

Minutes
City of Newport Planning Commission Regular Session
Monday, November 14, 2011

Commissioners Present: Jim Patrick, Jim McIntyre, Gary East, Melanie Sarazin, and Glen Small.

Commissioners Absent: Rod Croteau and Mark Fisher (excused).

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, Patrick, East, Sarazin, Small, and McIntyre were present. Croteau and Fisher were excused.

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.

MOTION was made by Commissioner East, seconded by Commissioner Small, 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. Patrick opened the public hearing portion of the meeting at 7:03 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, bias, ex parte contact, or site visits. Both Patrick and Sarazin declared site visits to both sites. Patrick called for objections to any of the Planning Commissioners or the Commission as a whole hearing these matters; and no objections were raised.

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.

Patrick opened the hearing on File No. 4-Z-11 at 7:04 p.m. by reading the summary of the file from the agenda. He called for the staff report. Tokos noted that all relevant information was included in the staff report. The packet included a detailed staff report with attached background documents showing the development and the historic zoning. He included the ordinances giving the context of what happened over time. This request involves all of Block 15 of Bayley and Case's Addition to Newport. Most is owned by Nationwide Health Properties, but the vacant piece is owned by Pacific Communities Health District. Both owners have provided consent to this request for rezoning from R-3 to R-4 in order to make it easier for the current property owner to do normal maintenance to the skilled nursing facility located on most of the property. The property was rezoned to R-4 in 1975. That ordinance was attached to the staff report. Shortly after that in 1976, the nursing facility was permitted and built. In 1982, when doing the comprehensive zoning code amendment, it appears that in changing the zoning maps, the property was inadvertently rezoned back to R-3. That ordinance, which is attached to the staff report, listed some 26 different ordinances it intended to repeal; but this one wasn't listed. However, there was a catch-all phrase that any other conflicting ordinances were repealed. It was pretty clear that this ordinance from 1975 was not in front of anybody at that time. The property has contained the skilled nursing facility for a very long time; since 1976. This is an area where we have established medical facilities within the community. Any request to change is in the public interest and general welfare. The analysis by the applicant and further in the staff report provide sufficient reasoning to find that those two standards are met in this case. Tokos also included analysis addressing the TPR, which we have to insure any time a zone change is being done that it will not impact the transportation network. In this case R-3 and R-4 are so similar. They allow comparable density. We already know the existing use. The zone change will not be that much different. When looking at rezoning, we must be cognizant of the fact that the zone is for residential purposes. If we rezone to where we won't have homes built, it can impact availability of affordable homes. But in this case, this has already been developed for years with nonresidential. The zone change takes the nursing facility from nonconforming to a use permitted out right, which is, by the record, what was trying to be done in 1975. Tokos said that if the Commission decides this meets the standards for a zone change, the Commission should recommend this favorably to the City Council. If not, the Commission should state why they believe it doesn't and provide that recommendation to the Council.

Proponents: One of the administrators, Yvonne Yates, 902 Arthur Ave, Cottage Grove, OR, was present on behalf of the applicant. Small had a question for her. He wondered if there was a specific issue that made them aware that the zoning had rezoned to R-3. Tokos answered that question for Yates. He noted that information was city information. When the applicant came in to do some modifications to the structure, city staff figured out that the property was zoned R-3 not R-4. We had conflicting maps. That is why we came up with the ordinances included in the packet. We had it flagged in the GIS as R-4; but all the paper maps had R-3. Tokos looked at the research when we did the conversion to the GIS map, and that is when we found it. There were no more proponents present to testify.

Opponents or Interested Parties: There were no opponents or interested parties present wishing to testify.

Patrick closed the public hearing at 7:12 p.m. for Commission deliberation. McIntyre said it appeared to him that they requested R-4 many years ago, and it had been changed at one time. Maybe due to lack of understanding or notification, it got changed back to R-3. Keeping it in R-3 makes it difficult for them to do maintenance and modification. McIntyre said that he sees no reason it shouldn't be approved to go back to R-4 zoning. Small agreed. He said that his impression is that all along the operation has been under the assumption they are under an R-4 designation. He doesn't see that the change will cause an adverse impact. Small doesn't see any reason not to change the zoning back to R-4. East agreed as well. He thought it needs to be changed back to R-4 to correct a mistake made years ago. Sarazin also agreed. She believes it is just an error that needs to be corrected. She thinks the intent was to make it R-4, but it got changed back. Patrick agreed it was just fixing a mistake.

MOTION was made by Sarazin, seconded by McIntyre, to recommend to the City Council to approve the zone change for this property from R-3 to R-4 as requested. The motion carried unanimously in a voice vote.

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.

Patrick opened the public hearing for File No. 3-SV-11 at 7:15 by reading the summary of the file from the agenda. He asked for the staff report. Tokos noted that in the packet was the staff report that outlines the relevant approval criteria. He explained that this is a petition to vacate the eastern 10 feet of SW 12th Street abutting those properties in Block 9 of Plan of Newport. Tokos noted that the standards that must be met in order to approve a street vacation are that the consents of the owners of the requisite area have been received; that notice has duly been given; and that the public interest is not prejudiced. He said that there is also an additional standard that applies, which has to do with consent from the Port of Newport because the property is within that notification distance. This matter is scheduled before the Port Commission for their consideration later this month. The staff report outlines the property owners within the requisite area from which the petitioners obtained consent. All the petitioners abutting the right-of-way have consented, and they have obtained consent from owners of 2/3 of the land area within the notification boundary. A map showing those specific properties is attached to the staff report. Tokos said it appears they have met the requirement that consent has been obtained. Proper notice has been provided for the Planning Commission hearing and will be for the City Council hearing. He said the question really deals with whether the public interest will be prejudiced with this vacation. Tokos noted that in the staff report, the Commissioners have the statement from the Public Works Director, who is opposed to vacating any of this right-of-way. His concern is that we have a substandard street that is not a fully-improved right-of-way. When this right-of-way is improved in the future, the City will need those 10 feet for widening the street and maintaining utilities, for sidewalks, etc. The Public Works Director's stance is that we shouldn't be vacating rights-of-way where we have unimproved streets, because we will improve it sometime. Tokos explained that the petitioners spell out that they would like to have these 10 feet for yards. Because of the steep bluff, their homes are built close to the front property lines. Tokos said that utilities are already in place out there. The Commission does have the ability to recommend utility easements be reserved if they feel it's appropriate. That can also be for sidewalks. Whether the Port Commission approves it, which is something required by state law, is something the Commission can pass along to the City Council. Tokos said he doesn't believe it will be a big issue for the Port Commission. He said the main question is whether or not in the long-term this is an appropriate action to take. The City doesn't get the property back once it's vacated. Sarazin asked how specific Attachment "D" was because it shows quite a few encroachments in the right-of-way. Tokos said that it isn't survey accurate. There are a number of encroachments that have been granted. Because it's not survey accurate, he can't say it's perfect; but it's relatively close. Roof lines are very close to property lines. Some pre-date building codes, and they were probably guessing at that time. East asked if there were any right-of-way issues from Newport Rehabilitation. Tokos said that he believes they were on the list providing consent. Sarazin asked for confirmation that the highlighted areas were the properties the petitioners received consent from, and Tokos confirmed that. East asked if there were concerns from the City. Tokos said that the Commissioners saw what the Public Works Director said. Tokos said that there are utilities in place in that street; although he can't say where they all are. The water meters for the individual units would extend into this area. The paper maps would suggest that main lines run in this area, but they are not survey accurate. The paper maps suggest that they don't run on this side of the street. The Commission can reserve utility easements. Tokos would suggest that if they are inclined to grant the vacation, that the Commission would do that because there are utilities there. That is how it is typically done unless you know there are no utilities whatsoever in that particular right-of-way. Tokos said there is information in the packet that the point the City Engineer is making is that the right-

of-way should not be vacated because at some point the City is going to need it. McIntyre asked what the reason for the request was, and Tokos said that the petitioners may be able to answer that better.

Proponents: Cheryl Huff, 821/825 SW 12th Street, Newport, came forward. Huff explained that she is doing the leg work for five properties. (Ashley Forsyth, 1211 SW Bay St, added a few comments here and there.) It involves the entire block from Case to Bay Street. Explaining why they are applying, Huff noted that the street was platted in 1880 at 60 feet; and 50 feet is the requirement now. They are on the bluff above the Bay. She said that nobody has plans to do anything with the property. They won't do anything on the Bay side. When the Lalacks had their lot surveyed, Huff found that the platted street is 8 feet from her house. The neighbor on the left has his garage 4.5 feet in the right-of-way, and it's probably been there for years. They have a concrete walkway in the right-of-way that could have been there for years. Huff said that rather than apply with encroachments, it made more sense to apply for the 10-foot vacation, which would still leave 50 feet for the City. There is a natural gas line there that is 8 feet from their current property line. The gas company needs a 5-foot easement on each side of the gas line. They wouldn't be building anything that close to the gas line, but it gives them a few more feet. Huff noted that one house is in the right-of-way and several concrete driveways. She again said it made more sense for the vacation. She said they got great response from the others. She said their properties are right behind the rehab center, which had no objection. Huff said that the engineer said that he didn't want to grant it just for landscaping, but there are already structures in this right-of-way that have been there for 40-50 years. The vacation would bring this more in line of what is on the ground. Forsyth said that his understanding is that the water meters are on the other side of the street. They had all the gas lines and water lines located, and there would have to be some sort of utility easement. He said it's mainly because of all of those things in the right-of-way. The garage is 4.5 feet into the right-of-way and has been there for 40 years. Huff said until she saw the stakes, she thought that was their yard. It is grass. It's an unimproved road. A partial section is paved; and the Werders paved that part. She noted that they are behind the hospital and the rehab center where there is very little traffic. They found that people's GPSs send them down Bay Street to go to the water front, and then it's a dead end. Forsyth reiterated that they thought that rather than do encroachments, it would just make sense to apply for a 10-foot partial vacation, which would leave the 50-foot requirement for the street. Huff said she thinks the City grades that street, but the property owners treat it in the summer for dust. East asked if it's just basically access to their houses, and Huff said that the public traffic is by accident. She noted that the other end of 12th is even narrower. People from the hospital use that to go to the bridge. They go down 11th in front of the rehab. She said they are on the bluff and have narrow lots. Responding to a question from Sarazin regarding the survey, Huff said that the Lalacks had their property surveyed and that is how they saw the property stakes for the right-of-way. The stakes are inside the Piccianos' fence. She noted that property is probably the one most in the right-of-way. Because both neighbors had their properties surveyed, they have a pretty accurate line of where the platted street is. Patrick asked Huff if the City reserved the 10 feet as utility easement, if they had objections. Huff said they only would do a little landscaping. Patrick said that over an easement you can't put a structure; but you can do landscaping. Huff noted that there are already driveways in the right-of-way. She said this petition was not precipitated by having to build something. Patrick noted that you can count the 10-foot easement as part of the setback, which is 20 feet for a garage. In answer to McIntyre, Tokos said that his sense is that the building extending into the right-of-way is a very old structure. The City could make them take down the garage if there was a utility easement and they had to dig there. Patrick agreed that when you dig you have to have a certain distance from structures. Huff noted that the gas company requires 5 feet from the gas line, and it is 8 feet out from their current property line. For confirmation, McIntyre asked that if this request were not approved, it doesn't require them to tear down buildings until Public Works decides to improve the street; and Tokos said that was correct. There were no other proponents present wishing to testify.

Opponents or Interested Parties: There were no opponents or interested parties wishing to testify.

Patrick closed the public hearing at 7:40 p.m. for Commission deliberation. Sarazin said that she is torn on this one. She sees both the public's situation and the Public Works Director's side. She said that she lives on a similar street that isn't improved and is, in the meantime, using the City right-of-way for a yard. But, she would be happy to let the City have it back if they paved the street. Sarazin said something needs to be done to clean this up. She said that granting 10 feet subject to a utility easement would be feasible, but she doesn't know if that would benefit the property owners in any way. The purpose of a utility easement is to have the right to dig it up and put lines in. She said she sees Public Works' position; but she just doesn't see it happening in that area. East said that when looking at the pictures, 10 feet means it would improve their front yards quite a bit as long as they understand that in the future they have the possibility of having utility companies needing to tear up anything they put in, and they are responsible for any repairs after the fact. East said he doesn't really have a problem with granting their request for 10 feet of vacation as long as they understand an easement is maintained for utilities. Small said that he understands that with 60 feet of platted unimproved street following the vacation it would still provide enough space to have a street with sidewalk with the provision of a 10-foot easement. He doesn't think that is unreasonable. McIntyre said that he agrees with Public Works that the City maps out these streets and areas to keep for the City so that at some future date streets can be improved in order to be uniform throughout the City. He said that if we grant the vacation and give away 10 feet of street access, we are going to have non-uniform conditions throughout the City. McIntyre is not in favor of giving it away. He said once we give it away, we can't get it back. Even if we keep an easement, it is not the City's anymore to improve the street. If in the future, other owners want to have their street improved to be uniform with others, then there is a missing section. It breaks the uniformity of the street and the flow of the traffic. He believes the City just needs to keep it. If it is not given back to the homeowners, it is still usable for the homeowners as they are using it today until the City decides to improve it. He said that it would not change the status one bit from where it is today by denying the street vacation. Patrick said that he sees McIntyre's point, but looking at the map, you can

see a 40-foot street at the other end of 12th and an improved cross street that looks like 50 feet. Patrick said that there isn't such a thing as consistency of streets within Newport. He said that as long as we keep a utility easement, he is inclined to grant the request. He doesn't believe it is going to help the homeowners a lot, but it will at least make it so they won't have to worry about it too much. He said the only other thing is to have it surveyed and find out where things are before granting a full vacation. Patrick thought it best to keep the 10-foot easement. He didn't see any problem with cutting the street to 50 feet with a 10-foot easement. McIntyre said that Public Works seems to have a reason not to give away street access. Tokos noted that if the Commission makes a favorable recommendation to the City Council to make it clear if this easement is for utilities alone or utilities and sidewalks. He said that the easement can be for both, but you want to be clear. McIntyre wondered what the benefit of vacating this property was to the owners. He said he doesn't see that it is benefitting them other than maybe for yards, with which some currently are. He can't see what they are gaining from the City vacating the street. Patrick said they would gain some setback because they would have 10 feet. It would make their properties more usable, especially with the bluff. He noted that they are nonconforming as it is and would still be nonconforming. But, if we grant the vacation with a utility easement, they would be closer to meeting setbacks. He noted that the Commission has made decisions in the past that if we can get a property closer to conforming, it is okay. As it stands right now, they are not going to be able to do anything. McIntyre said that he still is looking out to the future and what we want the City to look like in 10 to 15 years from now. He wondered if we want nonconforming streets or if we want them uniform. Patrick said that the streets will never become uniform, and Sarazin agreed. McIntyre said that what the city engineers had in mind when laying out the streets was keeping the streets uniform or having the ability to do that. If we grant vacations of pieces of street here and there, pretty soon we don't have uniform streets; and it makes it very difficult for traffic or uniform development in the future. McIntyre said he would be in favor of granting this vacation if it would serve a real great purpose, but he doesn't see that. He sees a large benefit of not granting because it gives the City the same ability of keeping it the way they have it today. We would still have one homeowner encroaching on the street, and sometime in the future he is going to have to tear down part of his garage. The other property owners are currently using part of that land for lawns or driveways, and they have the same access until the street is widened. In answer to a question from Sarazin, Tokos noted that the subdivision code currently requires sidewalk on both sides of the street. Patrick said the practical thing is to get sidewalk on one side. Tokos said we are pushing for both sides in subdivision discussions. East noted that we have a lot of subdivisions that don't have sidewalks. Tokos noted that we are retrofitting 3rd and 6th right now under current budgeting. It will happen incrementally. On those two streets it's not happening on both sides because we just didn't have the funds. Patrick said that McIntyre has a point in not granting the vacation just for lawns, but one thing this is helping with is setbacks. East agreed it would improve setbacks. If we grant the vacation with an easement that is a combination for sidewalk and utilities, we are achieving one thing. Patrick asked if we would want sidewalks in that utility easement, and East thought so. McIntyre wondered if they can derive setbacks from the curb if there is an easement. Tokos said that setbacks are from property lines, and there have been variances granted on this street. He noted an example is that the Planning Commission granted a "0" lot line to the Lalacks because of the terrain.

To gain further public input, Patrick re-opened the public hearing at 7:55 p.m.

Proponents: Bill Lalack, 811 SW 12th St. Lalack noted that the damage was already done to the street. He said the only logical place to build a street is on the west side. The properties are pushed so tight to the bluff, and they have gone through numerous conditional use hearings because of that. He said one advantage to the City is that the property owners at 811 prior to 2006 were paying about \$800 in taxes. When they wanted to improve the property, they couldn't. They received the "0" setback agreement and built, and the taxes are now \$7300 a year. He said that nobody in the future can do anything because of that situation. You are talking about tearing down houses that have been there for 50-60 years. He said this vacation would do some good housekeeping and would be a benefit to the City. There still would be the 50 feet required by the City code now. McIntyre asked what the property owners gain or benefit from by getting this vacation of 10 feet. Lalack said that for him personally, right now they are using their house for a B&B. He had to get an easement from one of his properties to the other at a cost of about \$1,000. If he had the 10 feet, he wouldn't have that easement on his property for parking. It would clear up a lot for him. As far as setback, he said he has probably done all that he is going to do; but if others go to improve, they will have to go through a bunch of hoops otherwise. Sarazin wondered if that 10 foot was vacated, would people making that turn onto 12th Street be going onto the property on the other side. Lalack said that if the street were improved, that whole intersection would have to be changed. He described that whole street as a cobbled-up mess. He said looking down the street; it would line up more if it were on the west side.

Ken Huff, 821/825 SW 12th St. Huff said that one thought that came to him when McIntyre asked the question about what the benefit would be is for security partially because there is 60 feet there. He said who is to say where they will want to put sidewalk or street in the future. He said their property will be secure, and they will have a proper setback that they never have had. The vacation would give them the peace of mind of having a piece of property that is not going to change even if there is an easement. He noted that with the vacation, his next-door neighbor's garage is going to remain secure unless they have to put utilities there. He thought the water main is more toward the other side where the rehab center is or probably right in the center. He said the phone is outside the 10 feet; the gas line is within that 10 feet. There were no other proponents wishing to testify.

Opponents or Interested Parties: There were no opponents or interested parties wishing to testify.

Patrick re-closed the public hearing at 8:01 to continue deliberation. Patrick said that he thought vacating the 10 feet but keeping a 10-foot utility easement with the ability to put in sidewalks in that 10-foot easement strikes a compromise between what the City Engineer wants and what the petitioners want. East said that with any luck there are no utilities within the 10 feet, but at least the Utilities have access. McIntyre said there wouldn't be a 50-foot wide street if you took away 10 feet. Patrick said 36 feet for the street and 6 feet on each side for the sidewalk adds up to 48 feet. Tokos said the current subdivision code requires 50 feet of right-of-way for a local street. McIntyre said that he doesn't understand why the Public Works Director is so adamant about not vacating public right-of-way. Patrick said because when the Public Works people have to dig into that, they can only get so close to the property line to dig. Patrick said that he thinks an easement as discussed gives the property owners their certainty, gives the City Engineer what he wants, and would reserve the right to put sidewalks in that easement too.

MOTION was made by Commissioner Small, seconded by Commissioner Sarazin, to recommend approval of this request to vacate the eastern 10 feet of SW 12th Street along Block 9, Plan of Newport, with the provision that the City preserves an easement for utilities and sidewalks subject to Port Commission's consent. The motion carried unanimously in a voice vote.

F. Unfinished Business.

1. Update on consultant selection from the RFPs for consulting services for the Newport EOA. Tokos noted that we received five proposals. Commissioners McIntyre and Croteau, Port Manager Don Mann, and Greater Newport Chamber of Commerce Executive Director Lorna Davis will join Tokos on Wednesday, November 16th to go through those five proposals and score them. Tokos said that we had competitive proposals. At the City Council work session on November 21st, Tokos will update them on the process, and we will probably have a consultant on board. Tokos is meeting with the Chamber of Commerce and the Economic Development Alliance of Lincoln County on how to pull together an ad hoc committee. He will get a list of names together to vet with the Commission.

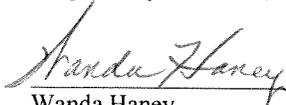
2. Update on OSU HMSC dynamic revetment construction project (File No. 6-CUP-10). Tokos noted that OSU HMSC is constructing revetment. A letter was included in the packet outlining what they are doing. He just wanted to make sure the Commissioners were aware of it. He noted that because of the nature of the work they are doing in the water way, they have to take advantage of the low tides so they did receive permission from the City Manager, which is required when doing construction activity after 10:00 p.m.

G. New Business. Patrick asked about an upcoming meeting, and Tokos confirmed that on Wednesday, November 16th at 6:00 p.m. in the Guin Library at the HMSC, a City Council/Urban Renewal town hall meeting will be held. He said it will be discussion about urban renewal projects primarily. They will be doing a series of these town hall meetings.

H. Director's Comments. Tokos said this had already been covered with the town hall meeting discussion.

I. Adjournment. Having no further business to discuss, the meeting was adjourned at 8:10 p.m.

Respectfully submitted,



Wanda Haney
Executive Assistant