

**PLANNING COMMISSION MINUTES**  
**August 12, 2010**  
**7 p.m. Regular Meeting**  
**Newberg Public Safety Building**  
**401 E. Third Street**

TO BE APPROVED AT THE SEPTEMBER 9, 2010 PLANNING COMMISSION MEETING

**I. ROLL CALL:**

Present:                    Nick Tri, Chair                    Matson Haug                    Philip Smith, Vice Chair  
                                  Cathy Stuhr                        Thomas Barnes                    Lon Wall

Absent:                     Derek Duff (excused)

Staff Present:             Barton Brierley, AICP; Planning & Building Director  
                                  Steve Olson, AICP; Associate Planner  
                                  Luke Pelz, AICP; Assistant Planner  
                                  Dawn Karen Bevill, Recording Secretary

Others Present:            Mayor Andrews    Councilor Stephen McKinney (Sign Committee)  
                                  Dennis Lewis (Sign Committee, pilot program)    Dan Rouse (pilot program)  
                                  Fred Gregory (Sign Committee)    Wayne Strong (pilot program)

**II. OPEN MEETING:**

Chair Tri opened the meeting at 7:00 p.m. and asked for roll call.

**III. CONSENT CALENDAR:**

Chair Tri entertained a motion to accept the minutes of the July 8, 2010 meeting.

<p><b>MOTION #1: Haug/Wall</b> to approve the minutes as corrected from the Planning Commission Meeting of July 8, 2010. (6 Yes/ 0 No/ 1 Absent [Duff]) Motion carried.</p>
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**IV. COMMUNICATIONS FROM THE FLOOR:**

Chair Tri offered an opportunity for non-agenda items to be brought forth. One audience member came forward and stated a few citizens had come to the meeting with the understanding the Planning Commission would be hearing an application regarding a zone change on Meridian Street. Barton Brierley stated the application has not been filed as of yet. It will most likely come before the Planning Commission at the October 14, 2010 meeting.

**V. QUASI-JUDICIAL PUBLIC HEARING**

**APPLICANT:** Springbrook Properties, Inc. (Joe Kavale)  
**REQUEST:** Conditional use approval for a helipad  
**LOCATION:** 3200 E. Mountainview Drive  
**TAX LOTS:** 3209-2690  
**FILE NO.:** CUP-10-001                      **RESOLUTION NO.:** 2010-282  
**CRITERIA:** Newberg Development Code 151.210

**Opening of the Hearing:**

Chair Tri asked the Commissioners for any abstentions, conflicts of interest, or objections to jurisdiction. Commissioner Stuhr stated her mother owns the property immediately north of the Allison Inn. She spoke with her mother today who stated although the helicopter did scare her the first time it came over, it does not concern her as long as there were not going to be many helicopters flying and the path does not go directly over her property. Commissioner Stuhr stated she could make an unbiased judgment in this matter. Chair Tri read ORS §197.763.

TIME - 7:07 PM

Luke Pelz gave the staff report (see official meeting packet for details). Luke showed photos and a graphic that illustrated the proposed helipad site plan. This is a conditional use in the SD/H zone; will not have a negative impact; is consistent with the code; provides convenient transportation for the Allison Inn and Spa guests; and does not conflict with Oregon Department of Aviation (ODA) requirements.

Staff recommends that the Planning Commission adopts Resolution 2010-282 with the findings contained in Exhibit "A" and approve the conditional use permit to allow a 67' x 67' (4,500 square foot) helipad subject to the conditions of approval contained in Exhibit "B".

**Public Testimony:**

Chair Tri opened public testimony.

Proponents:

Joe Kavale stated staff did an excellent job of briefing the Planning Commission. This is actually a helistop. The legal difference is that a heliport allows maintenance and fueling of the aircraft. A helistop is only for offload and pickup of passengers or cargo. The hospital has a legal helistop due to the omission of maintenance and fueling. The primary flight route for the proposed helistop, coming down Springbrook Road and staying away from any residential properties, is based on prevailing winds. The D helicopter, when hovering and taking off, have a noise in the range of 80 - 90 decibels from 200 – 300 feet away. The closest house is due south 1,300 feet away. Common uses that have the same decibels include a ringing doorbell, a teakettle, a food processor, and a blender. One of the reasons people notice helicopters is because the noise is intermittent, which draws their attention.

Commissioner Haug asked if there are noise limits in the Development Code. Barton Brierley replied yes there are in the Municipal Code, although he is not sure what they are from memory. Mr. Brierley stepped out of the meeting to gather the information.

Commissioner Stuhr is concerned with the frequency of tours and helicopters landing and taking off. What is to stop a commercial helicopter entity starting to produce a lot of air traffic? Mr. Kavale

replied that could happen, although the Allison Inn would regulate that to limit the impact. Helicopter rides are not cheap and hours of operation are limited to daylight only; dawn to dusk.

Commissioner Wall stated 80 - 90 decibels does not sound accurate to him. He has had helicopters come over his house, which were very loud. Mr. Kavale disagrees with him on the volume because they will be several hundred feet over residential areas. Commissioner Wall asked about the helicopters that have landed there before and whether a special permit is needed. Mr. Kavale explained the FAA allows a helicopter to land anywhere they want to land as long as they have permission. Commissioner Wall asked if this application was made for the helipad because of City ordinance. Mr. Kavale responded by stating he wanted to do it legally by City code, even though the helicopters most likely could have flown in and out until someone had complained about it. They want to be in conformance with the City ordinance.

Commissioner Haug asked whether the visual flight rules are self-imposed or by the regulatory agencies. Joe Kavale replied they are self-imposed. Commissioner Haug would like to add as a conditional use that visual flight rules are required. Mr. Kavale has no objection to that. Commissioner Haug asked how complaints would be handled if any are received. Mr. Kavale replied the noise complaints go to the FAA. Commissioner Haug disagreed, and thought that most complaints would be directed to the city. If there are many complaints, how will it be handled at the City? Do we need conditions? Commissioner Wall stated the FAA could have strange rules and jurisdiction. Mr. Kavale does not know the process the FAA uses to handle noise complaints.

Commissioner Smith asked how many helicopter landings have occurred so far. He wondered have there been any noise, dust, and/or safety problems to date. Mr. Kavale replied six in the last year and there have been no complaints.

Barton Brierley returned to the meeting with the Noise Ordinance, which he read to the Commission.

Commissioner Haug asked what if the City receives complaints from surrounding citizens and those incidents become quite frequent, how do we address those? Barton Brierley stated first call Joe Kavale or the Allison with the complaint and try to resolve it that way; and unless it is unreasonable noise, they would be allowed to do it.

Chair Tri closed public testimony.

**Deliberation:**

Chair Tri entertained a motion for Resolution 2010-282.

**MOTION #2: Haug/ Smith** moved to recommend adoption of Resolution 2010-282 with the conditions stated; along with the following conditions: Type 3 & 4 helicopters are only allowed, no instrument landing is ever allowed; visual flight rules must always be used; daylight use only; and must satisfy the City Noise Ordinance requirements; and maintain private use by permission only.

**VOTE ON MOTION #2:** To adopt Resolution 2010-282. (6 Yes/ 0 No / 1 Absent [Duff]) Motion carried.

Chair Tri recessed for a five- minute break at 8:13 PM.

## VI. LEGISLATIVE PUBLIC HEARING

**APPLICANT:** City of Newberg  
**REQUEST:** Amend Newberg's Development Code to allow electronic signs to use more animation, depending on the zone and operating method.  
**FILE NO.:** DCA-09-002                      **RESOLUTION NO.:** 2010-281  
**CRITERIA:** Newberg Development Code 151.122, conformance with Comprehensive Plan

### **Opening of the Hearing:**

Chair Tri asked the Commissioners for any abstentions, conflicts of interest, or objections to jurisdiction. None were brought forward.

TIME - 8:19 PM

Steve Olson gave a summary of the staff report (see official meeting packet for full report). One question asked by Commissioner Duff at the last Planning Commission Meeting was regarding a sign being used by two or more businesses and how a business is defined. Is a vending machine operated by another business a second business? One suggestion could be to define a business as having two or more employees on site; at least 15 hours per week.

In the absence of public testimony, staff recommends adoption of Resolution 2010-281, recommending the City Council adopt the proposed Development Code amendments, with either of the two options; adopt the amendment as proposed by the Electronic Sign Ad Hoc Committee or adopt the amendment with some modifications, as described in the official meeting packet, page 31.

Commissioner Smith pointed out that Pilot Program and Sign Committee members are in the attendance.

### **Public Testimony:**

Chair Tri opened public testimony. No comments were received and Chair Tri closed public testimony.

### **Deliberation:**

Chair Tri entertained a motion for Resolution 2010-281.

**MOTION #3: Barnes/Stuhr** moved to recommend adoption of Resolution 2010-281.

Commissioner Smith is concerned in defining what qualifies as a business and suggested language. Commissioner Wall stated ATM machines have no employees, as well, but are often separate businesses. Commissioner Wall stated in the future that there would be more businesses that will reach these criteria. He has a hard time with sign ordinances since they are constantly drawing a line in the sand. Businesses have to have useful signs. Regulating signs based on aesthetics can be difficult.

Commissioner Haug states his thought on the proposal is he would be more comfortable in eliminating the site review element and replace it with a minimum number of design points, and also try to adjust the sizes so they do not go so large; a fixed maximum. He thinks large animated signs are not attractive and the rules in the packet leave room for a lot more animation and distraction than have been displayed this past year during the Pilot Program. He can see a large number of small, animated signs to identify local businesses, but this will bring in a large number of large signs and put pressure on business owners

to keep up. Regarding the point system, there are some standards that are more negative than positive and will be worse for the community.

Commissioner Smith asked Chair Tri if the members of the Ad Hoc Sign Committee could explain why they chose the square footage of the signs that they did. Chair Tri and the Commission responded unanimously to allow the members to speak.

Councilor and Sign Committee Member, Stephen McKinney came forward and spoke to correct a few misperceptions. As a City Councilor, Mr. McKinney found out the playing field was extremely unfair among the community and businesses. He is an ordained Quaker Pastor and this is a way he can love his neighbors equally well. The City code in terms of signs is a difficult instrument to administrate. Signs are dealing with 21<sup>st</sup> Century technology and the existing code does not line up. Nothing is analog anymore, but digital. Static messages are no more. It has to be good for neighborhoods and businesses alike. He was more than glad to bring this to the City Council because there is no current instrument to use. We cannot use signs in the town in the existing code to promote events. Now, Walgreens can show Amber Alerts with their sign. Commissioner Smith understands the need for fairness but is the concern too generous? Could it be more restrictive? Councilor McKinney thinks the recommended code reflects the technologies, as they exist right now. This is right for Newberg as the old code is not workable. The Sign Committee tried to pick something good for the citizens and make the sign code applicable in trying to keep within the charge of the Mayor. Commissioner Smith understands Commissioner Haug has worried that if we adopt this code it gives leeway for businesses to have visual pollution. Councilor McKinney used Mountainview School as an example. The parents raised money for their sign but it was useless because of the code. You had to drive up to the sign to see it. Sometimes it makes more sense to have a large sign with a setback.

Commissioner Haug stated the testimony Councilor McKinney is giving is intimidating and forceful which establishes the point that there is no reason for him to make any proposal at all because Councilor McKinney is so set in stone on this proposal and will not budge a little on this. Commissioner Haug believes the Councilor's testimony proves his own point. Councilor McKinney stated he has been a preacher his entire life; so that is his methodology of conveying his message. There were all types of points of view on the Sign Committee, not just his, and all members ended up relating to the same material and arriving at the same conclusion. The City of Newberg deserves a 21<sup>st</sup> Century code in regard to electronic signs. Commissioner Haug stated he is not opposed to upgrading the code or increasing the size to some extent, but questioned the extent of the size changes.

Barton Brierley recommended the Planning Commission focus on the proposed code language and any potential changes they want to recommend, and not speculate on the process.

Commissioner Stuhr understands Commissioner Haug's concerns but pointed out the larger the sign the less animated the sign can be, which is better because they will be static. The site element review is her concern. Some of the choices could actually make it less attractive.

Commissioner Wall asked at what point the City needs to micromanage everything. Councilor McKinney is not intimidating. He would like to know specifically what about the existing ordinance is unfair. The proposed code would change the rules, but be no more fair or unfair. Councilor McKinney explained most businesses under the existing code meet all the requirements to the best of their ability, but if the City Council exempts another sign, why should one of our businessmen have to play by those rules when the larger business with an attorney who threatens to sue, get an exemption? He does not believe that to be a level playing field. Commissioner Wall asked if that is a problem with the fact the

Council has a way to grant an exception, and not a code problem. Councilor McKinney would like to have a better document where exceptions will not need to be granted; making it easier for people to have the ability to use their signs, meeting the criteria. He believes this document adjusts the sign ordinance appropriately since the electronic portion was not applicable anymore.

**MOTION: #4: Smith/Haug** moved to adopt the staff's proposal regarding the site element review; adding a business definition to the section regarding a sign used by two or more businesses on site; *"Sign will be used by two or more businesses on site; each business must have two or more employees on site at least 15 hours per week."* (6 Yes/ 0 No/ 1 Absent [Duff]) Motion carried.

**VOTE ON MOTION #3:** To adopt Resolution 2010-281. (5 Yes/ 1 No [Haug] / 1 Absent [Duff]) Motion carried.

TIME: 9:53 PM

## VI. ITEMS FROM STAFF:

Update on Council items:

Barton Brierley stated the Planning Commission's decision to deny the conditional use permit for the Fred Meyer gas station was appealed by the applicant and will be heard by the City Council on August 16, 2010. The Planning Commission members can attend but it would not be appropriate for them to speak. On September 7, 2010 the City Council will hold a hearing on Affordable Housing and Design Standards development code amendments. Also, they will consider approving a student planning commissioner.

Other reports, letters, or correspondence:

Commissioner Haug asked about the City budget and what the City Manager presented to the City Council regarding a report to adopt a sustainable budget. Mr. Brierley explained the City Manager proposed a process to the City Council to go to the public citizens both in a forum and survey format to ask questions on what services do they feel are so important they should be paid for at public expense. What are their priorities? Based on that input, base the budget for coming years and make decisions on services that are most needed.

The next Planning Commission meeting is scheduled for September 9, 2010.

## VIII. ITEMS FROM COMMISSIONERS:

Commissioner Smith asked about the matter regarding the citizens who came to the meeting this evening believing they would be hearing an application for affordable housing on Meridian Street. Barton Brierley explained the Yamhill County Housing Authority purchased a piece of property on Meridian Street north of the railroad tracks and are preparing to file a zone change application from R -1 to R -3. Staff met with them and encouraged them to have a meeting with the neighbors before it comes to the Planning Commission. The Housing Authority did hold neighborhood meetings. As a result, many

are aware of the proposal and voiced concerns. If the Planning Commissioners hear any comments it will be ex-parte contact so Barton urged the commissioners to please take notes and print out any information such as an email the Commissioners may receive which needs to be in the record. Avoid all ex-parte contact if at all possible.

Commissioner Haug asked the legal basis the City Council has to grant exceptions to violations of the code versus rewriting the code to accommodate them. Barton Brierley replied regarding the Lamphere sign, there was an allowance in the code for the City to approve the sign under the Sign Program, which they did. The City Council did establish the Pilot Program for a period of time to analyze code amendments, which they did under their legislative authority. Commissioner Haug stated Mr. Brierley was incorrect regarding the Lamphere sign. That went to LUBA and when it came back, LUBA remanded it because a proper decision was not made. He believes the sign program was illegal and was not due process.

Commissioner Stuhr appreciates Commissioner Haug's passion but does not believe tonight's meeting was the time to have that energy behind what he was saying. She is a little concerned by the behavior of this board. That energy needs to be tempered and the discussion needs to be focused on the items before the Planning Commission at the meeting.

**IX. ADJOURN:**

Chair Tri adjourned the meeting at 10:15 PM.

Approved by the Planning Commission on this 9<sup>th</sup> day of September, 2010.

AYES: 5      NO: Ø      ABSENT: 2      ABSTAIN: Ø  
(Stuhr & Duff)

  
Planning Recording Secretary

  
Planning Commission Chair