



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

03/02/2009

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Newberg Plan Amendment
DLCD File Number 010-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, March 13, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Barton Brierley, City of Newberg
Gloria Gardiner, DLCD Urban Planning Specialist

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DLCD

Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

☐ In person ☐ electronic ☐ mailed

DATE
STAMP

DEPT OF

FEB 23 2009

**LAND CONSERVATION
AND DEVELOPMENT**

Jurisdiction: **Newberg**

Local file number: **G-104-04**

Date of Adoption: **2/16/2009**

Date Mailed: **2/20/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: **10/22/2008**

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☒ Land Use Regulation Amendment

☐ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

AMENDMENTS TO THE NEWBERG DEVELOPMENT CODE STANDARDS RELATING TO
 TELECOMMUNICATION FACILITIES - SPECIFICALLY IN REGARD TO CAMOUFLAGING AND
 SETBACK REQUIREMENTS FOR CELL TOWERS IN OR ADJACENT TO RESIDENTIAL ZONES

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **na**

to:

Zone Map Changed from: **na**

to:

Location: **City-wide**

Acres Involved: **0**

Specify Density: Previous: **na**

New: **na**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

☒ **Yes** ☐ **No**

If no, do the statewide planning goals apply?

☐ **Yes** ☐ **No**

If no, did Emergency Circumstances require immediate adoption?

☐ **Yes** ☐ **No**

DLCD # 010-08 (17216)

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **Luke Pelz**

Phone: **(503) 554-7728** Extension:

Address: **PO Box 970**

Fax Number: **503-537-1272**

City: **Newberg**

Zip: **97132-**

E-mail Address: **luke.pelz@ci.newberg.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:**

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - **ATTENTION: PLAN AMENDMENT SPECIALIST**.



ORDINANCE No. 2009-2709

AN ORDINANCE AMENDING THE DEVELOPMENT CODE TO INCLUDE REGULATIONS FOR CELL TOWER CAMOUFLAGING AND SETBACKS FOR CELL TOWERS ADJACENT TO RESIDENTIAL ZONES

RECITALS:

1. Between 2000 and the present the City has had experience applying the existing Development Code standards for cell towers to development proposals.
2. The City Council recognizes that cell towers have an effect on the visual landscape.
3. The existing Development Code provides inadequate standards for protecting residential neighborhoods from visual impacts caused by cell towers.
4. Requiring cell tower camouflaging and setbacks adjacent to residential zones will reduce the negative visual effects on the built and natural environments. Background information regarding camouflaging, setbacks, and existing standards is contained in the staff report in Exhibit "B".

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. Section 151.674, Cell Tower Installation Standards, of the Newberg Development Code is amended as follows:
 - a. (B) Tower setbacks. (1) Only one tower per lot is authorized. Towers shall be setback from any existing structure on the site, abutting properties, and public rights-of-way a minimum distance equal to 30% of the height of the tower, measured from the base of the tower to the structure, abutting property or public right-of-way. All towers shall be set back from a residential zone a distance equal to or greater than 100% of the tower height, measured from the base of the tower to the nearest property line of a residentially zoned lot. The setback requirements of this section shall not apply towards:
 - a) antennas incorporated into, and no more than 18 feet above, existing or new buildings;
 - b) antennas incorporated into, and no more than 18 feet above, existing structures;
 - c) antenna support structures incorporated into, and no more than 18 feet above, existing or new buildings.
 - b. (E) Visual Impact. (1) Towers 200 feet or less in height shall be painted in accordance with regulations of the Federal Aviation Administration and/or Oregon State Department of Aviation. Where such regulations do not apply, ~~towers shall have a galvanized finish or be painted silver except in areas where there are trees in the immediate area, such towers shall be painted brown or green from ground level to at least the mature height of the trees.~~ towers shall be camouflaged. All new towers and antennas must either be

camouflaged or employ appropriate stealth technologies that are visually compatible with a host building or structure, or the surrounding natural environment. The type of camouflage may include trees, flagpoles, bell towers, smoke stacks, steeples; however, other types of camouflage may be approved at the discretion of the decision making body.

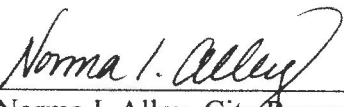
2. Section 151.003, Definitions, of the Newberg Development Code is amended as follows:

- a. Camouflaged. A telecommunication facility that is disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure ~~is considered camouflaged.~~ such that its presence is not readily discernable as a telecommunication facility.

3. The findings in Exhibit "A" are hereby adopted.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: March 18, 2009.

ADOPTED by the City Council of the City of Newberg, Oregon, this 17th day of February, 2009, by the following votes: **AYE: 6 NAY: 0 ABSENT: 1 (SHELTON) ABSTAIN: 0**



Norma I. Alley, City Recorder

ATTEST by the Mayor this 19th day of February, 2009.



Bob Andrews, Mayor

Exhibits:

"A" Findings

"B" Staff Report

LEGISLATIVE HISTORY

By and through the Planning Commission at 01 / 08 / 2009 meeting. Or, None.
(committee name) (date) (check if applicable)

EXHIBIT "A": FINDINGS
Ordinance No. 2009-2709
Camouflage and Setback Requirements for Cell Towers
File#: G-104-04

I. Procedures and Criteria That Apply - Newberg Development Code § 151.122:

- (A) *The proposed change is consistent with and promotes the objectives of the Newberg Comprehensive Plan and this code;*
- (B) *There is a public need for a change of the kind in question,*
- (C) *The need will be best served by changing the classification of the particular piece of property in question as compared with other available property.*

Finding: The proposed amendments are consistent with and promote the objectives of the Newberg Comprehensive Plan and Development Code as shown below. By amending the Code to require camouflaging and setback requirements adjacent to residential zones will enhance the aesthetic quality of development, reduce potential damage to adjacent properties, lessen the visual impact on surrounding residential properties, and improve the visual quality of Newberg.

Newberg Development Code

151.670 Telecommunication Facilities Description and Purpose

- (B) *Minimize visual impacts of towers through careful design, siting and vegetative screening.*
- (C) *Avoid potential damage to adjacent properties from tower failure and falling ice, through engineering and careful siting of tower structures.*
- (D) *Lessen impacts on surrounding residential areas.*

Newberg Comprehensive Plan

II. G. 2. Scenic Resource Policies

- a. The City shall take steps to maintain and improve the visual quality of the City.*

II. H. 2. Industrial Areas Policies

- a. Industrial expansion shall be located and designed to minimize impacts on surrounding land uses.*

II. J. 1. General Policies

- c. Non-residential uses abutting residential areas should be subject to special development standards in terms of setbacks, landscaping, sign regulations, building heights and designs.*
- g. Community appearance should continue to be a major concern and subject of a major effort in the area. Street tree planting, landscaping, sign regulations and building improvements contribute to community appearance and should continue to be major design concern and improvement area.*
- l. The City shall encourage compatible architectural design of new structures in the community.*
- m. The City shall encourage innovative design and ensure that developments consider site characteristics and the impact on surrounding areas.*

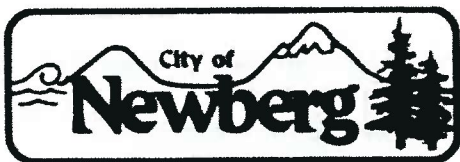
II. J. 2. Industrial Areas Policies

c. Where industrial uses abut residential zones or uses, special development standards relating to setbacks, screening, signs, building height, and architectural review should be established.

Finding: Residential development comprises a majority of the land area within Newberg's Urban Growth Boundary. For many persons the aesthetic character of a residential neighborhood and quality of adjacent development is an important factor in determining where to purchase a home or rent an apartment. There is a public need to:

- Ensure the existing aesthetic character of a neighborhood is not negatively affected by adjacent uses.
- Ensure uses located adjacent to residential development do not negatively affect property values.
- Ensure demand for cellular towers does not conflict with the policies of the comprehensive plan.
- Ensure that the natural and built environment is free of objects considered "visual pollution" and unacceptable to most persons.
- Exercise zoning authority to ensure adequate setbacks, open space, light, and safety between developments.

Exhibit **B**



Planning and Building Department

P.O. Box 970 • 414 E. First Street • Newberg, Oregon 97132

(503) 537-1240 • (503) 537-1272 FAX • www.ci.newberg.or.us

TYPE IV LEGISLATIVE AMENDMENT STAFF REPORT G-104-04

FILE NUMBER: G-104-04

REQUEST: Amend the Newberg Development Code to provide setback and camouflage standards for telecommunication towers.

APPLICANT: City of Newberg

PREPARED BY: City of Newberg Planning Staff

DATE OF HEARING: February 17, 2009

ATTACHMENTS: The attachments to this staff report are available in electronic format at:
http://ci.newberg.or.us/website/Community%20Development/Planning/Cell%20Towers/Staff_Report_Attachments.pdf

- A. Planning Commission Resolution 2008-259
- B. City Council Resolution 2004-2515
- C. Ordinance 2000-2536
- D. Photos: Examples of camouflaged tower designs (attached)
- E. Minutes:
 - January 8, 2009 Planning Commission Public Hearing
 - December 11, 2008 Planning Commission Public Hearing
 - September 25, 2008 Planning Commission Workshop
 - July 19, 2004 City Council Public Hearing
 - November 6, 2000 City Council Public Hearing

A. SUMMARY:

1. The use of the cellular phones and subsequently the demand to construct cellular towers has increased dramatically over the previous 20 years. All five of the towers in Newberg have been constructed since the year 2000.
2. Cell towers typically exceed the height of existing structures in the vicinity and may be aesthetically unpleasing, causing "visual pollution" in the landscape. Common concerns include the potential for nearby towers to decrease residential property values and to increase the potential for negative health effects.
3. The existing Development Code standards include requirements that a tower have the least visual impact, but does not include specific requirements for camouflaging beyond painting. Furthermore, the Development Code does not require increased setbacks for towers adjacent to residential zones.
4. The City Council would like the Planning Commission to consider amendments to the Development Code to require camouflaging and additional setbacks for towers adjacent to residential zones.
5. The Development Code amendments, as proposed, would:
 - Require camouflaging for new cell towers. Camouflaging will subsequently reduce concerns regarding the affect on residential property value and visual impact on the landscape.
 - Require towers to be located a distance equal to the height of the tower when adjacent to residential zones. Requiring a setback for towers adjacent to residential zones will reduce concerns regarding potential negative health effects and visual impact on the landscape.

B. PROCESS: Beginning in 2000, due to the increased demand for cell towers, the City Council directed the Planning Commission to review the pros and cons, and potential strategies to address any issues. As a result of these workshops, the Planning Commission recommended changes to the Development Code to improve its standards. Subsequently the City Council adopted Ordinance 2000-2536, establishing siting, buffering, height, and landscaping standards for cell towers in Newberg.

Between 2000 and 2004 the City had some experience in applying the adopted Ordinance to development proposals. The Council has identified that the existing standards could be improved regarding camouflaging requirements. In 2004 the City Council decided to adopt Resolution 2004-2515 initiating amendments to the Ordinance to better protect residential neighborhoods from the visual impact of these towers.

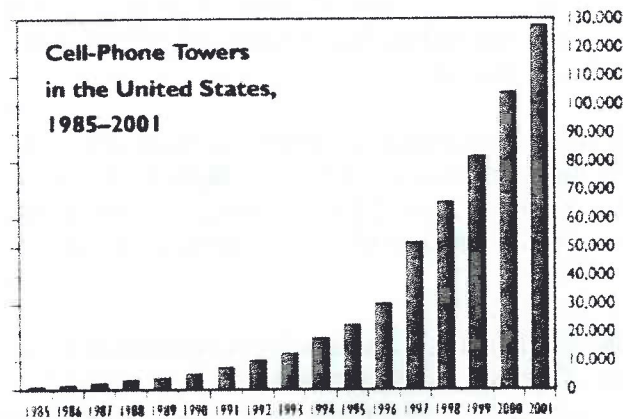
On September 25, 2008 the Planning Commission held a workshop to discuss typical concerns about cell tower placement and learn more about potential camouflage design. The meeting concluded with the Planning Commission directing staff to prepare a draft Development Code amendment that requires camouflaging, setbacks, and addresses how the new standards will affect existing towers.

On December 11, 2008 Planning Commission held a public hearing to consider the proposed amendments to the Development Code. The Planning Commission requested that staff

conduct additional code research and return with revised text. The hearing was continued to January 8, 2009. On January 8, 2009 the Planning Commission adopted Resolution 2008-259 recommending that the City Council adopt camouflaging and setback requirements for new cell towers.

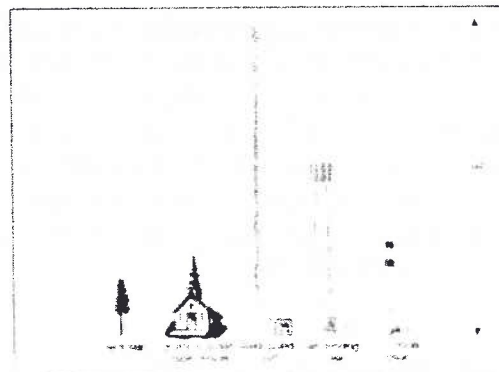
On February 17, 2009 the City Council will hold a public hearing to consider the Planning Commission recommendation and public testimony in regard to the proposed Development Code amendments.

- C. DISCUSSION:** Since 1990 the use of cellular phones has increased dramatically in the United States. Subsequently, there has been an increase in service providers which in turn has created demand for additional towers.



Source: Wilke, Thomas. 2003. *The Geographical Review*.

The increased construction of cell towers within a municipality can have a significant impact on the visual landscape. The height of a typical cell tower can range from between about 100 feet to 300 feet. The following graphic illustrates the comparative height of typical cell tower designs.



Source: Wilke, Thomas. 2003. *The Geographical Review*.

There are about 5 towers in Newberg. New service providers are required to co-locate new antennas on an existing tower. The existing capacity of towers and the demand for new towers in Newberg is unknown.

Visual Impact

The Telecommunications Act of 1996 established limits to what a local government may regulate in regard to cell tower siting. Essentially the Act prohibits a local government from discriminating against service providers and banning cellular service from a community entirely. However the Act maintains a local governments zoning power in regard to regulating location and aesthetics. This is beneficial since the typical concerns are that towers are unsightly, detract from the existing character of a neighborhood, obstruct view corridors, and may reduce property values.

The existing Development Code does provide standards to ensure design compatibility with the surrounding environment. The existing design standards require that the towers be painted either brown or green when trees are present. Otherwise they are required to be painted silver or according to federal and/or state standards. One way to better hide or integrate an unsightly tower is to use camouflaging. Towers can be disguised as trees, flag poles, or integrated into an existing building. Attachment "D" includes photos of typical cell towers that have been camouflaged.

Camouflaging would come at an additional cost to the developer or service provider. According to Stealth Concealment Solutions, Inc. a flagpole design may cost between \$5,000 and \$8,000 extra, a tree may cost around \$50,000 extra and a bell tower approximately \$65,000 extra. A typical tower between 80 to 120 feet tall costs between \$75,000 and \$200,000.

What is a reasonable tower setback distance from residential zones?

In general the purpose of setback requirements is to provide space, light, and air and safety from fire between developments. Any setback distance will not completely remove a tower from site. However, there is presumably a certain distance that would provide a minimum comfort level to adjacent property owners. To determine reasonably acceptable setback distance, staff reviewed one study, reviewed other development codes, and conducted a site visit to a local cell tower.

Research

The study that was reviewed analyzed the minimum distance to provide safety from a potential tower collapse. The study concluded that for the majority of the towers that collapse the debris is contained within a distance of 50% of the tower height. For example if a 100 foot tower collapsed, it is likely that the collapsed tower and debris will be located within 50 feet of the tower base. It seems, based on this report, that a setback distance equal to 50% of the height would be sufficient, at least in regard to safety concerns. It is worth to note the study found that towers rarely collapse and when they do it typically occurs in locations with high winds and high occurrence of snow and ice.

Municipal Code Review

The review of other municipal codes, chosen at random, showed that the typical setback requirement for towers adjacent to residential development is between 100% and 200% of the height of a tower.

Site Visit

Staff conducted a site visit to a local cell tower located at the Newberg High School. The purpose of the visit was to identify a general distance from the tower that would presumably feel comfortable for most persons. The cell tower at the High School is approximately 100 feet tall. At a distance of 50 feet (approximately 50% of the tower height) from the base of the tower, the tower seemed to be directly above the field of vision. At a distance of 100 feet from the base the tower seemed close but did not feel as if it was directly above the field of vision. At the distances of 150 feet and 200 feet from the base the tower was still within visible range and provided a nominal level of increased comfort as compared to the 100 foot distance. Essentially, the distances beyond 100 feet, although in the field of vision, felt comfortable because the tower did not seem to be located directly above.

Based upon the study, review of other codes, and conducting a site visit a setback distance equal to 100% of the height of a tower would seem reasonable both from a safety standpoint and general comfort level. It seems that there would be little function in a setback beyond 100% of the height of the tower, especially if the tower is required to be camouflaged. The purpose of the setback requirement should be to provide a general comfort level while the purpose of the required camouflage should be to mitigate the visual impacts. Increasing the setback requirement will not create additional cost for developers however the requirements may limit the number and location of potential tower sites.

Existing height restrictions for cell towers

For zones where towers are permitted outright or conditionally, a height limit is identified. The table below shows the zoning districts, whether a tower is permitted outright, conditionally or prohibited, and the height limit.

Newberg Development Code – Cell Tower Zoning Matrix		
Zone	Permitted -Outright, Conditionally, or Prohibited-	Height Limit
R-1 Low Density Residential	Conditional use if incorporated into an existing structure.	18 feet above host structure
R-2 Medium Density Residential	Conditional use if incorporated into an existing structure.	18 feet above host structure
R-3 High Density Residential	Conditional use if incorporated into an existing structure.	18 feet above host structure
RP Residential Professional	Conditional use if incorporated into an existing structure.	18 feet above host structure
C-1 Neighborhood Commercial	Permitted use if incorporated into an existing structure.	18 feet above host structure
C-2 Community Commercial	Permitted use if incorporated into an existing structure.	18 feet above host structure
C-3 Central Business District	Permitted use if incorporated into an existing structure.	18 feet above host structure
C-4 Riverfront Commercial	Prohibited	Not applicable
M-1 Limited Industrial	Permitted use if incorporated into an existing structure/Conditional use if freestanding or incorporated into an existing structure above height limit	18 feet above host structure/Freestanding – minimum height necessary, attached – more than 18 feet above host structure
M-2 Light Industrial	Permitted/Conditional use	100 feet/ more than 100 feet
M-3 Heavy Industrial	Permitted/Conditional use	100 feet/ more than 100 feet
SD Springbrook District	Prohibited	Not applicable
I Institutional District	Permitted use if incorporated into an existing structure/Conditional use if freestanding or incorporated into an existing structure above height limit	18 feet above host structure/Freestanding – minimum height necessary, attached - more than 18 feet above host structure
CF Community Facilities	Prohibited	Not applicable
Source: Newberg Development Code 2008		

In the (I) Institutional District, for freestanding towers and towers above 18 feet above the height of a host structure, the following height regulation applies:

151.674 E.4. "Towers shall be the minimum height necessary to provide parity with existing similar tower supported antenna, and shall be freestanding where the negative visual effect is less than would be created by use of a guyed tower."

How would existing towers meet the new standards?

If new camouflage and setback standards are required, existing towers would be considered non-conforming structures. Newberg Development Code section 151.144 Non-Conforming Building with Legally Conforming Uses would apply. This section requires that if an expansion or modification of a tower is approved, the new construction would be required to meet the new camouflaging and setback requirements. One option would be to amend the Development Code to require all existing towers to come into conformance with new code requirements within a specified time period.

D. NOTICE:

1. Notice was published in the *Newberg Graphic* prior to the public hearing.
2. Notice was sent to the Department of Land Conservation and Development at least 45 days prior to the initial evidentiary hearing.

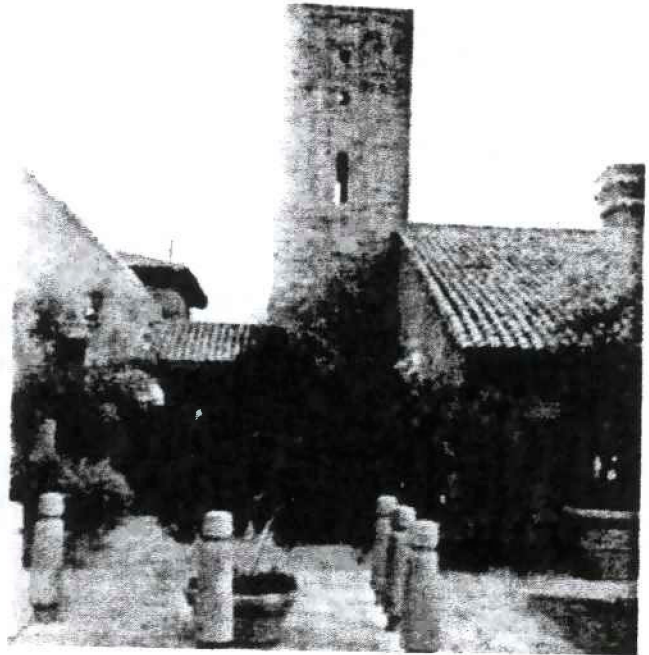
E. PUBLIC COMMENTS RECEIVED: No public comments were received regarding this proposal.

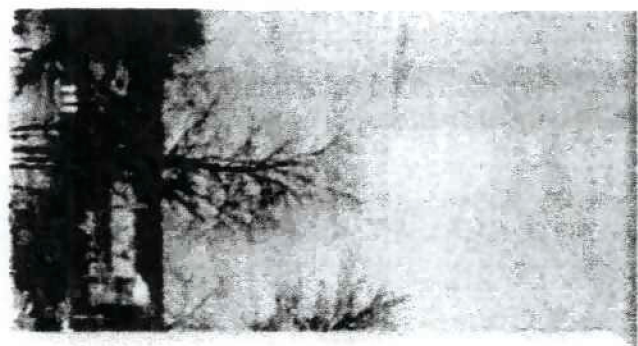
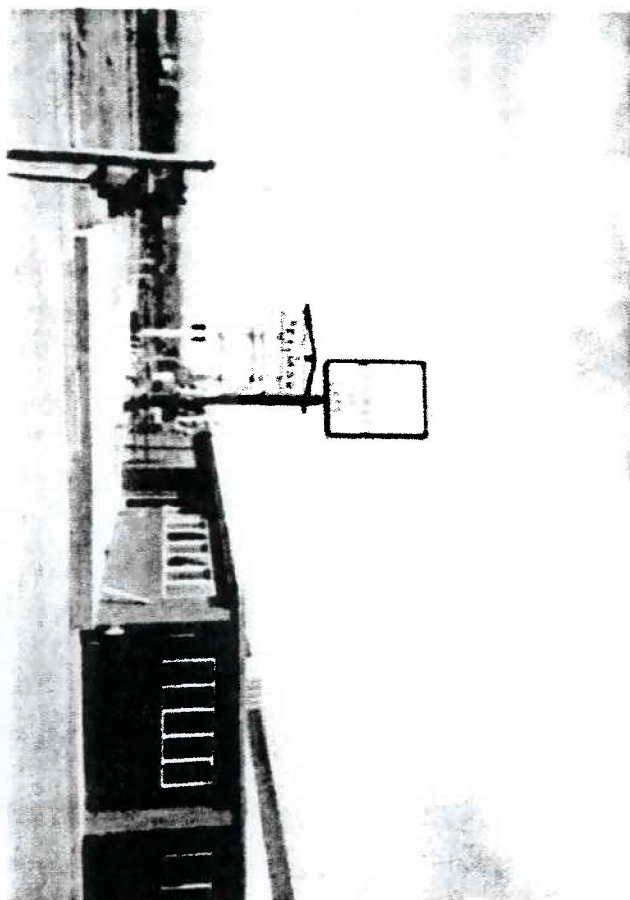
F. APPLICABLE REVIEW CRITERIA: Newberg Development Code§ 151.122. This request follows the Type IV legislative process to amend land use regulations.

G. STAFF RECOMMENDATION: The staff recommendation is made in the absence of public testimony and may be modified prior to the close of the hearing. At this time, staff recommends: **Adopt Ordinance 2009-2709** which recommends that the City Council adopt the proposed Development Code amendments to require camouflaging and setback standards for new cell towers.

H. PLANNING COMMISSION RECOMMENDATION: The Planning Commission adopted Resolution 2008-259 recommending that the City Council adopt an ordinance to amend the Development Code as shown in Ordinance 2009-2709.

Attachment D

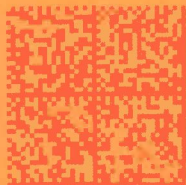






Planning Division
Box 970 ■ Newberg, OR 97132

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02/20/2009

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ATT: Plan Amendment Specialist

Department of Land Conservation and
Development

635 Capital Street NE, Suite 150
Salem, Oregon 97301-2540