

MINUTES
City of Newport
Planning Commission Work Session
City Hall Conference Room "A"
Monday, November 28, 2011

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

Citizens Advisory Committee Members Present: Lisa Mulcahy.

Citizens Advisory Committee Members Absent: Dustin Capri and Bill Branigan.

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

Chair Patrick called the Planning Commission work session to order at 6:00 p.m. and turned the meeting over to CDD Tokos.

A. Unfinished Business.

1. Discuss the Elimination of "Timeshare" definitions with Vacation Rental Code Update. Tokos had provided a memo in the packet and hoped that everybody had looked at it. He noted that the definitions that are in italics are existing definitions in the code. He said what it tries to do is define it as "timeshare project" where it's divided up on a monthly basis and then turn around under "residential unit" for this and prohibit them in certain districts. Tokos said the Commission has a couple of different options. One approach is just to delete the definitions and trust that the new vacation rental definition will cover them under transient rentals; so why try to parse it out. Or we can try to parse it out and define timeshare comparable to vacation rental and cross-reference it to the vacation rental definition. Fisher asked if there was any significance to the number 11 used in the definitions. Tokos wasn't sure, but thought it had probably been worked through. Patrick thought it may tie to the State. Tokos said that in terms of land use, there is no reason the City has to regulate timeshares; and many jurisdictions don't. Fisher asked if it would be easiest just to delete the definitions; and Tokos said that is his sense. Timeshare is ownership. There is some personal ownership in that residence, so the expectation is that they will utilize the premises the same as an ordinary residence. If we are talking about owner-occupancy, do we really need to set occupancy? Tokos said that if it's the Commission's view that a timeshare is no different than a rental, then we should be handling it just like a vacation rental. Or they may view it as an ownership. Sarazin asked where there's an ownership interest, if they turn around and rent it out, is that already under vacation rental. Tokos confirmed that. There was brief discussion about where there are some timeshares in town. East said that they still have owners; but some, like the Embarcadero, rent them out when not in use by the owner. McIntyre wondered how we would verify they are using it as a timeshare versus a vacation rental. He said it seems it would be very difficult to determine they are doing that unless they advertise it. Tokos said that is probably the way we would know. Tokos said if we keep these definitions, he would probably clean them up a little bit and cross-reference them in the vacation rental code. Tokos said that he received a call from Bob Berman, who was on the ad hoc committee; and his thought was to keep timeshares banned in R-1 and R-2. Tokos said the definitions are not very good; but the way it is now, we're trying to capture it under "Residential Unit" where they are banned under R-1, R-2, and R-3. Tokos noted that he had also attached comments received from another committee member, Lee Hardy. He said another thought is that what's the difference between a timeshare and someone who owns a second home here and doesn't come out often. McIntyre said that timeshare is the purchase of a specific slot of time per year for that unit. You do not own the unit; you own the time. If it's a single-family residence where they visit once a year; they own the home and could come anytime they want. With a timeshare, they have a specific time. Tokos added but they do have ownership interest. Patrick said that if we treat them as timeshare, we don't currently do anything with existing timeshares. East noted that most are professionally managed. Fisher doesn't think it is worth getting embroiled in this. Croteau agreed if we get to them through transient rentals. Tokos said that somebody could set up a timeshare development where they are turning the property over on a two to three week basis. McIntyre said that as he understands timeshares, there are a number of people that own a percentage of undivided interest in a property. Tokos said we could set it up such that at some point of time, if they use it as a rental, it will get hooked under the vacation rental code. The general consensus was to eliminate the definitions and just drop the reference to timeshares; they are what they are. The rationale is that it is a different type of occupancy; and anybody that owns a timeshare has vested interest and will be using it more like a typical residence. Vacation rental is a little different; and much more transient in nature. Tokos said all timeshare definitions will get dropped. The "residential unit" definition will need to be kept because throughout the code it is used interchangeably with dwelling unit. He will cross-reference them.

2. Continued Review of the Draft Ordinance for Tree City USA Designation. Tokos wanted to pick up where the group left off last time, which was on page 5 under "Planting, Maintenance, and Removal of Trees". He noted that this whole package is about putting in some standards; the minimum set of standards we need. First of all, in order to get the designation; which is a

Council goal. Also, it gives folks a sense that this is a community that cares about its urban tree canopy and is doing something to maintain it. The standards put into place are things we should be already doing to help maintain a healthy canopy and prevent damage to infrastructure. Fisher noted that in the Seaside code, they broaden it from just within the city to all areas owned by the City; and he wondered if that would also be effective for us. Tokos said that is picked up here in this proposal. Tokos noted that there is a no-cost permit obtained from Public Works right now when working in the public rights-of-way. With that permit, Public Works can confirm that what people are planting in the right-of-way meets these standards. When planting trees along public streets, they shall adhere to only those species listed in the Tree Plan and spacing as recommended in the Tree Plan. The Parks and Recreation committee will develop the Tree Plan. Croteau asked if “along public streets” means the same as “public rights-of-way”. Tokos said he was using streets to be more specific when he put it in there. He said that going back to the definition of right-of-way, they are slightly different. We want to expand this to include other City properties, but he targeted plantings to along streets because that is where we have infrastructure that we don’t want damaged. Patrick noted that where it says within 10 feet of overhead wires should not just be in the right-of-way. If a pole is sitting on the property line, and someone plants a tree within two feet of the property line, it will be in the wires; which is what we are trying to get away from. Tokos said that under “Planting of Trees” he could just say within the public right-of-way instead of streets. East asked if the permit is just over the counter or if a plot plan is required. Tokos said a scaled drawing is required under item ‘C’ above but will be clarified with 8” dbh. Tokos said that he did get comments back from City Engineer Tim Gross; and he did have a concern with the 5 feet on item ‘A3’ on page 5. His thought was to just make it 10 feet from all city underground lines. Tokos said the trick is to pick a number that will provide a reasonable amount of protection and yet is not so ridiculous that they can’t plant anything in the right-of-way. He said we could take it down to species. Patrick thought we should pull it and give it to the Parks and Recreation committee to figure out. He didn’t think we had enough information to find out. Tokos said the reason it is spelled out in this code and not in the Tree Plan is that there is a chance it will not be applied properly. If we get it in the code, it is clearer; but it’s a total policy call. He said it is more about visualizing the developed form of Newport and what makes sense in this community. He wondered if these distances make sense from that perspective. Fisher raised a question about the middle paragraph on page 5 that exempts City staff from obtaining a permit and just having to submit paperwork. He wondered who they would do that filing with. Tokos said the thought is here that the Parks Department will have staff review the Tree Plan and make statements that they have read it and will adhere to it. The idea is not to have those who are working on parks having to get a permit every time. That is why it is set up with Public Works. They don’t do tree maintenance. Fisher said he would like to know that this plan is going to some committee that is actually going to look at it. Patrick wondered if we would get into much problem with water laterals if we use 10 feet. Tokos noted that the City is still trying to inventory all of our lines. We have some work to do to understand our infrastructure. Patrick said that if there are three different locations for sewer, water, and electric laterals, that will take up 60 feet of room and they can’t plant trees. Croteau noted that it limits some large trees, but small trees would be okay. He said to let someone else define small. Tokos said there would be exemptions for small trees that are in a list put together by the Parks committee. People will be able to select those species most compatible. Patrick said we could leave in the 10 feet and let the owners deal with it later, or are we talking 10 feet within City property. Tokos said to let him confirm with Public Works what the City accepts as our responsibility for maintenance. If the owners are responsible to maintain laterals, then that is their business if plantings cause problems with that. Tokos noted that item ‘A4’ talks about setbacks from curbs. Sarazin noted that in that sentence, there should be a comma between “trees” and “three feet”; not a semi-colon. Tokos noted that number ‘5’ states that trees can’t be planted in the vision clearance area. Number ‘6’ sets the distance from fire hydrants. Item ‘B’ provides that the City has the right to maintain and prune trees in the public rights-of-way and gives the general authority for the City to do so on their own properties. Item ‘C’ talks about City staff, and Public Works would be the oversight department since they handle the right-of-way permits already. Item ‘D’ would deal with, if Parks and Recreation puts in a Heritage Program, the City Manager has the right to remove any tree to resolve an unsafe condition or prevent damage to public improvements. McIntyre asked who makes that determination, and Tokos said it would be the City Manager. Croteau thought there was no question that we need this “out”.

Moving into the “Encroachment Permit” section, Tokos noted that the existing code says they have to get an encroachment permit in order to plant trees. We don’t want to have to go through that for planting trees. Tokos noted that the right-of-way permit authorizes work in the right-of-way, but an encroachment permit is more permanent (such as for a retaining wall or fence). There is a legal agreement that goes with that and is recorded and runs with the title of the property. He said that we don’t want that or trees, so this is removing that reference. McIntyre asked is there is a land use action like the Commission had last time where an area is vacated and an easement is created, are they going to be able to plant on the easement. Tokos said if we don’t set out specifics for easements, then this governs it. McIntyre thought we would want to do that so they don’t plant trees over easements. Tokos said that gets into what the City should put in public easements. Easements typically have their own terms. We don’t want to run into a conflict. Patrick said we can throw in something about if it conflicts with an existing agreement. Tokos said that under “Exemptions” he just removed an exemption that is no longer needed. We don’t want that exemption in there.

Tokos added language to the Subdivision Code and Landscaping Code just cross-referencing to the Tree Plan. Street trees were added to the subdivision code, and plantings were added to the landscaping code. He just put the cross-reference in there so it doesn’t get missed.

Under "Vision Clearance", Tokos noted that the City had three provisions for site triangles. This provides that street corners be maintained in a manner so vehicles can see around them and are safe. The Zoning Code had one standard, and the Municipal Code had two others. He tried to clean that up so there was only one standard. That is what changes in the Nuisance Code. It just standardizes the language. The codes had 30 inches, 36 inches, and 3 ½ feet. He just went with the higher standard referenced in the code already so that it is consistent. He deleted the whole "Intersection Safety" section. We had two competing ones. We are keeping the one in the Zoning Code, which makes available the variance option. Tokos noted that the Planning Commission recently did a variance for the Kennans. It seemed logical to keep that administrative relief in there. It needs to be in the Zoning Code to have the variance. Tokos talked to Public Works and the Police Department because we want to make sure we are all working off the same code. The big change in terms of the Zoning Code is to go with a definition that people can easily figure out. Tokos said the trouble with using property lines for the measurement is that many folks don't know where their property lines are. We have to tell them to get a survey, and the conversation breaks down. The measurement can be from the curb line or pavement so they don't have the cost of a surveyor going out there. Some jurisdictions do that. That is what he has in here. He reworked it with that concept in play. Pages 13 and 14 explain that 35-foot triangle. Tokos said that we can reference this to standard engineering manuals. We would be justified in doing that, but it is hard to enforce in this community. Tokos wondered if 35 feet is reasonable and added that it's in the ballpark of a lower classification of streets. He noted that there is language in here that gives the City Engineer the right to modify it in certain circumstances. Patrick thought that 42 inches might be too tall. Tokos asked if it should be less, like 36 inches. Fisher said as long as it is consistent. The consensus was to change it to 36 inches, and Tokos will make that change.

Tokos said he will make these changes. He noted that this needs to be vetted with the Parks and Recreation committee, and they will look at it in their December meeting. It will come back to the Commission after that. Mulcahy asked who takes care of plantings in the rights-of-way. Tokos said that Parks and Recreation has done most of the vegetation management. Public Works will mow. When it comes to actually maintaining plantings of trees, shrubs, and flowers, it's Parks and Recreation. The roles of those two departments are changing. Tokos said but to be clear, if the right-of-way is in front of your property, you are responsible for it.

3. Omnibus Review of Codification of the Zoning Ordinance into the Municipal Code. Tokos said that he has been working with City Recorder Peggy Hawker on getting the Zoning Ordinance codified. It is the last one not in the Municipal Code. The City's objective is to get all codes into the Municipal Code so they are all in one place. As part of that, this was an opportunity to just do little things that are not coming as code packages. This picks up some of those little things. Tokos went through the markup copy in order to share what some of those changes could be. He noted that there are a number of changes in the "Definitions" section. He said that the rationale for each is shown on the side. The definition of "applicant" is being added. That is used throughout the code and should be defined. Fisher said that one thing that bothered him on an application was that just the renter was applying; not the owner. He thought that just a renter shouldn't be able to do that. Patrick agreed that at least they should get the permission of the owner. Tokos said this definition does tie to the owner. Going on, Tokos noted that we don't need to define "condominium hotel". He found it only in the Iron Mountain Impact Zone section; so that needs to be deleted. Under "dwelling unit", Tokos recommends getting rid of the last part. He said that a mobile home is a dwelling unit and should be defined as such. "Land use action" is a term that is used and really needs to be defined. "Land use decision" should cross-reference to the State Statute because it gets changed every few years. If we try to define it in the code, it will be inconsistent with state law in a few years. The number, ORS 197.015, won't change. Now "ministerial action", which is basically an action that is not a land use decision, will be defined. The definition of "nursing home" would be added. We need to clear up what the difference is between nursing home, residential care home, and residential facility. Small had a concern about being careful using a politically-correct term. His concern was using "mental retardation" under "residential care home". Tokos said that is out of statute. He put them in there because he thought it was best just to match up with statute from the Department of Human Services. Small thought it better to say something like "with mental or other developmental disabilities". Tokos said he would change that. He said that "residential facilities" is cleaned up, and a state department that doesn't exist anymore was removed. Tokos noted that we didn't have a definition for "setback", and it is used all over the place. "Street" is cross-referenced now to the Subdivision Code. That should be the same. Tokos noted that yards should never have been referenced to structures. Setbacks apply to buildings. A building is something that supports or shelters. Planter boxes or fences would be structures. It should be put in the code that temporary structures permits apply to anything, not just buildings. We have been doing this administratively. Per the building code, the building official doesn't sign off unless it's up for more than 180 days. In some cases, the Fire Marshal reviews those that are there less than 180 days. There is already language in the temporary structures code that says that. Tokos put in language that if the structure is there for more than 12 months, they have to do a bond or cash deposit. If something is there for two years, and they get a third year extension, we have issues getting it off the property. It will now be a ministerial action, not a Type I. The standards are clear and objective so we don't have to do a land use process. Under "required yards" on page 7, it is clarified that it applies to buildings. 14.11.040, "general exceptions to required yards", was kind of hard to figure out. If you have established buildings in line that are less than what is required for front yards, you can build to the established building line. He put alternate language in that reads a little bit better. Everyone thought the current language was better. Patrick asked what about if it's on a corner lot. Tokos said you would basically get an average; if one has a 20-foot setback and the next has 10 feet, you can go to

15 feet. The “screening and buffering” section is the buffer requirement between residential and non-residential uses. The language basically now says the non-residential has to maintain a landscape buffer and then construct a fence. Tokos just left the language that they have to plant a buffer. All were in agreement that this seems reasonable.

Under the “geologic hazards” section, the only thing is that Tokos is trying to standardize to 14 days where possible because 14 days work better for notices of any kind so we don’t end up on odd days where we have to recalculate.

Tokos noted that the “beach and dune area” section probably needs more, but for this process he added “applicability” explaining when this permit is required. It is required when development is proposed within the beach and dune areas identified on the Comprehensive Plan Ocean Shorelands Maps. Item ‘C’ is added under procedure basically to give what process we are to use. He put in Type II administrative decision (staff level), appealed to the Planning Commission.

Tokos said that the “Iron Mountain Impact Area” section has a lot of references to the SIC codes that he would like to trim down by using the new use classifications. He didn’t have time to map that all out. Everyone was okay with him doing that.

Under the “Design Review” section, to be standard, the comment period was changed to 14 days.

The “Annexation” section is clarified to note that it only applies to petitions for annexation. It doesn’t prevent the City from initiating annexations, but there are other rules for how that is to be done.

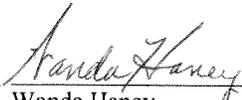
The only changes under “Planned Destination Resort” are from 15 days to 14.

Tokos noted that we do have a full copy of the codified code posted on the website. The rest is going verbatim as it is now. Tokos asked if there was anything else we should take a look at. Patrick said he will take a look at the whole thing and will see.

4. Formation of a TAC for the Newport EOA. Tokos noted that there is one seat for a Planning Commission member on the advisory committee looking at the Newport Economic Opportunity Analysis. He said there will be up to six meetings over the next six months. The meetings will be held in the afternoons for about two hours each. The TAC is made up of 15 people. At the first meeting, which date hasn’t been determined yet, they will set the schedule for moving forward. Commissioner Small volunteered.

C. Adjournment. Having no further items for discussion, the work session meeting adjourned at 7:17 p.m.

Respectfully submitted,



Wanda Haney
Executive Assistant