PLANNING COMMISSION AGENDA
July 8, 2010
7 p.m. Regular Meeting
Newberg Public Safety Building, 401 E. Third Street

I. **ROLL CALL**

II. **OPEN MEETING**

III. **CONSENT CALENDAR** (items are considered routine and are not discussed unless requested)
- Approval of June 10, 2010 Planning Commission Meeting Minutes
- Approval of findings for Resolution 2010-262, denying approval of the Fred Meyer gas station conditional use permit/design review application. File # CUP-08-004/DR2-08-036.

IV. **COMMUNICATIONS FROM THE FLOOR** (5 minute maximum per person)
- For items not listed on the agenda

V. **WORKSHOP:** The final recommendation of the Electronic Sign Ad Hoc Committee.

VI. **ITEMS FROM STAFF**
1. Update on Council items
2. Other reports, letters, or correspondence
3. Next Planning Commission Meeting: August 12, 2010

VII. **ITEMS FROM COMMISSIONERS**

VIII. **ADJOURN**

FOR QUESTIONS PLEASE STOP BY, OR CALL (503) 537-1240, PLANNING & BUILDING DEPT. - P.O. BOX 970 - 414 E. FIRST STREET

ACCOMMODATION OF PHYSICAL IMPAIRMENTS:
In order to accommodate persons with physical impairments, please notify the City Recorder's office of any special physical 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 the city recorder at (503) 537-1283. For TTY service please call (503) 554-7793.

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PLANNING COMMISSION MINUTES
June 10, 2010
7:00 p.m. Regular Meeting
Newberg Public Safety Building
401 E. Third Street

TO BE APPROVED AT THE JULY 8TH, 2010 PLANNING COMMISSION MEETING

I. ROLL CALL:

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

Staff Present: Barton Brierley, Planning & Building Director
Steve Olson, Associate Planner
Jessica Nunley, Assistant Planner
Crystal Kelley, Recording Secretary

Others Present: Randy Lytle Dan Schutter

II. OPENING:

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

III. CONSENT CALENDAR

Chair Tri entertained a motion to accept the minutes of the May 13, 2010 Planning Commission meeting.

Motion #1 Haug /Duff to approve the minutes from the Planning Commissions meeting of May 13, 2010 (Yes 7 /NO 0) Motion Carried.

IV. COMMUNICATIONS FROM THE FLOOR:

Chair Tri offered an opportunity for non-agenda items to be brought forth from the audience. None were stated.

V. QUASI-JUDICIAL PUBLIC HEARING:

1. **(Continued from May 13, 2010 at the point of deliberation)**
   APPLICANT: Fred Meyer Stores, Inc., c/o Barghausen Consulting Engineers, Inc.
   REQUEST: Conditional use permit & design review approval for a gas station on the western portion of the Fred Meyer site.

LOCATION: 3300 Portland Road
TAX LOT: 3216-2004
FILE NO.: CUP-08-004/DR2-08-036
RESOLUTION NO.: 2010-262
CRITERIA: Newberg Development Code 151.210, 151.194, 151.196

Steve Olson presented the staff report (see official meeting packet for full report). The record was left open one week for additional written testimony. Some additional written testimony was received and the applicant responded to it; both are included in the meeting packet. The summary and recommendation from staff were presented. Staff recommends that the Planning Commission approve Resolution number 2010-262 as conditioned.

Deliberation:
Commissioner Haug stated that he wanted to make a motion recommending denial of the application and revising many of the findings to state that the criteria were not met. He listed the criteria that he felt were not met. After some discussion the Commission decided to discuss the criteria one at a time.

Commissioner Thomas Barnes stated he has studied the traffic flow at the property. He is concerned with light trespass from the site, and is also concerned about traffic. He spent around four hours sitting in the parking lot to watch the situation.

Commissioner Philip Smith stated he saw six different issues. In the past, traffic studies came up with a cost of $1,500,000 to fix the Springbrook/99W intersection. This building is the only big box store in the city. It was built before the big box requirements were adopted. If they were going to meet the new requirements they would literally have to rebuild the site. What they are doing is bringing this site closer to the big box standards. The second issue is the internal traffic on site, which will experience increased traffic on the west side of the building with this proposal. He feels there are solutions to work out on the issues of traffic safety. He does not see it as a showstopper. Commissioner Smith feels the issues with the drive-in have been well addressed. The noise problem can be addressed as well. The issue of the gas station being an un-safe station does not make sense to him. He is not sure how this station would be any less safe than any other gas station.

Commissioner Lon Wall stated he is in favor of denial for a number of reasons. In the hearings, the implication from the applicant was this proposal would not create a significant increase in trips. They felt a high percentage of gas station customers would already be on the property. He does not see how it would be a dangerous gas station. The arguments that gas would be unfairly cheap he does not agree with either. He is concerned about Fred Meyer not responding very well to their neighbors. The changes staff made to the ODOT condition concerns him. They are now stating they will allow them to occupy that location. Are they going to insist all the key conditions are enforced before they are allowed to occupy the property? He is also concerned with the issue of bringing the property up to code. He feels the City is not

going to ask Fred Meyer to do anything with regard to conformity. They could require a number of the big box improvements on the building. He is also very concerned with traffic. His conclusion is the numbers they were provided regarding how many trips will come into the gas station are not correct. He does not feel the numbers they were given for traffic flow would be enough to keep the station profitable. He is concerned with the congestion of the parking lot. He feels the traffic will be considerably worse than perceived. The argument that the City should not be concerned with internal movement on a piece of property is not a good one. The traffic is already heavy on the property and the addition of the new proposed station will only make traffic worse. Safety is a huge concern for the public.

Commissioner Matson Haug stated he has ten issues. The first one is the issue with ODOT approval and permits before the City moves ahead. The second is the traffic and noise in the neighborhoods. The third would be the light trespass on the drive-in. He feels once the station is in place there will not be any recourse, which is a high risk for the drive-in. The fourth is in regard to the testimony they heard addressing the behavior of the corporation. The fifth is the refueling trucks that will have to pass through the neighborhoods. He does not think the City could ensure they only use certain streets and could not enforce those requirements. The sixth is the drive-in, which is a historic site and is a unique addition to the town. If it were to take a year to address any light trespass issues, the drive-in would not survive the year. The seventh is that Fred Meyer is not a good neighbor. The eighth is the issue of pollution. They are running the station adjacent to a stream. As the chair of the Citizen Rate review Committee, he knows the issues that are still being addressed with regard to storm water. He is concerned about gas leaks. The ninth is the photometric study, about which he is not convinced they are scientifically correct. There may be some engineering standards for photometric study software but when he asked for that information, he did not get it. The tenth is the overwhelming testimony from the community on the corporate behavior, which will have a big influence on how they meet the criteria. He thinks the community has a right to express an interest and a concern. If Fred Meyer was involved in the community and talked to the owners of the drive-in, they would have done something in the past to try to work out their light concerns. He feels the City will lose the drive-in if this is approved.

Commissioner Cathy Stuhr stated that she felt Fred Meyer does not know this community. If they had done something already to find a solution to the concern with the drive-in, it would have looked better for them. The criteria states it should be a reasonable or minimal effect on livability. What is the community getting in exchange for the negative things they are going to be seeing? There does not appear to be any benefits to the City. She feels it is being forced. She is also concerned with the environmental issues. They could do something to try to work with the drive-in. The underground storage tanks are not a concern for her. An underground leak would most likely not occur on a large scale and the project is meeting all the state and federal standards. She is concerned about the traffic. The benefits do not outweigh what the community will have to endure with regard to traffic risks. She is also concerned with the exception to the standard for building orientation. The current

building does not meet the standards and they are not making any adjustments to meet that standard.

Commissioner Derek Duff stated he is concerned about internal traffic. The station would have a huge impact on the internal flow in the parking lot. From a customer standpoint, he does not want to have to wait for five minutes at an internal stop sign. If the congestion does not have an effect on safety and meets ODOT standards that is fine but he may stop shopping at Fred Meyer. He is also concerned with the issue of Fred Meyer being a poor neighbor. The attitude of the business seems to be that they are unwilling to do anything to address the concerns that are brought before them.

Chair Nick Tri stated he has a concern with the issue of traffic and noise in the neighborhood. He is also concerned about the light issues for the drive-in. The refueling trucks are also a concern for him. He feels they will create problems when they are getting in and out of the parking lot. The community is very concerned about the light trespass issue affecting the drive-in.

Commissioner Haug stated they either adopt the findings the staff presented or come up with their own findings. He does not agree with all the findings. They have to decide if they want to adopt each finding or make a motion to modify them. If they say the criterion is not met, staff needs to revise the findings and address the arguments. They need to decide if they think each finding has been met, then staff can come back with findings of denial. Commissioner Wall stated it would be simpler if they just stated they are opposed to the application. They need to establish their own findings rather than giving counter arguments to staff findings. He is not sure what they will say to make them change their mind. Commissioner Haug stated that staff will rewrite the findings to reflect the decision of the commissioners. Mr. Brierley stated it is appropriate for them to do that. Staff would have to come to the next meeting with the findings they requested. Commissioner Smith stated they should take each proposed finding and vote on keeping or changing it. If they are going to approve a motion to deny it they have to explain why they are denying the application. Mr. Olson stated they could either approve the proposal, approve it with conditions, or they can deny the proposal. They are adopting findings when they make their decision, so they need to say how they want the findings revised if they want changes.

Commissioner Wall asked if the City's stance with regard to the ODOT condition had changed from the last meeting. Mr. Olson confirmed he was correct, they revised it to make the condition clearer and to say that ODOT had to approve the plans before the city would approve the plans, although all improvements still had to be constructed before occupancy. Commissioner Wall asked how the City came to the conclusion that Fred Meyer does not have to do anything with the non-conforming building. Mr. Olson stated the code requires the new addition to meet the new code but does not require changes to the existing building, providing that it does not become more non-conforming.

Commissioner Wall stated they are being asked to approve something that does not have a clear benefit to the community. Commissioner Stuhr stated the science behind light studies is simple and a trustworthy science. This body did not ask them for another light study. Mr. Bridges did the light study and it was clear they could not determine what portion of the light at the drive-in was coming from Fred Meyer versus other buildings. Commissioner Smith stated he is convinced the plan will protect the drive-in from light pollution but the owners and the public are not persuaded. A light study done in the field may be able to persuade them. Fred Meyer could have done some additional study to reassure the drive-in.

Commissioner Haug stated on Page 31 section 4 with regard to landscape requirements, what happens when the tall trees fall. Years later, it will leave a gap that will not easily be filled. According to the finding, the trees are supposed to block the light for the drive-in. Landscaping is not a long-term solution. Commissioner Stuhr stated that concern has been addressed in the conditions. It states if a tree falls down the light can be mitigated. Commissioner Haug stated there is a limit to how big a tree you can put in there. Commissioner Smith stated he thinks the condition implies if a large gap in the screen provided by the trees occurs, the applicant will have to address the issue at that time. Commissioner Duff stated they could put a condition stating there can be no exterior canopy lights to the west.

Commissioner Wall stated he is a big believer in private property rights on your own property. You have to think of the people who own property in the surrounding area, however. They have private property rights as well. The Planning Commission has to realize this is not always black and white. If they ignore the two components, they have not done their job. They have to consider all involved.

Chair Tri adjourned the meeting at 9:00 for a five-minute break.

Motion #2 Smith/Haug moved to adopt alternative findings denying criteria on page 28, section 2 based on the arguments the last two sentences have not been met. (Yes 6 /NO 1 {Thomas Barnes}) Motion Carried.

Motion #3 Smith/Wall moved to adopt the staff findings on page 30, section 2-3 with regard to setbacks and general requirements (Yes 6 /NO 1 {Matson Haug}) Motion Carried.

Motion #4 Haug/Wall moved to adopt alternative findings on page 31, section 4 denying they satisfy criteria also determining the staff findings are not enforceable (Yes 2 /NO 5 {Thomas Barnes, Derek Duff, Philip Smith, Cathy Stuhr, Nick Tri}) Motion Failed.

Motion #5 Haug/Wall moved to adopt findings that indicated article 9 of page 33 is not satisfied. The City does not have the ability to mandate what public streets are used by the refueling truck (Yes 1 /NO 6 {Thomas Barnes, Derek Duff, Philip Smith, Cathy Stuhr, Nick Tri, Lon Wall}) Motion Failed.

Motion #6 Smith/Barnes moved to adopt staff findings on page 33, section 10 (Yes 5 /NO 2 {Lon Wall, Matson Haug}) Motion Carried.

Motion #7 Haug/Wall moved to adopt alternative findings on page 44, section 3A that would deny the condition is met (Yes 6 /NO 1}Thomas Barnes}) Motion Carried.

Motion #8 Haug/ Smith moved to deny application, with amended resolution NO. 2010-262 and amended findings (Yes 6 /NO 1 {Thomas Barnes}) Motion Carried.

Mr. Brierley stated staff would amend the resolution and the findings, and bring them back to the next Planning Commission meeting for adoption.

2. **APPLICANT:** **Steve Watt**
REQUEST: **Annexation of 0.97 acres**
LOCATION: **612 W. 3rd St. and 308 Hwy 99W**
TAX LOTS: **3219BD-2600 and 3219BD-2500**
FILE NO.: **ANX-10-001** **RESOLUTION NO.: 2010-280**
CRITERIA: **Newberg Development Code 151.262**

Opening of the Public Hearing:
Chair Tri asked the Commissioners for any abstentions, conflicts of interest, or objections to jurisdiction. None were stated. Jessica Nunley presented the staff report (see official meeting packet for full report). Staff recommends they adopt Resolution No. 2010-280.

Proponents:
Randy Lytle, representing Mr. Steve Watt, stated the property is two existing parcels which meet the city's criteria. City of Newberg water is already servicing the properties. Commissioner Barnes asked why they would like to be annexed. Mr. Lytle stated it increases the property value and the future options.

Commissioner Smith asked why the City does not recommend they make the property industrial zoned. Mrs. Nunley stated that it has current commercial uses and would not really help mitigate the city's industrial need as it's not the most appropriate place for industrial. The comprehensive plan designation is for commercial use on the property.

Motion #9 Barnes/Wall moved to adopt resolution NO. 2010-280 (Yes 7 /NO 0) Motion Carried.

3. **APPLICANT:** **George Fox University**
REQUEST: **Stream Corridor variance and design review approval to construct a gazebo in the Hess Creek stream corridor.**
LOCATION: **West of 1306 E. Sherman Street**
TAX LOT: **3217CD-6600**
FILE NO.: **MISC3-10-001** **RESOLUTION NO.: 2010-279**
CRITERIA: **Newberg Development Code 151.194, 151.474, 151.478**

Opening of the Public Hearing:
Chair Tri asked the Commissioners for any abstentions, conflicts of interest, or objections to jurisdiction. Commissioner Smith left the room due to a conflict of interest, as he is employed by the applicant. Commissioner Duff stated he is a George Fox University student, but this would not be a conflict of interest. Mr. Steve Olson presented the staff report (see official meeting packet for full report). Staff recommends the committee approve resolution number 2010-279 with a few conditions. Those conditions were presented in the staff report.

Proponents:
Mr. Dan Schutter with George Fox University stated the project is funded by the students. The other locations that were considered were a threat to area trees and the students did not want to cut down any trees. The students would have attended the meeting but they have gone home for the summer. The project benefits are the greater use of the canyon and enhancement of the property. The proposed structure will be an enhancement to the stream corridor. He feels it will encourage an awareness of the area. It is also for the purpose of fitness walking and jogging. It will function as a venue to bring the community and nature together regardless of weather. It is adjacent to vehicle travel areas, which will help bring a rural setting to the area. His only criticism concerning the staff proposal are some of the conditions. The problem with the sewer line is probably a mistake in the map, since GFU has been maintaining the line for some time. They do not have a problem assuming responsibility for maintenance of the line from the city. The City has never done maintenance on the line and the university is fine with taking it over. The way the conditions are written, does not allow for discussion and possible appeal to the State regarding the Building Code. It is not certain what the code says for the specific proposal. He would rather the condition state it has to be done per the code requirements. They will follow the erosion control measures that have been asked.

Commissioner Stuhr asked if they would be required to have a burn permit in order to have a fire pit on the property. Mr. Schutter stated the code says if they build an enclosure around it, they are allowed to build a fire. He is not aware of any restrictions for that. Mr. Olson stated he is not aware of any restrictions other than setting rules for students and the use of the fire pit. Commissioner Haug asked if he discussed his concerns with staff prior to the meeting. Mr. Schutter stated he has not talked to staff about his concerns prior to the meeting.

Commissioner Stuhr asked if the sewer line does not meet the interior requirements would they have to excavate it. Mr. Olson stated he does not know what it is constructed of currently. If it does not meet the requirements, it may have to be excavated but it is still undetermined at this point.

Commissioner Haug stated he would like to see staff make the changes based on what was stated by Mr. Schutter. He asked staff if it would it be possible to modify the conditions tonight so the applicant can hear them and they can vote on the issue. Mr. Brierley stated the sewer line building code requirements are not under the Planning

Commission. The City can verify it meets code or the applicant can propose an alternate. Mr. Olson stated the sewer line condition could be changed to say it should meet building code requirements for building over a private sewer line. The applicant will also need to discuss the project with the fire marshal.

Motion #10 Wall/Barnes moved to adopt resolution No. 2010-279 and to change condition 2 to meet building code requirements as amended (Yes 6 /No 0) {Philip Smith did not cast his vote due to a conflict of interest}) Motion Carried.

VI. ITEMS FROM STAFF:

Mr. Brierley stated the South Industrial area group meeting took place with 24 people speaking at the meeting. NUAMC took testimony and left the record open for written testimony. They will meet again on June 15th to deliberate on the subject.

The City held a work session with the City Council and an open house, town hall meeting with the public on the subject of affordable housing. The subject will be scheduled to go to the City Council but a date has not been set yet.

ODOT has released the Tier 2 Environmental Impact Statement for the Newberg Dundee bypass. There is a meeting at Newberg High School on June 29th for testimony and information from 3:00 p.m. to 8:00 p.m.

The Electronic Sign Ad Hoc Committee has been meeting and has arrived at a final recommendation. Their final recommendation will be presented to City Council on July 6th. They will be asking City Council to amend the development code, which will require formal hearings. The next Planning Commission meeting will include a brief workshop on the Electronic Sign Committee's recommendation.

VII. ITEMS FROM COMMISSIONERS

Commissioner Smith asked for an excused absence for the July 8th meeting of the Planning Commission. His request was approved by Chair Tri.

VIII. ADJOURN:

Chair Tri adjourned the meeting at 10: 25.

Approved by the Planning Commission this 8th day of July, 2010.

AYES:	**NO:**	**ABSENT:** (List Name(s))	**ABSTAIN:** (List Names(s))

Planning Recording Secretary

Planning Commission Chair

PLANNING COMMISSION RESOLUTION NO. 2010-262

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWBERG DENYING FILE CUP-08-004/DR2-08-036, A CONDITIONAL USE PERMIT/DESIGN REVIEW REQUEST TO ADD A FUELING FACILITY TO THE FRED MEYER PROPERTY LOCATED AT 3300 PORTLAND ROAD, YAMHILL COUNTY TAX LOT 3216-2004

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 fueling facility at the Fred Meyer property located at 3300 Portland Road.

2. On January 21, 2009, notice of this proposed conditional use permit/design review was mailed to the owner of record as identified in Yamhill County Assessor's Office, and all adjoining property owners within a distance of 500 feet. The site was posted on January 29, 2009.

3. On January 28, 2009, notice was published in the *Newberg Graphic* newspaper, which is at least ten days prior to the public hearing before the Planning Commission on February 12, 2009, and notice of the Planning Commission hearing was posted at four public places to comply with Oregon Revised Statute requirements.

4. 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 14, 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.

5. On April 21, 2010, notice signs were posted on site. On April 22, 2010, notice of this proposed conditional use permit/design review was re-mailed to the owner of record as identified in Yamhill County Assessor's Office, and all adjoining property owners within a distance of 500 feet.

6. On April 28, 2010, notice was published in the *Newberg Graphic* newspaper, which is at least ten days prior to the public hearing before the Planning Commission on May 13, 2010, and on April 19, 2010, notice of the Planning Commission hearing was posted at four public places to comply with Oregon Revised Statute requirements.

7. 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.

8. On June 10, 2010, the Planning Commission continued the public hearing.

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Newberg that it denies the requested conditional use permit/design review for a gas station at Fred Meyer. This decision is based on the findings and testimony.

APPROVED by the Planning Commission on this 8th day of July, 2010.

AYES: NAYS: ABSTAIN: ABSENT:

ATTEST:

Planning Commission Secretary

Planning Commission Chair

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

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:

USE (square feet)	**PARKING STANDARD**	**SPACES REQUIRED**
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
Total required parking		**506**
Parking available after project completed		**666**
Surplus parking		**160**

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

Fixture Lamp Type	*Shielded*
Low/High Pressure Sodium, Mercury Vapor, Metal Halide and Fluorescent over 50 watts	*Fully*
Incandescent over 160 watts	*Fully*
Incandescent 160 watts or less	*None*
Fossil fuel	*None*
Any light source of 50 watts or less	*None*
Other sources	*As approved by § 151.587*

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 unsure 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 façade.

(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.

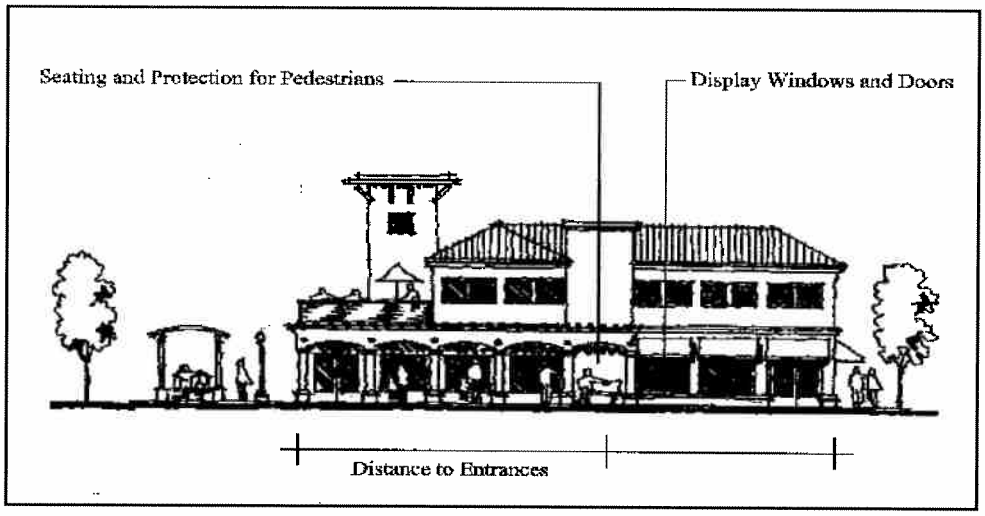
Finding: The canopy does not have any walls and therefore cannot have any windows. The cashier's kiosk is a small building that is not open to the public. It does have windows, and its interior is an active space. The area under the canopy can also be considered an active space. The nature of the structure 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-swales, 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 vactor 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

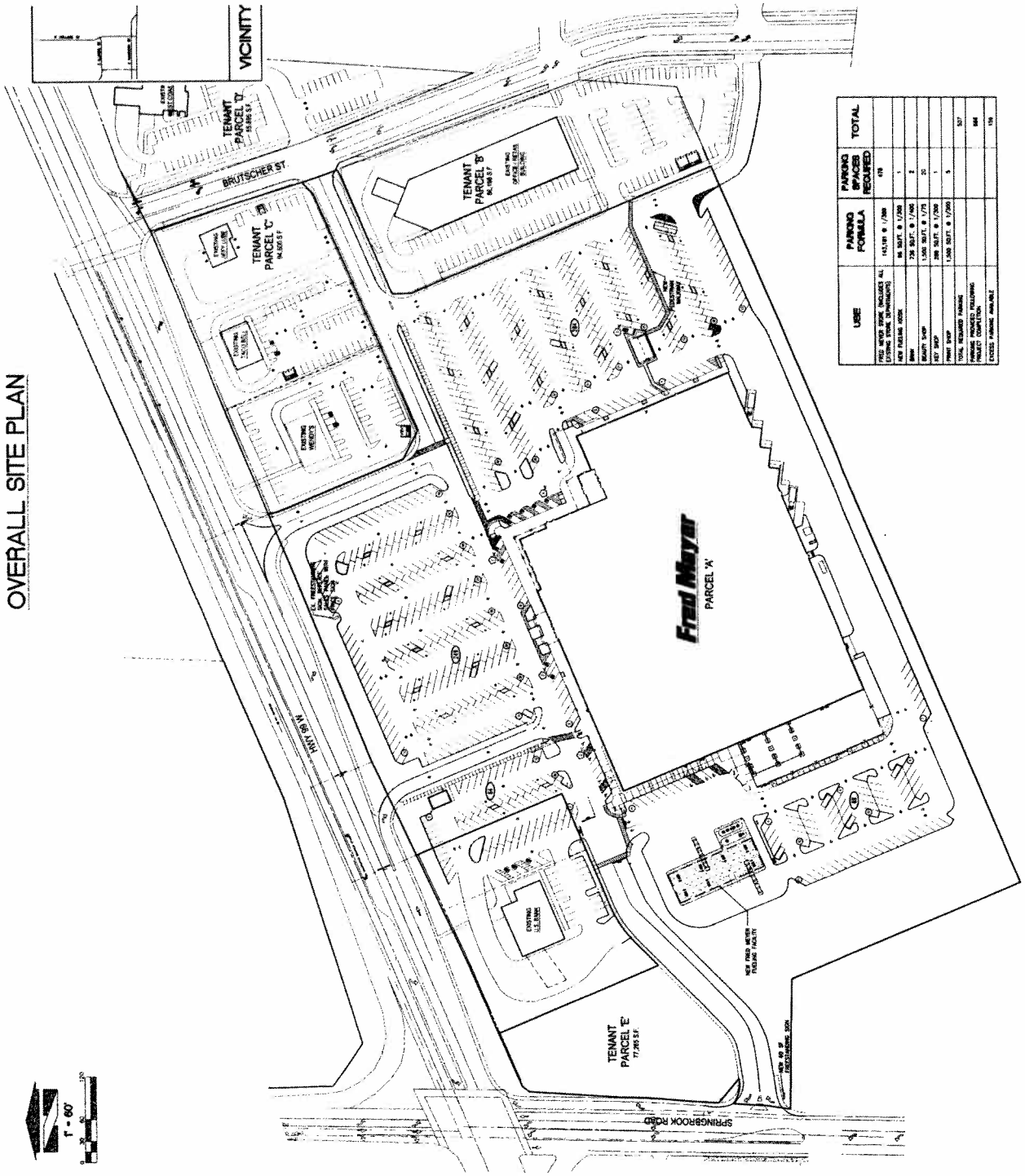


EXHIBIT C: SITE PLAN FOR FUEL FACILITY

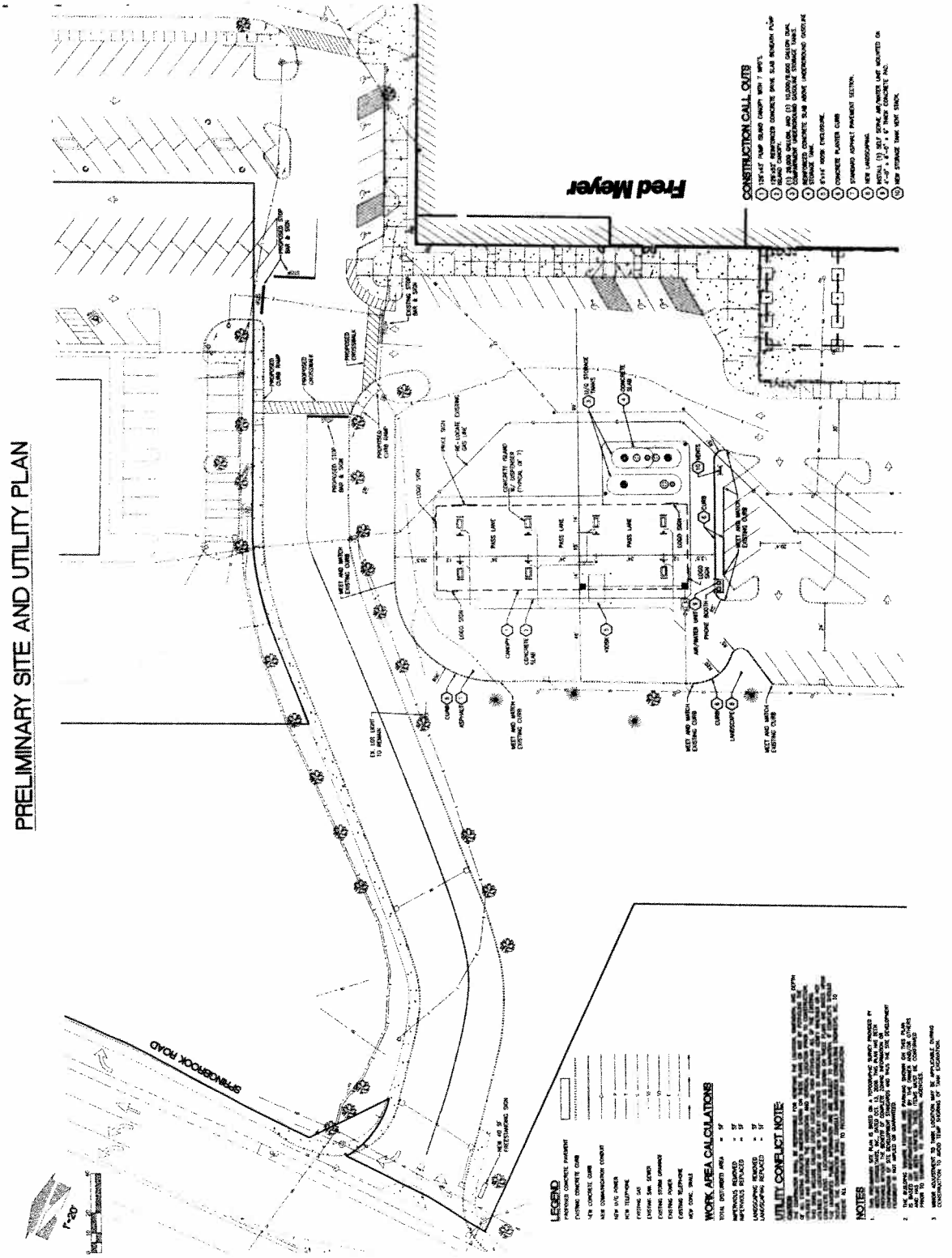
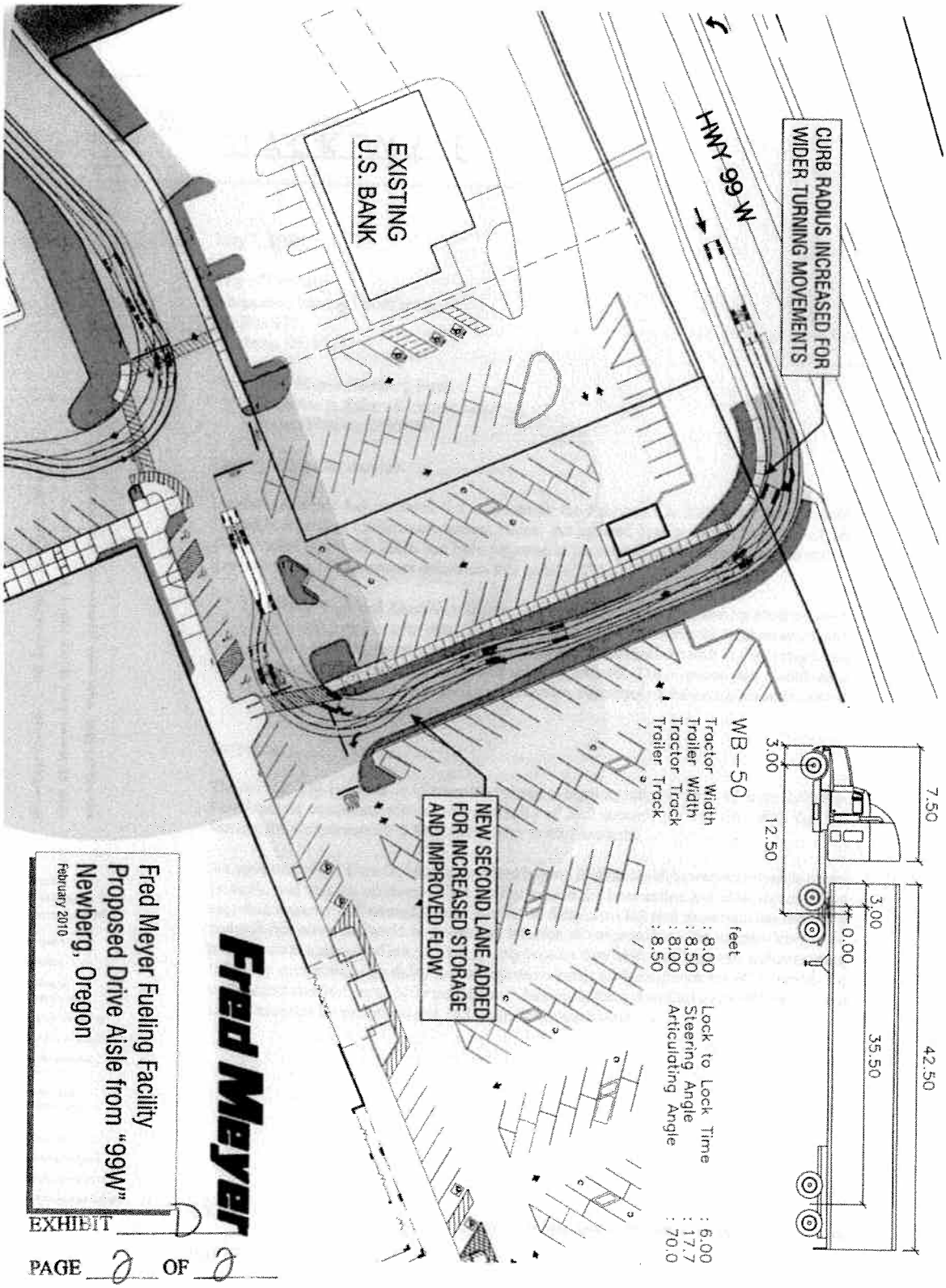


EXHIBIT D: REVISED WEST 99W ACCESS



City of Newberg

Planning and Building Department
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MEMORANDUM

TO: Newberg Planning Commissioners

FROM: Steve Olson

SUBJECT: Workshop on the Electronic Sign Ad Hoc Committee's final recommendation

DATE: July 1, 2010

At the July 8, 2010 Planning Commission meeting we will have a workshop on the final recommendation of the Electronic Sign Ad Hoc Committee. The workshop will provide some background on the committee's process, the topics that were explored, and will explain the committee's final recommendation in detail.

The City Council will be considering the recommendation at their July 6, 2010 meeting and may initiate a development code amendment to consider the recommended changes. If the Council initiates the development code amendment then the Planning Commission will have a future formal hearing on the proposed code amendment. For this reason we will focus the workshop on learning about the Electronic Sign Ad Hoc Committee's recommendation, and avoid deliberating on the merits of the proposed recommendation.

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June 3, 2010

FINAL RECOMMENDATION:

The Electronic Sign Ad Hoc Committee believes that electronic signs provide a valuable means of communication for the community to give and receive information about business products, events, and current conditions. The committee believes that the City could allow more flexibility to use electronic signs, depending on the zone and the sign size, while protecting the livability of residents. The committee recommends that the City Council initiate a development code amendment to allow more flexibility to use electronic signs in most zoning districts. The committee also recommends that the prohibition on animated signs in the C-3 downtown district be revisited in the future as part of the downtown coalition process. The committee further recommends that the City consider other options, such as annual sign awards or low-interest loans for sign upgrades, to encourage better signs in Newberg.

I. RECOMMENDED DEVELOPMENT CODE AMENDMENT

A. Add the text and table below:

§ 151.597.5 ELECTRONIC MESSAGE CENTERS
Electronic message center (EMC) signs are permitted subject to the limitations below.

(see table on next page)

Table 1: Electronic Message Center Standards by Display Method, Size, Zoning, and Review Process

Zoning	Size of EMC [1]	Display Method				
		Static Message	Alternating Message	Animated Message	Extended Video Message	Flashing or rapid scrolling
Portland Road Commercial and Industrial (C-2, M-1, M-2, M-3, M-4); other zones not listed	Up to 30 sq. ft.	Allowed	Allowed	Allowed	Allowed	Prohibited
	> 30 sq. ft. up to 50 sq. ft.	Allowed	Allowed	Allowed[2] or Site element review	Site element review	Prohibited
	> 50 sq. ft. up to 100 sq. ft.	Allowed	Allowed	Site element review	Prohibited	Prohibited
Downtown (C-3) Zone	Up to 30 sq. ft.	Allowed	Prohibited	Prohibited	Prohibited	Prohibited
	> 30 sq. ft. up to 100 sq. ft.	Allowed	Prohibited	Prohibited	Prohibited	Prohibited
Institutional (I), Neighborhood Commercial (C-1), and Residential-Professional (R-P)	Up to 30 sq. ft.	Allowed	Allowed	Allowed	Prohibited	Prohibited
	> 30 sq. ft. up to 50 sq. ft.	Allowed	Allowed	Allowed[2] or Site element review	Prohibited	Prohibited
	> 50 sq. ft. up to 100 sq. ft.	Allowed	Site element review	Site element review	Prohibited	Prohibited
All Residential Zones (Including R-1, R-2, & R-3) [3]	Up to 30 sq. ft.	Allowed	Allowed	Allowed	Prohibited	Prohibited
	> 30 sq. ft. up to 50 sq. ft.	Allowed[2]	Allowed[2]	Allowed[2]	Prohibited	Prohibited

[1] Maximum size of EMC is limited by the maximum size of sign allowed in that zone. Therefore, EMCs of the size shown may or may not be allowed.
[2] Allowed if setback from front property line is greater than 30 feet.
[3] Must be turned off between the hours of 11 p.m. and 6 a.m.

Review process:
The table above lists the zones where EMCs are allowed, based on the display method, size, and review process. EMCs that are allowed in the zone will use the standard Type I administrative review process. EMCs that require Site element review will use the process described below.

1. Site element review process: A Type I process with a decision by the Planning Director.
    a. Criteria: The review body must find that the sign will be compatible with surrounding uses, based on all of the following factors:
        i. Proposed sign operation complies with code.
        ii. Setback: At least 15 feet from front property line
        iii. Hours of operation: May be required to be turned off between the hours of 11 p.m. and 6 a.m. if sign is abutting and visible from a residential district.
        iv. Site landscaping is maintained and is up to code. If the site is nonconforming and cannot be brought up to code then efforts have been made to bring the site as close to code as practical.
        v. Freestanding signs include 3 of the following design elements:
            a. Includes prominent brickwork, masonry, naturally-finished wood, or naturally-finished metal in frame or supports.
            b. Includes neon type tube lighting.
            c. Uses 2 support poles or a full-width support structure.
            d. Outline or top of the frame is predominantly non-rectangular or curved.
            e. Includes landscaping around the base equal in area to the size of the sign.
            f. More than 40% of sign is EMC.
            g. Height is 20% lower than required.
            h. Setback is 20% greater than required.
            i. Sign will be used by 2 or more businesses on site.
    b. Appeals: All appeals of the site element review process shall be heard by the Planning Commission.

Size incentive:
If any freestanding EMC sign includes 4 of the design elements in 1.a.(v) above then the allowable sign area is increased by 10%. If any freestanding EMC sign includes 5 or more of the design elements in 1.a.(v) above then the allowable sign area is increased by 20%.

Electronic Scoreboards: Electronic scoreboards with electronic message centers in stadiums or at sports fields are not considered signs or limited in size or display method if they are oriented inward to the playing field.

Sign maintenance: All electronic message centers shall be kept in a good state of repair. Any burned out lights or LEDs shall be replaced as soon as possible.

Brightness: Each electronic message center shall be equipped with dimming technology that automatically varies the brightness of the electronic message display according to ambient light conditions. This standard shall only apply to signs approved after _____ (*insert date code revision adopted*).

B. Add the following to the existing Definitions section:

§ 151.003 DEFINITIONS

ELECTRONIC MESSAGE CENTER (EMC). A sign that is capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.

ELECTRONIC MESSAGE CENTER DISPLAY METHODS:
1. **Static message**. The display on the entire electronic message center stays constant for a period of at least ten minutes, and does not appear to change, move, scroll, vary color, or vary light intensity.

2. **Alternating message**. The display on the entire electronic message center is held constant for a period of at least 5 (five) seconds, and does not appear to change, move, scroll, vary color, or vary light intensity during that period, and where the image transitions to another image instantly or in a transition of less than ½ second.

3. **Animated message**. The display on all or part of the electronic message center changes or appears to move, scroll, vary color, or vary light intensity. *Animated message* excludes static messages, alternating messages, extended video messages and flashing or rapid scrolling.

4. **Extended video message**. A display on an electronic message center that contains images that vary in a continuous, non repeating fashion, similar to television viewing. It includes messages or patterns of images that repeat in segments over ten seconds in duration. It excludes images that serve as a background display, where a foreground display comprising at least 50 percent of the EMC surface is held constant for continuous one second intervals. It also excludes flashing or rapid scrolling displays.

5. **Flashing or rapid scrolling.** *Flashing* means a display that includes a pattern of sudden alteration (less than ½ second) between an illuminated EMC face and a face without illumination, or an EMC face where the copy color and the background color alternate or reverse color schemes rapidly (in less than ½ second). *Rapid scrolling* means any letter or character in a message moves or appears to move across an EMC face faster than 10 feet in two seconds. *Flashing or rapid* scrolling excludes a transition of less than ½ second between messages on an alternating message display. Flashing or rapid scrolling is prohibited.

6. **Strobe lights.** *Strobe lights* are high intensity flashing lights that may impair vision. Strobe lights are prohibited on signs.

C. Make the changes below in the existing code sections (deletions are ~~struck through~~, additions are underlined.)

151.593 GENERAL REQUIREMENTS; ALL SIGNS.

(C) ~~No animated sign shall exceed ten square feet in area~~. In the C-3 Zone, animated signs are prohibited.

151.594 MAJOR FREESTANDING SIGNS.

(B) Size.

(1) Residential Zones: No major freestanding sign shall be larger than 0.2 square foot per foot of street frontage, up to a maximum of ~~30~~ 50 square feet. At least six square feet of signage will be allowed. Major freestanding signs are not allowed on lots containing only one single family dwelling or duplex.

151.596 MAJOR ATTACHED.

(B) Size:

(1) R-1, R-2, and R-3 Zones: The total of all major attached signs on any building frontage shall not exceed 0.2 square foot for each foot of building frontage. At least six square feet of signage will be allowed up to a maximum of ~~30~~ 50 square feet. Major attached signs are not allowed on lots containing only one single family dwelling or duplex.

151.599 TEMPORARY SIGNS FOR EVENTS.

In addition to the portable signs otherwise permitted in this code, a lot may contain temporary signs in excess of the number and size allowed by § 151.598 above, during events as listed below:

(A) Grand opening event: A grand opening is an event of up to 30 days duration within 30 days of issuance of a certificate of occupancy for a new or remodeled structure, or within 30 days of change of business or ownership. No lot may have more than one grand opening event per calendar year. The applicant shall notify the city in writing of the beginning and ending dates prior to the grand opening event. If there are no freestanding signs on a frontage after the grand opening event, one of the temporary signs may remain on the property for the 60 days

immediately after the end of the grand opening event. A temporary electronic message center may be used during a grand opening event.

(B) Election event: An election event begins 90 days prior to and end 14 days after any public election. During this event a lot may contain up to two additional temporary signs not to exceed 12 square feet total area for both signs. These signs shall not be located in the public right-of-way.

(C) Other events: A lot may have two other events per calendar year. The events may not be more than eight consecutive days duration, nor less than 30 days apart. A temporary electronic message center may be used during the event.

(D) Flag displays: One flag display is permitted on each street frontage. An unlimited number of displays is permitted on any legal holiday or Newberg City Council designated festival.

II. RECOMMENDED NON-CODE OPTIONS

Non-code options

The Electronic Sign Ad Hoc Committee also believes that there are other actions that can be taken outside of the sign code to improve signs in Newberg. The committee recommends that the City Council encourage a community-based group to create an annual award for signs that show public service messages. The committee also recommends that the City Council consider creating a low-interest loan fund for sign upgrade projects in Newberg.