



## AGENDA & NOTICE OF PLANNING COMMISSION MEETING

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The Planning Commission of the City of Newport will hold a meeting at **6:00 p.m.** (*note earlier start time for regular meeting*) **Monday, November 25, 2013**, 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.

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### NEWPORT PLANNING COMMISSION Monday, November 25, 2013, 6:00 p.m. AGENDA

**A. Roll Call.**

**B. Approval of Minutes.**

1. Approval of the Planning Commission regular session meeting minutes of November 12, 2013.

**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.**

1. Final Order for File No. 2-NCU-13. Final Order approving a Nonconforming Use Permit per NMC Section 14.32 as requested by Douglas & Verna Fitts (Dennis Bartoldus, authorized representative) for the alteration and expansion of a nonconforming use (Surfside Mobile Village) located at 392 NW 3<sup>rd</sup> Street. The Planning Commission conducted a public hearing on this matter on October 28, 2013, and continued on November 12, 2013.

**E. Public Hearings.**

**F. New Business.**

**G. Unfinished Business.**

**H. Director Comments.**

**I. Adjournment.**

**Draft Minutes**  
**City of Newport Planning Commission**  
**Regular Session**  
**Newport City Hall Council Chambers**  
**Monday, November 12, 2013**

**Commissioners Present:** Jim Patrick, Jim McIntyre, Rod Croteau, Mark Fisher, and Gary East.

**Commissioners Absent:** Glen Small and Bill Branigan (*both excused*).

**City Staff Present:** Community Development Director 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, McIntyre, Croteau, Patrick, Fisher, and East were present; with Small and Branigan absent but excused.

**B. Approval of Minutes.**

1. Approval of the Planning Commission work session and regular session meeting minutes of October 28, 2013.

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

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

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

**E. Public Hearings.**

Patrick opened the public hearing portion of the meeting at 7:02 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, bias, ex parte contacts, or site visits. Fisher noted that since the last meeting, he had driven through the entire facility; Croteau declared an additional site visit; Patrick declared a site visit; East declared only his original site visit; and McIntyre had not made a site visit. Patrick asked for objections to any of the Commissioners or the Commission as a whole hearing this matter; and none were heard.

**Quasi-Judicial Actions:**

1. **Continued Hearing on File No. 2-NCU-13:** Further consideration of a request submitted by Douglas & Verna Fitts (Dennis Bartoldus, authorized agent) for approval of a request per Section 14.32/“Nonconforming Uses, Lots, and Structures” of the Newport Municipal Code for the alteration and expansion of a nonconforming use. The property, located at 392 NW 3<sup>rd</sup> Street, is currently being used as a mobile home park (Surfside Mobile Village). On October 28, 2013, the Planning Commission opened the public hearing on File No. 2-NCU-13, took testimony, and continued the public hearing to tonight’s meeting.

Patrick opened the public hearing for File No. 2-NCU-13 at 7:04 p.m. by reading the summary of the file from the agenda and then calling for the staff report. Tokos noted that included in the Commissioners’ packets was the supplemental information that the applicant provided, which includes a narrative, a floor plan, and a series of different maps. Tokos said that this supplemental information came in as he was pulling the meeting packets together, which was understandable because the applicant needed time to get this additional stuff done. Tokos explained that because of that, he was unable to put together findings of fact and a final order for this meeting. He did put together a brief memo regarding a course of action. If he receives direction consistent with this memo, or however the Commission feels, he can roll that into a final order for the next meeting. Essentially what this memo says is that with the nonconformity of the existing park, the information was helpful but doesn’t establish clearly that Tax Lot 10600 and 10800 were lawfully brought into the park. He said that’s not the fault of the applicant; it’s just bad recordkeeping over the years. Tokos noted that the applicant wants to make sure there are no ambiguities with the park; so he feels the best way is to approve the expansion onto those tax lots along with this application. He thinks that he can write findings of fact on that as opposed to relying on old documents. He said the applicant did what they could; there just wasn’t a lot they could get. He said that the play area shown on the map doesn’t help establish that it was approved for RV hookups. The other is not signed or stamped by a government agency. We know that those improvements have been there for a number of years. Tokos feels that as a defensible decision, it can be approved as an expansion now as opposed to relying on the old documents. The applicant provided a utilities map, which Tokos said he is struggling with a bit. You can see where the sewer line and storm drain runs under the park. The City has easements crossing through the park; and he had attached a number of those easement documents with the packet materials. He noted that if the City has to go in and make repairs, we have an obligation to return the site to its pre-existing condition; which is not a good situation. Tokos noted that Fitts had mentioned that a number of those units are reaching the end of their useful life and will probably

need to be swapped out in the next few years. Tokos thought the best way to tackle the legacy issue is to acknowledge that it needs to be addressed by adding a condition that as the units are swapped out, the new units are not being placed where they will impact the City's ability to reach the utilities. The applicant noted that much of Hurbert lacks sidewalks, and if sidewalks are placed on Hurbert it should be done in a uniform manner. Tokos said one option the Commission could pursue is a requirement for a non-remonstrance agreement so the applicant would participate in future construction should such a project be pulled together. Tokos noted that the applicant provided a drawing showing how they will provide access on the new expansion area. That more or less addresses the access issue but doesn't quite comport with the lot lay-out shown on their site plan initially. Tokos said that should be cleared up. The last suggestion included by staff is that the Commission consider a requirement that the new units comply with the Oregon Manufactured Dwelling and Park Specialty Code and that the applicant comply with all Fire and Life Safety Standards. He noted that a lot of those standards have to do with foundation, strapping, skirting, etc.; and the new units should meet the most current standards in that regard. Tokos noted that the applicant's materials indicate that the part of their request that included the area to the north that they were proposing for storage has been withdrawn. So, Tokos didn't address that because in his mind that has been withdrawn. Tokos said that summarizes how he suggests the Commission approach this request.

Croteau asked how moveable does a structure have to be to still be compliant with the easement; temporary or on wheels? Tokos said that would certainly be easier than on a permanent foundation. He added that even a parking pad is probably not a big deal. If it's on a permanent foundation, then that's a bigger deal. Fisher said that instead of moving the vehicle, he thinks digging under it would be easy. McIntyre said if the City had to remove a drain pipe and replace it, they would need to have access from the top to put the drain pipe in and re-compact the ground. Fisher said that not all the units impact the easement; and McIntyre agreed that only one or two appear to extend over the easement. Tokos said from the view of Public Works, we wouldn't have storm drainage or sewage under a permanent structure; but we have that in the city in these legacy areas. He said if Public Works wanted to put an end to that, it may be that nothing could go on top of those lines until the park develops into something else. He said it seemed reasonable to add a condition that as the units swap out to make sure that they are not repeating the same issues. East noted that park models are a little smaller so he thought they could be set where they wouldn't impact the easements. Tokos agreed there are more options with those. He said he was careful to draft the condition with wording that they don't impact our ability to access our utility lines. He said we don't have accurate enough information to know exactly how the easements are encumbered. East said the lots seem to be fairly big and it seems they would easily be able to move park models. Patrick said it's not the easement that bothers him, but wondered if there would be any trouble because we are changing the expansion of the nonconforming use to include the old part of the park. He asked about the original notice and wondered if that was fine. Tokos said it was reduced by eliminating the storage area. He said the notice was for the alteration and expansion of a nonconforming use; it's just a larger expansion than it was. But, it's the same overall area that was described when we did the notice. McIntyre asked, when the original easement for the utilities was placed on the property, was it a park at that time? Tokos said it was for at least a couple of the easements; but he can't say for the 1963. For the two 1981 documents it was a park at that point. He said it may have been cabins or trailers in 1963; he's not certain. McIntyre asked where there are encroachments on the easements, were those made after the easements were placed on the property; and Tokos didn't know.

**Proponents:** The applicant's representative, Dennis Bartoldus, PO Box 1510, Newport, testified along with the applicant, Doug Fitts. Bartoldus said he didn't have a lot of issues to address; Tokos had covered everything well. Bartoldus said they agree that generally speaking the records are not really great when you go back. He noted that one of the reasons they did this as an alteration and expansion of a nonconforming use was to pick up anything not approved before. Fitts brought Bartoldus plans from the late 70s and early 80s when the State approved mobile home parks. Some had been in storage so long, that those dark spots you see on them were actually mildew spots. Bartoldus said when he came here in the 70s, those cabins were still there, and it was a mobile home park at that time. He said it goes way back in time and has been for those uses. But they want to make sure it is up to snuff for approvals because older records are not that good. Bartoldus said they are fine having approvals provided in that way and had kind of anticipated that in the start. Bartoldus didn't think there was a problem with the notice. He thinks the notice was fine. It was for the alteration and expansion of a nonconforming use. They are dropping the lots along the north side that were included for storage; so those go away. By having that property taken out, Bartoldus didn't address the comments received on those. As far as the easements, Bartoldus noted that Fitts said that a lot of units were actually there when easements were granted. There has been a situation where the City ran a new sewer line through the easement. They did pipe bursting and were able to put it in. Bartoldus said they don't want to be in the way of the easement; so if they can move the models outside the easements and out of the way of the lines as they are replaced, they will do that. He agreed that makes sense. He said they can't say that in every single case this is not going to be an issue; and they may have to address that with Public Works. They may have to move a unit. He said the City is actually aware of these circumstances after the failure under Washington Federal and under Pacific Village. He said but it is somewhat different here because there is not a large permanent structure over the line. Unlike larger homes, these could be moved to accommodate the City if the line had to be replaced; or it may be able to be re-routed. They understand the City's position, but they would like to retain flexibility. Depending on the exact location, there may be other solutions rather than saying they have to be hauled out or they can't be used. He noted that this configuration has worked for a long time. Bartoldus said he would like the final wording to provide flexibility so they can work with Public Works understanding that there are easements through there. Regarding the lay-out on Tax Lot 10700 for three new lots, Bartoldus said go with the nice drawing that also shows park models and how they are set in there; the later one should control. Bartoldus said they submitted how lot 25 could fit in there. That lot exists and meets the standards for space size. Bartoldus said that Tax Lots 10600 and 10800 have long existed; like the park area that was clearly part of the mobile home park. That area is just for RVs and is only proposed for RVs. Bartoldus said the infrastructure within the park all exists. Bartoldus said that Tokos discussed the situation on Hurbert regarding the sidewalk; and Bartoldus agrees

with that analysis that there is no need for the entire sidewalk because of the reasons stated. Bartoldus said that number 9 on their submittal explains the full circle. They want to make sure they have all the "I"s dotted and all the "T"s crossed. They are making sure they have all the approvals so as they change out units they won't have any issues with that and it will be approved. Bartoldus said that he hopes that the Commissioners' observations when they drove through the park were the same as his. It is a great opportunity for affordable housing for those 55 and older. The park is neat and clean and immaculate. Bartoldus said he has visited most trailer parks in town, and this one is very well kept. Bartoldus said they believe they have addressed the issues that were raised, and they hope to receive approval.

Fitts said he didn't know if the Commissioners were familiar with the pipe bursting that the City has been doing. He said that about three years ago, there were two main lines that went down to Nye Beach and went right through their place. They moved two RVs, and they opened one section, ran the pipe-bursting machine, and pushed it all the way up to Nye Street. He said that is probably the way they will do it if the lines have to be replaced. There were no problems. They put back the asphalt. Fitts said the water lines are all his. The creek goes through there and all storm water goes into the creek. Fitts said that he can't see any problem with the easements.

Patrick asked if they were okay with the LID waiver of remonstrance. Bartoldus said it is the lesser of two evils. He said they assume the City is not going to require special sidewalk along the property right now, so they can probably live with it. Fitts said he has no problem as long as the City hires local contractors. McIntyre asked if he was saying he was willing to participate, and Fitts said he would be willing to pay his share.

**Opponents or Interested Parties:** There were no opponents or interested parties present wishing to testify; and, therefore, rebuttal was waived.

Patrick closed the hearing at 7:25 p.m. for Commissioner deliberation.

**MOTION** was made by Commissioner East to approve File No. 2-NCU-13 with the staff recommendations as presented by Tokos. East added that he thought the request meets the goal we have been wanting to set to allow this type of housing as an alternative for affordable housing for seniors and workforce. He said this is a very good start to move that forward, and maybe other locations in town will follow. Fisher agreed, assuming that Tokos is able to put together the final paperwork needed to sign that would satisfy the City and get the job done. Croteau said that if everyone is comfortable with the easement situation, he would be okay with having the final order prepared. McIntyre was in agreement with the other members, noting that as long as the issues of sidewalks, easements, and future references are covered, he can support it. Patrick said he was happy with being flexible with putting stuff in as they get to replacing units and has no problem with that. He has no problem with access or easements. He said that you can move one of these units; not a house, but one of these you can. He has no problem with an LID non-remonstrance agreement. Patrick is happy about cleaning up the specific language to cover the entire park so the older areas are brought up to legal standards. Commissioner Fisher seconded Commissioner East's motion; and the motion carried unanimously in a voice vote.

**F. New Business.** No new business to discuss.

**G. Unfinished Business.**

1. Tokos gave an update on the Teevin Brothers appeal. The Commissioners had been given a copy of LUBA's decision. Tokos said that basically it was remanded back to the City on a very narrow issue; and two of the three arguments were dismissed. The argument upheld by LUBA was that Teevin Brothers' traffic engineer didn't provide sufficient analysis with respect to Running Springs. LUBA felt that the appellants were correct that they didn't provide adequate analysis along the entire travel route and remanded it for consideration of that particular intersection. The City will have to render a supplemental decision; probably by the City Council. Tokos noted that on a remand the City is not required to take it back through the two-step process. In order to move it expeditiously, we need only the one evidentiary hearing before the City Council. He noted that Teevin Brothers is getting their traffic engineer working on the supplemental analysis. Tokos said we will get a notice out for the hearing, and the Council will consider that one very narrow issue and render supplemental findings of fact and final order addressing that. Tokos said that it's not that that issue wasn't addressed. Their traffic engineer did deal with it. The way they looked at it was that since they had analyzed in detail the larger intersections, which showed that they function appropriately; so too would the small intersections because they have smaller traffic volume and will perform at adequate levels as well. Tokos said they just didn't say the magic words that they looked at Running Springs. The Court said the traffic engineer did not adequately address the intersection of Running Springs Road and Bay Road; so, therefore, it did not constitute "substantial evidence" that the City could rely on to support an approval. The City Attorney pointed out that as far as remands go, this is pretty good because it is so narrow and can be readily addressed by Teevin Brothers' traffic engineer. Tokos said he is trying to get a hearing with the City Council lined up for mid-December. The appellant could appeal that narrow issue back up to LUBA, but their whole appeal was never that Running Springs couldn't handle the traffic. Their appeal was that they didn't provide adequate analysis; and they already addressed it, just not in detail. Tokos said he would be surprised if they appeal up to LUBA again. Fisher noted that his understanding was that the minute the appeal cleared, Teevin Brothers wanted to be working by February. He wondered if the City Council does this hearing and supplemental findings, is February a reasonable time. Tokos said it depends. With the City's decision it would be; but he can't say what will happen post-City decision. Tokos said that the Teevin Brothers General Manager contacted him and he shared the process with them. They are

satisfied that we are moving as expeditiously as we can; but we don't want any procedural errors. They understand that. They have Kittelson already working on the supplemental analysis. Patrick said Teevin could proceed, but they are holding back. Tokos agreed that they don't want to proceed with litigation out there. He said that it's not that the Council wants to avoid the Planning Commission; but this is about handling the remand as expeditiously as possible. If it went back to the Planning Commission, that would also afford an appeal option to the City Council. Croteau asked if this could go back to LUBA. Tokos said on that narrow issue it could go back to LUBA. They can't raise the geologic issue; LUBA already granted a decision on that. If the appellant feels they had a case, they could take it back to LUBA with the analysis on Running Springs. They can't re-raise issues denied. Patrick asked if they couldn't appeal the LUBA decision though. Tokos said if the appellant disagrees with LUBA's decision on the arguments that were denied, they could take it to the Court of Appeals. They have twenty-one days to do that. Tokos noted that we couldn't get the twenty-day notice done before November 27<sup>th</sup>, and we wouldn't hold a hearing until the action is final. That is why December works. By statute, we have ninety days to handle the remand; which starts when LUBA's decision is final, November 27<sup>th</sup>. We'll have no issue meeting that.

2. Fisher raised a question about business licenses. He wondered if someone soliciting door-to-door is supposed to have a business license. Tokos said if they are doing business in Newport and don't fall under one of the exemptions, then yes. Fisher asked what about if he were standing on the street corner soliciting. Tokos said yes, that would be a vendor. Fisher said then, what about those people standing on the corner with their signs asking for money (panhandling). Tokos said they are not selling anything; they wouldn't need a business license if they take money but don't give anything back. He said a business license is required if they are selling something or making money; begging doesn't count, it is soliciting funds and wouldn't fall under the business license. McIntyre wondered if the City has any laws for loitering; and Tokos said maybe, but he's not familiar with that. Bartoldus, speaking as an attorney, said that he isn't sure if the City has those laws or not; but they are always hard to enforce because of the First Amendment ordinance. McIntyre noted that when he worked with stores in California, he knew that some supermarkets with loiters in front of their stores had a pact with the police to give those people a ride to the next city.

**H. Director's Comments.** Tokos had no additional comments.

**I. Adjournment.** Having no further business to discuss, the meeting adjourned at 7:40 p.m.

Respectfully submitted,

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Wanda Haney  
Executive Assistant

**BEFORE THE PLANNING COMMISSION  
OF THE CITY OF NEWPORT, COUNTY  
OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION )  
FILE # 2-NCU-13, APPLICATION FOR ALTERATION )  
AND EXPANSION OF A NONCONFORMING USE, ) FINAL  
AS SUBMITTED BY DOUGLAS & VERNA FITTS ) ORDER  
(SURFSIDE MOBILE VILLAGE) (DENNIS L. BARTOLDUS, )  
AUTHORIZED REPRESENTATIVE) )**

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**ORDER APPROVING** a request per Chapter 14.32 (“Nonconforming Uses, Lots, and Structures”) of the Newport Municipal Code (NMC) for the alteration and expansion of a nonconforming use. The owner is requesting 31 spaces, consisting of 24 permanent spaces and 7 RV spaces. The owner shall be allowed to replace mobile homes with park model homes. The subject property is currently identified as 392 NW 3<sup>rd</sup> Street and is currently being used as a mobile home park (Surfside Mobile Village). This nonconforming use permit shall serve to clarify that the mobile home park has been approved as a use on Tax Lots 10500, 10600, 10501, 10700, and 10800 of Lincoln County Tax Assessor’s Map 11-11-05-CD.

**WHEREAS:**

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Municipal Code; and
- 2.) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on October 28, 2013, continued November 12, 2013; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, upon a motion duly seconded, the Planning Commission **APPROVED** the request.

**THEREFORE, LET IT BE RESOLVED** by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the requested nonconforming use permit.

**BASED UPON THE ABOVE**, the Planning Commission determines that the request to alter and expand a nonconforming use is in conformance with the provisions of the Comprehensive Plan and the Municipal Code of the City of Newport; and the request is, therefore, granted subject to the following conditions:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. The property owner shall sign a non-remonstrance agreement consenting to participate in any sidewalk local improvement district that the subject properties would be part of should such a district be formed.
3. The applicants shall comply with all applicable building codes, fire codes, zoning ordinance requirements, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicants are responsible for obtaining the necessary approvals and permits pertaining to the proposed use.
4. As units are replaced within the park, the replacement units shall comply with the most current Oregon Manufactured Dwelling and Park Specialty Code, including the Fire and Life Safety Standards listed under ORS 446.100.
5. As units are replaced within the park, the new units shall be situated in such a manner that does not impair the City's ability to exercise its easement rights and access these utilities.
6. Because of the inadequacy of historical records, this approval for alteration and expansion of a nonconforming use shall serve as confirmation of approval for the manufactured home park development on Tax Lots 10500, 10501, 10600, 10700, and 10800, as described herein.

Accepted and approved this 25<sup>th</sup> day of November, 2013.

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James Patrick, Chair  
Newport Planning Commission

Attest:

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Derrick I. Tokos, AICP  
Community Development Director

## EXHIBIT "A"

Case File # 2-NCU-13

### FINDINGS OF FACT

1. Douglas & Verna Fitts (Surfside Mobile Village) (Dennis Bartoldus, authorized representative) submitted an application on September 25, 2013, per Chapter 14.32 ("Nonconforming Uses, Lots, and Structures") of the Newport Municipal Code, for the alteration and expansion of a nonconforming use. Initially the applicants were requesting to be allowed to have 24 permanent spaces and 7 RV spaces; expand the park for a screened storage area; and to be able to replace mobile homes with park model homes. However, at the hearing, the applicants modified the request by deleting the request for the expansion for the screened storage area.

2. The subject property is located at 392 NW 3<sup>rd</sup> Street (Lincoln County Assessor's Tax Map 11-11-05-CD, Tax Lots 10500, 10600, 10501, 10700, and 10800). In sum, the properties total to approximately 2.22 acres in size.

3. Staff reports the following facts in connection with the application:

- a. Plan Designation: High Density Residential.
- b. Zone Designation: R-4 / "High Density Multi-Family Residential".
- c. Surrounding Land Uses: A mix of single- and multi-family residential, commercial, and public uses.
- d. Topography and Vegetation: The subject property is generally flat except on the north side where it slopes upward and is level again along NW 5<sup>th</sup> Street. There is also a slope along the west and north of Tax Lot 10700. There is some vegetation on the hillsides, but the property is primarily cleared and used for the mobile home park.
- e. Existing Structures: The property contains the Surfside Mobile Village consisting of 28 sites (21 permanent residences and 7 for vacation trailers), a restroom/laundromat, and an office/storage facility.
- f. Utilities: All are available to the site.
- g. Development Constraints: None known.
- h. Past Land Use Actions: File No. 4-CUP-73 – authorized expansion of the Glenwood Cottages and Trailer Park to 18 trailer parking spaces. Approved February 12, 1973.

4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on September 26, 2013, to affected property owners required to receive such notice by the Newport Municipal Code, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m. October 28, 2013, or be submitted in person at the hearing. Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on October 18, 2013. A letter and photographs were received on October 18, 2013 from Brad and Linda Capshaw, 353 NW 5<sup>th</sup> Street. The Capshaws expressed opposition to the portion of the request pertaining to construction of outdoor screened storage on NW 5<sup>th</sup> Street.

5. A public hearing was held on October 28, 2013, and continued to November 12, 2013. At the hearing, the Planning Commission received the staff report and allowed for testimony on the request. The minutes of the October 28, 2013, and the November 12, 2013, meetings are hereby incorporated by reference. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

- Attachment "A" – Applicant’s Written Statement Describing the Request & Findings of Fact in Support
- Attachment "A-1" – Photographs of the Park and Surrounding Streets
- Attachment "A-2" – Depiction of a Park Model Home
- Attachment "A-3" – Site Plan
- Attachment "B" – Public Hearing Notice and Map
- Attachment "C" – Zoning Map of Area
- Attachment "D" – October 18, 2013, letter from Brad & Linda Capshaw
- Attachment "E" – Conditional Use Permit 4-CUP-73
- Attachment "F" – 2007 Aerial Photograph of the Property
- Attachment "G" – City Map Showing Water and Sewer Easements
- Attachment "H" – Chapter 11, Fire and Life Safety, 2010 Oregon Manufactured Dwelling Installation Specialty Code

6. At the public hearing on October 28, 2013, testimony was received from:

- Dennis Bartoldus, PO Box 1510, Newport, OR 97365, representing Mr. & Mrs. Fitts, speaking in support of the application.
- Doug Fitts, 392 NW 3<sup>rd</sup> St, Newport, OR 97365, speaking in support of the application.
- John Howell, 396 NW 5<sup>th</sup> Street, Newport, OR 97365, making a point of clarification in terms of the material submitted regarding lot sizes in the neighborhood.
- James Warren, NW 3<sup>rd</sup> Street, complementing Fitts on the care of the park; but stating if generators are allowed to be used on a regular basis, he would be opposed to that.
- A letter from James Raske, 406 NW 5<sup>th</sup> Street, was read into the record. His opposition was to the storage on 5<sup>th</sup> Street.

7. Pursuant to NMC 14.32.040, applications must include a completed application form, scaled site plan, names and addresses of property owners within the notification area, survey work if structures will not satisfy setback requirements and exterior architectural elevations if structures will exceed building height limitations.

8. Pursuant to Section 14.32.070/“Alteration, Expansion, or Replacement of Nonconforming Uses and Structures” of the Newport Municipal Code, after verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood.

9. **Verification of Status of Nonconforming Use or Structure:** Pursuant to NMC Section 14.32.060, upon receiving an application to alter, expand, or replace a nonconforming use or

structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

- The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and
- The use has not been discontinued for a continuous 12-month period.

The approval authority may require the applicants provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings.

The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use (September 7, 1982). When determining the nature and extent of a nonconforming use, the approval authority shall consider:

- Description of the use;
- The types and quantities of goods or services provided and activities conducted;
- The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;
- The number, location, and size of physical improvements associated with the use;
- The amount of land devoted to the use; and
- Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.

A reduction of scope or intensity of any part of the use as determined under this subsection for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

10. **Applicable Criteria (Section 14.32.070):** After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the approval authority shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

- (1) The character and history of the use and of development in the surrounding area;
- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood;
- (3) Adequacy of infrastructure to accommodate the use. For the purpose of this subsection, infrastructure includes sewer, water, and streets;
- (4) The comparative numbers and kinds of vehicular trips to the site;
- (5) The comparative amount and nature of outside storage, loading, and parking;
- (6) The comparative visual appearance;

- (7) The comparative hours of operation;
- (8) The comparative effect on solar access and privacy;
- (9) Other factors that impact the character or needs of the neighborhood.

## CONCLUSIONS

In order to grant the permit, the Planning Commission must find that the applicants have provided a complete application, that there is substantial evidence that the Commission can rely upon to verify the nature and extent of the existing nonconformity, and that the expansion will not result in a greater adverse impact on the neighborhood considering the criteria listed under NMC 14.32.070.

1. At the hearing on October 28, 2013, the applicants withdrew the portion of their request involving Tax Lots 9500, 9700, 9800, 9900, 10100, 10200, and 10300, where the proposed storage area was to be located. Because that portion of the request was withdrawn, any issues raised regarding the storage area are moot.

2. During this same hearing, the applicants acknowledged that additional site plan information and detail drawings were needed for the Planning Commission to understand the full scale of development and its ramifications. This included additional details regarding how the park was developed and expanded over time, where drainage and public utilities are located, and how vehicle access will be provided for the three units that are to be placed on Tax Lot 10700.

3. Minimal information was provided for the Planning Commission to verify the nature and extent of the existing nonconforming trailer park. The applicants' written statement of the request and findings of fact note that a 1973 conditional use permit approved a trailer park with 18 sites on the property, and that the site has been used continuously as a trailer (mobile home) park since then. A site plan included with the 1973 conditional use permit (ref: Staff Report Attachment "E") shows the extent of the park at that time. In addition to the trailer park, it shows that the site contained cabins and an office. A set of plans submitted by the applicants for the November 12, 2013 hearing shows the cabins being removed and replaced with additional trailer sites. This set of plans was approved by the State of Oregon on October 12, 1979. An aerial photograph (ref: Staff Report Attachment "F") shows the boundary of the trailer park approved in 1973, as later amended in 1979. It encompassed the property currently identified as Tax Lot 10500. This aerial shows that the park as it exists today substantially conforms to what was approved in 1973 and 1979 as it relates Tax Lot 10500. The Commission concludes that the information provided is sufficient to establish that the trailer park is a lawfully established non-conforming use with respect to this property.

4. The records submitted by the applicants at the continued hearing on November 12, 2013, do not clearly establish that development of Tax Lots 10600 and 10800 was properly permitted in the past. Those properties are shown in red on the Attachment "F" aerial photograph. The applicants provided a map of Tax Lot 10800, dated May 1973, which identifies the property as a play area, not a location where recreational vehicle pads would be located. A map was provided showing development on Tax Lot 10600, dated November 1982; however, it is not signed or stamped by a government agency and therefore cannot be relied upon as evidence that the units were approved. Given this lack of evidence, the Commission determined that the most prudent course of action is to view development on Tax Lots 10600 and 10800 as an expansion of the nonconforming park.

5. After verification of the status of a nonconforming use pursuant to Subsection 14.32.060, the Planning Commission may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Commission shall consider the factors listed below.

a. The character and history of the use and of development in the surrounding area.

i. The applicants explain that the Surfside Mobile Village has been in existence since 1972. It is a 55 and older community where most all the residences are occupied on a full-time basis. The findings state that, as the submitted photos show, the park has been maintained in excellent condition. The findings indicate that to the west of the park across NW Hurbert Street is a commercial office building, a vacant lot, a duplex, and a single-family residence. To the north, the terrain climbs steeply and then levels out adjacent to SW 5<sup>th</sup> Street. The applicants own the lots on the south side of SW 5<sup>th</sup> Street, which overlook the park. One of the lots is developed with a single family residence. A portion of the property to the east of the park is city-owned open space. The area to the south across NW 3<sup>rd</sup> Street is residential. However, the south side of NW 3<sup>rd</sup> Street is a large hill that slopes up and any residences are set back a distance from NW 3<sup>rd</sup> Street. The houses are not readily visible from the park. Generally the area west of the property can be described as the Nye Beach Commercial area. The applicants own all the property within the boundary created by NW 3<sup>rd</sup>, NW Hurbert, NW 5<sup>th</sup>, and NW Lee Streets with the exception of four tax lots. The total area not owned by the applicants within those parameters is approximately 23,000 square feet, whereas the applicants own approximately 100,000 square feet. The property is only one and a half blocks west of Highway 101; and NW 3<sup>rd</sup> Street, which abuts the subject property to the south, is a major route from Highway 101 to Nye Beach on which the City is just finishing significant improvements. To the east of the property is an adjustable income apartment building, a commercial fueling station, and the former city sewer plant where the fire training tower is built.

ii. As noted in the application materials, the park is grade separated from adjoining residential areas. This includes the original park (Tax Lot 10500) and the expansion areas (Tax Lots 10501, 10600, 10700, and 10800). The tax lots orient to, and are accessible from roads internal to the park. Tax Lots 10501 and 10700 are accessed from NW 3<sup>rd</sup> Street, a collector roadway that serves as the primary access to the Nye Beach Commercial area.

iii. Based on findings and testimony regarding the character and history of the use and of development in the surrounding area, and based on the scaled-down application for expansion withdrawing the storage area, the Planning Commission determines that the expansion of the use would not cause any greater adverse impact on the neighborhood.

b. The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood.

i. The applicants explain that the use of the property does not result in noise, vibration, dust, odor, fumes, glare, or smoke other than what would exist if the property were used as a residential use that is allowed outright in the zone. The roads in the park are paved so there is

little if any noise from any vehicles moving in the park. The uses do not cause dust, odor, fumes, glare, or smoke.

ii. At the October 28, 2013 hearing, James Warren testified that he lives up off NW 3<sup>rd</sup> Street on Lee Street right above Tax Lot 10700. He noted that the park models that will be placed on that property will reside just to the west of him. Mr. Warren asked if the park models would be using generators and expressed his opposition to such use given the noise and proximity to his residence. The applicants responded that the park model units planned for this property will be placed on foundations and permanently connected to electricity, thus eliminating the chance that there will be noise from the units attributed to regular generator use.

iii. Based on findings and testimony regarding the comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood, and based on the scaled-down application for expansion withdrawing the storage area, the Planning Commission concludes that the expansion of the use would not cause any greater adverse impact on the neighborhood.

c. Adequacy of infrastructure to accommodate the use (including sewer, water, and streets.)

i. The applicants state that all sewer and water is already in place in the park. Three units will be added to Tax Lot 10700, but those units will be served by utilities already existing on the lot. The entrances to the residential and RV spaces are off NW 3<sup>rd</sup> Street and NW Hurbert Street, both of which are paved city streets. There are two entrances/exits on NW 3<sup>rd</sup> Street and two along NW Hurbert Street.

ii. At the continued hearing on November 12, 2013, the applicants provided a map, dated June 1973, showing the public utilities within the park. The map provided is helpful in establishing the location of distribution lines, culverts, and manholes. When comparing the map to the aerial photograph, and considering City easement documents, it is evident that manufactured dwellings and appurtenant structures extend over many of these facilities and the associated easements. This makes it difficult for the City to exercise its easement rights to access the utilities for maintenance purposes or to address failures. This has a direct bearing on the near and long term adequacy of these utilities to serve the subject development and surrounding areas. Considering that the applicants testified that a number of the units in the park are nearing the end of their useful life, the Commission believes that the encroachments can best be addressed by requiring that, as units are replaced, they be situated in a manner that does not impair the City's ability to exercise its easement rights and access these utilities. A condition of approval is attached addressing this issue.

iii. At the continued hearing, the applicants provided a detail drawing, which was helpful in establishing that suitable vehicle access can be provided to three park model recreational vehicle units on Tax Lot 10700. The placement of the units does not comport with the proposed lot pattern shown on the primary site plan. The applicants clarified that the detail drawing showing park models, and associated driveway with an emergency vehicle turnaround, controls over the general site plan. The balance of the park is served by a looped, paved private driveway.

iv. NW 3<sup>rd</sup> Street provides access to the park. This public street is improved with a paved

surface and sidewalk. NW Hurbert Street also provides access to the park. This street is paved but lacks sidewalks along the property frontage. While the Commission determined that the additional units added to the park on Tax Lots 10501, 10600, 10700, and 10800 generate sufficient demand to warrant a requirement that the applicants construct sidewalk along the properties NW Hurbert Street frontage, it recognizes that such improvements are of limited value if the balance of the street remains without sidewalk. Therefore, the Commission concluded that the most reasonable approach is to require that the applicants sign a non-remonstrance agreement consenting to participate in a local improvement district should one be formed in the future to install sidewalks along the entire block. A condition of approval is attached addressing this issue.

v. Based on findings and testimony regarding the adequacy of infrastructure to accommodate the use (including sewer, water, and streets) and based on the scaled-down application for expansion withdrawing the storage area, the Planning Commission concludes that the expansion of the use would not cause any greater adverse impact on the neighborhood.

d. The comparative numbers and kinds of vehicular trips to the site.

i. The applicants note that the addition of three spaces on what is now Tax Lot 10700 will add a minor amount of traffic. However, the additional traffic will be on NW 3<sup>rd</sup> Street, which has just been improved and is already a primary access to the Nye Beach business area. Further, the trips to the site will be residential in nature. The placement of three park models on this tax lot will be fewer units than could be allowed by an apartment building, which is an allowed use on the property.

ii. This park and its associated expansion areas is a residential development, and the types and kinds of trips associated with the park use are what would be expected in a residential area. Densities are slightly higher than what exists in nearby residential neighborhoods; however, this is offset somewhat by the fact that this is a park dedicated to senior living. Further, as previously noted, the park is isolated from adjoining residential neighborhoods by terrain, so none of the expansion areas will orient traffic onto local streets in these areas (i.e. all traffic flows to NW 3<sup>rd</sup> Street).

iii. Based on findings and testimony regarding the comparative numbers and kinds of vehicular trips to the site, the Planning Commission concludes that the expansion of the use would not cause any greater adverse impact on the neighborhood.

e. The comparative amount and nature of outside storage, loading, and parking.

i. The applicant's findings state that parking is provided on site and off the streets within the park. There is virtually no loading or unloading given the primary residential nature and use of the property.

ii. As noted, the applicants withdrew that portion of the original application that was proposing a screened storage area abutting NW 5<sup>th</sup> Street.

iii. Based on findings and testimony regarding the comparative amount and nature of outside

storage, loading, and parking, and based on the scaled-down application for expansion withdrawing the lots for the proposed storage area, the Planning Commission concludes that the expansion of the use would not cause any greater adverse impact on the neighborhood.

f. The comparative visual appearance.

i. The applicants state that there will be little change in the visual appearance from what currently exists. There will be three park units added on what is now Tax Lot 10700. As older mobile homes are replaced, they will be replaced with park model or new single-wide homes or RVs for permanent living that will be more attractive and newer.

ii. Based on photographs, findings, and testimony regarding the comparative visual appearance and based on the scaled-down application for expansion withdrawing the proposed storage area on the lots abutting NW 5<sup>th</sup> Street, the Planning Commission concludes that the expansion of the use would not cause any greater adverse impact on the neighborhood.

g. The comparative hours of operation.

i. The applicants note that the hours of operation will not change. These are primarily residential units. There are only seven RV spaces.

ii. Based on findings and testimony regarding the comparative hours of operation, the Planning Commission concludes that the expansion of the use would not cause any greater adverse impact on the neighborhood.

h. The comparative effect on solar access and privacy.

i. The findings indicate that there will be no effect on solar access. The park sits lower than adjoining property, and the replacement units that are proposed are single-story units so solar access to adjoining property will not be affected. Since the units sit lower than the surrounding property, there will be no impact on privacy on adjoining property.

ii. Based on findings and testimony regarding the comparative effect on solar access and privacy and based on the scaled-down application expansion withdrawing the proposed storage area, the Planning Commission concludes that the expansion of the use would not cause any greater adverse impact on the neighborhood.

i. Other factors which impact the character or needs of the neighborhood.

i. In their findings, the applicants list the following other factors to be considered:

a) The park has been in existence in close to its present form and operation since the 1970s. It is maintained in excellent condition. Under the proposal, the area of the park would increase, but the number of living units in the park would decrease from 1970s numbers.

b) The new park models will be an enhancement to the property.

- c) The geographical features of the area tend to separate the property from other residential uses in the area.
- d) The approval of this proposal will assist in providing safe, clean, and affordable housing for those 55 and older.

ii. The applicant's stated objective with this application is to clean up things with respect to the permit history of the existing park. The historical records are inadequate to support findings that required permits were obtained for the development on Tax Lots 10600 and 10800. The Planning Commission concludes that the most prudent course of action is to approve the development on these lots as an expansion of the nonconforming park and the analysis contained herein supports such action.

iii. Based on findings and testimony regarding other factors that impact the character or needs of the neighborhood and based on the scaled-down application expansion withdrawing the proposed storage area on the lots abutting NW 5<sup>th</sup> Street, the Planning Commission concludes that the expansion of the use would not cause any greater adverse impact on the neighborhood.

*j. The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.*

i. Other than their findings for the other criteria, the applicants did not specifically address this standard. The manufactured dwelling park is zoned R-4/"High Density Multi-Family Residential." This same zoning was in place when the park was expanded in 1973. A manufactured dwelling park is a permitted use, subject to specific standards listed under Chapter 14.6 of the Municipal Code. The standards require that the placement of manufactured dwellings comply with the Oregon Manufactured Dwelling and Park Specialty Code, as amended. That code, last updated in 2010, contains requirements for the installation of footings (to current seismic standards), drainage improvements, skirting, underfloor ventilation, and standards for electrical, plumbing, and mechanical connections that many of the units may not meet. The code also implements fire separation requirements for manufactured dwellings listed under ORS 446.100, including standards that require dwellings be spaced at least 10-feet apart, be at least 5-feet from a property line, and be on a space that is at least 30-feet wide by 40-feet long.

ii. At the continued hearing, the applicants provided a revised site plan showing that Unit No. 25 will meet safety standards. This was the only unit that did not appear to meet the ORS 446.100 fire life safety standards, as depicted on the original site plan.

iii. A condition of approval is attached requiring that new units placed within the park, including those that are to be constructed on Tax Lot 10700, adhere to the provisions of the Oregon Manufactured Dwelling and Park Specialty Code, as amended and that all units (existing and new) satisfy fire and life safety standards of ORS 446.100. This ensures that the degree to which park units do not conform to these standards will lessen over time.

iv. Another requirement of Chapter 14.6 of the Municipal Code is that recreational vehicle

spaces be connected to the manufactured dwelling park's water, sewer, and electrical systems. At the continued hearing, the applicants confirmed that to be the case.

v. Based on findings and testimony regarding the purpose of the current zoning provisions that cannot be satisfied, the Planning Commission determined that the expansion of the use would not cause any greater adverse impact on the neighborhood.

k. To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, and alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to:

(1) Surfacing or parking areas and landscaping;

(2) Exterior design of structures;

(3) Outdoor displays, storage, and signage.

i. Other than their findings for the other criteria, the applicants did not specifically address this standard.

ii. At the hearing, the applicants provided photographs and testimony regarding the parking areas, landscaping, and asphalt on the property. The applicants stated their willingness to sign a waiver of remonstrance in lieu of placing sidewalks along NW Hurbert Street at this point.

iii. Based on findings and testimony, the Planning Commission concluded that requiring the expansion be brought into compliance with provision of the Zoning Ordinance for surfacing or parking areas and landscaping was not justified. A condition of approval that the applicants sign a non-remonstrance agreement is attached.

### **OVERALL CONCLUSION**

Based on the application material, the Planning Staff Report, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate compliance with the criteria for the expansion of a nonconforming use found in Chapter 14.32 of the Newport Municipal Code (NMC); and, therefore, the requested alteration and expansion of a nonconforming use as described in the applicant's findings and supporting documents as submitted, is hereby approved with the following conditions:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. The property owner shall sign a non-remonstrance agreement consenting to participate in any sidewalk local improvement district that the subject properties would be part of should such a district be formed.

3. The applicants shall comply with all applicable building codes, fire codes, zoning ordinance requirements, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The applicants are responsible for obtaining the necessary approvals and permits pertaining to the proposed use.
4. As units are replaced within the park, the replacement units shall comply with the most current Oregon Manufactured Dwelling and Park Specialty Code, including the Fire and Life Safety Standards listed under ORS 446.100.
5. As units are replaced within the park, the new units shall be situated in such a manner that does not impair the City's ability to exercise its easement rights and access these utilities.
6. Because of the inadequacy of historical records, this approval for alteration and expansion of a nonconforming use shall serve as confirmation of approval for the manufactured home park development on Tax Lots 10500, 10501, 10600, 10700, and 10800, as described herein.