



AGENDA & Notice of Planning Commission Work Session Meeting

The Planning Commission of the City of Newport will hold a work session meeting at **6:00 p.m., Monday, November 14, 2011**, at the Newport City Hall, Conference Room "A", 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder, 541-574-0613.

The City of Newport Planning Commission reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the work session.

NEWPORT PLANNING COMMISSION Monday, November 14, 2011, 6:00 P.M.

AGENDA

A. Unfinished Business.

1. Review draft ordinance for Tree City USA designation.
2. Review recommended revisions to the Vacation Rental Code from the Ad Hoc Work Group.

B. Adjournment.



Memo

To: Planning Commission/Commission Citizen Advisory Committee
From: Derrick Tokos, Community Development Director 
Date: November 10, 2011
Re: Draft Ordinance for Tree City USA Designation

There are no packet materials for this agenda item. An initial draft copy of the ordinance will be distributed for discussion purposes at the November 14, 2011 work session.



Memo

To: Planning Commission/Commission Citizen Advisory Committee
From: Derrick Tokos, Community Development Director 
Date: November 9, 2011
Re: Recommended Changes to Vacation Rental Code Update

Enclosed is a draft set of changes that the Ad-Hoc Work Group recommends the Planning Commission accept in response to feedback received at the September 21, 2011 open house. It is dated November 2, 2011. The proposed code, with changes in strikethrough and underlines, is listed in the left-hand column. The work group's rationale for the changes is spelled out to the right. Also, attached for reference is a copy of a PowerPoint presentation that the group considered when it put together its recommendations. Minutes in your packet for the September 26, 2011 Commission meeting include your debrief of the open house. They may also provide helpful context.

Several members of the Ad-Hoc Work Group are planning to attend the work session, and will be happy to answer questions. This is an opportunity for you to make additional changes to the proposal, if you feel they are warranted.

Coming out of this work session, my hope is to get direction from the Planning Commission as to whether or not it is ready to start a public hearings process on the proposed amendments.

CITY OF NEWPORT VACATION RENTAL CODE UPDATE

Options for Addressing

September 2011

Open House Comments

October 12, 2011

Work Group Meeting

Maximum Occupancy

ISSUE

- Concern that proposed 200 sq. ft. occupancy limit is excessive

OPTIONS

- Include requirement so that owners are aware of limit.
 - Do not call out limitation in the vacation rental code (will still be in Fire Code).
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- 200 sq. ft. of gross floor area per person limit is a function of the existing fire code (i.e. it is already a city standard).
- Life safety standard.
- Fire Department will enforce on a complaint basis.
- Public spaces, such as the Council Chambers, have a larger limit because of enhanced emergency egress (larger aisle widths, double doors equipped with panic bars, etc.)

Tenancy Limits

ISSUE

- Frequent move in/move out is disruptive. Interested in seeing tenancy limit imposed in R-1 and R-2 zones.

OPTIONS

- Impose tenancy limits in all zones.
 - Impose tenancy limits in select zones, such as the R-1 and R-2.
 - Do not impose tenancy limits.
-

- Work group considered tenancy limits with initial draft.
- Cannon Beach limits rentals to 1 tenancy every 14 days, Durango 1 tenancy every 7 days.
- Enforced through guest registry. May necessitate active oversight.

Locations Allowed?

ISSUE

- Desire to see Bed and Breakfast uses prohibited in R-1 and R-2
 - Interest in seeing no rentals in R-1 and R-2
 - Further restrict where Bed and Breakfast and/or vacation rental uses are allowed.
 - Do not restrict these uses in residential zones
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OPTIONS

- Bed and Breakfast Uses are not currently allowed in R-1 and R-2 zones. They are allowed conditionally in R-3 and R-4 zones.
- Vacation rentals are allowed outright in all residential zones subject to not more than 10 occurrences in a year.
- Jurisdictions that limit uses, by zone (e.g. Bandon), tailored the boundaries of zoning districts to correspond with likely uses (something Newport has not done).

Off-street Parking Requirements

ISSUE

- What about Nye Beach and other areas where no off-street parking is available?
- How will off-street parking be enforced?
- Why can't on-street spaces be used for overnight occupancy?
- Accessible = handicapped accessible?

OPTIONS

- Revise to focus on provision of off-street spaces only (i.e. drop restriction on use of on-street spaces).
- Make only minor clarifications (e.g. accessibility standard)
- Do not make adjustments..

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- Current proposal provides a conditional use process for applications that cannot satisfy all of the standards (such as off-street parking). Is that adequate?
 - Prohibition of use of on-street parking spaces by guests would be difficult to enforce.
 - Accessibility standard may need to be clarified (not intended to be handicapped spaces).

Waste Disposal

ISSUE

- ▣ Why restrict dumpsters?
- ▣ Weekly service if not occupied? Alternative?
- ▣ Why conceal?

OPTIONS

- ▣ Make targeted or wholesale adjustments to waste disposal standards.
 - ▣ Distinguish by zone or use (e.g. B&B vs. vacation rental)?
 - ▣ Do not make adjustments.
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- ▣ Concern with dumpsters was that they are out of character with residential areas, and encourage intensive use. Not all rentals or B&B's are in residential areas.
- ▣ Existing proposal requires weekly waste disposal service during all months the dwelling is available.
- ▣ Should consider enforcement. Is advertised easier to enforce then occupancy in terms of waste service being provided.
- ▣ Is concealment requirement equitable?

Safety Issues

ISSUE

- Frequency of inspections? Cost? Timing for corrective action?
- Required emergency provisions should be spelled out.
- Qualifications of Building Official designee?
- Shouldn't have to post next to door like a hotel/motel.

OPTIONS

- Make targeted adjustments to be more specific about requirements and qualifications.
- Make limited adjustments (maintains flexibility)
- Provide Commission with thoughts on cost.

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- Frequency of re-inspections, and qualifications of designee were not spelled out because the City may need flexibility in administering the program. Is this appropriate?
 - Prohibiting rental until corrective action is taken is a strong tool for ensuring that work is completed in a timely manner, and that persons occupying the residence are not at risk.
 - Emergency information / equipment, spell out or give the Council authority to adopt at a later date?

Guest registry

ISSUE

- Unnecessary.
 - What is the right balance of required info?
 - How will registry requirement be enforced?
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OPTIONS

- Adjust the types of information to be collected.
- Eliminate requirement.
- Do not make adjustments.

- The rationale for a guest registry is that it provides critical information for emergency responders in the event of a disaster. It also serves as a tool for enforcement of overnight occupancy / parking standards. Is this justification for the requirement?
- Hotels/motels collect information about the number of occupants, and specifics about the primary tenant and vehicles. Does the proposed language require the same?

Issue Resolution

ISSUE

- Complaint log, suggest not require.
- Clarify 30 minute response.
- Identifying local contact should be sufficient.

OPTIONS

- Make targeted adjustments with focus on the operator as the primary contact.
 - Do not make adjustments.
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- Complaint log requirement serves as an enforcement tool, since the City is not the primary contact. Is that justification?
 - A response in 30 minutes. Is it needed, or is a phone call adequate?
 - The limits imposed on the local contact are intended to ensure that they are responsive. Is that appropriate, or needed?

Enforcement

ISSUE

- How to address baseless complaints.
- Matrix of penalty levels? Seriousness?
- Appeals process?

OPTIONS

- Make targeted adjustments to the violations and penalties sections.
- Share with Commission thoughts on appeals options.
- Do not make adjustments.

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- A citation can be challenged in Municipal Court. That is the appeals process. It may be that another option may be appropriate, such as the City Manager having the option of making adjustments. This is an issue that is relevant to any enforcement issue, not just vacation rentals.

Permit Terms/Process

ISSUE

- Right should go with property not the owner.
- Favors grandfathering.
- Don't require two licenses.
- Property managers or owners required to obtain license?
- Build in a check-in to evaluate new process.

OPTIONS

- Consider whether or not grandfathering, permit transfer, or check-in process should be worked into the proposed code.
- Clarify multiple license issue (e.g. endorsement)
- Do not make adjustments.

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- Rights are specific to owner to ensure that new owners are aware of limitations (this has been a problem in the past). Is this adequate justification?
 - Grandfathering was not included because of long term implications it has in terms of fairness, cost to administer and complexity of the rules. Current proposal allows current owner to effectively grandfather for the period that they have a license. Is that adequate?

Motel vs Vacation Rental

MOTEL DEFINITIONS (SHOULD NEWPORT DEFINITION BE ADJUSTED)

- ▣ Motel. A building or group of buildings in which lodging is provided for guests for compensation, containing guest units with separate entrances from the building exterior, with or without cooking facilities, and where more than 40 percent of the lodging rooms are for rent to transient guests for a continuous period of less than 30 days (Newport)
- ▣ Motel means one or more buildings designed or used by temporary occupants. (Lincoln City)
- ▣ A building in which lodging is provided for guests for compensation. (Astoria)
- ▣ “Motel or other tourist accommodation” means a structure or part of a structure, containing motel rental units, occupied or designed for occupancy by transients for lodging or sleeping and including the terms “hotel” and “inn,” but shall not include the term “bed and breakfast establishment” or the transient occupancy of a dwelling unit regulated by this chapter. (Cannon Beach)
- ▣ Motel rental unit” means one bathroom and not more than three bedrooms. A “bathroom” is defined as consisting, at a minimum, of a toilet. (Cannon Beach)
- ▣ Not defined. (Bandon, Seaside)

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| <p>Draft Vacation Rental/Bed and Breakfast Code Amendments (latest revisions in strikethrough and underline)</p> | <p>Ad-Hoc Work Group Recommendation</p> |
| <p>Section 2-4-11. BED AND BREAKFAST AND VACATION RENTAL FACILITIES</p> <p>2-4-11.005. Purpose. This section establishes the terms, criteria and procedures by which bed and breakfast and vacation rental uses may be permitted to ensure the safety and convenience of renters, owners and neighboring property owners; protect the character of residential neighborhoods; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and accumulation of refuse.</p> | <p>No changes recommended.</p> |
| <p>2-4-11.010. General Provisions.</p> <p>A. Vacation rental and bed and breakfast uses are permitted in all residential and commercial zone districts subject to a <u>business license endorsement</u> ("<u>endorsement</u>") or land use permit pursuant to the provisions of this section;</p> <p>B. An <u>license endorsement</u> or <u>land use permit</u> for a vacation rental or bed and breakfast use is specific to the owner of a dwelling unit. When the <u>license or permit holder</u> or <u>land use permit</u> sells or transfers the real property, the new owner shall apply for and receive a new approval before using the dwelling unit as a vacation rental or bed and breakfast <u>establishment/facility</u>;</p> <p>C. Vacation rental or bed and breakfast approval <u>endorsements</u> shall remain in effect so long as a valid business license is maintained for the rental use and the property is not sold or transferred; and</p> <p>D. Each vacation rental and bed and breakfast use in existence as of the effective date of this section shall be subject to the provisions of this section.</p> | <p>This subsection should be amended to reflect that there will only be one business license that is required. Owners will then obtain an endorsement to the license for each vacation rental that they operate. Persons that attended the 9/12/11 open house expressed a concern about the cost and administrative challenge of tracking multiple licenses. This change responds to that concern. While the City may elect to impose a fee for endorsements to cover its administrative expenses, using an endorsement approach should still be more cost effective to a business owner than if they were required to obtain separate business licenses for each vacation rental or bed and breakfast unit that they operate.</p> <p>Several comments were made at the open house related to the issue of grandfathering existing vacation rental and bed and breakfast uses. Individuals that have gone through the expense of obtaining a land use approval should be entitled to a reasonable return on their investment. However, a wholesale grandfathering of these uses creates separate classes of operators which raises fairness issues and creates processes that are more complicated and potentially expensive for all involved.</p> <p>The proposed language strikes an appropriate balance. Operators can rely on existing approvals where they conflict with the new standards.</p> |



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| <p><u>(1) A business license endorsement shall be applied for within one hundred twenty (120) days of the effective date of the ordinance enacting this section. In the event an owner possesses a valid land use approval specifically authorizing a vacation rental or bed and breakfast use in a manner that is contrary to one or more of the standards for issuing a license under subsection 2-4-11.025, the city shall accept the prior land use approval in lieu of compliance with as satisfying the specific standard or standards--;</u></p> <p><u>(2) A prior land use approval shall be voided and all current standards satisfied if:</u></p> <p><u>(a) an owner fails to apply for an endorsement within one hundred twenty (120) days of the effective date of the ordinance or,</u></p> <p><u>(b) a business license lapses for at least 12 consecutive months.</u></p> <p><u>(3) The provisions of this subsection apply instead of the Section 2-5-1, Nonconforming Uses, Structures, and Lots, and</u></p> <p><u>D. A land use approval authorizing a vacation rental or bed and breakfast use issued prior to the effective date of this ordinance shall be void once a license has been obtained pursuant to the provisions of this section--</u></p> <p><u>E. If one or more of the standards under subsection 2-4-11.025 cannot be met, an owner may seek approval of a vacation rental or bed and breakfast use as a Conditional Use, pursuant to Section 2-5-3 of this Ordinance. A Conditional Use Permit may allow relief from one or more of the endorsement standards under subsection 2-4-11.025. An endorsement is still required.</u></p> | <p>Existing approvals also run with the land and are transferable to new owners.</p> <p>Existing operators should be required to obtain endorsements, and satisfy the standards that they can meet. That way everyone is operating on close to the same playing field and important new safety standards are being met.</p> <p>Prior approvals should expire if an owner does not come in to obtain an endorsement within a reasonable amount of time (120 days). The City has compiled a list of operators as part of this process, and notice should be provided so that operators have time to address this requirement.</p> <p>Also, if a business license is allowed to lapse for 12 months, then the prior approval should be extinguished. If the activity has ceased then there is no longer that investment backed expectation and having the next person meet the current rules helps to further the objective of getting everyone on the same page.</p> <p>Directing existing operators into the nonconforming code adds an extra permitting step, uncertainty, and cost. This is unnecessary and should be avoided if possible.</p> <p>One of the problems with the current process is that there is nothing in place to ensure that new owners understand the rules. Permits are approved and subsequent owners aren't aware that they exist. Making endorsements personal to the owner resolves this issue.</p> <p>The initial draft of the code only allowed a Conditional Use Permit to be submitted if the City determined that one or more of the standards for an endorsement couldn't be met. If someone knows that they can't meet all of the standards, then they should be able to submit the application without having to first submit an endorsement request to the City. The proposed changes also clarify that a Conditional Use Permit is an alternative approach to addressing endorsement standards that cannot be met on their face. An endorsement is still required for those standards that can be met. This wasn't clear in the first draft.</p> |
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2-4-11.015. Approval Authority.

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| <p>A. Upon receipt of an application for a vacation rental or bed and breakfast license endorsement, the Community Development Director, or designee shall determine if the request satisfies the license standards of subsection 2-4-11.025. If the request satisfies the license standards then the Director shall issue the license endorsement and provide notice required under subsection 2-4-11.035. Such action is ministerial and is not subject to appeal. The license endorsement is effective upon satisfaction of the inspection requirements of subsection 2-4-11.030; and</p> <p>B. In the event the Community Development Director or designee determines that an application does not meet one or more of the license standards of subsection 2-4-11.025 then the an endorsement shall not be issued; applicant may seek Planning Commission approval of the vacation rental or bed and breakfast use as a Conditional Use, pursuant to Section 2-5-3 of this Ordinance.</p> <p>C. <u>A Conditional Use Permit application for a vacation rental or bed and breakfast use Requests of this nature shall be submitted to the Community Development Director, or designee, and is subject to review by the Planning Commission reviewed under a Type III decision making process consistent with Section 2-6-1, Procedural Requirements; and in considering a vacation rental or bed and breakfast application the Planning Commission shall require the licensing standards of subsection 2-4-11.025 be satisfied where it is practical that they can be met. All other provisions of this section shall apply to vacation rental or bed and breakfast uses reviewed and approved by the Planning Commission.</u></p> <p>C.D. <u>An approved Conditional Use Permit that grants relief from, or provides alternative requirements to, one or more of the standards of subsection 2-4-11.025 shall serve to satisfy said standards.</u></p> | <p>Changes in this subsection clarify that the City cannot issue an endorsement if standards are not being met unless a Conditional Use Permit is approved granting the operator relief from those standards. The conditional use option is not an alternative to a person obtaining an endorsement. Rather, it is an avenue where they can obtain relief from certain standards if the Planning Commission believes that granting such relief is consistent with the approval standards for conditional uses (e.g. no greater adverse impact on the neighborhood, public facilities are adequate, etc.).</p> <p>An example that came up at the open house is a dwelling that lacks space for off-street parking. It may be that the dwelling is in an area where there is ample on-street parking. The conditional use process offers a forum for an applicant to make their case, and the Planning Commission to determine whether or not the alternative proposed is appropriate.</p> <p>The proposed changes explain that this is the purpose of the conditional use option. A Conditional Use Permit runs with the land whereas an endorsement is specific to the operator, so it is important that the City's code identify that they are different processes.</p> |
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| <p>2-4-11.020. Application Submittal Requirements. An application for a vacation rental or bed and breakfast license endorsement shall be submitted on a form provided by the Community Development Department. It shall also include the following:</p> <ul style="list-style-type: none"> A. Site plan, drawn to scale, showing the dimensions, property lines, existing buildings, landscaped area, and off-street parking locations; B. Lincoln County Assessor's map showing the subject property and notification area; and C. Names and addresses of property owners within 200' of the subject property (or outline of property that is held in common), as shown in the records of the County Assessor. If the property is within a Homeowners Association, then contact information for the Association shall also be provided. | <p>No significant changes.</p> |
| <p>2-4-11.025. License Standards for Vacation Rental Endorsement. An application for a vacation rental or bed and breakfast use shall comply with the following standards:</p> <ul style="list-style-type: none"> A. <u>Maximum Overnight Occupancy.</u> Maximum overnight occupancy shall be two (2) persons per bedroom, plus two additional persons per property. This overnight occupancy limit is subject to available off-street parking; B. <u>Maximum Building Occupancy.</u> The maximum number of individuals permitted within a vacation rental or bed and breakfast <u>are subject to the limitations of the Uniform Fire Code</u> at any/currently not more than one time is one (1) person for every 200 square feet of gross floor area); | <p>Some persons who attended the open house felt that the maximum occupancy limit was unreasonable, and would make it unlawful to rent vacation rentals for family gatherings.</p> <p>The proposed limitations are already a part of the Uniform Fire Code that the City has adopted, so the issue isn't whether or not the standard should be applied; rather, it is whether the City should call it out as part of this code update. As a matter of fairness to operators, many of which may not be familiar with these types of codes, we think it prudent that this requirement be called out. That way people can plan accordingly.</p> <p>Questions were raised as to why a room in City Hall, such as the Council Chambers, allows for higher occupancies. It is because the room has enhanced emergency egress (larger aisle widths, double doors equipped with panic bars, illuminated exit signs, etc.). These types of improvements are not typically found in single family homes that are used as vacation rentals or bed and breakfast facilities.</p> |



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| <p>C. <u>Parking Standards.</u> One (1) off-street parking space per bedroom that is dedicated to the vacation rental or bed and breakfast use. The location and design of parking spaces shall comply with NZO Section 2-3-6, <u>and designated spaces shall be accessible at all times to guests;</u></p> <p>(1) Use of on-street parking spaces by overnight guests is prohibited.</p> <p>(2) Designated parking spaces shall be accessible.</p> | <p>Concerns were raised at the open house about situations where a home lacks the spaces to provide off-street parking spaces. If it is an existing vacation rental, the changes under General Provisions provide the owner an opportunity to continue to operate the rental without providing off-street parking. If these changes are adopted, and an individual desires to use a dwelling for a vacation rental or bed and breakfast use where there is insufficient area for off-street parking then they have an opportunity to apply for a Conditional Use Permit. The Planning Commission would then determine whether or not the use is appropriate given circumstances particular to that area.</p> <p>Accessible has been clarified to apply to guests (i.e. it is not a requirement for handicapped parking).</p> <p>Comments were made that a prohibition on the use of on-street parking by guests would be difficult to enforce, and that those individuals should have the same opportunity to use available on-street spaces as anyone else. We agree, and believe that proposed language should be stricken.</p> |
| <p>D. <u>Waste Management.</u> Weekly solid waste disposal service shall be provided during all months that the dwelling is available for vacation rental or bed and breakfast use;</p> <p>(1) Owner or designee shall provide for regular garbage removal from the premises.</p> <p>(2) Use of dumpsters is prohibited.</p> <p>(3)(2) Provisions shall be made for storage of trash receptacles such that they are not in plain view of the street.</p> | <p>Dumpsters are not usually found in residential areas, and support an intensity of use that is not typical to a residential structure. They are; however, commonly used in commercial areas and for multi-family development. Comments were also received explaining how they are effectively used to manage waste where multiple homes are managed for vacation rental purposes. In this case, the utility of dumpsters as a waste management tool outweigh the concern that they facilitate an intensity of use that is out of character with residential areas.</p> |
| <p>E. <u>Landscaping.</u> For vacation rental and bed and breakfast uses situated on individual lots or parcels in <u>residential zones</u>, at least 50% of the front yard and 40% of the total area shall be landscaped. No more than 50% of the front yard landscaping may be hard surfaces, such as patios and decks. Driveway and</p> | <p>The percentages of a lot or parcel to be landscaped are comparable to what other jurisdictions require of vacation rentals. They ensure that the residential appearance of a property is maintained (i.e. the entire yard isn't paved or gravelled for parking to maximize income at the expense of the residential character of the neighborhood). These standards are</p> |



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| <p>parking areas shall not be treated as satisfying any portion of the landscaping requirements;</p> | <p>proposed for residential areas only, so that clarification has been added.</p> <p>A concern was raised about properties in Nye Beach that are on narrow lots where they may not be able to satisfy these requirements. Many of those properties are in commercial zones where this requirement will not apply. If it is in a residential area then a conditional use option is available.</p> |
| <p>F. <u>Guest Register.</u> Owner or designee shall maintain a guest and vehicle register for each tenancy. The register shall include the names, home addresses, and phone numbers of the <u>primary tenants</u>; the <u>total number of occupants</u>; vehicle license plate numbers of all vehicles used by the tenants, and the date of the rental period. This information shall be made available to the city <u>City</u> upon request;</p> | <p>Concerns were raised at the open house that this requirement is intrusive and unnecessary. We disagree. Hotels and motels are required to gather this information so that it is accessible to emergency responders. Vacation rentals and bed and breakfast facilities should be held to the same standards. It is also essential for resolving complaints. Questions were raised about the need for detailed information about each occupant. Hotels and motels collect details on the primary tenant and all vehicles, and the proposed language has been amended to match.</p> |
| <p>G. <u>Contact Information.</u> Owner or designee shall keep on file with the City the name, telephone number, mailing address and email address (if available) of a contact person who shall be responsible for responding to questions or concerns regarding the operation of the rental. The contact person or designee must be available to accept calls on a 24 hour basis; have a key to the premises; and be able to respond in person to inquiries from a tenant, constituent, or the City within 30 minutes;</p> | <p>An "in person" response isn't always necessary or appropriate, so the proposed code has been changed to essentially leave that up to the designated contact. The same holds for possession of a key. This is something that can similarly be left to the owner/operator to address.</p> |
| <p>H. <u>Emergency Provisions.</u> Owner or designee shall provide information and equipment in the dwelling unit to assist renters in dealing with natural disasters, power outages, and other emergencies. The type of information and equipment that must be provided includes the following: shall be established by resolution of the City Council;</p> <p><u>(1) A tsunami evacuation map produced by Lincoln County Emergency Services, Oregon Department of Geology and Mineral Industries or other agency with similar authority.</u></p> | <p>Persons attending the open house pointed out that the City should identify the types of information or equipment that an operator needs to provide in a dwelling unit. The changes address this concern. Changes in technology or our understanding of emergency preparedness may necessitate that other items be listed in the future. Therefore, it is appropriate to keep language in the proposal that provides the City Council the opportunity to update the list by resolution.</p> |



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| <p>(2) An emergency supply kit containing items recommended by a disaster relief organization such as the American Red Cross or Federal Emergency Management Agency.</p> <p>(3) Instructions for turning off water and gas to the unit.</p> <p>(4) Other information or equipment as established by resolution of the City Council;</p> | |
| <p>I. <u>Noise</u>. Noise limits shall be as specified in Chapter 8.15 of the Newport Municipal Code;</p> | <p>No changes.</p> |
| <p>J. <u>Posting</u>. A copy of the license or land use permit<u>business license endorsement</u> shall be kept on the property and the location of the information shall be posted next to the front door. <u>In addition to the endorsement, such information such posting shall also include occupancy limits; list a phone number and address for the designated contact information; a diagram of the premises with parking locations; the maximum number of vehicles that can be parked on-site; instructions for trash pick-up, storage and recycling; emergency information; and noise limits specified in Section 8.15.015 of the Newport Municipal Code. This information shall be maintained and current at all times;</u></p> | <p>No significant changes. A comment was received suggesting that having information posted by the door gives a vacation rental or bed and breakfast too much of a "hotel/motel" look. The proposed language only requires that the location of the information be posted by the door. People anticipate such posting next to a door, so this requirement will help guests find the information. An operator is free to decide where they want to place the balance of the information such that it meets their needs (e.g. a binder on a table, in a cabinet drawer, etc.).</p> |
| <p>K. <u>Shared Access</u>. Written consent is required from affected owners for applications that rely upon shared driveway, parking or beach access;</p> | <p>No changes.</p> |
| <p>L. <u>Signs</u>. Signs shall conform with applicable provisions of Title X of the Newport Municipal Code; and</p> | <p>No changes.</p> |
| <p>M. <u>Business License Required</u>. A business license for the rental use shall be obtained pursuant to Chapter 4.05 of the Newport Municipal Code; and</p> | <p>No changes.</p> |



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| <p>N. <u>Room Tax</u>. Owner or designee shall adhere to the room tax requirements outlined in Chapter 3.05 of the Newport Municipal Code.</p> | <p>No changes.</p> |
| <p>2-4-11.030. Inspections.</p> <p>A. A dwelling unit proposed for vacation rental or bed and breakfast use shall be inspected by the Building Official or designee to determine the conformance of the dwelling unit with the State of Oregon Residential Specialty Code and the license endorsement standards of subsection 2-4-11.025. If the Building Official or designee requires alterations, then the applicant must correct the identified deficiencies <u>must be corrected as follows: before the dwelling unit can be rented, and</u></p> <p><u>(1) In circumstances where the unit is already being rented, the Building Official or designee may allow continued use provided corrective action is taken within 30 days.</u></p> <p><u>(2) For units undergoing an initial inspection prior to vacation rental or bed and breakfast use, corrective action shall be undertaken before the dwelling unit can be rented.</u></p> <p>B. Dwelling units authorized for vacation rental or bed and breakfast use shall be subject to periodic re-inspection by the Building Official or designee at the City's discretion to ensure compliance with the provisions of this chapter. The timeframe between inspections may vary depending upon available resources, but is intended to be comparable to that of other temporary lodging establishments.</p> | <p>It was pointed out at the open house that existing bed and breakfast or vacation rental units should be provided reasonable time to make needed changes before they are faced with the prospect of not being able to rent a unit. Language to that effect has been added. It is structured to be at the Building Official's discretion as some deficiencies, such as certain building violations, may be a significant enough issue that allowing an operator to continue to rent a unit would pose a significant health and safety risk to guests.</p> <p>Questions were raised about the qualifications of the Building Official's "designee" or the frequency of re-inspections. The City should have some flexibility in how it administers an inspection program. Staff turnover occurs and resources vary depending upon available budgets. It is in the City's interest to ensure that qualified individuals perform inspections and that re-inspections occur frequently enough to ensure that endorsement standards are being met and the units are safe. Pinning down the inspection schedule or qualifications to tight could put the City in a position where it could not meet its inspection obligations.</p> |
| <p>2-4-11.035. Notice Requirements. Upon issuance of a license or <u>land use permit endorsement</u>, the City shall provide notice to property owners within 200' of the subject property (or outline of property that is held in common) and any established Homeowners Associations advising that a vacation rental or bed and breakfast use has been authorized. Such notice shall include the address of the dwelling unit that received the approval, a</p> | <p>No significant changes.</p> |



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| <p>location where additional information can be obtained about the nature of the license or permit, and the name, phone number, mailing address, and email address (if available) of the owner or designees<u>licensee</u> designated contact.</p> | |
| <p>2-4-11.040. Complaints. The licensee<u>designated</u> contact identified in subsection 2-4-11.025(G) above, is the initial point of contact if there are complaints regarding the use of the dwelling unit, and shall maintain a written log documenting the nature of the complaint, the date it was received, and efforts taken to resolve the issue. The written log shall be made available to the City upon request.</p> | <p>No changes. A comment was made that the complaint log requirement should be dropped. Having an operator's point of contact as the point person for working through complaints should help to get issues resolved more quickly. If a complainant believes that an issue is not getting resolved, then they can ask the City to initiate enforcement. Without a complaint log it will be very difficult for the City, operator, or the complainant to know where things broke down. That is why it is important that the complaint log requirement be retained.</p> |
| <p>2-4-11.045. Violations. The following conduct shall constitute a violation for which the penalties specified in subsection 2-4-11.050 may be imposed:</p> <p>A. Advertising; renting; using; or offering for use, occupancy or rent; a vacation rental or bed and breakfast establishment facility where the owner does not hold a valid license or land use permit<u>license or land use permit</u> issued pursuant to this section;</p> <p>B. Advertising; renting; using; or offering for use, occupancy or rent; a vacation rental or bed and breakfast establishment facility in a manner that does not comply with the licensing endorsement requirements of subsection 2-4-11.025 or the terms of a valid land use permit;</p> <p>C. Failure to comply with the licensing endorsement standards and operational requirements of this section;</p> <p>D. Failure by the owner to pay the transient room tax required by Chapter 3.05 of the Newport Municipal Code; and</p> <p>E. Failure of the owner's licensee<u>designated</u> contact to respond to complaint referrals from the City. A licensee<u>designated</u> contact</p> | <p>No significant changes.</p> |



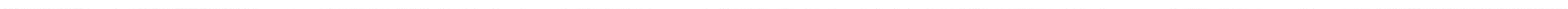
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| <p>shall be considered to have failed to respond if City staff is unable to reach them after three attempts, using the information that the owner or designee has filed with the City.</p> | |
| <p>2-4-11.050. Penalties. Penalties for a violation of this chapter where an owner does not possess a valid license or land use permit <u>business license endorsement</u> for vacation rental or bed and breakfast use shall be as outlined in Section 2-6-8 of the Zoning Ordinance. Where the owner possesses a valid license endorsement or land use permit, the penalties shall be as follows:</p> <p>A. For the first violation within a 12 month period, the penalty shall be a written warning notice;</p> <p>B. For the second violation within a 12 month period, the penalty shall be a 30 day suspension of the vacation rental or bed and breakfast license or land use permit <u>endorsement</u>; and</p> <p>C. For the third violation within a 12 month period, the penalty shall be revocation of the vacation rental or bed and breakfast license endorsement. The City shall also, or in the case of a land use permit the initiation initiate of the revocation procedure outlined under subsection 2-6-1.075, in cases where a Conditional Use Permit was obtained.</p> | <p>An endorsement to a business license is personal to the owner; whereas, a Conditional Use Permit runs with the land. They are different types of authorizations made by different decision making bodies, so it is important that they be addressed separately.</p> |
| <p>*****</p> <p>2-1-1.101. Definitions. As used in this Ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:</p> <p>***</p> <p>Bed and Breakfast Facility.** An owner occupied single-family dwelling containing not more than five (5) guest rooms or part thereof,</p> | <p>*****</p> <p>At the open house, questions were raised about the difference between a hotel/motel use and a vacation rental or bed and breakfast facility. The Newport Zoning Ordinance contains definitions for a variety of different temporary lodging arrangements. The City may want to consolidate them at some point.</p> <p>In looking at the hotel/motel definitions it is evident that a distinction needs to be made between that type of use and a vacation rental or bed and breakfast facility. The 2010 Oregon Structural Specialty Code allows <i>Lodging Houses</i> to stay under the Oregon Residential Specialty</p> |



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| <p>where traveler's accommodations and breakfast meals are provided for a fee on a daily or weekly room rental basis, not to exceed 30 consecutive days.</p> <p>***</p> | <p><u>Hotel.</u> A building in which lodging is provided for guests for compensation and contains a common entrance and where lodging rooms do not have an entrance opening directly to the outdoors (except for emergencies), with or without cooking facilities, and where more than 50 percent of the lodging rooms are for rent to transient guests for a continuous period of less than 30 days. <u>A bed and breakfast facility or a vacation rental conducted in a single family dwelling or individual dwelling unit is not a hotel use.</u></p> <p>***</p> | <p>Code. It defines lodging houses as being a building or portion thereof that contains not more than five (5) guest rooms.</p> |
| <p><u>Motel.</u> A building or group of buildings in which lodging is provided for guests for compensation, containing guest units with separate entrances from the building exterior, with or without cooking facilities, and where more than 40 percent of the lodging rooms are for rent to transient guests for a continuous period of less than 30 days. <u>A bed and breakfast facility or a vacation rental conducted in a single family dwelling or individual dwelling unit is not a motel use.</u></p> <p>***</p> | <p><u>Vacation Rental.</u> A dwelling unit containing not more than five (5) guest rooms that is rented for less than 30 <u>consecutive days per rental period.</u></p> | <p>Because most bed and breakfast facilities or vacation rentals are conducted in existing dwellings that cannot be readily retrofitted to meet commercial building codes (e.g. sprinkler system requirements, different hallway/staircase widths, etc.), it is appropriate to ensure that the uses are defined in the Newport Zoning Ordinance in a manner that allows them to qualify as a type of construction that is permitted to comply with the Residential Building Code. This is why the five (5) guest room limit should be applied. Definitions for hotel/motel uses have also been clarified to not include bed and breakfast facilities or vacation rentals.</p> |
| <p><u>Weekly Rental.</u> Any owner or renter occupied room or unit used as living quarters and which would constitute a permitted residential unit</p> | | |



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| <p>but for the fact that the same is offered for rent or rented by the week shall be a "weekly rental." No such residential unit may be permitted as a "weekly rental" unless the same shall be rented not more than 10 times in any calendar year and only upon condition that any sign used to announce the availability of such unit for such rental shall be attached to or suspended from such unit in accordance with all applicable codes and requirements and shall be not more than 15 square feet in size.</p> | |
| <p>*****</p> | <p>*****</p> |
| <p>Section 2-2-1. ZONING DISTRICTS*</p> | |
| <p>*** 2-2-1.025. Residential Uses. The following list sets forth the uses allowed within the residential land use classification. Uses not identified herein are not allowed.</p> | <p>Comments were received at the open house that the City should not permit bed and breakfast facilities in R-1 and R-2 zones, where they are currently not allowed. There was also discussion about limiting vacation rentals in the R-1 and R-2, including a comment that the City should explore tenancy limits (e.g. not more than 1 rental for every 14 days). While there are a few jurisdictions that impose tenancy limits, they could be difficult to enforce and would likely require active oversight. There also does not appear to be a strong public desire to pursue this course of action (only one comment).</p> |
| <p>*** D. Community Services</p> | <p>Bed and breakfast facilities are very similar to vacation rentals, so there does not appear to be a strong rationale for prohibiting them in zones where vacation rentals are allowed. Some jurisdictions limit vacation rentals and/or bed and breakfast facilities by zone district, or they limit the number of units through spacing requirements or hard caps on the number of permits/licenses that are issued. These approaches are resource intensive, and it is not clear that they are effective. The market will dictate where these uses are viable.</p> |
| <p>*** (11) Bed and Breakfast Facility <u>XP1</u> <u>XP1</u> <u>OP1</u> <u>OP1</u></p> <p>*** (29) Vacation Rental <u>P1</u> <u>P1</u> <u>P1</u> <u>P1</u></p> | <p>R-1 R-2 R-3 R-4</p> |
| <p>¹ Subject to endorsement requirements of Section 2-4-11</p> | <p>The Planning Commission can certainly propose to restrict these uses in the R-1 and R-2 zones, if it believes it is appropriate to do so.</p> |





AGENDA & NOTICE OF PLANNING COMMISSION MEETING

The Planning Commission of the City of Newport will hold a meeting at **7:00 p.m., Monday, November 14, 2011**, at the Newport City Hall, Council Chambers, 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder, 541-574-0613.

The City of Newport Planning Commission reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

NEWPORT PLANNING COMMISSION Monday, November 14, 2011, 7:00 p.m.

AGENDA

A. Roll Call.

B. Approval of Minutes.

1. Approval of the Planning Commission regular session meeting minutes of September 26, 2011, and work session minutes of October 10, 2011.

C. Citizens/Public Comment.

1. A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

D. Consent Calendar.

E. Public Hearings.

1. File No. 4-Z-11. A request submitted by Newport Rehabilitation, LLC, (Gretchen Stone, CB/Two Architects) (Nationwide Health Properties, LLC, c/o Ventas, Inc., and Pacific Communities Health District, property owners) for a NZO amendment to change the zoning designation of Block 15, Bayley and Case's Addition from R-3 (Medium Density Multi-Family Residential) to R-4 (High Density Multi-Family Residential). The Planning Commission will review this matter and forward a recommendation to the City Council.

2. File No. 3-SV-11. A request submitted by Kenneth & Cheryl Huff and adjacent property owners for a partial street vacation of the eastern 10' wide portion of SW 12th Street abutting the southern 40' of Tax Lot 7400, Tax Lots 7500, 7600, 7601, 7900, 8301, and 8300 of Tax Map 11-11-08-CA (Block 9 Plan of Newport). The Planning Commission will review this matter and forward a recommendation to the City Council.

F. Unfinished Business.

1. Update on consultant selection from the RFPs for consulting services for the Newport EOA.
2. Update on OSU HMSC dynamic revetment construction project (File No. 6-CUP-10).

G. New Business.

H. Director Comments.

I. Adjournment.

Draft Minutes
City of Newport Planning Commission Regular Session
Monday, September 26, 2011

Commissioners Present: Jim Patrick, Rod Croteau, Gary East, Mark Fisher, Melanie Sarazin, and Glen Small.

Commissioners Absent: Jim McIntyre.

City Staff Present: Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

A. **Roll Call.** Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:00 p.m. On roll call, Sarazin, East, Fisher, Patrick, Croteau, and Small were present. McIntyre was excused.

B. Approval of Minutes.

1. Approval of the Planning Commission regular session meeting minutes of August 22, 2011.

MOTION was made by Commissioner Fisher, seconded by Commissioner East, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

C. **Citizen/Public Comment.** No comments regarding non-agenda items.

D. **Consent Calendar.** Nothing on the consent calendar.

E. **Public Hearings.** No public hearings on tonight's agenda.

F. Unfinished Business.

1. Remand from the City Council of the proposed ordinance codifying street renaming and addressing provisions and establishing criteria and procedures for the renaming of public streets and places (File No. 3-Z-11) for consideration of a language change. Patrick had a question about the age of ORS 227.120. There was some discussion regarding that. Tokos said that Portland's code has probably been tested. If there was a challenge, that is where we would have seen it. Tokos explained that on August 8th, the Planning Commission made a recommendation of a package of amendments to the City Council. The Council met on September 6th and had two things to change. One was eliminating the reference that an individual would have to be deceased for a time before a street could be renamed after them. The other was that the Council was not comfortable with the process that the Planning Commission could effectively stop the process by providing an unfavorable recommendation without some sort of appeal to the City Council, which is akin to the Portland example. So, the Council remanded the ordinance back to the Commission. They directed staff to put together language for what they were looking for. Tokos noted that in the packets, the Commissioners would see that this was vetted with legal counsel. He included that letter explaining what she did. She did the markup of the actual section (Exhibit 'A'), and Tokos did the markup of Exhibit 'B' to match. The city attorney talked to the City of Portland, and their interpretation of that ORS provision is that it applies from the city limits out six miles. Anything within the city limits is fair game. What the attorney calls kind of a donut-type view. The Council wanted language to work with that interpretation. In the package is language that gets there. If a street extends out six miles, it goes to the City Council irrespective of the Planning Commission's recommendation. Before, if it was within those six miles, the Council couldn't take it up unless the Planning Commission provided a favorable recommendation. Tokos noted that most streets are inside the city limits, but some extend beyond (such as SE 35th).

Commissioner Fisher said that after reading this and letting it digest, he wrote down his thoughts; which he shared. He does respect the learned members of the City Council, but at the same time the product of the Planning Commission in this regard was seriously considered and discussed; and the product was very well done. He said that personally he stands by what the Commission sent to the Council. He feels the City Council should feel free to alter the Commission's product to suit the end they desire. He said he would be willing to offer a motion that the Commission returns the original product to them. Commissioner Small questioned some of these changes, especially under Section 9.85.035 (D). The process speaks about "following adoption of a Council resolution, the Planning Commission will hold a hearing and decide." He thought that if the Council already made a resolution, it seems to be going back to a waste of time with a Planning Commission hearing that doesn't mean anything. Small said that he agrees with Fisher that if the City Council wants to alter that proposal, they have every right to do that. He doesn't want to get back to where we were several months ago. Sarazin seconded that. She had written "why" next to that provision. She said if the Council has already made a resolution, why come backward to go forward. Why would the Planning Commission even be involved in that process? Patrick agreed that it was bad procedure. Croteau agreed and raised a question about the change in the death provision. Small wanted to address that point. He said the thought was that if the person was really worthy of having a street named after them, they would still be worthy after three years. That would prevent

the emotional burst of action of renaming a street after them. He said that is where point 8 in that same section comes into play. He thought the actual wording was "other circumstances that warrant special consideration". That was the out clause to say "this is a special case, and we can move ahead without waiting three years", or "we are looking at something extraordinary". He said that is why that was put in there. Fisher agreed that that clause gives them a door to open if a really special case comes along. Patrick said that he doesn't mind if the Commission holds a hearing, and it gets appealed. But, if the Council makes a resolution, why would they make that if they didn't want it done in the first place. He wondered why the Planning Commission should bother with a hearing if their decision gets overruled. He said why go through the charade. Patrick said you have to read the statute correctly. The Council only considers a renaming on Planning Commission approval. If the Commission turns it down, it dies there. There isn't an appeal process. That violates state statute. Sarazin agreed and noted that the attorney talked about the interpretation of the state statute. Tokos said that under the Portland interpretation, it only applies out six miles. He said you can read it that way. He noted that as it was originally drafted, the safest approach was to construe that as applying to the city plus land within six miles. Not all jurisdictions interpret the statute the same way. Tokos noted that the City Council is one approach to start the process, the other is by petition. The reason the City Council resolution option is there is that in the past when the City has done significant renaming, it has been done in mass in conjunction with annexation. That is why there is the option to be initiated by City Council resolution. We needed some way to initiate mass renaming, and City Council resolution was the only thing that made sense. Tokos said he can see the City Council saying they want to initiate street renaming for a big bunch of land and take it to the Planning Commission for a recommendation. The Council is just saying they want to rename twenty streets, for example, that were just brought into city limits. We need to engage the public and get Planning Commission input so it goes all the way up. Patrick agreed that in that case, that makes sense as a process. He said it doesn't make sense to pick a street within the city limits and rename it as a City Council resolution. Patrick said there is no language in here that says outside the city limits coming in. Tokos noted that this proposal does under Section 9.85.040 (Renaming Streets outside City Boundaries). He said that is essentially what was sent up to the City Council. The Planning Commission has to find that it is in the best interest of the City to move it along. Patrick noted that there is no appeal with that one. Tokos said that is consistent with statute. The only way to have appeal to the City Council is through an interpretation that the statute doesn't apply within the city limits, which is Portland's interpretation. Patrick said he felt like the other Commissioners that it's just bad procedure when a street is inside the city limits and the Council passes a resolution to rename the street and sends it to the Planning Commission for hearing. If it's an existing street, he suggested just leaving it at the City Council level and leaving the Planning Commission out of it. The other Commissioners agreed. Croteau said that the Commission wants to avoid what happened before. He thought this situation as it now lies is doing that all over again. Patrick noted that at least with this the Commission now has some criteria. Sarazin agreed that is what the Commission was hoping for. She said she likes this but doesn't know if it really needs the Commission's endorsement if the Council is going to do a resolution. Fisher said that he would recommend that if the Council chooses to, they can change it to suit their need; they don't need the Commission's agreement. Small concurred. Patrick said that is the general sense.

MOTION was made by Commissioner Fisher, seconded by Commissioner Patrick, that the Planning Commission return the ordinance they came up with on August 8, 2011, to the City Council with a respectable recommendation that the Council should alter it any way they choose to meet their desire because the Commission feels comfortable with what they did. The motion carried unanimously in a voice vote.

2. Debrief on the 9/12/11 public workshop on updating city regulations for vacation rental and bed & breakfast establishments. Review comments received and set out a schedule for additional public outreach or hearings process. Tokos noted that included in the packets were a verbatim breakdown on the comments received at the workshop on September 12th along with a draft of the code amendments that were available at that meeting. Tokos said one option for the Commission to consider could be to ask the Ad hoc work group to reconvene to evaluate the comments and provide a recommendation of changes that should be made or should not be made. The Commission can then take a look at that at a work session. If, coming out of that, the Commission is comfortable with that package, you could move to the hearing stage. Tokos noted that we had fourteen people show up at the workshop even though we did a very large mailing. He is concerned that we don't have everybody's attention yet. He has received a number of phone calls from folks that couldn't make the meeting. Monday night was pretty tough for those that were out of the area. They are on our email contact list and will be tracking it. Tokos told the Commissioners that if they had particular issues that they would like the Ad hoc group to pay particular attention to, we can pass those along. Small asked of those fourteen in attendance, if we had any idea how many of those were neighbors of vacation rentals. Tokos thought the majority operated either one or more vacation rentals. Fisher said that he knew that at least four were realtors that operate vacation rentals and had a vested interest. Patrick said it goes back to the problem he saw could happen, and that was that we didn't get the other side although we did everything that we could to get notice out. Small wondered if it was an issue if there was no neighborhood representation. He said that if there was a lot of concern by neighbors, it seems like we would have neighbor representation. Fisher noted that every water bill had a notice in it. Croteau thought that most comments were directed to R-1 and R-2 as opposed to other zones. He said that he would like the Ad hoc group to address the issue of why we would include these in R-1 and R-2 if that is where the complaints come from. Sarazin thought it would be helpful to reconvene the group after listening to concerns. Patrick agreed that the procedure he would like to see is for the committee to go back through this. First, he thought that the Commissioners should go through and address areas that they see problems with.

In the first area, the issue of R-1 and R-2 should be addressed. Sarazin added particularly with B&Bs. Under occupancy, Small said that he heard comments that vacation rentals that are now legally established and approved wouldn't meet these criteria.

Part of that proposal was that there is no grandfathering. The most recent rules would apply when they came in to apply. He said that there was a real concern if their existing vacation rental would be allowed. One woman said that hers wouldn't fit under this. That needs to be discussed either in this section or in the approval section. Patrick said that he heard the same because some existing vacation rentals would have issues with the parking, landscaping, and waste management requirements. Patrick noted a comment under occupancy about having three houses side by side that are rented together. He saw the same thing happening in hotel rooms.

Under parking/landscaping/waste management, Patrick said a lot of people with existing rentals didn't have any room. Croteau said that there has to be some provision to allow existing historical B&Bs, for example, that couldn't meet these standards. Patrick added also for off-street parking in Nye Beach and the Bay Front. He said there was a question about off-street parking enforcement and how we can tell. How will we enforce that? The others agreed how do we tell if a car parked on the street is at the vacation rental or visiting someone in the neighborhood. Patrick noted that trying to hide garbage cans gets to be a problem. Sarazin noted complaints about trash cans being left out. When a big wind comes along, no one is responsible. It is a burden to the neighbors because they have someone's trash can in their yard or have to pick up the trash. She said the some of the people having those places don't want that responsibility, and the neighbor has to deal with it. She said there has to be some provision where that isn't occurring. If a person lets someone use their property, they have to have someone to take in the garbage and get it off the street. Patrick noted that some people have house cleaners, some have dumpsters. The code says no dumpsters. He said dumpsters work for him. Croteau said that sometimes trash stays in dumpsters month after month. That can be a problem if they are not cycled out before they are full. Patrick thought they were emptied at least weekly. Sarazin said whether it's a dumpster or a trash can, some provision needs to be made for the handling of trash. Patrick said that some people were talking about existing places in Nye Beach that have no off-street parking, and they are vacation rentals right now. Patrick said another comment he found interesting was why do handicapped spaces have to be provided if the unit is not handicapped accessible. Croteau took that to mean physically accessible; not handicapped accessible.

Under safety issues, Small said he found the first comment to be something interesting to consider. He said you could argue that you favor having the property occupied rather than unoccupied. Patrick said he heard questions about what kind of standards and who is doing the enforcement.

Fisher noted that he and Lee Hardy manned the area discussing issues and enforcement. He noted that five issues came up. One was fairness and equity across the board. Another one was, when there are problems, in the end they decided that the owner of the vacation rental is responsible for that rental. Whoever is using it needs to have their contact by phone or in person. Also, the person that owns the property is responsible to decide whether to call the police or handle it themselves. They felt the City shouldn't be involved in when it's time to call the police. Another comment was if a vacation rental is on the internet, and the person decides they are not going to use it for the rest of the year, are they still obligated to meet all requirements. In the end, it was decided that anything that is listed as a rental unit should meet all requirements even though it may be taken off the market for a while. If it has a license to operate as a vacation rental, it needs to meet those requirements. He said another issue was requiring higher standards for vacation rentals than we do for long-term rentals. He said that he is sure that is true. Fisher said there was one really big issue on enforcement, and that was that if there are going to be rules, there should be a method of enforcement. If that is a punitive method, there needs to be some system of hearings. Can't have penalty unless there is a way to appeal. Sarazin thought it would be through the municipal court, and Tokos confirmed that. Fisher said there should be a stated way that everybody understands. He said that in the end, there is a real need to bring all of these vacation rentals into the fold so that everybody knows who and where they are and that the City is able to verify that they meet the standards. He said that one person came up with an idea how that might be done. The City on its website could have a link for vacation rentals, and anyone who goes to the trouble of getting licensed in the City would be able to have their information there (i.e. contact information and what it is). It was thought that maybe that could be an inducement or a lure to bring these people in. He said maybe the Chamber of Commerce could find a way to do that. He added that if we are going to do this, we should try to bring every one of these rentals into the fold. The other Commissioners thought that wasn't a bad idea. Fisher said that they thought that having one license was another incentive to bring them in. Tokos said there would be one license. For the initial endorsement, there would be an initial fee there that would cover inspection expense and the expense of administering the program. It would be a one-time fee they would have when they pulled their permit and the inspection was done. Fisher asked if from then it would just be an annual license fee, and Tokos confirmed that. Fisher said that keeping costs low; maybe even free; could draw in these rentals. He said that getting the knowledge of who they are, where they are, and what they are doing is really important. Going back to the question about the designated person, Sarazin said she understands the owner is responsible; but if that owner contracts with a rental company, in her eyes that is who would be the designee. She noted that some people, like those contacting Tokos, are out of town; and they need to have someone designated. She said they can't rent from afar and not have someone here to deal with problems that happen over here. Fisher agreed that the owner or rental company is the contact person. The person that owns or operates the rental is the responsible party. Sarazin noted that it seems like the only ones complaining are the designated people. They seem to have a concern that the City wants them to be responsible for this unit. She wondered who the City would go to if we can't go to them. Fisher said one of the punitive actions might be suspension of their permit for the year. The City shouldn't have to determine who is going to be the contact. Whoever owns or operates the unit is responsible. The City will hold them responsible and make sure they are aware of it. He said it is their obligation. Sarazin said that it seems like the people designated to do this are pointing in the other direction. Patrick said that the City needs to enforce the regulations on the unit itself; not the designee. He said their point is not to make them have to be careful. The City is not

punishing the designee. The license needs to go with the unit. The designee has to be responsible for their actions. Patrick said that the code says a 30-minute turn-around when it's 24 hours for police or at least the next day. He asked if the police can't respond in that amount of time, why does the property manager have to? Fisher said he heard to keep going on with the plan, but a system needs to be easily understood and followed if it will be effective. Patrick said sometimes it is a designee problem. Sarazin said there is common sense that needs to be put into play. The designee is not the one to respond if the issue is that there are shots fired. Fisher said that his next door neighbor could be the designated person, but the City will go to the owner/operator because they are the ones obligated to be the responsible person to see something gets done. Croteau said that his sense was that the owner should be the responsible party; but for absentee owners, there needs to be someone local to deal with problems with the property (like shingles missing and water flowing inside). He said that those owners would have a designee that would be closer to take care of those sorts of problems; close enough to do what is necessary. Fisher said that isn't the City's business. That is the responsibility of the owner/operator. Patrick noted that there are a lot of owners that operate from out of state.

Under permit terms and process, Croteau noted that were a number of comments raised as to whether the permit should go with the property owner. After some discussion, it was decided that so much of the responsibility was on the owner and to issue the permit to the property wasn't a workable thing. He said that if the property sells, you have to re-up as a vacation rental; it's not automatic. He said most questions were around that issue; whether you call it a permit or a license. The other was the issue of grandfathering. Pre-existing rentals want to be grandfathered. The assumption would be that if they had a B&B or VRBO and had permission to do so, they could continue with the existing permit unless there was a gross violation. Tokos said that the thought was that there needs to be a level playing field. Patrick said one question was whether it's a one-time inspection or a renewing inspection. Tokos said the inspection would be every time a license is pulled; it was not envisioned to be every time a business license is renewed. Patrick said that he thought language should be put in there that if there is a problem with the rental, we have the ability to re-inspect. He said there needs to be some sort of trigger in there for that.

Under other issues, Small raised the last question on page 4 about whether unattached homes have the same classification as hotels. Tokos said his sense is what we can do is take a look at hotel/motel definition and bring that through the process. He said that wasn't discussed at the Ad hoc level originally. Fisher said he thinks the houses in front of the Whaler Motel are rented more like a motel. Tokos said there is interplay with the commercial code. If they are treated as a hotel, they are subject to the commercial building code, which doesn't work well on old homes. With three units or more on a parcel, you are into hotel/motel use for building code purposes. Tokos said we can work through that. Patrick thought it was interesting to see the comment about why not regulate apartment buildings as well. Sarazin said that goes along with the concern that we are holding vacation rentals to higher standards than the rest of the city. Patrick said we may need to look at nuisance standards again. Sarazin said that on page 5 she didn't see the concern about the sale of the property and now this would make it harder to sell if the owner doesn't meet the requirements. She said it is the property not the owner that is meeting the requirements. Patrick said on the flip side of that a large part of sales is going on the value of property. If they think they can rent it as a vacation rental, they may think they can come out ahead. The economic conditions are driving down house prices regardless. If we are taking away part of the economic reason for buying a house, it will affect the value of the house. Sarazin said these people are concerned that if they can't sell the permit with the house, their value will be going down. If they are renting the house now, they qualify for everything. That property will qualify for the next owner. Fisher asked that unless they are grandfathered in, the new owners have to meet the standards; and Tokos confirmed that. Tokos said he could ask the Ad hoc group to take a look at that, but that was their intention. It was intentionally done so that we don't end up with three or four different sets of rules applying to those out in the community. Fisher said that to him it made sense that an exception would be if the property were inherited from parents. Then he would assume that wouldn't apply because they haven't purchased it; it would just be a deed change. Patrick said that if the license went with the property, it would just be a change of designee. Fisher said they wouldn't even have to notify the City, the title goes to the County. Patrick asked Tokos to ask the Ad hoc committee to discuss whether the license or permit goes with the property; also what we have in just changing hands or just changing form (into a trust). Croteau said that is a legal change of ownership and how would we deal with those. Tokos said that can be addressed. There is a lot of language out there about what constitutes an ownership change and what doesn't. Patrick said the other thing he thought of was where someone owns shares of a vacation rental home; like brothers and sisters. What happens if one in that joint ownership sells their share? Patrick said that he likes the whole process a lot better than immediately going into the hearing process. By then, hopefully, we will have a lot of this worked out. Small agreed it was a good process to hear other points of view, and doing it in this setting rather than a hearing was more comfortable. Patrick said he thinks we are still getting only one side of it, and he added that it looks like that one side is in disagreement with each other. Sarazin said someone had raised the possibility of limited tenancy; maybe moving in once a week. They wanted them to be able to only move in and move out every so often. She doesn't know how we would be able to monitor something like that.

The question was asked if the Commission and the Ad hoc people should meet together to discuss this. Tokos thought we should allow the Ad hoc group to meet separately rather than be together. They can come up with a set of recommendations to consider based on the observations the Commissioners have shared tonight.

MOTION was made by Commissioner Sarazin, seconded by Commissioner Croteau, to send this ordinance back to the Ad hoc work group to reconvene and look over these comments and suggestions and come back with some recommendations. The motion carried unanimously in a voice vote.

Croteau asked what would be the next step. Tokos said the Commission can take a look at the recommendation and decide whether they are comfortable to initiate a public hearing process or if there is need for additional outreach and what that might look like. He is unsure how to get the attention of folks that may be concerned; how to get the homeowners engaged. The mailing we did was one of the most effective. We had ads in the paper and on the radio. He expected folks who live in town to show up, but we really didn't get that. Small said his concern is the homeowner that lives next door to a vacation rental and protecting their peace and pursuit of happiness. He said maybe the fact that we didn't have any of those local residents show up is an indication that there is not the problem he thought there was. Fisher said that if they were really bothered, they probably would have shown up. Patrick said he thought there would at least have been some of those folks that have shown up when we have had hearings on vacation rentals. Tokos said the process will be that the Ad hoc group will hold one or two meetings to put recommendations together, and he will bring it back in work session for the Commission to take a look and provide direction whether you are comfortable going to hearings. Croteau said that maybe neighbors went to the website and looked at the materials there and thought it was much better than what it is now and were happy with what they saw. Sarazin said we had those comments mostly from owners. Patrick said we will keep trying to bring in the other side. He noted that if it passes and is not working, we can change it. Fisher said he thought the Ad hoc committee did a really good job in what they came up with. He said that was very valuable.

G. New Business.

1. Review scope of work for Newport Economic Opportunity Analysis (EOA). Tokos said it does appear that we are going to be receiving a grant for funds to help us with an economic opportunity analysis. He had mentioned this to the Commissioners previously in work session. It is something that the Council supported doing. The project would update the City's economic data to be factual based, develop a cohesive economic strategy and vision for the community, and better define the City's role in achieving that vision. Tokos said that there is the Yaquina Bay Ocean Observing Initiative (YBOOI) trying to get momentum. We have the Chamber of Commerce and the Mayor who are looking to do a broader business outreach in the community. Tokos noted that statewide planning requires the City to have a plan for the economic vitality of the community. He had included a copy of the economic section of the Comprehensive Plan in the packet. He said it is kind of vague and doesn't provide a whole lot of direction. We have to provide for a twenty year land supply. What we find in the Comprehensive Plan is that we don't quite have that and probably won't. We are partnering with the Chamber of Commerce, the Port of Newport, the Economic Alliance of Lincoln County, and different Nye Beach, Bay Front, and City Center merchants' associations to bring this initiative into place to have a comprehensive economic vision. Tokos said this is similar to what we went through with the housing study. This will involve \$30,000; half in grants, and the other half the City Council budgeted for. He noted that the employment forecast and the siting needs and analysis would need to be done before the end of the fiscal year. The broader items could go on beyond that. The end of August to get it wrapped up is what he drafted into this. The proposed scope of work shown in the RFP is what he has shared with Lorna of the Chamber of Commerce. He hasn't heard from Carolyn Bowman or Don Mann. He said the grant should come through any day. His hope is to get the RFP out for thirty days to give the consultants reasonable time to get something prepared and to us. He said we will want to look very carefully that who is selected has good facilitation skills. The consultant will need to do broader outreach than what we did with the housing study. The emphasis on this selection is to try to get someone with strong facilitation skills. Tokos said that if the Commissioners have ideas, he is open to them. Small asked when the RFP is going out, and Tokos said he hopes by the first week of October so that the consultants have close to thirty days. Patrick asked if the selection will be similar to what we did for the housing element with a couple of Commissioners and an Ad hoc committee member. Tokos said that he has pulled Lorna from the Chamber, and he would like to have a couple of Planning Commissioners. Fisher recommended, and Sarazin agreed, that Croteau and McIntyre should be on the selection committee. Croteau said his schedule should work for that. He asked if this is working into downtown revitalization. Tokos said it can help clear our thoughts, but that is just part of the puzzle. Patrick said that in reading the old section, NOAA was on the list, but was way down in priority. He said we need to keep our options open because things come up that make sense that we may not foresee. Croteau agreed that we need to be prepared for the unexpected. He said he knows that the downtown is in need of revitalization. Fisher said that Newport isn't alone in that. Some communities have solved those problems, but what they have done won't work in all towns. Tokos said there is the larger 101 corridor. He said that if you look at the broader 101 corridor, other things come up than if you just look at the downtown. Patrick said it should be interesting. We already know we are short on commercial property. Tokos agreed that the City needs to look at how we can supplement our commercial lands. Fisher wondered if the Holiday Inn Express had been able to build on one whole block, if that would have helped downtown. Tokos say that speaks to what the community wants the downtown to be; a walking downtown area or a more conventional modern development. He said it is a train of thought. There have been a lot of things done in the past about what would happen. He said that these issues have been studied to death and nothing has happened. If we don't do engagement to figure out what to do next, it will blow up. Sarazin wondered if we were limited because the City doesn't own the properties, and there are a lot of businesses. Tokos said it gets back to having the property owners engaged. Maybe there is the potential for community development block grant funds for a façade improvement program. Maybe it will be to clean up the 101 corridor. If federal funds ever become available again, maybe we can figure a match. He said that if we don't have our ducks lined up, we won't be able to pull it off. Croteau asked about the previous studies. Tokos mentioned the Glick study, there was discussion about couplets so that we don't have 101 basically running through the middle of downtown, there have been discussions about whether on-street parking should go, whether we should tear down block by block for redevelopment and give up on a traditional downtown, and talk about taking out asphalt and putting in plantings and cleaning up the center strips along 101. Tokos said that

even though he hasn't gone through all the previous studies, he gets that there is still disagreement on what should be done. Tokos asked if the RFP scope of work looked okay, and the consensus was that it does.

H. Director's Comments.

Tokos said that the SIC code passed at the last City Council meeting and in less than thirty days, that will go.

The City Council did pass a motion on what it takes to become a Tree City designated community. Tokos will bring that to the next work session.

Also at the next work session, the Commission will have a draft of the South Beach trip budget (trip cap) overlay. He doesn't know that we will have a regular agenda.

Tokos wanted to give the Commissioners a heads up that City Recorder Peggy Hawker will work on codification of the zoning code into the municipal code. This is the last major code element not in the municipal code. This will be brought to the Planning Commission at some point as legislative. There are a few minor things that get corrected; nothing major.

I. Adjournment. Sarazin noted that she will not be available for a meeting on December 27th; but Tokos noted that we most likely won't have a Planning Commission meeting on that day. Fisher asked to be excused on October 10th. There being no further business to come before the Planning Commission, the meeting adjourned at 8:34 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

Draft MINUTES
City of Newport
Planning Commission Work Session
City Hall Conference Room "A"
Monday, October 10, 2011

Planning Commissioners Present: Jim Patrick, Glen Small, Gary East, and Rod Croteau.

Planning Commissioners Absent: Jim McIntyre, Mark Fisher, and Melanie Sarazin (excused).

Citizens Advisory Committee Members Present: Lisa Mulcahy and Bill Branigan.

Citizens Advisory Committee Members Absent: Dustin Capri (excused).

City Staff Present: Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

ODOT Representative Present: John deTar.

Audience Members present: Bonnie Serkin, Will Emery, and Mr. & Mrs. Don Huster.

Chair Patrick called the Planning Commission work session to order at 6:00 p.m.

A. New Business.

1. Review draft Trip Budget Overlay for South Beach. Tokos handed out a diagram showing the South Beach transportation analysis zones. He noted that this is the first actual draft the Commission has seen with language that might be added to the TSP, and he wanted to talk about that potential language. This puts in place policies for a trip budget program. Tokos noted that what he included in the packet were sections that would be added to the TSP. The first encouraged mode shifts. It is to encourage new retail, office, and industrial developments to incorporate or facilitate alternative modes of transportation methods such as requiring them to provide dedicated parking for van pools, bike parking, and transit facilities. Mulcahy said that one thing she thought of that wasn't mentioned is that maybe there is a way to encourage major businesses to encourage employees to carpool. Croteau suggested the use of a website posting. Patrick noted that it does mention providing vanpool and carpool dedicated or preferential parking. East added that parking for carpool vehicles could be up close to the building. Small said he couldn't figure the scenario that there would be large enough businesses to encourage that. For retail there wouldn't be that much carpooling. He thought it would have to be a major entity where they have many employees. Patrick thought it might be for employee parking for something like Fred Meyer, Wal-Mart, or Home Depot. Small wondered what we were anticipating that would be large enough that it would make that work. Patrick thought it should be left in there in case we ever get one of those employers. He thought it was more to encourage existing businesses like SPCH and HMSC. Branigan talked about the Aquarium, which has employees who are really into environmentalism and recycling. He said that they have a bike to work week where the department that had the most people bike to work got a pizza party or something. He thought that maybe the City could encourage something like that with a quarterly plaque or something for businesses. He said that businesses like hospitals and banks appreciate that recognition. Small agreed that he thinks about human nature and the results of requiring or rewarding. He said it seems that if the City were to reward a business for encouraging their employees that would be more effective, but he doesn't know how the City could reward them. Tokos said there are ways; perhaps it could be in terms of business license fees. The City could impact the financial side, or through the Chamber of Commerce. He said there are avenues that we could use. Tokos said that what he is hearing from the discussion is why not language talking about existing versus new. He said that seems that should be a point of emphasis. Patrick thought it should apply to existing also. East said it would be interesting to know what existing businesses have in place. Tokos said the City could explore an SDC discount too. We may have a rationale for capturing that if there is a solid program in place. Tokos continued that the last implementation action has to do with requiring that a development demonstrate that they are designing circulation that will be attractive for pedestrians. That might need to lead to some changes in the parking code. We would have to have some standards in place to give developers an understanding of what we are looking for. Tokos noted that next are some specific recommendations of encouraging the transit system along the lines of coordinating with Lincoln County Transit. Branigan talked about transit from Corvallis. deTar noted that in three counties there is ride match, but he thought it sounds like this group is telling him that needs to be more visible. He said he can bring that back to the Council of Governments. Patrick said that he thinks the City can work on the physical amenities part of the transit system because shelters, signage, and benches are pretty sketchy. Tokos noted that the implementation actions for the transit system involve coordinating with Lincoln County to work on barriers to ridership, needed enhancements, and impediments to providing service. The City will continue to work with Lincoln County Transit, ODOT, and other partners. Tokos said this is the language that is going into the TSP on transit improvements. Patrick asked about the "queue-jump" opportunities for buses. deTar said it gives riders a reason to be on the

bus rather than having to get in the queue with everybody else. For example, they are the ones going across the bridge first, and it helps the buses stay on schedule.

Moving on to the next document, Tokos noted that it has language adding policy direction to create a South Beach Overlay Zone (SBOZ) to implement the Trip Budget Program. Tokos covered what is in the code. South Beach was divided into the Transportation Analysis Zones (TAZs) shown on the map he handed out earlier. Review and approval of trip allocations is an over-the-counter ministerial action. The Traffic Impact Analysis (TIA) being done for certain types of development is discussed. There is some language about monitoring the trip budget program, and discussion about amending the program. Small asked why 65% is used as a benchmark for re-evaluation of the TSP. Tokos said it is arbitrary, but his sense is that it was designed to be a peak number in order to have enough time to review it before hitting 100%. deTar added that it is the point where you initiate reconsideration so it doesn't affect development that would exceed that capacity or beyond. He said it is the point where we need to reconsider before it gets away from us and is out of control. Croteau asked if any land use action in the SBOZ is going to trigger an assessment letter or an actual impact analysis or if it's a question of scale. Tokos said that when we get into the zoning level piece, the over-the-counter transportation analysis is more involved and has a discretionary element.

With that, Tokos moved right into the actual overlay zone itself. Section 2-5-12 creates the South Beach Overlay Zone (SBOZ). He noted that the map he just handed out gives a sense of the boundaries of the overlay zone. The purpose of the SBOZ is to promote development in South Beach in a way that maintains an efficient, safe, and functional transportation system and doesn't impact uses at all. Tokos noted that as deTar had pointed out to him, under definitions the opening wording "gross trips" and "net trips" are flipped. Small asked about the reduction percentage under gross trips (which should be net trips) and whether there is a formula that calculates trips. deTar said that the ITE Trip Generation Manual by trip type defines which type of uses can expect a lot of pass-by trips. He said pass-by traffic is something already on the road that pulls off to visit one use and then gets back on the road; like fast-food or gas stations. Tokos wondered if this is where we will pick up discounts for uses primarily for the local area like a grocery store in South Beach. deTar said even that kind of use has some pass-by trips. He said the whole context of how we deal with a use we would like to have in South Beach (like a gas station) and how we account for it still needs some more discussion. Tokos asked the Commission if for a use like a grocery store we want to make sure to do something in the overlay that gives them a discount. Small said he would like to see that. He thought a grocery store in South Beach in some respect would reduce the number of trips across the bridge. deTar noted that a big store would draw from the north side of the bridge. Audience member Will Emery said that it seems that the City's approach should be not to let the bottle neck of the bridge drive all decisions. deTar said maybe there is a way to deal with this with reductions in SDCs or some other credit. There could still be a way to make it more attractive. Patrick said we need to put a hook where there is credit for trips in South Beach, but he doesn't know how to set it up. He said if a developer can show that the use holds people in South Beach and will prevent them from going over the bridge, maybe that can be used. deTar agreed that we have to figure something that makes sense. Tokos discussed saying that these are the desirable uses there because they capture and keep trips locally and are convenient for people living in the South Beach area. He added that there would have to be some side bars to that. He said maybe scale is something we could use to come up with an appropriate discount. Maybe it's arbitrary, but as long as it is reasonable. We can work on something that makes it more attractive for that use. deTar agreed that this whole concept is something to have more discussion on. He said there are some uses you want to have in South Beach, and you want to figure out how to make that happen. Tokos went through the structure of the overlay. The department will maintain a trip budget ledger. The way this is set up, small-scale development will follow a ministerial process. At the counter, we will look up ITE, figure the number of trips, document it, and keep the information in a ledger. We will inform the State so they know where we stand. A TIA would trigger for larger-scale uses. Croteau asked what the rationale was for not allowing transfers. Tokos said it gets too complicated if there's a transfer from one TAZ to another or one property to another. Patrick asked about a change of use and gave an example of Toby Murry going to a Home Depot or something like that. Tokos said that is a commercial zone now and the trips would be allocated. If you have changes to the Comp. Plan, you get into more traffic assessment. If you are changing from commercial to industrial or residential to commercial, you have to do a full TIA. deTar noted that on page 4 is discussion about when you get to a TIA. He said we may also want to say if an existing use increases the number of trips 50 or more. That might be the way to get to that change in land use activity. Tokos confirmed that Section 2-5-13 on page 4 is talking about when a TIA is needed rather than just a letter. Those are a Comprehensive Map amendment, direct access to 101, 50 or more or increases by 50 or more peak hour trips, increases in use of adjacent street by large vehicles, access driveways don't meet spacing, or to pull out of the Trip Reserve Fund. In answer to a question, deTar noted that 50 PM peak-hour trips is the number the Legislature set for ODOT to look at. Previously it was lower. He said that 50 trips in the peak hour is enough to start having an impact on an intersection. He noted they are not looking at the whole day's trips; just the effect of the peak hour. Tokos said he could bring examples of typical developments and where they would fall. Tokos said effectively what this is setting out here is if it's under that threshold, it's ministerial and wouldn't be going through review. We are just capturing how many trips. If it's under that threshold, we document it with a letter. At some point, we will hit a cap and it will get more involved for those developing property at that time. Until we get there, it's just a matter of documenting it in a ledger. From the audience, Serkin asked when that documentation in the ledger is done. Tokos said that he would like to do it with the platting on residential property. We can pick it up with the plat rather than on an individual lot by lot basis. A TIA would be triggered at the appropriate time. If it's a large enough plat, it would be done at

that time. He said that was his intent, and the others thought that sounded agreeable. deTar noted that at the bottom of page 7, he doesn't think this really gets to that, and what Tokos discussed seems to make more sense. In that way, once a developer is ready to begin the development process, they would have some assurance that they are going to be able to build. deTar agreed that language needs to be worked on. Tokos noted that the TIA will apply citywide. The City currently doesn't have anything in place for requiring TIAs. Our access standards only apply to arterial roadways. Patrick thought it should be clarified if this is just new accesses onto arterials or if it's a change of use in existing development as well. Tokos asked if it should just be for new. deTar said that just the popularity of a business, which can fluctuate, wouldn't be characterized as a change of use. It's based on the square footage of the building and how much that activity brings in. If they double the size of the building, then there is the opportunity to go back in and revisit that use. But, if for example, a 3,000 square-foot restaurant changes its menu and then becomes very popular, that is not a basis for change of use. Patrick mentioned the driveway standard of every 500 feet, which is about every other block. He noted that in South Beach you are looking at long distances between. When doing developments you can plan for that. It also means a lot of those properties are going to be unusable. deTar said it means that we need to take a closer look at it, and that is what a TIA allows. Again, Tokos asked if the access standards should be for new or new and existing. Patrick thought new, and the others agreed that access applies to new. Tokos asked if these thresholds seem to make sense, and the consensus was that they do. Before leaving the discussion about 50 trips, deTar wanted to note that Corvallis uses 30 and Albany uses 50. He said that Newport would be in the ballpark of what the other cities use. Tokos discussed what is required to be submitted when a TIA is required. A pre-application conference is required. The pre-application conference requires a report prepared by a licensed engineer qualified to perform TIAs. Intersection analysis is needed if the analysis shows 50 or more trips can be expected. The TIA requires TPR compliance. deTar explained that if the intersection where the development connects to the highway is increased by 50 trips, that is the only one analyzed. For a larger use, say a McDonald's, maybe 300 trips at first intersection, then 200 at next, and 100 at the next. The study area is out as far as you go with it at 50 trip units. If it's down to 30 trips, then you are not looking at that intersection any more. Tokos said the next section talks about the study area and what needs to be looked at. These are all site-access points, roads through and adjacent to the site, intersections that receive site-generated trips that comprise at least 10%, all intersections needed for signal progression, and anything else the City Engineer determines is warranted. Tokos explained that the approval process follows a Type II decision-making process, which is staff level and appealable to the Planning Commission. Tokos covered the approval criteria, which are that the analysis complies with 2-5-13.010 that talks about basically all the elements required to be included in the analysis, that the TIA needs the City's level of service standards (which presently we have not adopted) or highway mobility standards (which would be under the alternate mobility framework), and that the site design and traffic circulation includes mitigation measures to have the least negative impact on the system. Tokos noted that we need to define what negative means. deTar noted that he and Tokos also discussed that the impact analysis would be 50 at State intersections and 100 at the City street intersections, which is not in here. Tokos asked deTar what standard they are trying to achieve with criterion 'C'. deTar said he will have to ask the consultants what they are thinking about here because he doesn't know what they had in mind. Tokos said that unless the consultants can give a compelling reason why this is here that he can convey to the Commission, it goes away. He said that criterion 'B' seems to cover it. He noted that a level of service standard needs to be achieved, and we have to establish that. If the level of service standard can't be met, and we want to allow some development under certain circumstances, maybe we can put something in there so an overtaxed City street won't put a stop to all development. Patrick agreed that was a good point. Since this will apply all through the City, he would like the City to have an out some way. Tokos said that criterion 'C' needs more work. He continued that the next provision allows conditions of approval to be imposed. There is also some language that we asked the consultants to put in that the City can collect in-lieu-of fee if a developer can't make improvements right away. This allows the City to collect a fee if it's not practical for improvements to happen right away. If the development is required to widen the street and put in curbs and sidewalks, but the City can live with a half-street because of other potential development; they now can contribute as a payment in lieu of doing the actual frontage improvements, and the City will pick it up down the road. Everyone agreed that made sense.

Tokos asked if this was starting to take the trip budget from fuzzy to more concrete and if it is doing it in the right way with some adjustments we are talking about. He said the Commission will see this again in work session with some of these changes and the alternative mobility standard worked in. There will be drafts a couple of more times before it goes to hearing. The consensus was that this was going in the right direction.

Tokos noted that the TSP is a combination of 1997 projects and the projects added on the north side with the 2008 amendment. This is where we would be inserting the policy language. We need to do this trip budget process. We will be updating the project lists to include the proposed traffic network. The policy language for the TIA is something we should be doing citywide. There will be an amendment to this TSP chapter and separate zoning code amendments.

From the audience, Will Emery wanted to add that South Beach is the location of the City's industrial land bank. He noted that he has recently cleared and is looking to prepare 5-15 acres of industrial ground served by 50th Street. He noted that this industrial track is what the City has for someone that may be looking for a large piece of industrial land. He asked that we not forget that. He talked about the trip cap they are under. He just wanted to mention the industrial aspect of it. Tokos asked deTar if it's right that the way this is set up, if we have an industrial user of any size down at 50th Street, they are going to be under the TIA under this program and until that is done, they are not going to know what they are to do in terms of road

improvements. deTar said you can have an industrial user look at how they work their shifts. You may want to think of that when setting up alternate modes and such. Encourage large employers not to work on shifts. Actually set up shift changes to be at 3:00 p.m. rather than 4:00 or 5:00. 50th Street number of trips available in the TAZ may be okay if not completely allocated, and you have the general trip reserve that could be allocated to that use. deTar talked about shovel ready land. He said maybe the City can build into their program something that addresses not only grocery stores and gas stations, but also when development is on a shovel-ready site, trips are allocated to it. It could be something like when shovel-ready land is created for industrial purposes, "x" number of trips are allocated. In that way, they would be able to reserve the trips so the development doesn't have nearly as much of a process to go through and doesn't get beaten to the punch by something else in the TAZ that might not be quite as desirable. You can look into the mechanism. Tokos said it gets difficult keeping track of the reserve. deTar said he can turn this over to the consultant to determine if there is some mechanism. He said that if someone has gone to the point of getting land shovel ready, and that is what the City wants; ODOT is not trying to prevent that from happening. Tokos said the trip caps we are talking about here are pretty generous. It's a 20-year time frame of growth; and when we are talking about hitting the cap, that will be 20 years down the road, and we will already have had a number of industrial developers. Tokos summed up that we will start working on revisions here and bring back a more finalized version.

2. Ordinance for Tree City USA designation. Tokos noted that the City Council is looking for the Planning Commission to put something together for Tree City USA designation. He outlined in his memo what that could be. He said we are looking to do the minimum to get the designation. He noted that there are things the City should probably already be doing; and if we do that, we can get Tree City designation. Essentially we have to have a tree board, and he envisions that board to be the Parks and Recreation committee. That would require amendments to the Municipal Code to expand their authority. They would put together a list of appropriate plantings and also provide feedback on development codes when planting within a public right-of-way. These are some prudent things that we should be doing already such as rules for care and placement of trees in existing rights-of-way and a permitting process. Public Works already requires a permit to remove trees in the public right-of-way. We have a structure in the code for where this would fit. The way this works is if it's in the public right-of-way, then we would be requiring that kind of detail; not on private property. We have sidewalks, curbs, and utilities cracking because of improper plantings. Branigan wondered how much it costs the City to become a Tree City. Tokos said whatever the program is. Patrick thought \$2,000 per citizen. He noted a lot of the necessary things are already being done by Parks and Recreation and Public Works. Croteau asked if we were looking for something along the lines of Seaside's or Coos Bay's approach, and Tokos confirmed that. Tokos said that we can put in to authorize the board for the Heritage Program, and they can get into it if they want to. Tokos would recommend staying away from the Lincoln City approach for preservation. He noted there is an issue now that we have vision clearance in two sections of the code that say different things. The Tree Committee can also be in charge of Arbor Day observances. Patrick thought this language sounded about right. Tokos said he will put together an ordinance for the Planning Commission to look at later.

C. Adjournment. Having no further business to discuss, the work session meeting adjourned at 7:30 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

PLANNING STAFF REPORT
File No. 4-Z-11

- A. **APPLICANT & OWNER:** Newport Rehabilitation, LLC (Nationwide Health Properties, LLC c/o Ventas, Inc. and Pacific Communities Health District, property owners) (Gretchen Stone, CB/Two Architects, authorized representative).
- B. **REQUEST:** The request involves a zoning map amendment. The subject property has a zoning designation of R-3/"Medium Density Multi-Family Residential". The applicant is requesting that this designation be changed to R-4/"High Density Residential". The applicant operates an 80-bed skilled nursing facility at this location. "Nursing Homes" or "Skilled Nursing" are allowed outright in the R-4 zone, but are allowed as a conditional use in the R-3 zone. City staff discovered that the property was rezoned from R-3 to R-4 in 1975 by Ordinance No. 1002. Then in 1982, when the City of Newport adopted a comprehensive package of zoning map amendments to comply with Statewide Planning Goals (Ordinance No. 1308), the property appears to have been inadvertently rezoned back to R-3.
- C. **LOCATION:** The subject property consists of Lots 1-12, Block 15, Bayley and Case's Addition to Newport, including a vacated 10-foot wide alleyway (currently identified as Tax Lots 8400, 8500, 8600, 8700, 8800, 8801, and 8901 of Lincoln County Assessor's Map 11-11-08-CA). See map in Planning Staff Report Attachment "B".
- D. **LOT SIZE:** The size of the subject property is approximately 1.45 acres per Assessment Maps.
- E. **PLANNING COMMISSION ACTION:** The Planning Commission reviews this request and makes a recommendation to the City Council.
- F. **STAFF REPORT:**
1. **Report of Fact**
 - a. **Existing Plan Designation:** "High Density Residential".
 - b. **Existing Zone Designation:** R-3/"Medium Density Multi-Family Residential".
 - c. **Surrounding Land Uses:** The property abuts R-4 zoned property to the north and west, and is surrounded by a mix of single-family residences, multi-family dwellings, and medical offices. Across SW 11th Street is the Samaritan Pacific Hospital property that is zoned P-1.
 - d. **Topography and Vegetation:** The site gently slopes from the northwestern side of the property downwards toward the southeast. The site is landscaped.

e. **Existing Structures:** A single-story 19,900 square foot building housing a skilled nursing facility.

f. **Utilities:** All city services are available to the site.

g. **Development Constraints:** None known.

h. **Past Land Use Actions:**

Ordinance No. 1002, adopted May 19, 1975, amended the zoning map changing the zoning of the subject property from R-3 to R-4.

Ordinance No. 1308, adopted September 7, 1982, amended the zoning map repealing all prior ordinances, thereby inadvertently changing the zoning of the property back to R-3.

i. **Attachments:**

| | |
|------------------|--|
| Attachment "A" | Applicant Request |
| Attachment "A-1" | Pacific Communities Health District Resolution |
| Attachment "A-2" | Assessor's Property Information |
| Attachment "A-3" | Zoning Map of Property |
| Attachment "A-4" | Aerial Photo of Property |
| Attachment "B" | Notice of Public Hearing and Map |
| Attachment "C" | Ordinance No. 1002 |
| Attachment "C-1" | Ordinance No. 1308 |
| Attachment "D" | Draft Ordinance |
| Attachment "E" | Uses Allowed in the R-3 and R-4 Zones |
| Attachment "E-1" | NZO Section 2-3-5 Table "A" |
| Attachment "F" | Topography Map of Area |

j. **Notification.** The Department of Land Conservation & Development was mailed notification of the proposed amendments on September 26, 2011. Applicable city departments, public agencies, and affected property owners within 300 feet of the subject property were notified on October 24, 2011, for the Planning Commission hearing. Notification of the Planning Commission hearing was published in the Newport News-Times on November 4, 2011.

2. **Explanation of the Request:**

Block 15, Bayley and Case's Addition to Newport was rezoned from R-3 to R-4 in 1975 by Ordinance No. 1002. City records show that a nursing home was constructed on the property in 1976 (then known as Yaquina Nursing Home). When the City undertook a comprehensive rewrite of its Zoning Ordinance and maps in 1982, to satisfy the newly adopted Statewide Planning Goals (Ordinance No. 1308),

the property appears to have been inadvertently rezoned back to R-3. Since the skilled nursing facility is an outright use in the R-4 zone, but in the R-3 zone requires a conditional use permit, the applicant is asking for a zoning map amendment to change the zoning of Block 15 back to R-4 as it was in 1975. This will make it easier for them to maintain, repair, or expand the existing skilled nursing facility.

3. **Evaluation of the Request:**

a. **Comments:** DLCD was provided notification on September 26, 2011. All applicable property owners, city departments, affected public/private utilities/agencies were notified on October 24, 2011, of the Planning Commission hearing. As of November 4, 2011, no written comments were received by the Community Development Department.

b. **Applicable Criteria:**

Criteria for the Proposed Zoning Map Amendments (Section 2-5-5.005) of the Newport Zoning Ordinance (No. 1308, as amended):

1. The change furthers a public necessity.
2. The change promotes the general welfare.

c. **Staff Analysis:**

The proposed findings submitted by the applicant address the criteria established in the Comprehensive Plan and Zoning Ordinance for approving the request. See Planning Staff Report Attachment "A". Additionally, a list of the uses in the applicable zones and a copy of Table "A" of NZO Section 2-3-5 (summarizing height restrictions, lot coverage restrictions, and other items in the different zones) are attached. See Planning Staff Report Attachments "E" and "E-1".

In regard to the applicable criteria for the proposed Zoning Map amendment:

The change furthers a public necessity and promotes the general welfare.

The requested zoning map change would allow the applicant to continue to operate the skilled nursing facility on the property and to repair, maintain, and expand the facility without having to go through a conditional use permit process. It appears that the City's intention was to have Block 15 zoned R-4 in 1975, but Ordinance No. 1308 inadvertently rezoned it to R-3. Ordinance No. 1308 called out 26 prior ordinances that it was intended to replace; however, Ordinance No. 1002 was not listed among them. Because of its comprehensive nature, Ordinance No. 1308 included an additional statement repealing and replacing all other conflicting ordinances. That is what caused the change back to R-3. Given this information, it appears that the City was

unaware of Ordinance No. 1002 when it made the changes in 1982.

Further, this zone change request will not create spot zoning. The subject property abuts R-4 zoning to the north and west. The applicant believes that it is appropriate to rezone the property to R-4 given how the property is developed and the history of its use. Also, Pacific Communities Health District to the north recently went through a zone change from R-3 to R-4 for property they purchased at 749 SW 11th Street. The applicant contends that the skilled nursing facility is a complementary use to the hospital's campus, and so it is logical and proper to allow the property to be rezoned to R-4. At 1.45 acres, it is reasonable for the Planning Commission to view this request as a minor adjustment to the boundary of the R-3 and R-4 zoning districts.

The applicant's findings indicate that the surrounding uses include R-3 to the north, east, and south; with R-4 to the north and west. They contend that there will be no impacts to the surrounding areas as both R-3 and R-4 are considered "High Density Residential" under the City's Comprehensive Plan. The applicant states that the existing use will not change as a result of approving this request and notes that the approval of the request is reasonable given the surrounding development and the medical uses adjacent to the north.

A change from R-3 to R-4 zoning furthers a public necessity by facilitating growth of essential medical services within the community. The applicant points out the presence of these services on the subject property and nearby parcels to the north and west. This demonstrates that medical uses are well established in the area. The R-4 district allows these uses outright, making it easier for them to be maintained, repaired or expanded.

For these reasons, the Planning Commission can find the proposed zoning change to be a public necessity that promotes the general welfare.

In regard to applicable Oregon Administrative Rules:

OAR 660-012-0060(1) requires that the Planning Commission establish that the proposed zone change will not significantly affect existing or planned transportation facilities. The subject request satisfies this requirement because the change to R-4 zoning will not have the effect of allowing more vehicle trips than the existing R-3 zoning. This is due to the fact that the property is already developed with a skilled nursing facility, the small size of the zone change (1.45 acres), and that the R-3 and R-4 zoning districts allow the same residential densities. R-4 zoning provides for a broader range of non-residential uses; however, such flexibility will have a negligible impact to the transportation system because the more limited list of non-residential uses allowed in the R-3 zone provides for a comparable intensity of

development.

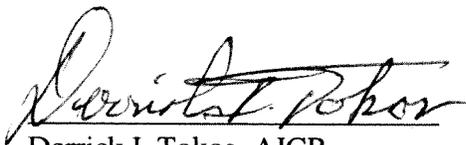
Consistent with Statewide Planning Goal 10 and Chapter 660, Division 008 of the Oregon Administrative Rules, the City of Newport maintains a residential buildable lands inventory, which establishes that a 20 year land supply is available for needed housing. When properties are rezoned, the Planning Commission must consider the impact of the change on the City's inventory. In this case, the subject property is already developed with a non-residential use. This fact is accounted for in the buildable lands inventory, which identifies most of the property as being unavailable for residential development.

4. **Conclusion:**

The applicant requests the zone change in order to continue the use of the property as a skilled nursing facility and in order to make necessary repairs, maintenance, and enhancements without having to go through a conditional use permit process. It appears that the City's intention was to have Block 15 zoned R-4. The R-3 zoning seems to have happened due to an inadvertent oversight when adopting a new zoning map with Ordinance No. 1308 in 1982. Because of that, the applicant believes that the zone change is a reasonable request.

G. **STAFF RECOMMENDATION:**

The Planning Commission should review the proposed changes to the Zoning Map and the application materials as well as other documentation and testimony that may be submitted during the course of the hearing. The Planning Commission should recommend approval of the request as being in compliance with the applicable criteria if the Commission finds that the criteria have been met. The Commission should identify how the request does not comply with the criteria, or should identify conditions necessary in order to make the request comply with the criteria, if the Commission finds that the criteria have not been met.



Derrick I. Tokos, AICP
Community Development Director
City of Newport

November 4, 2011



Attachment "A"

File No. 4-Z-11
Applicant Request

**City of Newport
Land Use Application**

Print Form

PLEASE PRINT OR TYPE - COMPLETE ALL BOXES - USE ADDITIONAL PAPER IF NEEDED

| | |
|---|---|
| Applicant Name(s): Newport Rehabilitation, LLC | Property Owner Name(s): Nationwide Health Properties LLC |
| Applicant Mailing Address: 25117 Southwest Parkway, Ste F Wilsonville, OR 97070 | Property Owner Mailing Address: c/o Ventus, Inc. Attn: General Counsel/Asset Mgmt 10350 Ormsby Park Place Louisville, KY 40223 |
| Applicant Telephone No.: 971-224-2056 Albert Castaneda, Avamere | Property Owner Telephone No.: (877) 483-6827 General Counsel |
| Authorized Representative(s): Gretchen Stone / CB Two Architects | |
| Authorized Representative Mailing Address: 500 Liberty Street SE, Suite 100, Salem, OR 97301 | |
| Authorized Representative Telephone No.: 503-480-9700 | |

Project Information

| | |
|---|---|
| Property Location: 835 Southwest 11th Street | |
| Tax Assessor's Map No. 11-11-08 CA | Tax Lot(s): 1,2,3,4, 5, 8, 9, 10, 11, 12 |
| Zone Designation: R-3 | Legal Description: |
| Comp Plan Designation: Med. density res. multi-fam | legal is attached |
| Brief Description of Land Use Request(s): | Request a Zone Change from R-3 / Medium Density Residential Multi-Family to R-4 / High Density Multi-Family Residential for a developed property. |

| |
|---|
| Existing Structures: A single story 19,900 SF Skilled Nursing Facility |
| Topography and Vegetation: Site gently slopes from the northwestern side of the property downwards toward the southeast. Site is landscaped. |

APPLICATION TYPE (please check off that apply)

| | | |
|--|---|--|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Interpretation | <input type="checkbox"/> UGB Amendment |
| <input type="checkbox"/> Appeal | <input type="checkbox"/> Minor Replat | <input type="checkbox"/> Vacation |
| <input type="checkbox"/> Comp Plan/Map Amendment | <input type="checkbox"/> Partition | <input type="checkbox"/> Variance/Adjustment |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Planned Development | <input type="checkbox"/> PC |
| <input type="checkbox"/> PC | <input type="checkbox"/> Property Line Adjustment | <input type="checkbox"/> Staff |
| <input type="checkbox"/> Staff | <input type="checkbox"/> Shoreland Impact | <input checked="" type="checkbox"/> Zone Ord/Map Amendment |
| <input type="checkbox"/> Design Review | <input type="checkbox"/> Subdivision | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Geologic Permit | <input type="checkbox"/> Temporary Use Permit | |

FOR OFFICE USE ONLY

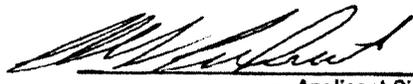
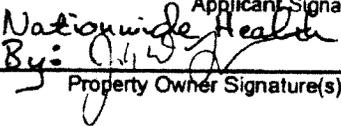
| | | |
|---------------------------------|----------------------------------|----------------------------------|
| Date Received: <u>11/19/11</u> | File No. Assigned: <u>4-2-11</u> | Date Accepted as Complete: _____ |
| Received By: <u>[Signature]</u> | Fee Amount: <u>752.00</u> | Accepted By: _____ |
| | Receipt No: <u>77757</u> | |
| | <u>78714</u> | |

(SEE REVERSE SIDE)

Community Development & Planning Department • 100 SW Coast Hwy, Newport, OR 97365 • Derrick I. Tokos, AICP, Director

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

| | | |
|---|---|----------------------|
|  | ALBERT CASTANEDA, DIRECTOR OF GROWTH + DEVELOPMENT + COMMUNITY HEALTH SERVICES, LLC as agent for Owner. | 10/17/11 |
| Applicant Signature(s) | | Date Signed |
| By:  | Nationwide Health Properties, LLC Joseph D. Lambert, Vice President | 10/14/11 |
| Property Owner Signature(s) | | Date Signed |
| _____ Authorized Representative Signature(s) | | _____ Date Signed |

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

Legal Description for Avamere Rehabilitation of Newport:

LOTS 1, 2, 3, 4, 5, 8, 9, 10, 11 AND 12, BLOCK 15, BAYLEY AND CASE'S ADDITION TO THE TOWN OF NEWPORT, LINCOLN COUNTY, OREGON, TOGETHER WITH VACATED ALLEY THAT INURED TO SAID LOTS BY VACTION ORDINANCE, RECORDED NOVEMBER 4, 1975, IN VOLUME 60, BOOK 1085, DEED RECORDS OF LINCOLN COUNTY, OREGON.

October 17, 2011

City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365

Re: Request for a Zone Change
835 SW 11th Street
Lots 1,2,3,4,5,8,9,10, 11 & 12, and portions of vacated alley, Block 15, Bayley &
Case's Addition to Newport

We are requesting a Zone Change to the above reference property from R-3 to R-4. The property is developed with a single story building, originally constructed in 1962 as a nursing home. Avamere operates Avamere Rehabilitation of Newport an 80 bed skilled nursing facility at this location.

"Nursing Homes" or "Skilled Nursing" as they are more commonly known today, are allowed outright in the R-4 zone, where as they are allowed as a Conditional Use in the R-3 zone. City Staff has indicated that the property was zoned R-3 until 1975 when it was rezoned to R-4, then in 1982 was inadvertently rezoned back to R-3. We believe that it is appropriate to rezone the property to R-4, given how the property is developed and the history of its use. Moreover, Pacific Communities Health District to the North recently went through a zone change from R-3 to R-4 for similar reasons. The skilled nursing facility is a complimentary use to the hospital's campus, so it is logical and proper to allow the property to be rezoned to R-4.

Surrounding uses include R-3 to the north, east, and south, with R-4 to the north and west. There will be no impacts to the surrounding areas, as both R-3 and R-4 are considered "High Density Residential" under the City of Newport's Comprehensive Plan. The existing use will not change as a result of approving this request. The approval of the request is reasonable given the surrounding development and the medical uses adjacent to the north.

Attachment "A-1"

File No. 4-Z-11

Pacific Communities

Health District Resolution

PACIFIC COMMUNITIES HEALTH DISTRICT

RESOLUTION 2011-____

A RESOLUTION CONSENTING TO A ZONE CHANGE AFFECTING HEALTH DISTRICT PROPERTY

WHEREAS, The Pacific Communities Health District ("District") owns Lots 6 and 7 of Block 15 (also known as Tax Lot Parcel 11-11-08-CA-08801-00), and

WHEREAS, the property was at one time zoned with an R-4 zoning designation, and

WHEREAS, subsequently the property was inadvertently rezoned to have an R-3 zoning designation, along with the other lots in said Block 15, and

WHEREAS, the City of Newport is at this time initiating proceedings to restore the R-4 zone to Block 15, and

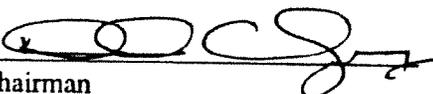
WHEREAS, it appears that an R-4 designation is appropriate, and consistent with existing uses upon and adjacent to said Block 15, and that the zone change is in the best interests of the District,

NOW, THEREFORE, the Pacific Communities Health District resolves that the District, as an owner of the affected land, consents to, and supports, a change to the zoning map of the City of Newport assigning a land use designation of R-4 to all of Block 15, Bayley and Case's Addition, in the City of Newport, County of Lincoln and State of Oregon.

The foregoing resolution was adopted this 17th day of October, 2011 by the following vote:

| | |
|---------|----------|
| Ayes : | <u>5</u> |
| Nays : | <u>0</u> |
| Absent: | <u>0</u> |

PACIFIC COMMUNITIES HEALTH DISTRICT

By: 
Chairman

Attest:

Secretary



PROPERTY ID & LEGAL DESCRIPTION

Property ID: R146701 Active, Rsn: A Page: 1
 Map & Tax Lot: 11-11-08-CA-08500-00 Part Date: 09/21/11
 Legal: BAYLEY AND CASE'S ADDN. Exemption:
 TO NEWPORT, BLOCK 15, LOT 2 & PTN VAC
 Tax Code: 104 Acres: Eft. Acres:
 Comments:

PROPERTY REMARKS

Gen App Notes:
 Imp. Notes:
 Land Notes: PTO 8400, 8600, 8700, 8901

| Type | Issue Date | Appr. | Chk. Date | % Com | Comments |
|------|------------|-------|-----------|-------|----------|
| | | | | | |

IMPROVEMENT CHARACTERISTICS

Foundation: Ext. Components
 Ext. Wall: Emetic
 Int. Finish: Bedrooms
 Roofing: Shape
 Roof Style: Perimeter
 Flooring: Docks
 Plumbing: Units
 HVAC: Back
 Fireplace: Sewer
 Rooms: SEN, CN, EL, GAS
 Int. Components: PVD

Sketch Notes

Sketch Commands:

SKETCH

| LAND DESCRIPTION | Type | Land Code | Unit | Acres | Unit Price | Land Price | Adjustments | NET/LA | TOTAL | TOTAL VALUE |
|-------------------------|------|-----------|------|-------|------------|------------|-------------|--------|-------|-------------|
| DEV RESIDENTIAL LOT | LR | NNN | LR | 0.12 | A | *\$8500 | | | | |
| SITE DEVELOPMENT | SD | NN032 | LT | A | 19500L | LSP 1000P | | | | |
| TOTAL Land Value | | | | | | | | | | 99,130 |
| TOTAL Imp Value | | | | | | | | | | 0 |
| TOTAL Value | | | | | | | | | | 99,130 |

ACT. DETAILS

Neighborhood: NNMG
 Appraiser: JM
 Property Class: 211
 Property Code: 22
 Last Appraised: 05/10/10

OWNER NAME & ADDRESS

NATIONAL IDE HEALTH
 PROPERTIES LLC
 SUITE 150
 CENTER DR
 NEWPORT BEACH, CA 92660
 ID: 229715
 Sheet:

ASSESSMENT INFORMATION

| Year | Imp. | Land | Total Val | Total Ased | 1st Imp Current Amt |
|------|------|--------|-----------|------------|---------------------|
| 2011 | 0 | 99,130 | 99,130 | 42,410 | 0 |
| 2010 | 0 | 99,130 | 99,130 | 41,180 | 0 |
| 2009 | 0 | 99,130 | 99,130 | 39,950 | 0 |
| 2008 | 0 | 99,130 | 99,130 | 38,720 | 0 |
| 2007 | 0 | 99,130 | 99,130 | 37,490 | 0 |
| 2006 | 0 | 99,130 | 99,130 | 36,260 | 0 |
| 2005 | 0 | 99,130 | 99,130 | 35,030 | 0 |
| 2004 | 0 | 99,130 | 99,130 | 33,800 | 0 |
| 2003 | 0 | 99,130 | 99,130 | 32,570 | 0 |
| 2002 | 0 | 99,130 | 99,130 | 31,340 | 0 |
| 2001 | 0 | 99,130 | 99,130 | 30,110 | 0 |
| 2000 | 0 | 99,130 | 99,130 | 28,880 | 0 |
| 1999 | 0 | 99,130 | 99,130 | 27,650 | 0 |
| 1998 | 0 | 99,130 | 99,130 | 26,420 | 0 |
| 1997 | 0 | 99,130 | 99,130 | 25,190 | 0 |
| 1996 | 0 | 99,130 | 99,130 | 23,960 | 0 |
| 1995 | 0 | 99,130 | 99,130 | 22,730 | 0 |
| 1994 | 0 | 99,130 | 99,130 | 21,500 | 0 |
| 1993 | 0 | 99,130 | 99,130 | 20,270 | 0 |
| 1992 | 0 | 99,130 | 99,130 | 19,040 | 0 |
| 1991 | 0 | 99,130 | 99,130 | 17,810 | 0 |
| 1990 | 0 | 99,130 | 99,130 | 16,580 | 0 |
| 1989 | 0 | 99,130 | 99,130 | 15,350 | 0 |
| 1988 | 0 | 99,130 | 99,130 | 14,120 | 0 |
| 1987 | 0 | 99,130 | 99,130 | 12,890 | 0 |
| 1986 | 0 | 99,130 | 99,130 | 11,660 | 0 |
| 1985 | 0 | 99,130 | 99,130 | 10,430 | 0 |
| 1984 | 0 | 99,130 | 99,130 | 9,200 | 0 |
| 1983 | 0 | 99,130 | 99,130 | 7,970 | 0 |
| 1982 | 0 | 99,130 | 99,130 | 6,740 | 0 |
| 1981 | 0 | 99,130 | 99,130 | 5,510 | 0 |
| 1980 | 0 | 99,130 | 99,130 | 4,280 | 0 |
| 1979 | 0 | 99,130 | 99,130 | 3,050 | 0 |
| 1978 | 0 | 99,130 | 99,130 | 1,820 | 0 |
| 1977 | 0 | 99,130 | 99,130 | 500 | 0 |
| 1976 | 0 | 99,130 | 99,130 | 0 | 0 |

APPEAL HISTORY

| Roll ID | Appr. Value | Status | Decision | Date | Final Value |
|---------|-------------|--------|----------|------|-------------|
| | | | | | |

SALES HISTORY

| Site Date | Price | Document | Type | Deed Date | C. Code |
|-----------|--------|----------------|------|-----------|---------|
| 07/27/11 | 380000 | 201107634 | 37 | 08/15/11 | KD |
| 04/17/11 | 380000 | 201107613 | 37 | 08/15/11 | RS |
| | | 0 * ME439-0872 | 12 | 01/12/02 | RS |
| | | 0 * ME439-0972 | 12 | 01/12/02 | KD |

USING AREA

| Using Area | Total Imp. Cont. New | Year Imp. | Imp. Val. | Year | Imp. Val. |
|------------|----------------------|-----------|-----------|------|-----------|
| | | | | | |

TOTAL SU MKT VALUE



PACIFIC OCEAN



SUBJECT PROPERTY

COAST HIGHWAY
(U.S. HIGHWAY 101)



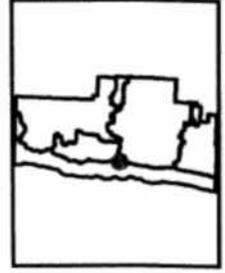
Attachment "A-4"

File No. 4-Z-11

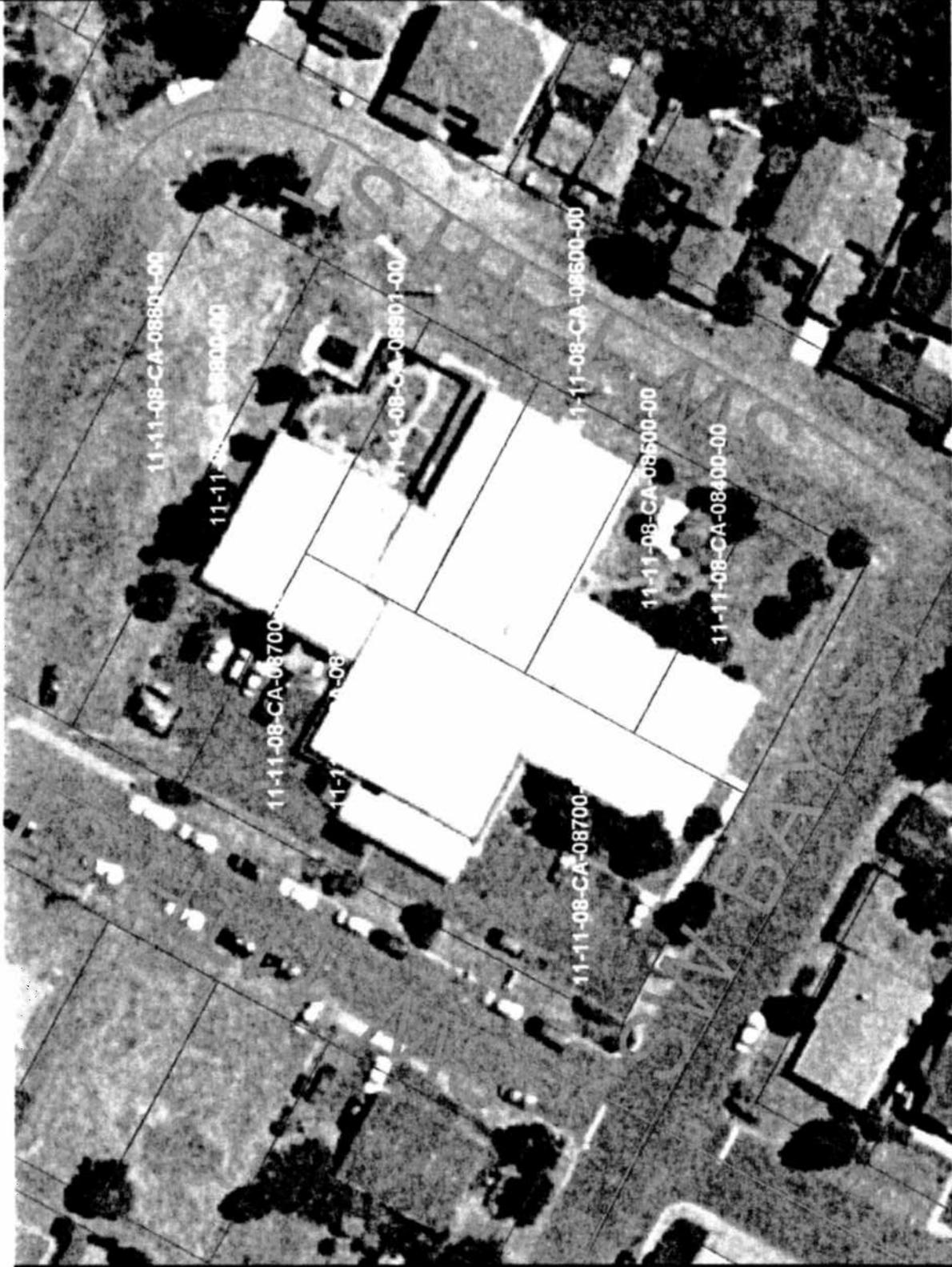
Aerial Photo of Property

Lincoln County
Geographic Info System

- County
- County
- Shore2
- Roads
- Roads-Hwy
- Streets
- Taxlot
- City
- Taxlot



9/21/2011



1 in. = 58 ft.

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Attachment "B"

File No. 4-Z-11

Notice of Public Hearing
and Map

**CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING¹**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on November 14, 2011, to review and make a recommendation to the Newport City Council on the following request. A public hearing before the City Council will be held at a later date, and notice of the City Council hearing will also be provided.

File No.: 4-Z-11.

Applicant & Owners: Newport Rehabilitation, LLC (Gretchen Stone, CB/Two Architects), (Nationwide Health Properties, LLC, c/o Ventas, Inc., and Pacific Communities Health District, property owners).

Request: The applicant requests an amendment to the Zoning Map of the City of Newport to change the zoning designation of Block 15, Bayley and Case's Addition to Newport from R-3/"Medium Density Multi-Family Residential" to R-4/"High Density Multi-Family Residential". The Comprehensive Plan map designation for the property is currently "High Density Residential" and would not need to be changed.

Subject Property: Lots 1-12, Block 15, Bayley and Case's Addition to Newport (currently identified as Tax Lots 8400, 8500, 8600, 8700, 8800, 8801, and 8901 of Lincoln County Assessor's Map 11-11-08-CA).

Applicable Criteria: For the proposed amendment to the Zoning Map of the City of Newport, the applicable criteria identified in the Newport Zoning Ordinance (NZO) (No. 1308, as amended) Section 2-5-5.005 are as follows: 1) The change furthers a public necessity; and 2) The change promotes the general welfare.

Testimony: Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department (address under "Reports/Materials") must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

Reports/Materials: The staff report may be reviewed or a copy purchased at the Newport Community Development (Planning) Department, City Hall, 169 S.W. Coast Hwy, Newport, Oregon, 97365, seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased for reasonable cost at this address

Contact: Derrick Tokos, Community Development Director (541) 574-0626 (address above in "Reports/Materials").

Time/Place of Hearing: Monday, November 14, 2011; 7:00 p.m.; City Hall Council Chambers (address above in "Reports/Materials").

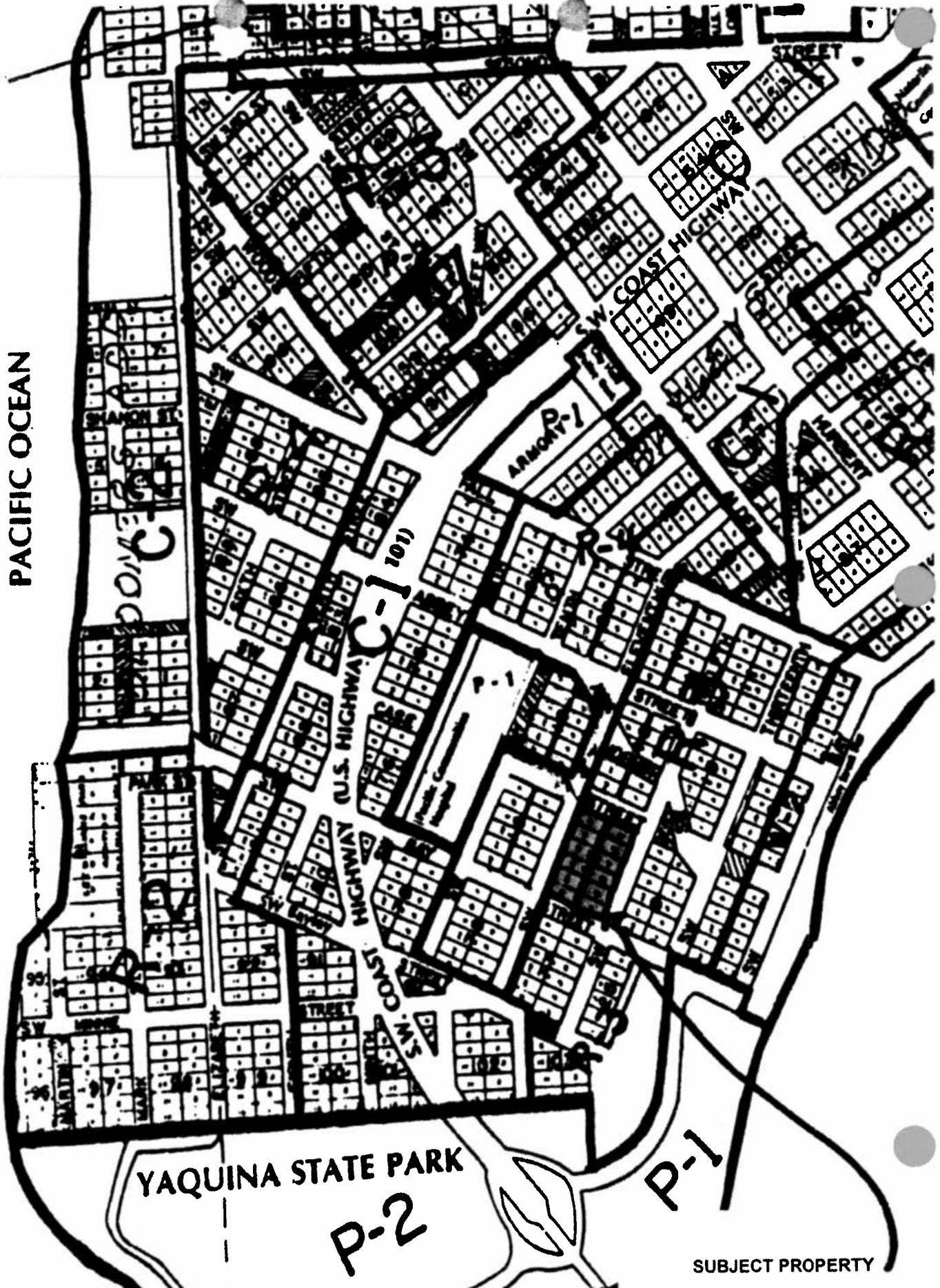
MAILED: October 24, 2011.

PUBLISHED: November 4, 2011/News-Times.

¹ Notice of the public hearing is being sent to affected property owners (according to Lincoln County Assessor's records) within the notification distance required, affected public/private utilities/agencies, and affected city departments.

C-2

PACIFIC OCEAN



YAKIMA STATE PARK

P-2

P-1

SUBJECT PROPERTY

ORDINANCE NO. 1002

AN ORDINANCE AMENDING ORDINANCE NUMBER 731, ENTITLED BY SHORT TITLE "ZONING ORDINANCE" OF THE CITY OF NEWPORT, OREGON, AS AMENDED, TO PROVIDE FOR A CHANGE IN THE ZONES OF CERTAIN AREAS WITHIN THE CITY OF NEWPORT AND REQUIRING THE MAYOR AND CITY RECORDER TO MAKE SUCH CHANGES UPON THE OFFICIAL ZONING MAP OF THE CITY OF NEWPORT.

WHEREAS, the Planning Commission of the City of Newport did, on the 14th day of April, 1975, hold a public hearing to afford all parties an opportunity to be heard on the request for a change of zone on the following described property, to-wit:

Block 15, Case and Bayleys Addition

WHEREAS, said public hearing was held in accordance with the provisions of Section 26 of Ordinance No. 731 as amended, and notice was properly and timely given;

WHEREAS, after due deliberation and consideration of testimony of opponents and proponents, the Planning Commission issued the following findings of fact supporting the zone change to-wit:

- 1) There exists a public need for the proposed nursing home.
- 2) The public need is best met by this zone change request. This site is the most suitable site, being centrally located near the hospital, doctor's offices and other services.
- 3) The proposed zone change conforms to the adopted Comprehensive Land Use Plan.
- 4) The change is not detrimental to the purpose or objective of the zoning ordinance.

WHEREAS, the Planning Commission of the City of Newport has, by majority vote, recommended to the Common Council of the City of Newport that the proposed zone change be allowed; and

WHEREAS, the Common Council of the City of Newport has, pursuant to the provisions of Section 26 of Ordinance No. 731, as amended, held a public hearing to afford all persons an opportunity to be heard; and

WHEREAS, notice was properly and timely given; and

WHEREAS, after due deliberation and consideration of testimony given by opponents and proponents the City Council has issued the following findings of fact; to-wit:

- 1) The proposed change conforms to the adopted Comprehensive Land Use Plan.
- 2) There is a public need for the change.
- 3) The public need is best met by the proposed change due to location, topography and lack of any other suitable site.
- 4) The proposed change is not detrimental to the purposes of the zoning ordinance.

NOW THEREFORE, THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. That the following described tract of land,

Block 15, Case and Bayleys Addition, should be rezoned from R-3, four family residential to R-4, multiple family residential.

Section 2. That the City Recorder and Mayor be and they are hereby directed to effect the foregoing zone change upon the official zoning map of the City of Newport and affix their respective signatures to said change as witness of their authority to so do in accordance with this ordinance.

Section 3. That pursuant to the provisions of Section 6 of Ordinance No. 731, as amended, this ordinance shall be and become effective and in full force when the changes in said zone as herein provided have been entered on the official zoning map by the Mayor and attested by the City Recorder.

Introduced and passed the first and second readings at a regular meeting of the Common Council of the City of Newport, Oregon, held on the 5th day of May, 1975.

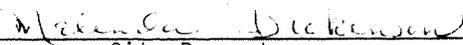
Passed the third reading, placed on final passage and adopted at a regular meeting of the Common Council of the City of Newport, Oregon, held on the 19th day of May, 1975.

Approved by the Mayor of the City of Newport, Oregon, on this 19th day of May, 1975.



Mayor

ATTEST:



City Recorder

Attachment "C-1"

File No. 4-Z-11

Ordinance No. 1308

ORDINANCE NO. 1308

AN ORDINANCE ADOPTING A NEW ZONING ORDINANCE FOR THE CITY OF NEWPORT AND REPEALING ORDINANCE NUMBER 731 AND ALL AMENDMENTS THERETO INCLUDING BUT NOT LIMITED TO ORDINANCES 782,795,813, 965 858,867,874,904,932,956,1007,1082,1086,1096,1097,1125,1133,1218 1139,1156,1166,1174,1178,1179 and 1225; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH.

WHEREAS, the City of Newport has been required by the Land Conservation and Development Commission of the State of Oregon to develop and adopt a Comprehensive Plan and implementing ordinances, and

WHEREAS, the acknowledgement review of the Comprehensive Plan and Zoning Ordinance in August and September of 1981 required certain changes to be made,

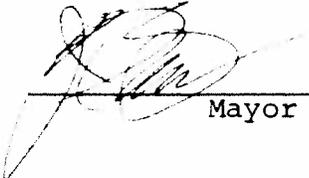
NOW, THEREFORE, THE CITY OF NEWPORT ORDAINS AS FOLLOWS:
that ordinance No. 731 and all amendments thereto are hereby repealed and that a new Zoning Ordinance and Zoning Map is hereby adopted and shall be known as the Zoning Ordinance of the City of Newport.

(See Attached Zoning Ordinance and Map)

Introduced and passed the first reading at a regular meeting of the Common Council of the City of Newport, Oregon, held on the 16th day of August, 1982.

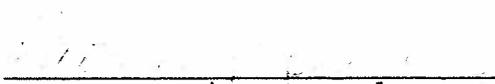
Passed the second reading and placed on final passage and adopted at a regular meeting of the Common Council of the City of Newport, Oregon, held on the 7th day of September, 1982.

Approved by the Mayor of the City of Newport, Oregon on this 7th day of September, 1982.



Mayor

ATTEST:



City Recorder



CITY OF NEWPORT

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE NO. 1308 (AS AMENDED) OF
THE CITY OF NEWPORT, OREGON, TO AMEND THE ZONING MAP OF
THE CITY OF NEWPORT**

Summary of Findings:

1. A request by Newport Rehabilitation, LLC (Nationwide Health Properties, LLC c/o Ventas, Inc. and Pacific Communities Health District, property owners) (Gretchen Stone, CB/Two Architects, authorized representative) was filed on September 19, 2011 for an amendment to the Zoning Map of the City of Newport Zoning Ordinance (Ordinance No. 1308, as amended). The application was made complete on October 24, 2011.
2. The subject property is approximately 1.45 acre in size, consisting of Block 15, Bayley and Case's Addition to Newport, including a 10-foot wide vacated alleyway (Lincoln County Assessor's Map 11-11-08-CA, Tax Lots 8400, 8500, 8600, 8700, 8800, 8801, and 8901).
3. Existing improvements include a single story, 19,900 square foot building housing an 80-bed skilled nursing facility. This facility, known as "Avamere Rehabilitation of Newport," has an address of 835 SW 11th Street.
4. The Comprehensive Plan Map designation for the property is High Density Residential, and the Zoning Map designation is R-3 (Medium Density Multi-Family Residential).
5. Newport Rehabilitation, LLC, a part of the Avamere Family of Companies, operates the skilled nursing facility on behalf of Nationwide Health Properties, LLC. They have expressed an interest in maintaining, repairing and improving the facility. This is easier to accomplish in an R-4 zone district, where skilled nursing is an outright permitted use. Skilled nursing facilities are a conditional use in the R-3 district.
6. Property subject to this application was rezoned from R-3 to R-4 in 1975 with Ordinance No 1002. It was later changed back to R-3 when the City adopted a comprehensive set of map changes in 1982 with Ordinance No. 1308.
7. City records indicate that the 1975 zone change was done to facilitate skilled nursing use of the property. The 1982 amendments were undertaken to bring the City of Newport's Zoning Ordinance into compliance with Statewide Planning Goals. The ordinance that made those changes, Ordinance No. 1308, identified 26 prior ordinances that it was intended to replace. Ordinance No. 1002 was not listed among them. Because of its comprehensive nature, Ordinance No. 1308 included an additional statement repealing and replacing all other conflicting ordinances. Given this information, it appears that the subject property may have been overlooked at the time, and was inadvertently rezoned back into the R-3 district.

8. Pacific Communities Health District owns the vacant parcel north of the nursing facility (Tax Lot 8801). The District has indicated that it supports the application.
9. With this amendment, the Zoning Map designation for the property will be changed to R-4 (High Density Multi-Family Residential), which is consistent with the current Comprehensive Plan designation.
10. The Newport Planning Commission reviewed the proposed revisions to the Zoning Ordinance (Newport File No. 4-Z-11) at a public hearing on November 14, 2011, and voted _____ to recommend adoption of the amendment, as furthering a public necessity and promoting the general welfare for the following reasons:
 - a. R-4 zoning exists to the north and west of the subject property, and at 1.45 acres the proposed change constitutes a minor adjustment to the boundary between the R-3 and R-4 districts. The zone change will not result in spot zoning.
 - b. The change to R-4 zoning furthers a public necessity by facilitating growth of essential medical services within the community. City Building Records show that a skilled nursing facility was constructed on the subject property in 1976. Samaritan Pacific Hospital resides to the west, and the Shaw House, immediately to the north, is being renovated for medical office use. This demonstrates that medical uses are well established in the area. The R-4 district allows these types of uses outright, making it easier for them to be maintained, repaired or expanded.
 - c. Consistent with OAR 660-012-0060(1) this zone change will not significantly affect existing or planned transportation facilities because the change to R-4 zoning will not have the effect of allowing more vehicle trips than the existing R-3 zoning. This is due to the fact that the property is already developed with a skilled nursing facility, the small size of the zone change (1.45 acres), and that the R-3 and R-4 zoning districts allow the same residential densities. R-4 zoning provides for a broader range of non-residential uses; however, such flexibility will have a negligible impact to the transportation system because the more limited list of non-residential uses allowed in the R-3 zone provides for a comparable intensity of development.
 - d. The change also does not impact the City of Newport's residential buildable lands inventory, which establishes that the City possesses a 20 year supply of land that can be developed for needed housing. This is the case because the subject property was already discounted as being built and committed to non-residential use given that a nursing facility exists at this location.
11. The City Council held a public hearing on _____ regarding the question of the proposed revisions, and voted to accept the Planning Commission's recommendation after considering evidence and argument in the record.
12. Information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council public hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted as support for the Council's following amendments.

Section 2. The City Council further adopts the analysis and recommendation contained in the Planning Staff Report as supplemental findings in support of approval of the requested Zoning Map amendment, attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 3. Ordinance No. 1308 (as amended) is hereby amended to rezone Block 15, Bayley and Case's Addition to Newport, together with that portion of vacated alleyway described in Lincoln County Micro Film Record 60-1085 (Lincoln County Assessor's Map 11-11-08-CA, Tax Lots 8400, 8500, 8600, 8700, 8800, 8801, and 8901), from "R-3/Medium Density Multi-Family Residential" to "R-4/High Density Residential," as illustrated on Exhibit "B", attached hereto and incorporated herein by this reference.

Section 4. This ordinance shall take effect 30 days after adoption.

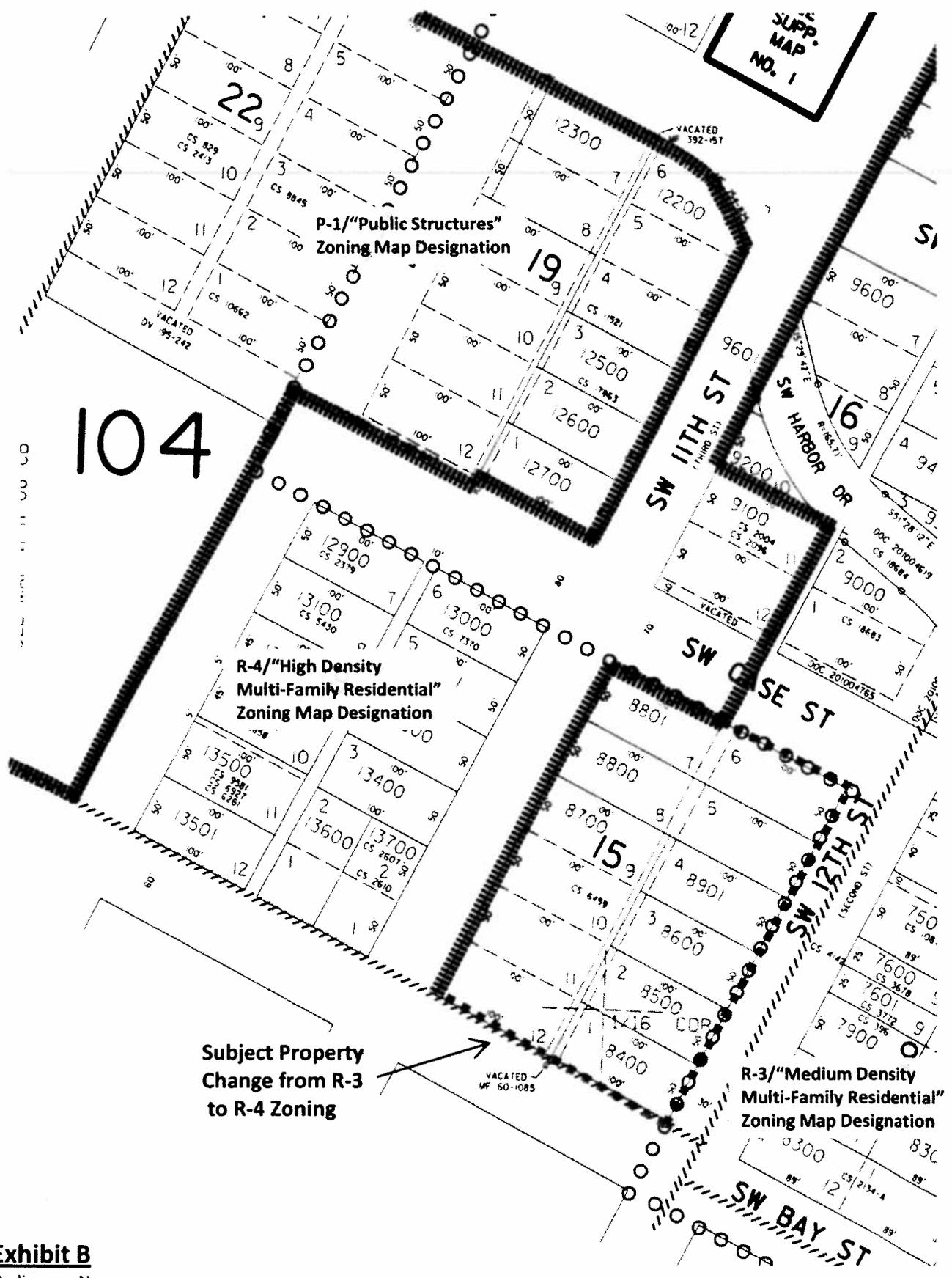
Date adopted: _____.

Signed by the Mayor on _____.

Mark McConnell, Mayor

ATTEST:

Margaret M. Hawker, City Recorder



Subject Property
Change from R-3
to R-4 Zoning

Exhibit B
Ordinance No. _____
Zoning Map Amendment
(File #4-Z-11)

Attachment "E"

File No. 4-Z-11

Uses Allowed in the R-3
and R-4 Zones

**R-3/"MEDIUM DENSITY MULTI-FAMILY
RESIDENTIAL:**

Permitted Uses

Single-Family Dwellings
Two-Family Dwellings
Multi-Family Dwellings
Mobile Home Parks
Accessory Uses
Home Occupations
Parks
Child Care Facilities
Residential Care Homes
Condominiums
Residential Facilities
Assisted Living Facilities

Conditional Uses

Publicly Owned Recreation Facilities
Libraries
Utility Substations
Public or Private Schools
Day Care Facilities
Churches
Nursing Homes
Bed and Breakfast Inns
Rooming and Boarding Houses
Colleges and Universities
Golf Courses
Necessary Public Utilities and Public
Service Uses or Structures

**R-4/"HIGH DENSITY MULTI-FAMILY
RESIDENTIAL:**

Permitted Uses

Single-Family Dwellings
Two-Family Dwellings
Multi-Family Dwellings
Mobile Home Parks
Accessory Uses
Home Occupations
Parks
Public or Private Schools
Child Care Facilities
Residential Care Homes
Nursing Homes
Rooming and Boarding Houses
Hospitals
Membership Organizations
Museums
Condominiums
Residential Facilities
Assisted Living Facilities

Conditional Uses

Publicly Owned Recreation Facilities
Libraries
Utility Substations
Day Care Facilities
Churches
Bed and Breakfast Inns
Motels and Hotels
Professional Offices
Beauty and Barber Shops
Colleges and Universities
Hostels
Recreational Vehicle Parks
Necessary Public Utilities and Public
Service Uses or Structures
Movie Theaters
BICYCLE SHOPS



**2-3-5
TABLE "A"**

| District | Minimum Lot Area (Sq. Ft.) | Minimum Width | Setback Requirements: Front/2nd Front' | Side | Rear | Lot Coverage In Percent | Maximum Building Height | Density In Sq. Ft. Per Unit |
|--|----------------------------|---------------|--|---------|------|-------------------------|-------------------------|-----------------------------|
| R-1/"Low Density Single-Family Residential" | 7,500 | 65' | 15' and 15' or 20' and 10' | 5' & 8' | 15' | 54% | 30' | 7,500 |
| R-2/"Medium Density Single-Family Residential" | 7,500 | 50' | 15' and 15' or 20' and 10' | 5' | 10' | 57% | 30' | 3,750 |
| Duplex on interior lot | 5,000 | 50' | 5' | 5' | 10' | 57% | 30' | 2,500 |
| Duplex on corner lot | 5,000 | 50' | 20' and 10' | 5' | 10' | 57% | 30' | 5,000 |
| R-3/"Medium Density Multi-Family Residential" | 5,000 | 50' | 15' and 15' or 20' and 10' | 5' | 10' | 60% | 35' | 1,250 ² |
| R-4/"High Density Multi-Family Residential" ³ | 5,000 | 50' | 15' and 15' or 20' and 10' | 5' | 10' | 64% | 35' | 1,250 |
| C-1/"Retail and Service Commercial" | 5,000 | 0' | 0' | 0' | 0' | 85-90%* | 50** | n/a |
| C-2/"Tourist Commercial" | 5,000 | 0' | 0' | 0' | 0' | 85-90%* | 50** | n/a |
| C-3/"Heavy Commercial" | 5,000 | 0' | 0' | 0' | 0' | 85-90%* | 50** | n/a |
| I-1/"Light Industrial" | 5,000 | 0' | 50' from Hwy. 101 | 0' | 0' | 85-90%* | 50** | n/a |
| I-2/"Medium Industrial" | 20,000 | 0' | 50' from Hwy. 101 | 0' | 0' | 85-90%* | 50** | n/a |
| I-3/"Heavy Industrial" | 5 acres | 0' | 50' from Hwy. 101 | 0' | 0' | 85-90%* | 50** | n/a |

* See Section 2-4-4

n/a - not applicable

and second front yards shall equal a combined total of 30 feet. All garages shall be set back at least 20 feet from the access street.
 Ordinance No. 1642 (8-3-92).

City of hotels, motels and nonresidential units shall be one unit per 750 square feet.

MINING ORDINANCE (NO. 1398 AS AMENDED)

2-3-5 (cont.)
TABLE "A"

| District | Minimum Lot Area (Sq. Ft.) | Minimum Width | Setback Requirements: Front/2nd Front | Side | Rear | Lot Coverage In Percent | Maximum Building Height | Density In Sq. Ft. Per Unit |
|------------------------------------|--|---------------|---------------------------------------|------|------|-------------------------|-------------------------|-----------------------------|
| W-1/"Water Dependent" | 0 | 0' | 0' | 0' | 0' | 85-90%* | 40' | n/a |
| W-2/"Water Related" | 0 | 0' | 0' | 0' | 0' | 85-90%* | 35' | n/a |
| MU-1 thru MU-10 (Management Units) | 0 | 0' | 0' | 0' | 0' | 100% | 40' | n/a |
| P-1/"Public Structures" | 0 | 0' | 0' | 0' | 0' | 100% | 50' | n/a |
| P-2/"Public Parks" | 0 | 0' | 0' | 0' | 0' | 100% | 35' | n/a |
| P-3/"Public Open Space" | 0 | 0' | 0' | 0' | 0' | 100% | 30' | n/a |
| (M-H)/"Mobile Home Overlay" | For mobile homes on individual lots, see underlying zone; for mobile home parks, see ORS 446.100 and OAR 814-28-060. | | | | | | | |

* See Section 2-4-4

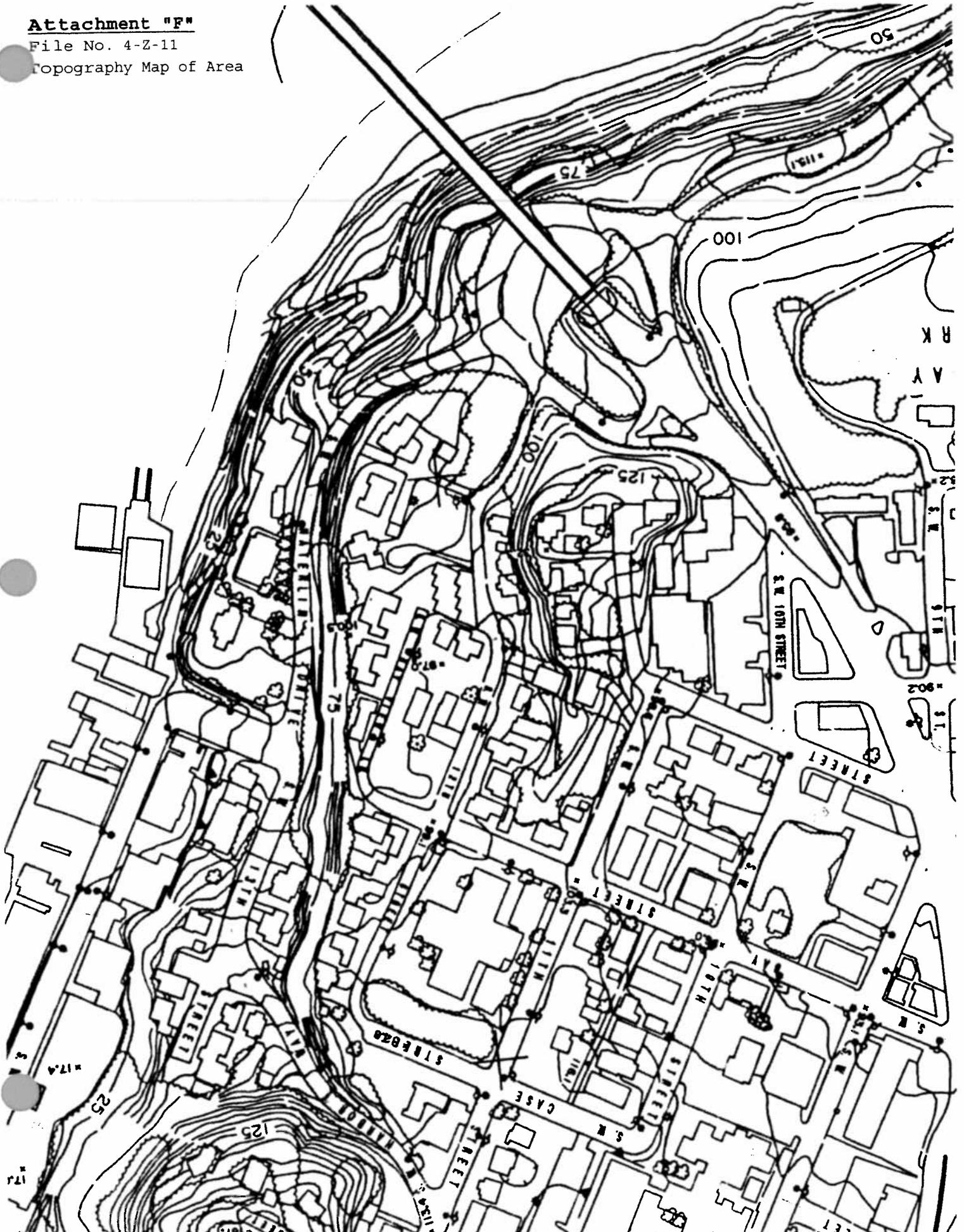
n/a - not applicable

Front and second yards shall equal a combined total of 30 feet. All garages shall be set back at least 20 feet from the access street.

Attachment "F"

File No. 4-Z-11

Topography Map of Area





PLANNING STAFF REPORT
Case File 3-SV-11

- A. **APPLICANTS:** Kenneth J. & Cheryl A. Huff, Bill & Cheryl Lalack, Tom & Cindy Picciano, Vern & Paulette Bartley, and Ashley Forsyth.
- B. **REQUEST:** The applicant requests the city vacate the eastern 10' wide portion of SW 12th Street abutting the southern 40' of Tax Lot 7400, Tax Lots 7500, 7600, 7601, 7900, 8301, and 8300 of Tax Map 11-11-08-CA (Block 9, Plan of Newport).
- C. **STAFF REPORT**
1. **REPORT OF FACT**
- a. **Plan Designation:** High Density Residential.
- b. **Zone Designation:** R-3/"Medium Density Multi-Family Residential".
- c. **Surrounding Land Uses:** Surrounding uses include a mix of residential uses, the Samaritan Pacific Communities Hospital and related facilities, and commercial uses.
- d. **Topography and Vegetation:** The applicant states that their property is on the bluff. There is natural vegetation and landscaping.
- e. **Existing Structures:** The subject Tax Lots are developed with single-family homes.
- f. **Utilities:** All are available to the site.
- g. **Development Constraints:** None known.
- h. **Past Land Use Actions:**
- File No. 4-TEP-11** – A request submitted by Kenneth & Cheryl Huff for a temporary encroachment permit to landscape and construct a fence three feet into the SW 12th Street right-of-way along the front of their property rather than waiting for approval of the partial street vacation.
- Encroachment Agreement #394.** A request by Harvey Werder to asphalt SW 12th Street in front of 801 SW 12th street, dated May 13, 1991.
- i. **Notification:** Notification to surrounding property owners, to City departments, and to public/private utilities/agencies was mailed on

October 24, 2011. See Planning Staff Report Attachment "B" (Public Hearing Notice and Map). Notification distance is as specified in ORS 271.080(2) for street vacations. The notice of Planning Commission public hearing for the request was also published in the Newport News-Times on November 4, 2011, and November 9, 2011.

j. **Attachments:**

- Attachment "A" – Application Form and Signatures
- Attachment "A-1" – Applicant Findings Regarding Public Interest
- Attachment "A-2" – Public Records Report for Street Vacation
- Attachment "A-3" – Photos of Street
- Attachment "A-4" – Petition Notification Boundary
- Attachment "B" – Public Hearing Notice and Map
- Attachment "C" – Zoning Map of Area
- Attachment "D" – Aerial Map of the Property
- Attachment "E" – October 27, 2011 Email from Public Works Department
- Attachment "F" – Letter to Port of Newport, dated November 4, 2011
- Attachment "G" – Additional Photos of the Street (by Staff)

2. **Explanation of the Request for Street Vacation:**

The applicant explains that their property is on a bluff, and they do not want to make any improvements on the bluff side because they do not want to affect the vegetation or the potential instability of the bluff. They note that their plat, which was done in 1880, has very small yards. SW 12th Street is a 60-foot platted unimproved road with about 32 feet of driving surface. It is used primarily for local traffic or people lost trying to find the Bay Front. The applicant states that the 10 feet they are requesting is in grass, and several of the properties on the block already have houses, driveways, and fences abutting the current platted street.

3. **Evaluation of the Request for Street Vacation:**

- a. **Comments:** Surrounding property owners and affected city departments and public/private utilities/agencies were notified on October 24, 2011. As of November 7, 2011, the only comment received was from City Engineer Tim Gross. Gross is strongly opposed to the vacation of this right-of-way. He notes that the right-of-way is used for public and private utilities. In addition, he states that it is likely that in the future all public rights-of-way in the City will be improved and every inch will be needed to make an adequate street section. Gross says also that the right-of-way width is needed to do excavation for sewer and water trenches. He does not believe that the City should be abandoning a public right-of-way, especially for a landscaping use.

- b. **Applicable Criteria set forth in Oregon Revised Statutes (ORS) 271.120:**

1. Whether the consent of the owners of the requisite area [as defined in ORS 271.080 (2)] has been obtained;
2. Whether notice has been duly given [for the public hearing before the City Council] and,
3. Whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof.

c. **Applicable Criteria set forth in Oregon Revised Statutes (ORS) 271.190:**

1. No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

d. **Staff Analysis:**

The Planning Commission reviews this request and makes a recommendation to the City Council. In order to recommend approval of the request, the Planning Commission must find that the applicant's proposal meets (or is capable of meeting) the following criteria:

- (1) Whether the consent of the owners of the requisite area [as defined in ORS 271.080 (2)] have been obtained;

On October 20, 2011, the applicant submitted the names and addresses of abutting property owners along with their original, notarized signatures indicating consent for the street vacation. These documents are available in the case file. ORS 271.080 (2) requires "the consent of the owners of the abutting property and not less than two-thirds in area of the real property affected thereby." Written notarized consents were submitted from property owners as follows:

Assessor's Map 11-11-08-CA

| <u>TAX LOT</u> | <u>OWNER</u> |
|-----------------------|---|
| 06700 | Peter Lawson & Nancy Reid |
| 09400 | Peter Lawson & Nancy Reid |
| 06900 | Edward McVea |
| 07001 | Newport Bay Adventures (Michael Rickus) |
| 07002 | Newport Bay Adventures (Michael Rickus) |
| 09000 | Newport Bay Adventures (Michael Rickus) |
| 07100 | Paula Oliver, Trustee |
| 07200 | Craig & Lisa Reed |
| 07400 | Bill & Cheryl Lalack |

| | |
|-------|--|
| 07500 | Bill & Cheryl Lalack |
| 07401 | NW Natural Gas |
| 07600 | Kenneth & Cheryl Huff |
| 07601 | Kenneth & Cheryl Huff |
| 07700 | Dallas & Wilma Roles |
| 07900 | Tom & Cindy Picciano |
| 08300 | Ashley Forsyth |
| 08301 | Vern & Paulette Bartley |
| 08302 | Vern & Paulette Bartley |
| 08400 | Nationwide Health Properties, LLC c/o Ventas, Inc. |
| 08500 | Nationwide Health Properties, LLC c/o Ventas, Inc. |
| 08600 | Nationwide Health Properties, LLC c/o Ventas, Inc. |
| 08800 | Nationwide Health Properties, LLC c/o Ventas, Inc. |
| 08901 | Nationwide Health Properties, LLC c/o Ventas, Inc. |
| 08801 | Pacific Communities Health District |
| 09300 | City of Newport |
| 09500 | Donald Skinner & Katelyn Lord |
| 09800 | Donald Skinner & Katelyn Lord |

Assessor's Map 11-11-08-CD

| | |
|-------|--|
| 00200 | Rebecca Duncan |
| 00400 | Marion & Norma Giannini |
| 02002 | Leila Johnson |
| 02003 | Kathryn Schaub |
| 02004 | Wyma Jane Rogers |
| 02005 | Myra Teague |
| 02101 | Tatie, LLC (Sten or Nicole Sanchez) |
| 02300 | Michael & Kathy Larimer |
| 02301 | Claire J. Little |
| 02305 | Claire J. Little |
| 02306 | Claire J. Little |
| 02302 | Mary Wrigley, Trustee |
| 02303 | Ronald E & Sandra F. Hunter Rev. Trust |
| 02304 | Michael & Anne Meyer |
| 02500 | Brian Trabold |
| 02600 | Gerald & Opal White |
| 02801 | Ben & Ruth Wisseman, Trustees |
| 03000 | James Landis & Quna Mei Yang |
| 03100 | David & Carol Young |
| 03101 | Bernard & Rosalee Keisch |

The notification area under ORS 271.080 extends 200 feet to either side of the right-of-way being vacated, and a distance of 400 feet from the terminal ends of the right of way being vacated. This creates a rectangular shaped notification area. A map is enclosed depicting the properties where consent has been obtained (see Planning Staff Report Attachment "A-4"). The properties where consent has not been obtained are Tax Map 11-11-08-CD Tax Lots 00300, 02000, 02001, 02006, 02200, 02501, 02700, 02800, 02900, 03001, 03002, 03200, and 03300, and Tax Map 11-11-08-CA Tax Lots 06500, 06600, 06800, 07000, 07300, 09100, 09200, and 09600. This information is adequate to establish that the required level of ownership consent has been obtained.

(2) Whether notice has been duly given [for the public hearing before the City Council];

Notice of the Planning Commission hearing has been provided by direct mail and newspaper notice advising the public of the petition request. This satisfies the requirements of ORS 271.110.

(3) Whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof; and

The applicant in the proposed findings states that they do not believe the public interest would be prejudiced by this vacation. They obtained consent to vacate from more than 2/3 of the property owners in the notification area. The applicant states that their property does not lie within the Coastal Shoreland boundaries, and this vacation would not interfere with pedestrian, bicycle, or other transportation. They note that SW 12th Street is primarily used for local traffic or those people who get lost trying to find the Bay Front. The applicant also contends that the vacation would not affect the City's ability to preserve vegetation.

City Engineer Tim Gross points out that the right-of-way is needed for public/private utilities and future expansion of the street section (including sidewalks, on-street parking, lighting, etc.). He further notes that trenching of water and sewer lines is conducted within rights-of-ways. For these reasons he strongly opposes this petition.

The Planning Commission should consider how this stretch of right-of-way might be used in the future and if the types of improvements noted by the City Engineer could be constructed in the area that is proposed to be vacated. At 60-feet, the right-of-way width for SW Street 12th Street is typical of an older platted residential street in Newport. It exceeds the City's current subdivision ordinance minimum standard of 50 feet. The petitioners note that SW 12th Street is an unimproved gravel road that is 32-feet wide. There are no sidewalks. The standard width for a paved residential street, per the Subdivision Ordinance, is 36 feet. An additional 10-12 feet is needed for a detached sidewalk. Less width is required for an attached walk. As depicted on photos taken by the petitioner and staff, overhead and underground utilities are in place within the area proposed to be vacated (see Planning Staff Report Attachment "A-3" and "G"). The Planning Commission can reserve an easement for utilities and sidewalks if it believes that those are the only types of improvements that are either currently located, or are likely to be located in the area to be vacated.

If it is possible that the right-of-way will be needed for any of the improvements described by the City Engineer, then it would be appropriate for the Commission to find that the public interest would be

prejudiced. However, if the Commission believes that these types of improvements will not be constructed in the area proposed to be vacated, or that they can be adequately accommodated through reservation of easements, then it is reasonable for the Commission to find that the public interest will not be prejudiced.

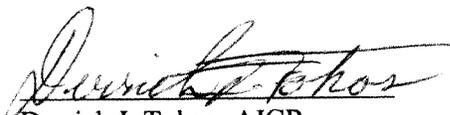
d. Whether approval has been obtained from the Port Commission of the Port of Newport [as required by ORS 271.190]

Notice of the petition was provided to the Port Commission on November 4, 2011 (see Planning Staff Report Attachment "F"). Action by the Port Commission is required before the petition can be approved by the City Council. Given that this street is not a primary transportation route to and from Port facilities, it is unlikely that they will be impacted. However, if the Planning Commission desires to have the Port's feedback prior to making a recommendation it can continue this hearing. It can also forward a recommendation to the City Council with a stipulation that Port Commission approval be obtained.

4. **Conclusion:** The staff report has been prepared based on the information available to staff at the time of writing the report. If additional comments or information is provided during the course of the public hearing process, the analysis or conditions of approval recommended by staff are subject to change.

If the Planning Commission finds that the application meets the minimum ORS criteria (or is capable of meeting the criteria) established for the street vacation, the Planning Commission may forward a favorable recommendation to the City Council. If the Commission finds that the criteria have not been met (or are not capable of being met), the Commission should identify changes necessary to meet the criteria or should deny all or part of the request.

- D. **STAFF RECOMMENDATION:** If the Commission decides to recommend approval of the requested street vacation, the Commission may want to consider recommending or attaching any necessary reasonable conditions of approval. It may also direct staff to bring forward a draft ordinance if it wants to see specific conditions before the petition is presented to the City Council.


Derrick I. Tokos, AICP
Community Development Director
City of Newport

November 8, 2011



City of Newport Land Use Application

Attachment "A"

File No. 3-SV-11

Application Form
and Signatures

| | |
|---|--|
| Applicant Name(s): <u>Cheryl Huff For</u> | Property Owner Name(s) if other than applicant |
| <u>See Attached List</u> | <u>See Attached List</u> |
| Applicant Mailing Address: | Property Owner Mailing Address: |
| <u>4646 NE 12th Ave Portland, OR 97211</u> | |
| Applicant Phone No. | Property Owner Phone No. |
| <u>503-946-5879</u> | |
| Authorized Representative(s): Person authorized to submit and act on this application on applicant's behalf | |
| Authorized Representative Mailing Address: | |
| Authorized Representative Telephone No. | |

Project Information

| | | |
|--|--|---|
| Property Location: Street name if address # not assigned | <u>801, 811, 821, 825, 845, 835 SW 12th St + 1211 SW Bay St Newport</u> | |
| Tax Assessor's Map No.: | <u>11-11-08 CA</u> | Tax Lot(s): <u>7400, 7500, 7600, 7601, 7900, 8301, 8300</u> |
| Zone Designation: | <u>R-3</u> | Legal Description: Add additional sheets if necessary <u>Blk 9 Lots 7, 8, 9, 10, 11 + 12 Plan of Newport</u> |
| Comp. Plan Designation: | | |
| Brief description of Land Use Request(s): | <u>10ft partial St Vacation of SW 12th on the East Side adjacent to lots 7, 8, 9, 10, 11 + 12 Blk 9</u> | |
| Examples: | <ol style="list-style-type: none"> 1. Move north property line 5 feet south 2. Variance of 2 feet from the required 15-foot front yard setback | |
| Existing Structures: if any | <u>None</u> | |
| Topography and Vegetation: | | |

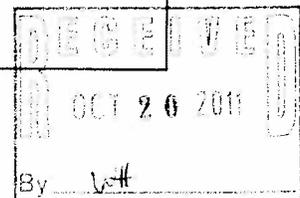
Application Type (please check all that apply)

- | | | |
|--|---|--|
| <input type="checkbox"/> Annexation | <input type="checkbox"/> Interpretation | <input type="checkbox"/> UGB Amendment |
| <input type="checkbox"/> Appeal | <input type="checkbox"/> Minor Replat | <input checked="" type="checkbox"/> Vacation |
| <input type="checkbox"/> Comp Plan/Map Amendment | <input type="checkbox"/> Partition | <input type="checkbox"/> Variance/Adjustment |
| <input type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Planned Development | <input type="checkbox"/> PC |
| <input type="checkbox"/> PC | <input type="checkbox"/> Property Line Adjustment | <input type="checkbox"/> Staff |
| <input type="checkbox"/> Staff | <input type="checkbox"/> Shoreland Impact | <input type="checkbox"/> Zone Ord/Map |
| <input type="checkbox"/> Design Review | <input type="checkbox"/> Subdivision | <input type="checkbox"/> Amendment |
| <input type="checkbox"/> Geologic Permit | <input type="checkbox"/> Temporary Use Permit | <input type="checkbox"/> Other |

FOR OFFICE USE ONLY

| | | |
|---------------------------------|---------------------------|----------------------------|
| Date Received: <u>10/20/11</u> | File No. Assigned: | Date Accepted as Complete: |
| Received By: <u>[Signature]</u> | Fee Amount: <u>628.00</u> | Accepted By: |
| | Receipt No. <u>78736</u> | |

City Hall
169, SW Coast Hwy
Newport, OR 97365
541.574.0629



Applicant Names and Mailing Address:

Property Owner Names

1. Kenneth J. and Cheryl A. Huff
4646 NE 12th Ave.
Portland, Oregon 97211
503-946-5879

7600
7600

1. Same

2. Bill and Cheryl Lalack
811 SW 12th St.
Newport, Oregon 97465
541-265-6525

7400
7500

2. Alberta Werder Living Trust, Cheryl J.
Lalack and Jeffrey S. Werder, Trustees
811 SW 12th St. Newport

3. Tom and Cindy Picciano
835 SW 12th St.
Newport, Oregon 97365
541-265-6525

7400

3. Same

4. Vern and Paulette Bartley
375 SE Airpark Dr.
Bend, OR 97702
541-771-9111

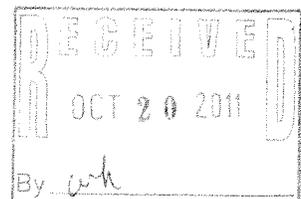
8300

4. Yeltrab Family LLC
375 SE Airpark Dr.
Bend, OR 97702

5. Ashley Forsyth
1050 SW Timian St.
Corvallis, OR 97333
541-270-7146

8300

5. Same



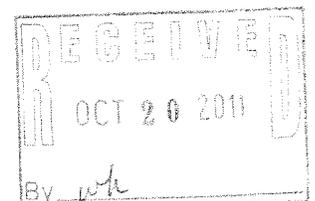
I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

| | |
|---|-------------------------------|
| <u>Cheryl A. Kelly</u> Applicant Signature(s) | <u>6/21/11</u> Date Signed |
| <u>Cheryl A. Kelly</u> Property Owner Signature(s) | <u>6/21/11</u> Date Signed |
| _____ Authorized Representative Signature(s) | _____ Date Signed |

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.



Community Development & Planning Department • 169 SW Coast Hwy, Newport, OR 97365 • Derrick I. Tokos, AICP, Director

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

Chevy J. Lalack
Applicant Signature(s)

10/15/11
Date Signed

Property Owner Signature(s)

Date Signed

Authorized Representative Signature(s)

Date Signed

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

REGISTRATION
OCT 24 2011
wh

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

Thomas B. Picciano Cynthia J. Picciano 3-22-11
Applicant Signature(s) Date Signed
Thomas B. Picciano Cynthia J. Picciano 3-22-11
Property Owner Signature(s) Date Signed

Authorized Representative Signature(s) Date Signed

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

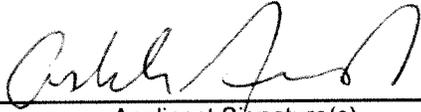
Community Development & Planning Department 159 SW Cleveland Hwy, Newport, OR 97365 • Derrick J. Tolson, ACP, Director

6/09

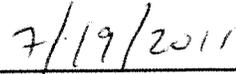
RECEIVED
OCT 20 2011
By *wh*

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.



Applicant Signature(s)



Date Signed

Property Owner Signature(s)

Date Signed

Authorized Representative Signature(s)

Date Signed

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.





October 23, 2011

Attachment "A-1"

File No. 3-SV-11
Applicant Findings Regarding
Public Interest

City of Newport:

We are applying for a partial 10 foot street vacation of SW 12th St. in Newport from Bay to Case Streets.

Our reasons for applying for this partial vacation are:

We are on the bluff and do^{not} want to make any improvements on the bluff side because we do not want to affect the vegetation or the potential instability of the bluff.

Our plat which was done in 1880 has very small yards.

SW 12th St. is a 60 ft platted unimproved road with about 32 feet of driving surface. It is used primarily for local traffic or people lost trying to find the Bay Front.

The 10 feet we are requesting is in grass and several of the properties on our block already have houses, driveways and fences abutting the current platted street.

We do not believe the public interest would be prejudiced by this vacation. We do not lie within the Coastal Shoreland boundaries and this vacation would not interfere with pedestrian, bicycle or other transportation. It would also not affect the City's ability to preserve vegetation.

We have obtained Consent to Vacate forms for more than 2/3 of the area in our notification area.

Please call me or any of the other property owners if you have questions.

Sincerely,


Cheryl Huff
503-946-5879

for
Bill and Cheryl Lalack
Vern and Paulette Bartley
Ashley Forsyth
Tom and Cindy Picciano





Western Title & Escrow Company
255 SW Coast Highway, Suite 100
Newport, OR 97365
Office Phone: (541) 265-2288
Office Fax: (541) 265-9570

PUBLIC RECORDS REPORT FOR STREET VACATION

THIS REPORT IS FOR THE EXCLUSIVE USE OF:

Cheryl Huff
4646 NE 12th Avenue
Portland, OR 97211

Date Prepared: **October 18, 2011**

Report Number: **51575**

Fee: **\$100.00**

CONDITIONS, STIPULATIONS AND DEFINITIONS

(I) Definitions:

- (a) "Customer": The person or persons named or shown on this cover sheet.
- (b) "Effective date": The title plant date of **October 12, 2011**.
- (c) "Land": The land described, specifically as by reference, in this public record report and improvements affixed thereto which by law constitute real property.
- (d) "Liens and encumbrances": Include taxes, mortgages, and deeds of trust, contracts, assignments, rights of way, easements, covenants, and other restrictions on title.
- (e) "Public records": Those records which by the laws of the State of Oregon impart constructive notice of matters relating to said land.

(II) Liability of **Western Title & Escrow Company**:

- (a) THIS IS NOT A COMMITMENT TO ISSUE TITLE INSURANCE AND DOES NOT CONSTITUTE A POLICY OF TITLE INSURANCE.
- (b) The liability of **Western Title & Escrow Company** for errors or omissions in this public record report is limited to the amount of the fee paid by the customer, provided, however, that **Western Title & Escrow Company** has no liability in the event of no actual loss to the customer.
- (c) No costs of defense, or prosecution of any action, is afforded to the customer.
- (d) In any event, **Western Title & Escrow Company** assumes no liability for loss or damage by reason of the following:
 - 1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
 - 2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
 - 3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.

4. Discrepancies, encroachments, shortage in area, conflicts in boundary lines or any other facts which a survey would disclose.
5. (i) Unpatented mining claims; (ii) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (iii) water rights or claims or title to water.
6. Any right, title, interest, estate or easement in land beyond the lines of the area specifically described or referred to in this report, or in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
7. Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use or enjoyment of the land; (ii) the character, dimensions or location of an improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at the effective date hereof.
8. Any governmental police power not excluded by (II)(d)(7) above, except to the extent that notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at the effective date hereof.
9. Defects, liens, encumbrances, adverse claims or other matters created, suffered, assumed, agreed to or actually known by the customer.

(III) Report Entire Contract:

Any rights or actions or rights of action that the customer may have or may bring against **Western Title & Escrow Company** arising out of the subject matter of this report must be based on the provisions of this report. No provision or condition of this report can be waived or changed except by a writing signed by an authorized officer of **Western Title & Escrow Company**. By accepting this form report, the customer acknowledges and agrees that the customer has been afforded the opportunity to purchase a title insurance policy but has elected to utilize this form of public record report and accepts the limitation of liability of **Western Title & Escrow Company** as set forth herein.

(IV) Fee:

The fee charged for this Report does not include supplemental reports, updates or other additional services of **Western Title & Escrow Company**.

REPORT

Report Number: 51575

Effective Date: **October 12, 2011 at 5:00 p.m.**

A. The land referred to in this public records report is located in the County of Lincoln, State of Oregon, and is described as follows:

The Easterly 10 feet of SW 12th Street, formerly known as Second Street, lying adjacent to Block 9, Plan of Newport, in the City of Newport, County of Lincoln and State of Oregon.

B. As of the effective date and according to the public records, we find title to the adjacent properties are currently assessed to:

11-11-08-CA-7400 and 7500
Alberta Werder, Trustee
Cheryl J. Lalack, Trustee
Jeffrey S. Werder, Trustee
811 SW 12th Street
Newport, OR 97365

11-11-08-CA-7600 and 7601
Kenneth J. Huff, Trustee
Cheryl A. Huff, Trustee
4646 NE 12th Avenue
Portland, OR 97211-4616

11-11-08-CA-7900
Thomas B. Picciano
Cynthia J. Picciano
835 SW 12th Street
Newport, OR 97365

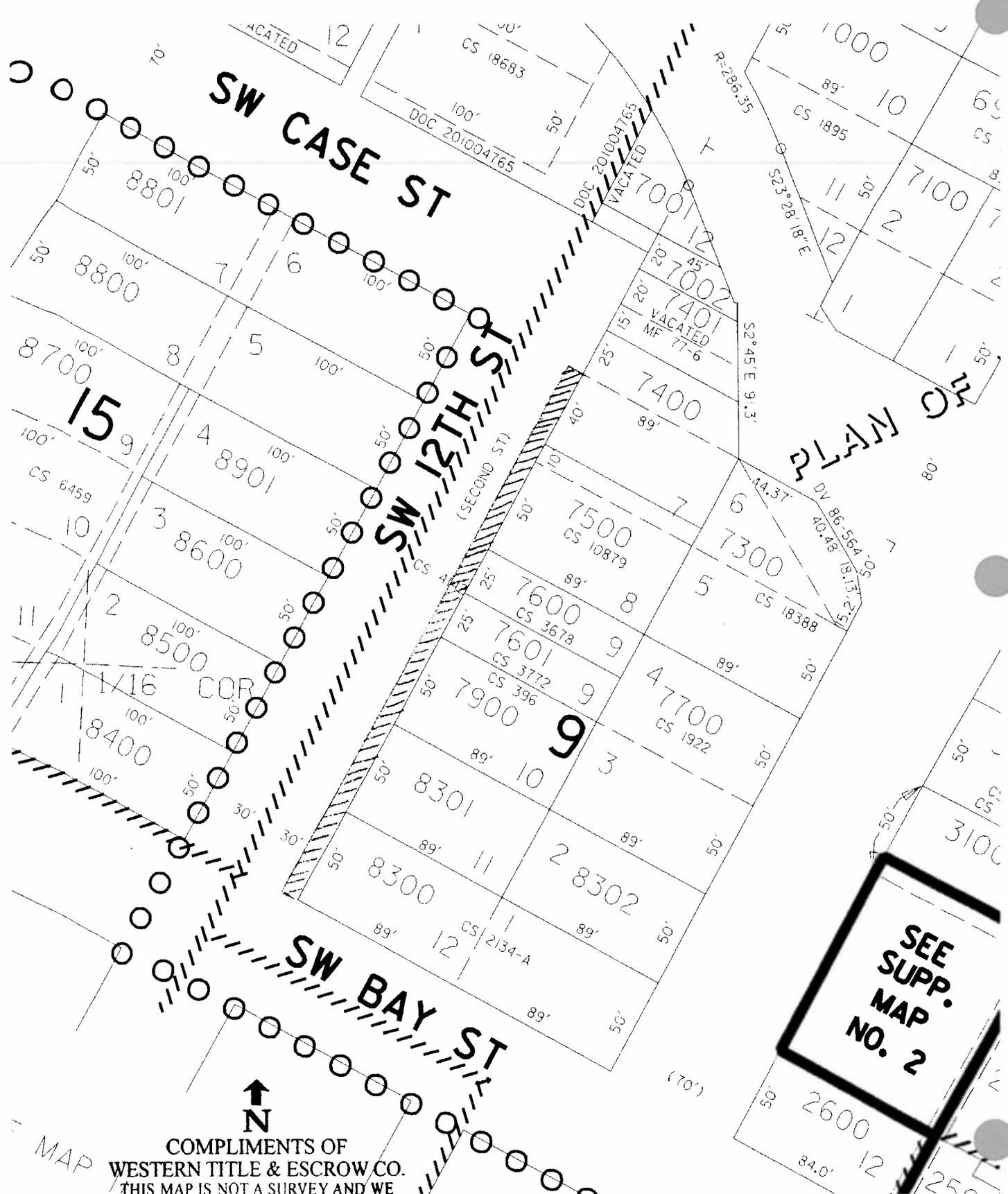
11-11-08-CA-8300
Ashley W. Forsyth
1211 SW Bay Street, #B
Newport, OR 97365

11-11-08-CA-8301
Yeltrab Family LLC
375 SE Airpark Drive
Bend, OR 97702

C. We do not find any recorded easements or liens affecting within the property described herein and we find that the said roadway was created by the Plat of Plan of Newport, recorded August 18, 1875 in Plat Book 1, page 2, Plat Records for Lincoln County, Oregon.

END OF REPORT

Any questions concerning the Public Records Report should be directed by email to titleofficersupport@westerntitle.com.



SW CASE ST

SW 12TH ST
(SECOND ST)

SW BAY ST

PLAN OF

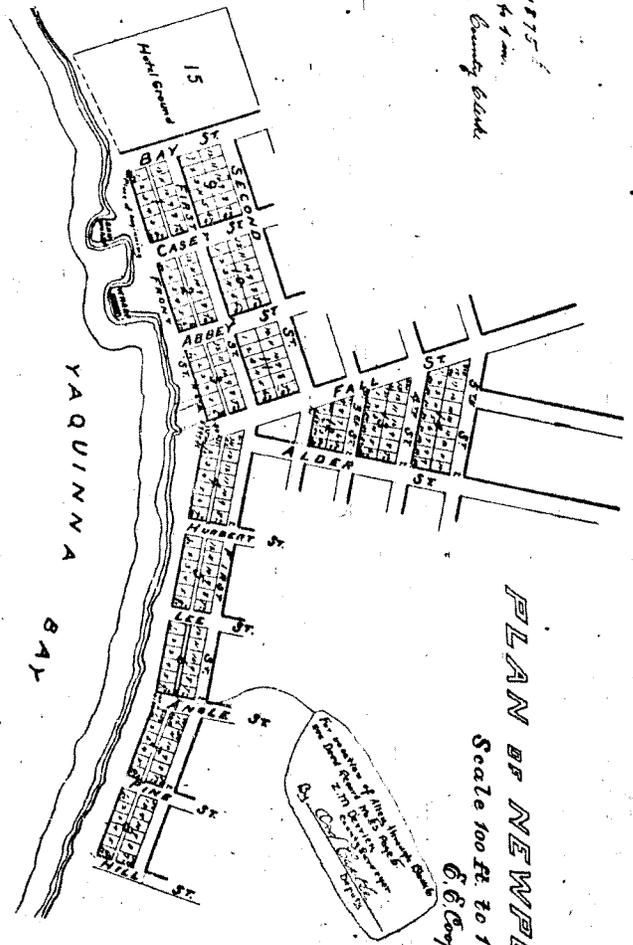
SEE SUPP. MAP NO. 2



COMPLIMENTS OF
WESTERN TITLE & ESCROW CO.
 THIS MAP IS NOT A SURVEY AND WE
 ASSUME NO LIABILITY FOR INACCURACIES

MAP

Revised for Boston, Aug. 19th 1875
 and Revised on a scale of 500 ft. to 1 in.
 S. W. Wilson, County Clerk



PLAN OF NEWPORT
 Scale 100 FT. to 1 in.
 S. W. Wilson, C. C.

For a measure of Hill Street see also Record No. 33 Page 191

State of Oregon } ss On this 15th day of August 1875 Before me S. W. Wilson
 County of Benton }
 County Clerk of Benton County, State of Oregon, come Samuel Lane and acknowledged
 the foregoing and annexed plat to be the plat of the town of Newport in Benton County,
 State of Oregon, according to the survey of S. W. Wilson Civil Eng. and for said Samuel Lane.
 In testimony whereof I have hereunto set my hand and official
 seal of said County this 15th day of August 1875
 S. W. Wilson, County Clerk of Benton County,
 State of Oregon.

Article that have enclosed the foregoing plat and
 annotations or articles, with the original record of the
 same, is signed by me this 15th day of August 1875
 S. W. Wilson, County Clerk of Benton County, Oregon,
 in compliance with an act of the Legislature (Assembly of
 1871, State of Oregon, filed Feb. 12, 1871) (see pages 67
 and 68 Session Laws of Oregon for 1871) that if it is
 found that correct government therefrom, and of the whole
 thereof, and that I am the legal custodian of the same,
 then I will certify to the same.
 this 15th day of July 1884
 S. W. Wilson, County Clerk
 Benton County, Oregon

State of Oregon, 1875
 I hereby certify that a true and correct copy of the foregoing plat and annotations
 is on file in the office of the County Clerk of Benton County, Oregon, and that the same
 is a true and correct copy of the original record of the same, as the same
 is on file in the office of the County Clerk of Benton County, Oregon.
 S. W. Wilson, County Clerk
 Benton County, Oregon

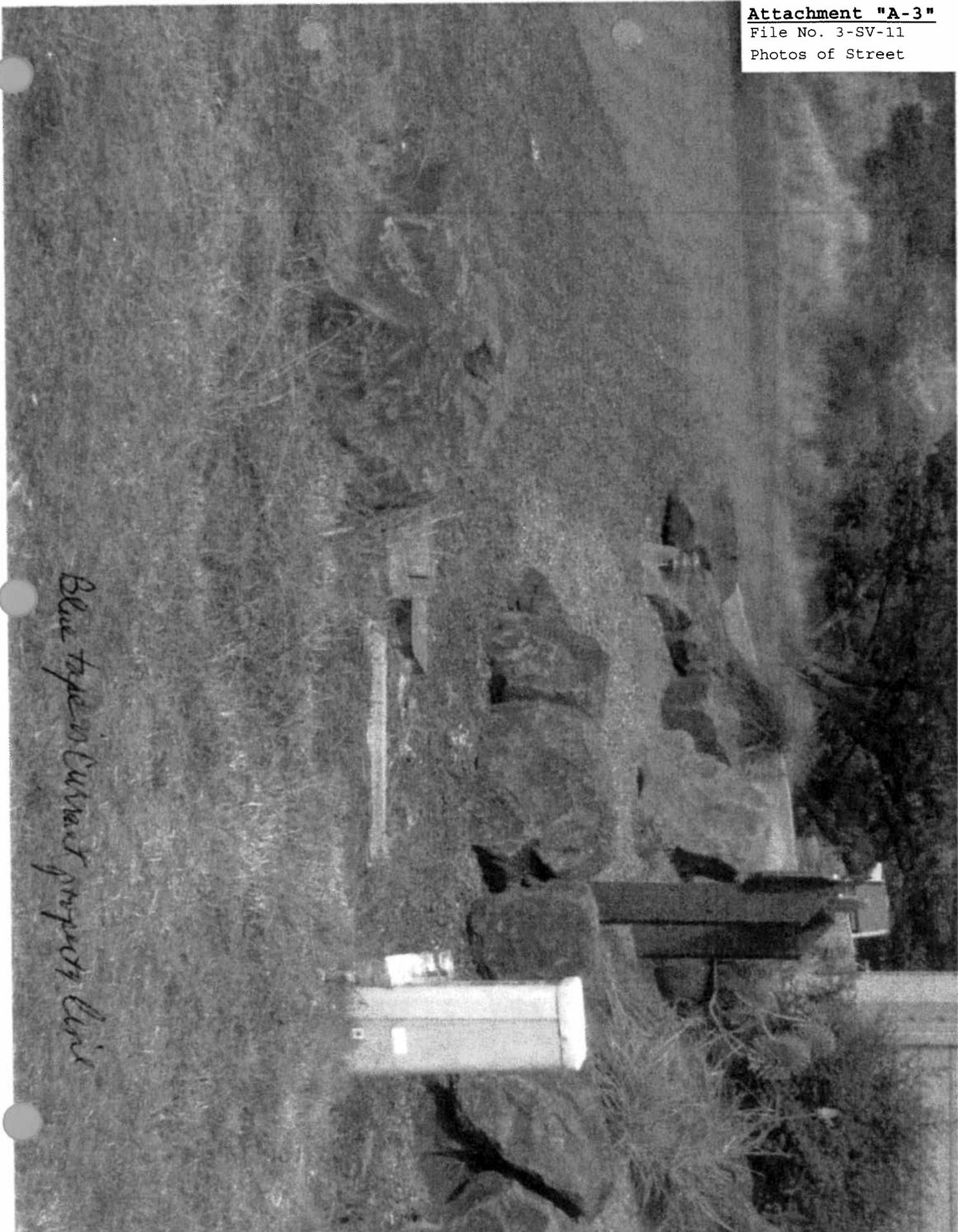


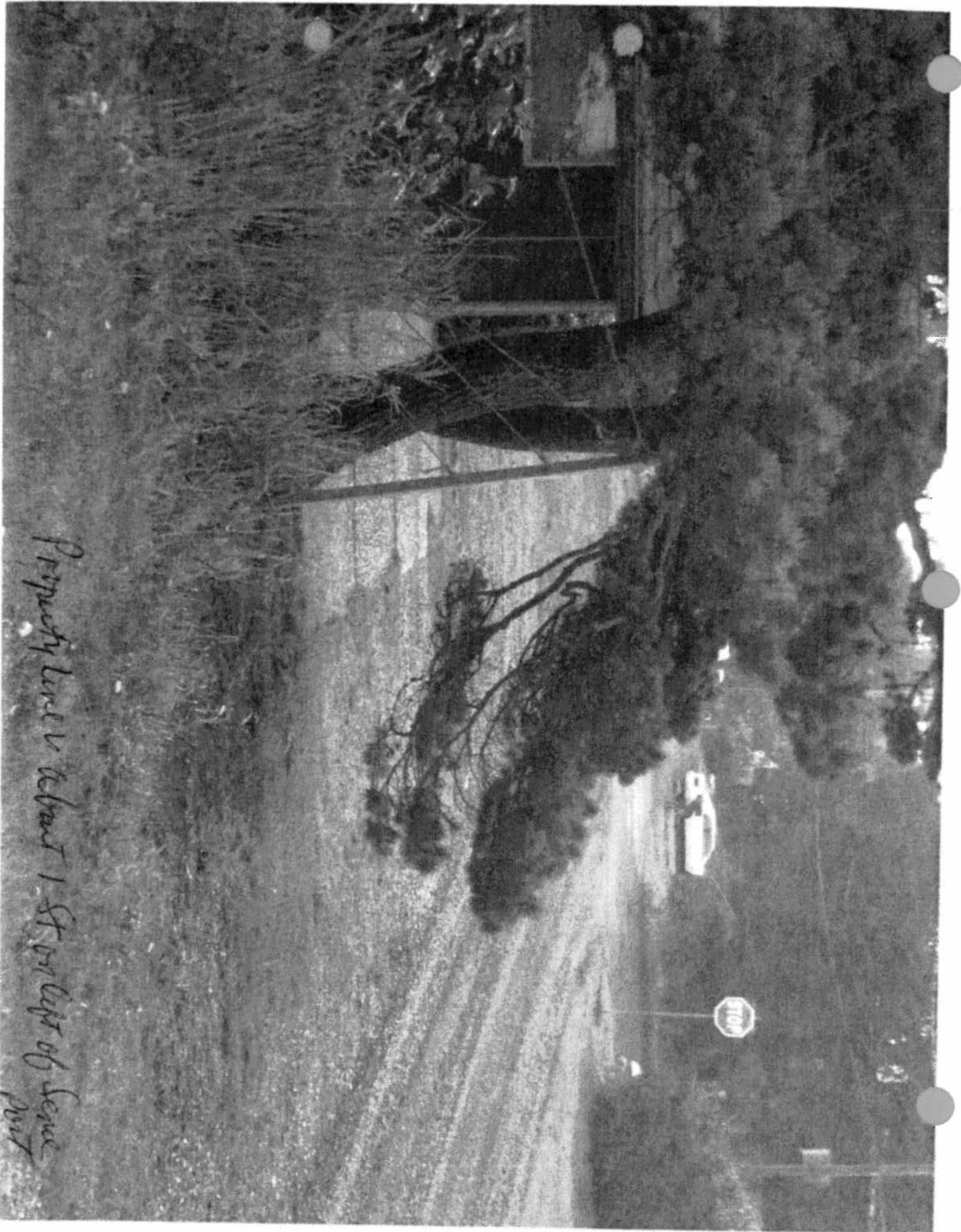
Attachment "A-3"

File No. 3-SV-11

Photos of Street

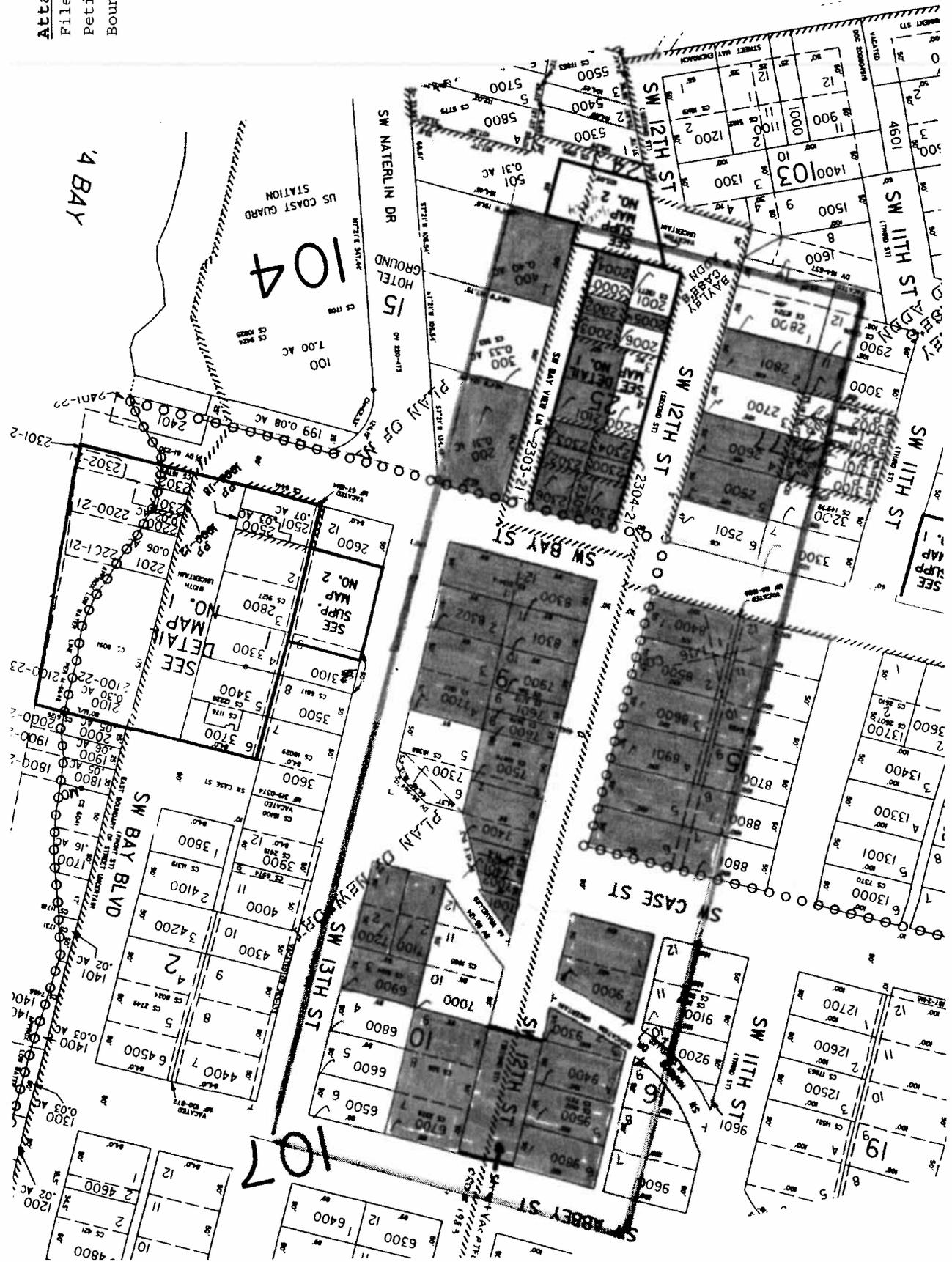
Blue type of Curbside property line





Property line v about 1 ft on left of fence post

Attachment "A-4"
File No. 3-SV-11
Petition Notification
Boundary





**CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING ON A PARTIAL STREET VACATION¹**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing on Monday, November 14, 2011, to review and make a recommendation to the Newport City Council on a partial street vacation as requested in:

File No. 3-SV-11:

Applicant: Kenneth & Cheryl Huff, Bill & Cheryl Lalack, Tom & Cindy Picciano, Vern & Paulette Bartley, and Ashley Forsyth.

Request/Subject Property: The request is for a proposed partial street vacation of the eastern 10' wide portion of SW 12th Street abutting the southern 40' of Tax Lot 7400, Tax Lots 7500, 7600, 7601, 7900, 8301, and 8300 of Tax Map 11-11-08-CA (Block 9 Plan of Newport) (see the attached illustration of the proposed area to be vacated).

Date Request Received: October 20, 2011

Applicable Criteria: Oregon Revised Statutes (ORS) 271.120 requires that: (1) The consent of the owners of the requisite area have been obtained; (2) Notice has been duly given; and (3) The public interest will not be prejudiced by the vacation of such plat or street or parts thereof.

Testimony: Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal (including to the Land Use Board of Appeals) based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department (address under "Reports/Materials") must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application.

Reports/Materials: The staff report may be reviewed or a copy purchased at the Newport Community Development (Planning) Department, City Hall, 169 S.W. Coast Hwy, Newport, Oregon, 97365, seven days prior to the hearing. The file materials and the applicable criteria are currently available for inspection at no cost or copies may be purchased for reasonable cost at this address.

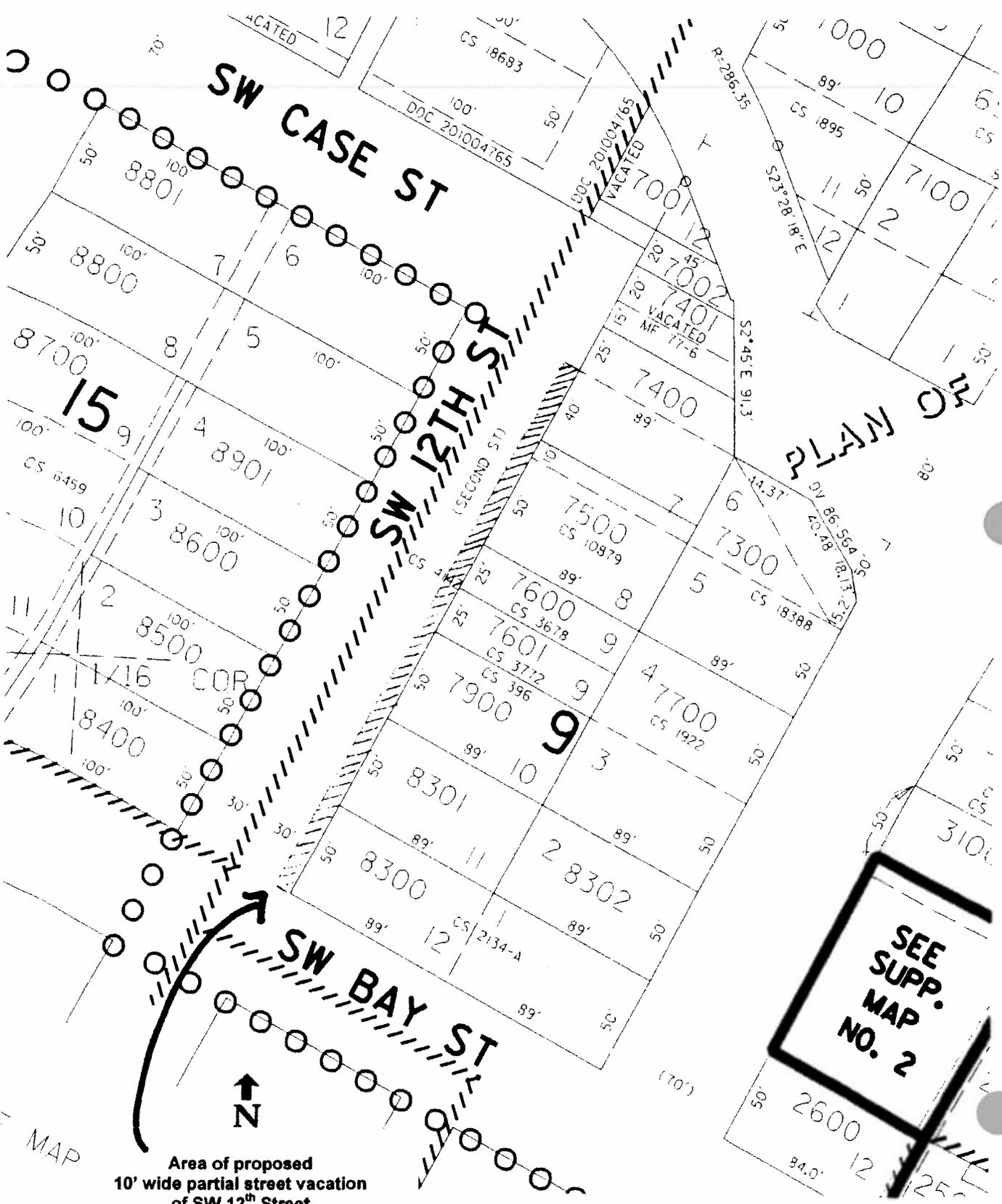
Contact: Derrick Tokos, Community Development Director (541) 574-0626 (address above in "Reports/Materials").

Time/Place of Hearing: Monday, November 14, 2011; 7:00 p.m. or soon thereafter; City Hall Council Chambers (address above in "Reports/Materials").

MAILED: October 24, 2011.

PUBLISHED: November 4, 2011 & November 9, 2011/News-Times.

1 Notice of the public hearing is being sent to affected property owners (according to Lincoln County Assessor's records) within the notification distance required for the request, affected public/private utilities/agencies, and affected city departments.



SW CASE ST

SW 12TH ST
(SECOND ST)

SW BAY ST

PLAN OR

Area of proposed
10' wide partial street vacation
of SW 12th Street

SEE SUPP.
MAP
NO. 2



MAP



City of Newport
 Community Development Department

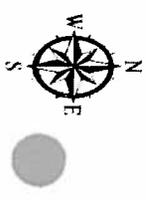
Legend

Newport Zoning

- Zone**
- C-1 Retail and Service
 - C-2 Tourist
 - C-3 Heavy
 - I-1 Light
 - I-2 Medium
 - I-3 Heavy
 - P-1 Public Structures
 - P-2 Public Parks
 - P-3 Public Open Space
 - R-1 Low Density Single-Family
 - R-2 Medium Density Single-Family
 - R-3 Medium Density Multi-Family
 - R-4 High Density Multi-Family
 - W-1 Water Dependent
 - W-2 Water Related

This map is for informational use only and has not been prepared for, nor is it suitable for, legal, engineering, or surveying purposes. It includes data from multiple sources. The City of Newport assumes no responsibility for its compilation or use and users of this information are cautioned to verify all information with the Newport Community Development Department.

189 SW Coast Highway Phone: 1.541.574.0628
 Newport, Oregon 97365 Fax: 1.541.574.0644







Attachment "D"
File No. 3-SV-11
Aerial Map
of the Property



Wanda Haney

From: Tim Gross
Sent: Thursday, October 27, 2011 6:26 PM
To: Wanda Haney
Cc: Derrick Tokos
Subject: RE: Temporary Encroachment Permit for fence (File 4-TEP-11)

3-SV-11

I am strongly opposed to the vacation of this ROW. The ROW is used for public utilities and private utilities including gas, electricity and telecommunications. It is likely that in the future all public ROW's in the City will be improved and we need every inch we can get to make an adequate street section which may include sidewalks, on-street parking, possible lighting, and all of the utility services mentioned above. Not only that, but we require the ROW width to do excavation for sewer and water trenches.

Many Cities have 60' ROW widths on all public streets and also have 10' utility easements on the front of the lots for private utilities.

No, we should not be abandoning a public ROW especially for a landscaping use.

Timothy Gross, PE
Public Works Director/City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365
P 541-574-3369
F 541-265-3301
C 541-961-5313

From: Wanda Haney
Sent: Wednesday, October 26, 2011 8:41 AM
To: Tim Gross
Subject: RE: Temporary Encroachment Permit for fence (File 4-TEP-11)

Tim,

You're right, these are the same properties. The applicants want to go ahead with a temporary encroachment permit to put in landscaping and a picket fence now. The street vacation will take longer than they want to wait to do this. They received consent from the adjoining property owners to vacate a 10' width portion along Block 9. I've attached the applicant's letter explaining their reasons for applying for a partial street vacation. Also attached is a map showing the portions of SW 12th Street further up that have been vacated already.

Wanda

From: Tim Gross
Sent: Tuesday, October 25, 2011 5:46 PM
To: Wanda Haney
Subject: RE: Temporary Encroachment Permit for fence (File 4-TEP-11)

Wanda,

Isn't this the same area you just sent a vacation request for?

Timothy Gross, PE
Public Works Director/City Engineer
City of Newport
169 SW Coast Highway
Newport, OR 97365
P 541-574-3369
F 541-265-3301
C 541-961-5313

From: Greg Schaecher
Sent: Thursday, October 20, 2011 3:20 PM
To: Tim Gross
Cc: Lanny Schulze
Subject: RE: Temporary Encroachment Permit for fence (File 4-TEP-11)

Tim,

SW 12th Street exists as a 24 foot paved, but not curbed, street slightly off center to the south in a 60 foot wide right-of-way in a rural residential neighborhood. The residence in question requesting the temporary encroachment permit sits on the southerly side of the street. There is approximately 12 feet from the southerly edge of the paved street to this residence's property line. Near her northwesterly corner sits her and her neighbor's water meters. There are no fences constructed along this side of SW 12th Street that I remember seeing. Her house sits about 2 – 3 feet lower than the street.

In my opinion, a fence built 3 feet into the right-of-way along this side of the street will not cause any harm. There should be adequate room for on-street parallel parking. Also, part of the City's temporary encroachment permit application states that fences, walls, etc. must be at least 2 feet away from the City's water meters and other such structures.

Fence height (asking 3 feet) is usually a Planning Department issue. The Zoning Ordinance requires a vision clearance triangle at corner lots restricting heights of fences along with height restrictions for fences build in the front yard setback areas.

Greg

From: Tim Gross
Sent: Thursday, October 20, 2011 12:24 PM
To: Greg Schaecher
Subject: FW: Temporary Encroachment Permit for fence (File 4-TEP-11)

Can you please review this and let me know if you have any concerns? Thanks.

Timothy Gross, PE
City of Newport
Public Works Director/City Engineer
P: 541-961-5313

Sent from my Windows Mobile phone

From: Wanda Haney
Sent: Thursday, October 20, 2011 12:00 PM
To: David Marshall; Elwin Hargis; Gene Cossey; Jim Protiva; Mark Miranda; Phillip Paige; Ted Smith; Tim Gross; Victor Mettle
Subject: Temporary Encroachment Permit for fence (File 4-TEP-11)

This is to provide notice regarding a request for a temporary encroachment permit received by the Community Development Department. The attachments contain the applicant's explanation of the request and a map. Please review the request and return any comments you may have to our department by **October 31, 2011**, to be considered in the Community Development Director's decision. If you need any further explanation, all materials are available for review at our department.

Thanks,

Wanda Haney

Executive Assistant
City of Newport
Community Development Dept.
541-574-0629
FAX: 541-574-0644
w.haney@newportoregon.gov



Attachment "F"

File 3-SV-11

11/4/11 Letter to
Port of Newport

phone: 541.574.0629

fax: 541.574.0644

<http://newportoregon.gov>

CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365



COAST GUARD CITY, USA

mombetsu, japan, sister city

November 4, 2011

Don Mann
General Manager
Port of Newport
600 SE Bay Boulevard
Newport, Oregon 97365

RE: Petition to Vacate a Portion of SW 12th Street

Don,

On October 20, 2011, the City of Newport received a petition to vacate a 10-foot wide portion of SW 12th Street, between SW Case Street and SW Bay Street as shown on the attached map. Oregon Revised Statute (ORS) 271.190 requires written approval by the Port Commission of any street vacation within 5,000 feet of the harbor or pierhead line of the port.

The subject right-of-way appears to be within the prescribed distance. An initial hearing on the petition is scheduled for 7:00 pm on November 14, 2011 before the Newport Planning Commission. It will be held in the Council Chambers. At that meeting, city staff will advise the Planning Commission of this requirement.

I can appreciate that you may not be able obtain a decision from Port Commission by this date. Approval from the Port Commission is needed before the City Council takes action on the petition, and a date for that hearing has not been set.

Please let me know when this matter will be scheduled with the Port Commission. You are also welcome to attend and testify on the petition at the Planning Commission hearing on November 14, 2011.

Sincerely,

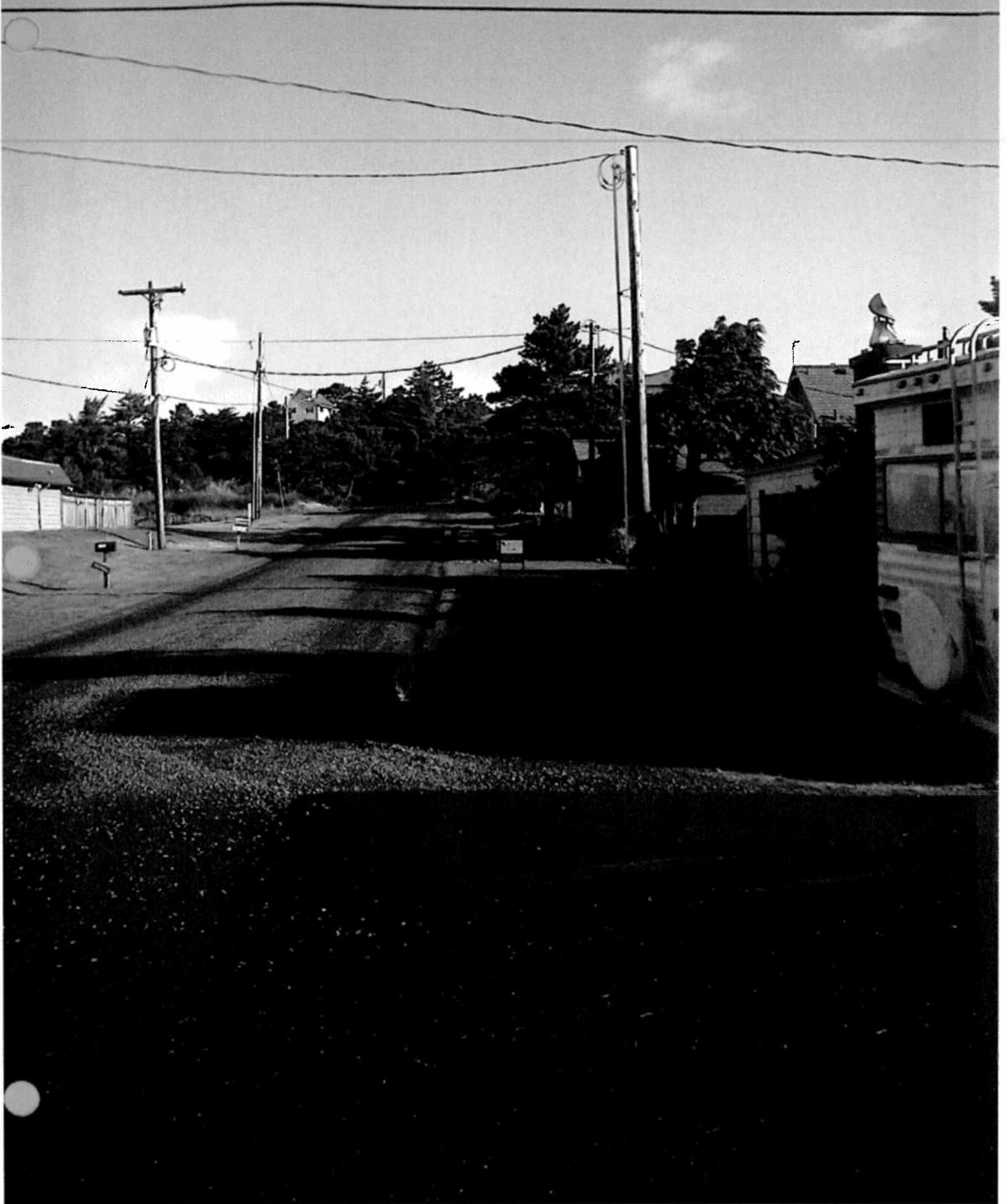
Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626

xc: File

attachment



Attachment "G"
File No. 3-SV-11
Additional Photos
of the Street (Staff)











Hatfield Marine Science Center
Director's Office
2030 S.E. Marine Science Dr., Newport, Oregon 97365-5296
T 541-867-0212 | F 541-867-0444 | <http://hmsc.oregonstate.edu>
Email: hmsc@oregonstate.edu

October 31, 2011

Thomas J. Taylor
Department of the Army
Corps of Engineers, Portland District
PO Box 2946
Portland, OR 97208-2946

Dear Mr. Taylor:

I am writing to inform you, as per the requirements of our permit # NWP-2010-401 (DSL #45455-FP; City of Newport #6-CUP-10), of the OSU Hatfield Marine Science Center's plans to begin construction of the dynamic revetment as described in the permit. We anticipate that construction will begin on November 7, with assistance from the Oregon National Guard Innovative Readiness Training (IRT) program. The schedule includes a stretch of favorable tides from November 7 through November 22, although we hope to have the project completed within approximately one week of the Nov 7 start date.

Please contact myself or Maryann Bozza, HMSC Program Manager, at 541-867-0234 if you have questions. We will advise you and the other permitting agencies of any issues encountered during construction; otherwise, we will send the required certification form upon completion.

Sincerely,

A handwritten signature in black ink, appearing to read "George Boehlert", is written in a cursive style.

George Boehlert
Director

cc: Carrie Landrum, DSL
Derrick Tokos, City of Newport
Maryann Bozza, HMSC
Randy Walker, HMSC

