use on or before the last-mentioned date.

Response: No new or additional water service connections are proposed as the users are current customers of the Foothills Water Company which has purchased water from the city since forming in May of 1963 by City of Newberg Resolution No. 0012. The four remaining Foothills Water Company customer connections are all currently in use.

Out of the four customers of the Foothills Water Company, the EA Meyer and Pierre Jackson parcels are outside the city limits and urban growth boundary. The property owned by Kenneth Austin is outside of the city limits but within the urban growth boundary; and the Springbrook Properties Inc. parcel is within the city limits. Refer to Exhibit B, Vicinity Map for the location of the four properties.

B. No new water users shall be connected to group customer lines, and no new single residential users shall be connected after the last-mentioned date, it being the intention of this amendment that the city shall not serve or supply water to any additional users outside the city limits save and except those then in service or ready for service.

Response: This section does not apply as the users received service from the Foothills Water Company prior to January 1, 1988 and are already in service.

C. The words "ready for use" and "ready for service," as used in this section, shall be taken to mean that the building or structure wherein the water is to be used shall have been constructed up to the point that all framing and roofing and all exterior siding, windows and exterior doors are completed, and all plumbing is roughed in and ready for installation of plumbing fixtures.

Response: This section does not apply as the users are already in service via the Foothills Water Company.

D. The city recorder is directed to require the individual, firm or organization in charge of each group customer line outside the corporate limits of the city to file with the recorder a sworn statement setting forth the name and address of each water user served through

their respective group customer lines and presently connected therewith.

Response: Each user from the Foothills Water Company will have a separate water account with the city and receive individual utility billings. The Foothills Water Company group customer water supply line from the master meter is proposed to be owned and maintained by the city. A recorded agreement for each property owner will be prepared by the city attorney outlining the public improvements that may be needed and the necessary public waterline easements, as described in section 13.15.120.D.5 below.

E. The recorder may require such additional information as the recorder shall see fit to be furnished in connection with the reports. The city recorder shall report to the city council all group customer lines and all responsible individuals who shall not furnish such a statement and report within the time hereinabove required.

Response: Reporting will not be needed as the number of allowed connections will remain the same as currently served by the Foothills Water Company.

F. All additional connections to the group customers' lines after the effective date of the ordinance codified in this chapter, whether or not in service, shall be promptly reported to the recorder when ready for service. [Ord. 1398, 5-17-65. Code 2001 § 52.11.]

Response: No additional connections are proposed to the Foothills Water Company group customer line.

13.15.120 Exceptions due to hardships.

An exception to NMC 13.15.100 may be granted by the city council in cases of hardship. The following process shall be used in determining whether the exception shall be granted, and the criteria shall be strictly applied with the burden of proof upon the applicant:

A. Eligibility. The applicant must meet the following criteria:

1. The new or additional water connection can be used only to supply water to an existing structure and will not be used to allow any new development.

Response: No development is proposed. The existing Foothills Water Company connections are to existing structures.

2. Annexation of the property upon which the structure is located is not immediately practical.

Response: Annexation of the parcels owned by EA Meyer and Pierre Jackson into the city is not possible at this time as the properties are located outside of the urban growth boundary. Refer to Exhibit B, Vicinity Map for a location of the properties.

Annexation of the parcel owned by Kenneth Austin into the city is possible, as the property is located within the urban growth boundary. The parcel owned by Springbrook Properties Inc., is within the City of Newberg.

The recorded agreements described in 13.15.120.D.5 below will set forth terms for annexation of each property into the city.

B. Hardship Determination. A request for a new or additional water connection due to hardship shall be accompanied by evidence of the following:

1. A genuine hardship exists due to quality and/or quantity of water for domestic consumption.

Response: The existing properties would have a genuine hardship if they were disconnected from the springs system and required to install wells, as the underground aquifers in the vicinity of the four properties has very poor water quality, and the State of Oregon has restricted the quantity of water that can be pumped from the groundwater aquifer in the area due to declining groundwater levels.

2. All other alternatives have been investigated and are not economically feasible.

Response: The existing water supply infrastructure was installed to provide adequate water service to the four properties. Drilling of groundwater wells and installing pumps, electrical systems, and tanks, or connection to other city waterlines nearby, would not be economically feasible when compared to the continued use of the existing facilities.

3. The dwelling to be served is in close proximity of existing services, either private or public, and the granting of the additional connection would not overburden existing lines, either private or public, or overburden the city's water supply.

Response: The addition of the properties to the city springs water system will not overburden the city's water supply or system, as the properties are currently using city water through the Foothills Water Company supply system.

C. Application for Hardship. A request in letter form for a hardship exception to NMC 13.15.100 shall be made to the city council. The request shall be accompanied by a statement and evidence to be used in the determination. The request shall be reviewed and a recommendation made to the city council by the public works department prior to the city council's consideration of the matter. A granting of the request for an exception can be made by the city council; provided, that all the conditions stated in subsection (B) of this section do exist.

Response: Exhibit A, submitted to the City on February 6, 2012, is the signed petition prepared by the property owners requesting connection to the City water system. The statement and evidence for use in the determination was discussed in a meeting with Joe Kavale and City Staff on 2-6-12. The staff recommendation is to approve the water hardship request by the Foothills Water Company water district. All of the conditions listed in subsection (B) above have been met.

D. Conditions of Hardship. Any exception granted shall be subject to the following conditions:

1. The owner of the property shall agree to pay the full cost of extending services to the parcel with all services meeting city standards and including all water connection fees and water system development charges.

2. The owner of the subject property agrees to annex to the city at such time as annexation is legally possible and is requested by the city. At the time of annexation, the property owner shall pay all system development charges then in effect, except wastewater, which shall be assessed in accordance with Chapter 13.10 NMC.

3. Water shall be for domestic purposes only and no water granted under this exception shall be permitted for agricultural use.

4. A written agreement as to the conditions under which the exception was granted shall be recorded on the Yamhill County deed records with the applicant paying all fees.

5. The city council may waive all or any portion of the city system development charges as it feels is in the best interest of the city. [Ord. 2666, 3-6-07; Ord. 1912, 7-3-78. Code 2001 § 52.12.]

Response: Upon council approval of the hardship request, the city attorney, in coordination with the city engineer and city manager, will prepare a written agreement for signing and recordation by each property owner. The written agreement will include, but is not limited to, items such as:

- a. Dedication of public water easements for maintenance access, as needed.
- b. Reimbursement to the city for water meter installation and waterline system repair costs.
- c. Non-remonstrance agreements by the property owner to the sale/transfer of the spring system from the city ownership to ownership by a separate water district or other agency.
- d. Water shall be used for domestic purposes.
- e. Other written agreement items that relate to the expansion of the existing domestic use, future connection to the city well field water supply system, water rate fixed and volume charges, etc.

It is requested that council waive the system development charges for the four individual meter installations as the charges were paid at the time of installation of the Foothills Water Company master meter.

13.15.130 Water service for public entities inside urban areas and boundaries.

The city council shall have sole authority to grant water service to public entities including, but not limited to, School District 29Jt and Chehalem park and recreation district, for property which is located within the urban growth boundary and/or the urban reserve area of the city. Property to receive service shall be for the public's use and enjoyment. The city council shall have the authority to require the public entity receiving utility service to comply with any conditions the city council may deem appropriate at the time the water service is granted. [Ord. 2483, 7-7-97. Code 2001 § 52.13.]

Response: This code section is not applicable as the properties requesting the hardship are not public agencies.

13.15.140 Water connections outside city.

A. Additional water connections are allowed to residents outside the city that meet the following conditions:

1. They were in existence as of January 1, 1988, or the property owner had requested a water connection to the property for the purposes of a residence before January 1, 1988, and desires the water connection for the purposes of establishing a residence; and

Response: The water connections to the properties were in existence before January 1, 1988 through the Foothills Water Company.

2. They will be served through a water district; and

Response: The connections are currently served through a water district, the Foothills Water Company, Resolution #0012 adopted on May 6, 1963, which allowed for the provision of city water to the Foothills Water Company. For health reasons, the current operators of the Foothill Water Company, Ernest and Barbara Meyers, are seeking to dissolve the Foothills Water Company. Due to the limited number of connections, it is suggested by staff that the city prepare and record contracts with each property owner as described in 13.15.120.D.5 above, and then under a separate resolution repeal Resolution #0012 which will discontinue the city contract with the Foothills Water Company.

3. A new agreement between the water district and the city will be established; and

Response: If the hardship request is granted by council, staff will establish a new agreement with each of the four property owners.

4. The properties upon which the residences are located agree to annex to the city at the appropriate time and at the request of the city; and

Response: As previously mentioned, the Springbrook Properties Inc. parcel is currently within the city limits, the Kenneth Austin parcel is outside of the city limits but within the urban growth boundary, and the EA Meyer and Pierre Jackson parcels are outside of the city limits and urban growth boundary.

The recorded agreement described in 13.15.120.D.5 above will include a provision that the property annex to the city at the appropriate time and at the request of the city.

5. The water to be used is for domestic purposes only; and

Response: The recorded agreement described in 13.15.120.D.5 above will include a provision that the water is to be used for domestic purposes only.

6. The water district makes a joint application with the property owner on which the residence is located for the new water connection.

Response: These connections currently exist through the Foothills Water Company. The joint application for service by the water district and the property owner will be replaced by the recorded agreement described in 13.15.120.D.5 above, if the hardship request is approved by council.

B. Each water district that desires any new connections will enter into an appropriate agreement between the water district and the city governing the use, connections and maintenance of the water system. The agreement, among other things, may provide for an engineering study for the water district system to assure that the system complies with OAR Chapter 333, concerning public water systems.

Response: Upon approval of the hardship request by council and recordation of agreements between the property owners, the City of Newberg will maintain the system in conformance with State Standards. A part of the recorded agreement described in 13.15.120.D.5 above will include reimbursement to the city for water meter installation and waterline system repair costs.

C. All system development charges and other charges as provided for in the ordinances of the city shall be applicable to the new connections; provided, however, that the city manager has authority to waive, reduce, or otherwise change the systems development charge to the water district pursuant to the agreement between the water district and the city; and provided further, that in no event will the agreement provide for service development charges less than the charge for in-city connections.

Response: It is requested that council waive the system development charges for the four individual meter installations as the charges were paid at the time of installation of the Foothills Water Company master meter.

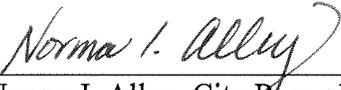
D. This policy shall be in effect regardless of any conflicting provisions of NMC 13.15.010 through 13.15.130. The purpose of this policy is to facilitate the establishment of proper agreements and policing of connections within the water districts. Any provision of NMC 13.15.010 through 13.15.130 that is in conflict with the water policy shall be deemed to have been repealed. Any provision of the sections which can be read to not be in conflict with the water policy shall be enforced. The city wishes that this policy act as an interim policy to facilitate reaching agreement with the water districts it serves. This matter shall be brought back before the city council within six months of the date of passage for review. [Ord. 2264, 6-20-89; Ord. 2247, 10-3-88. Code 2001 § 52.14.]

Response: An interim agreement is not needed in this situation. As a part of council approval of this hardship request, staff will prepare and record written agreements with each of the four property owners that will identify the policies and provisions of connecting to the city system. If for some reason a property owner chooses not to execute the written agreement, staff will return to council to discuss the provisions of the agreement.

3. The Newberg City Council does hereby authorize the city manager to execute an agreement with the property owners to be recorded with the Yamhill County Clerk. The attached findings in Exhibit "C" provide a generalized list of items to be included in the agreement.

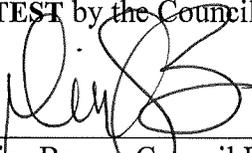
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 17, 2012.

ADOPTED by the City Council of the City of Newberg, Oregon, this 16th day of April, 2012.



Norma I. Alley, City Recorder

ATTEST by the Council President this 19th day of April 2012.



Denise Bacon, Council President