

**PLANNING COMMISSION MINUTES**

**January 12, 2012**

**7:00 p.m. Regular Meeting**

**Newberg Public Safety Building**

**401 E. Third Street**

TO BE APPROVED AT THE FEBRUARY 9, 2012 PLANNING COMMISSION MEETING

**I. CALL MEETING TO ORDER:**

Vice Chair Thomas Barnes opened the meeting at 7:00 p.m.

**II. OATH OF OFFICE FOR NEW COMMISSIONERS:**

Mayor Bob Andrews read the Affirmation of Office and swore in Commissioners Cathy Stuhr and Philip Smith; to serve on the Planning Commission from January 12, 2012 – December 31, 2014.

**III. ROLL CALL:**

Present:	Thomas Barnes	Philip Smith
	Art Smith	Lon Wall
	Allyn Edwards	Gary Bliss
	Cathy Stuhr	Mayor Bob Andrews, Ex-Officio
	Kale Rogers, Student PC	

Staff Present: Barton Brierley, Building & Planning Director  
Steve Olson, Associate Planner  
Jessica Nunley, Assistant Planner  
Sonja Johnson, Environmental Specialist  
DawnKaren Bevill, Minutes Recorder

**IV. CONSENT CALENDAR:**

1. Election of Chair and Vice Chair for one year.

**MOTION #1: Philip Smith/Art Smith** moved to elect Thomas Barnes as Chair and Cathy Stuhr as Vice Chair. Motion carried (7 Yes/ 0 No/ 0 Absent).

2. Approval of the December 8, 2011 Planning Commission Meeting Minutes

Chair Barnes entertained a motion to accept the minutes of the December 8, 2011 meeting.

**MOTION #2: Edwards/Stuhr** approve the minutes from the Planning Commission Meeting of December 8, 2011 as amended. Motion carried (7 Yes/ 0 No/ 0 Absent).

**V. COMMUNICATIONS FROM THE FLOOR:**

No items were brought forward.

## **VI. LEGISLATIVE PUBLIC HEARING:**

**APPLICANT:** City of Newberg

**REQUEST:** Proposed Stormwater and Erosion Control codes to implement the Willamette River EMDL Plan. The Willamette River TMDL (Total Maximum Daily Load) Implementation Plan is an agreement between DEQ and the City to protect the Willamette River from illicit discharges and adverse effects from stormwater runoff. The proposed stormwater and erosion control codes are intended to implement the plan and control the adverse effects of stormwater and erosion.

**RESOLUTION NO.:** 2012-296

**Opening of the Hearing:** Chair Barnes opened the hearing, which is continued from the Planning Commission Meeting of December 8, 2011, at the point of deliberation and asked staff for comments.

Sonja Johnson stated all information was included in the meeting packet.

### **Public Testimony:**

Mr. Mike Gougler apologized first of all for not being in attendance at previous meetings regarding the stormwater issue. As a member of the Citizen Rate Review Committee (CRRC), it must be determined, based on information provided by the consultant, whether or not the current rates meet the capital improvement expenditures as well as operating expenses for the various utilities. In the last two CRRC meetings, they discussed stormwater and what rates to establish to meet the obligations of the City of Newberg and what the citizens will be charged. In reviewing the proposed stormwater and erosion control code, he is left with the impression that what is being considered is something slightly more difficult to manage than an unfunded mandate. Normally with an unfunded mandate such as No Child Left Behind, private and public actuaries get together and estimate, due to desired outcomes by the mandate, how much it will cost to accomplish those goals. Mr. Gougler believes the desired outcomes for this proposal are not specified. According to the Planning Commission Meeting Minutes of October 13, 2011, the Department of Environmental Quality (DEQ) stated the Total Maximum Daily Load (TMDL) parameters the City of Newberg needed to be concerned with were stream temperature, mercury, and bacteria. A large percentage of the body of the work staff did is related to erosion control, solids in streams, and effluent run-off. The difficulty is determining what we are measuring it against. How do we know we meet a sediment control goal if we do not know how much sediment flows during several months of the year in the Willamette River? The answer is uncertain, yet the City of Newberg is being asked to control it. This is also the case with stream temperature. DEQ should have been asked to supply a chart of benchmark stream temperatures in the Willamette River. DEQ does not know how much heat is carried into the Willamette River from the various sources. Mr. Gougler asked how to budget for the correction of a perceived problem when there is no benchmark to measure against. There are a number of questions that relate and if not properly answered will cost the City and the citizens a lot of money. For instance, requiring a Stormwater Retention Plan in a small development. The Director determines what type of stormwater management is needed and then the obligation to maintain that facility will be the owner's responsibility, although "owner" has not been defined. Is the owner the developer? If so, the developer will be gone at some point which leaves it in the hands of the homeowner. If there is a homeowner's association, which this does not require, then the association's obligation will be to maintain the facility. When a homeowner's association is made up of numerous individual families who have an undivided obligation to maintain the facility, which will collect it? If the Director determines there has been a violation, who will be fined? Mr. Gougler stated due to undefined, unspecific methods, eventually the citizens of Newberg will all have to pay because it will become a budget item. As a developer, he sends the 1200-C permit off to DEQ, which has specifics. In this proposal, the first obligation is given to the City of Newberg which he is not in favor of due to the cost. It makes better sense for this entire body of rules to be vetted at the state level where it can be staffed and judged the same as large projects. How will the City pay for the Director's time it takes him to work on it? He is concerned with what this will cost the City in the future.

**Discussion:**

Commissioner Wall shares the same concerns as Mr. Gougler, although staff has stated they are not doing more than is being required by DEQ. He asked Mr. Gougler to tell him why this proposal should be put off. Mr. Gougler is not advocating pushing this proposal off but suggested the report include how to determine whether the City has or has not been successful regarding compliance as well as whether the City will be required to pass on 1200-C permits to the state or will that be the responsibility of the developer.

Commissioner Stuhr stated she recently asked a friend who is a stormwater expert to help her in sorting out the stormwater issues, and the sense she received from her friend is exactly what Mr. Gougler has stated. However, her friend made it clear there are no specific measures given by the state, which only looks forward and does not address the past. Commissioner Stuhr agrees defining who the owner is and who is responsible is important. Mr. Gougler stated DEQ is requiring the City of Newberg to implement measures to address these problems; giving the City the authority to do so. DEQ is satisfied with that, but the City of Newberg can also establish for its own purposes the measures in meeting its goals.

Commissioner Edwards agreed there is no way to gauge if the City is successful or not. He sees the anger of citizens with the increase in rates and now the question is who will be going out to be sure compliance is achieved. Sonja Johnson stated DEQ sampled and/or polled data from other agencies and did their own sampling at various spots, one near Newberg, so there is some data in regard to what is out there. The DEQ Willamette TMDL Report states that basin-wide for the Willamette bacteria needs to be decreased by 80% to meet water quality standards. Mercury needs to be decreased by 27% and the soil needs to be kept in place. The report also provides ways they believe are best management practices to attain these goals and they are primarily to reduce stormwater volume, reduce stormwater velocity, increase shading near streams to keep the streams cooler, and to keep the stream vegetation in place. In regard to knowing what the benchmark is, when the regulations are implemented, the City will do the measures DEQ has asked as well as starting a monitoring program where samples are taken above and below the city limits to see what the City of Newberg is putting into the Willamette River. Mr. Gougler stated a basin study should be developed and paid for by the state.

Commissioner Philip Smith understands Mr. Gougler's concerns regarding standards and compliance. He believes this proposal should be adopted but it would be money well spent now in protecting the City long term to test the sediment and temperature of the Newberg watershed so a standard can be established.

Commissioner Art Smith stated the requirement needs to be met but is concerned about approving it without a particular standard. He is not optimistic of receiving the standard from the state.

Commissioner Bliss is concerned with how this is approached. If the City is given a mandate to meet a certain percentage and then create a baseline, the state could later argue that the City is not doing enough.

Chair Barnes closed the public testimony at 7:58 p.m. and asked for comments from staff.

**Staff Comments:**

Sonja Johnson stated the City of Newberg is behind schedule regarding the TMDL. When the code is passed, staff will need time to implement the code and there are costs associated with that down the road and it will affect the stormwater fee. Mr. Gougler is correct in saying it is an unfunded mandate.

**Deliberation:**

Commissioner Stuhr stated the discussion of sampling and developing a baseline is exactly why the regulations are written the way they are. It takes time to establish and implement the practices. However, she would like to be convinced the City is doing only the minimal required. Can 500 square feet be larger? What about

ownership? She wants those questions to be answered before it is passed on to City Council. Also, consider if the City can do an estimate of costs for the future.

Kale Rogers stated there is no information in the packet regarding success. It says just to implement and he does not see adding to rates now if it is not needed in the future. Doing the least amount possible is most cost effective at this time.

Commissioner Edwards asked whether the state obtained the measurements. Sonja Johnson replied the state sampled and gathered historical data for the Willamette River and they used that to determine if the Willamette was achieving the water quality standards and sampled where there was no data found.

Chair Barnes asked Ms. Johnson if data was obtained from Newberg creeks. Ms. Johnson stated the data was used from creeks that had defensible data, but not from the three creeks located in Newberg.

Commissioner Bliss still has a problem with the 150% costs falling on the developer. Sonja Johnson stated she had asked legal counsel regarding that percentage and Mr. Mahr was of the opinion the City does need a deterrent and 150% is acceptable. There have been instances where people either cannot or will not do what is asked by the City which then causes a cost to the City to clean up. The City needs a deterrent to keep that from happening in the future. Commissioner Bliss understands the percentage is for penalty purposes.

Ms. Johnson stated in regard to ownership, many other cities in the area have allowed private stormwater facilities as has Newberg, and some are not being maintained, just as Mr. Gougler had stated. The City of Newberg is proposing to require that a maintenance agreement go along with the deed. When a developer brings a subdivision in to be platted, the City will require an Operations and Maintenance Plan for the stormwater facility. That is included in the proposal in Section 13.35.06 (b).

**MOTION #3: P. Smith/Art Smith** moved to amend the motion by removing the last 4 words of the sentence on page 26; Section 13.30.16. Motion carried (7 Yes/ 0 No/ 0 Absent).

**MOTION #4: Wall/P. Smith** moved to adopt Resolution 2011-296. Motion carried (7 Yes/ 0 No/ 0 Absent).

Commissioner Philip Smith asked that a recommendation be made to the City Council regarding exploring the idea of quantitative research. Perhaps a grant would be available for the research

Chair Barnes recessed for 6 minutes at 8:36 p.m.

## **VII. QUASI-JUDICIAL PUBLIC HEARING**

**APPLICANT:** Mart Storm

**REQUEST:** Approval of the Thorne Park Subdivision (four lots)

**LOCATION:** Adjacent to 1800 E. Mountainview Drive

**TAX LOT:** 3217BA-00300

**FILE NO.:** SUB3-08-009

**ORDER NO.:** 2012-01

**CRITERIA:** 15.235.060

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

Chair Barnes read ORS §197.763 and opened the hearing. He asked the Commissioners for any abstentions, conflicts of interests, or objections to jurisdiction. Commissioner Bliss visited the site yesterday and today and but had no contact with the owner. Commissioner Philip Smith goes by the site but has had no contact with the

owner. Commissioner Stuhr stated if there is a feeling or impression it should be brought up at this point to give the applicant the time to respond to it.

Commissioner Bliss expressed in visiting the site on two occasions and reviewing the maps, he found the maps inadequate which did not meet the code and showed no existing trees, hedge, or retaining wall; the contours do not conform to what is on the site.

Commissioner Edwards and Chair Barnes both pass the property daily but they have no bias.

Jessica Nunley presented the staff report (see official meeting packet for details), and used a PowerPoint presentation. The applicant recently has done a lot line adjustment. Improvements will be substantially complete, and the developer will make a payment-in-lieu for remainder of required improvements. Each lot meets the required area and width standard.

**Staff Recommendation:** Ms. Nunley stated staff asks the Planning Commission to adopt Order 2012-01 which approves the requested subdivision tentative plat with the finding shown in Exhibit "A" and the condition of approval shown in Exhibit "B".

Chair Barnes opened public testimony.

#### **Public Testimony:**

**Proponents:** Matt Storm made himself available to answer concerns or questions posed by the Commissioners.

Chair Barnes asked about the drainage depth for the sanitary sewer on lot #4. Mr. Storm replied the sanitary storm on Thorne Street is at 15 feet.

Commissioner Philip Smith asked about the 1% slope on a sewer drain. Commissioner Bliss stated ½ of 1% is acceptable.

Chair Barnes asked in regard to drainage into Hess Creek; who maintains that? Mr. Storm replied there will be individual lines for each lot and they will not share the same pipe. Each property owner will be responsible for their own line. One of the conditions is to design and construct an approved facility there but he is not sure about whether it will have a water quality feature in it; will only be hooked to roof and low-point drains. He is unsure as to the requirements. Chair Barnes stated the concern is to not disturb the sediment in Hess Creek. Ms. Nunley stated each homeowner will maintain it and there are different ways it can be mitigated.

Chair Barnes closed the public testimony at 8:57 p.m. and asked for comments from staff.

#### **Discussion:**

Commissioner Bliss asked staff how the stream corridor map was established. Barton Brierley replied the stream corridor was developed in the mid 1990's and the stream corridor was mapped by engineers based on elevations. They took site visits and used aerial photographs. Most of it was based on a vegetation line. Commissioner Bliss stated there is a 21-foot difference in elevation from the east side to the west side. He asked what frequency it was based on. Mr. Brierley stated it was based on the 100 year flood plain and a 1% chance per year that it will flood. Commissioner Bliss disagreed as there is a 25-foot elevation difference. Why was the flood plain boundary not required as in the code? Mr. Brierley replied it is a condition. Mr. Storm was on the stream corridor committee and explained that it was established 50 feet from the low water level and then a consultant was hired to draw a line based on that. In most cases they exceeded 50 feet. He believes it has been shown on the plat and will see to the correction.

**Staff Comments:**

Staff recommends adoption with the change to the grading condition noted.

**MOTION #5:** Wall/Stuhr moved to approve Planning Commission Order No. 2012-01 with conditions and requirements stated by staff.

**Discussion:**

Commissioner Bliss cannot support the motion due to the topography which does not reflect what is in the field. Fences, trees, and a retaining wall are not shown on the map, which is required in the code. The preparer, surveyor, and owner are not shown on the map. Chair Barnes understands the flooding concern, but Exhibit "B" shows a retaining wall which is on the neighbors property.

Commissioner Wall asked who supplied the map. He does not want to punish the applicant if the applicant is not at fault. Ms. Nunley stated the property owner/developer supplied the map and she stated staff's contours match up with the property owner. This application requires no site grading, which is why there is no grading plan, and the lots are relatively level in that area.

Commissioner Bliss agrees he does not want to penalize the applicant, but asked where the Planning Commission should draw the line. The code needs to be met.

Commissioner Stuhr stated those items can be added to the conditions before it moves forward. Commissioner Bliss would rather see it resubmitted.

Commissioner Edwards agrees with setting a precedent and staff needs to be more aware of the paperwork as the code calls for, but the applicant should not be penalized.

Commissioner Philip Smith stated he will vote in favor of the application with the proper preliminary plat as a condition.

**VOTE ON MOTION #5:** Motion carried (5 Yes/ 2 No [Bliss, Wall]/ 0 Absent).

**VIII. OLD BUSINESS:**

**REVIEW OF PLANNING COMMISSION GUIDELINES:**

**MOTION #6:** Art Smith/Wall moved to pass Resolution 2012-297. Motion carried (7 Yes/ 0 No/ 0 Absent).

**IX. ITEMS FROM STAFF:**

Update on Council items:

Barton Brierley stated the McClure property was appealed to the Court of Appeals and the McClure's have now asked to withdraw the subdivision and annexation application.

The next Planning Commission Meeting is scheduled for Thursday, February 9, 2012.

**X. ITEMS FROM COMMISSIONERS:**

Commissioner Philip Smith stated he has concerns about the issue Mr. Gougler brought up in testimony regarding best management practices by DEQ. It is disturbing that the City is asked to make improvements but is unaware of what the targets are. The Stormwater proposal has been passed but he would still like to have it

