MINUTES
City of Newport
Planning Commission Work Session
City Hall Conference Room "A"
Monday, September 14, 2009

Commissioners Present: Jim Patrick, Dawn Newman, Glen Small, and John Rehfuss.

Commissioners Absent: Mark Fisher and Jim McIntyre (both excused).

Citizens Advisory Committee Members Present: Bill Wells.

Citizens Advisory Committee Members Absent: Kathy Cleary (excused).

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

The Planning Commission work session came to order at 6:05 p.m. CDD Tokos noted that there were two items for the work session, and Chair Patrick suggested reversing the order since the legislation review item was carried over from the last work session.

A. Unfinished Business.

1. Update on 2009 Land Use Legislation. Tokos said that he wanted to provide a quick overview from highlights of the last legislative session. He noted that land use wasn't the main focus. He said that the biggest bill was House Bill 2229 regarding the Big Look Task Force, which was formed to take a comprehensive look at the state's land use planning laws and whether or not the program needs to be updated. The task force held a lot of meetings around the state and made a number of recommendations to consider. Tokos described the bill as a very watered down version of what was started. The main principle is that it expands the authority for regional land use planning. There is more problem solving than there was. Partnering with counties, if desired, is easier. Tokos talked about farm and forest designation and how all counties can revisit their inventory. There is also a provision for LCDC to put together a group to look at state statutes and administrative rules, which is not mandatory. HB 2230 is a LCDC sponsored bill regarding land use compatibility statements. When a permit is required from the state (Army Corp., DSL, or DEQ, for example), before the state agency will issue a permit, the local jurisdiction has to say yes or no as far as complying with local code. Senate Bill 30 regarding the disclosure for Planning Commissioners and others, now does not require them to disclose all family members. HB 2155 did away with the requirement that when doing wetland mitigation, there had to be proof that onsite mitigation was done before there could be offsite mitigation. Now offsite mitigation can simply be selected. Tokos noted that the biggest land use issue that related to a few bills that passed had to do with the Metolius basin. He said this may have opened a "Pandora's box" with a "critical State concern" designation. That term hadn't been used before. An area of statewide concern could open a whole lot of resource protection that could be applied to other areas of the state. Senate Bill 763 had to do with transferred development credits, which Tokos explained. HB 3462 dealt with building inspector education for cross-training, which may be good for small jurisdictions. HB 3106 made recommendations on near shore resources. HB 3013 created additional marine reserves. SB 5531 regarded the LCDC budget. HB 2014A, which wasn't included in the list given the Commissioners, had to do with school finances. The City collects a school impact fee for new construction. We did receive 1% for administrative fees, and that has been increased to 4%, which will allow the City to recover more of the true administrative costs.

2. Continued Newport Zoning Ordinance review with discussion regarding Section 2-5-1 (Nonconforming Uses and Structures). Tokos had prepared a staff memo regarding nonconforming uses, structures, and lots. He included a copy of the current nonconforming section of the code. He wanted to get a sense from the Commissioners as to what they like or don't like about it. He also included sample codes for context. He noted that this was good material for the Commissioners to study before this nonconforming section is brought back to another work session. He included sample codes from Astoria, Bend, Mosier, Tigard, and Portland. He didn't attach any county codes, because counties are regulated by state law where cities aren't. He went over his memo, which answered some basic questions about nonconforming uses. He explained that a nonconforming use is one that was lawful, but something changed making it nonconforming to current regulations. He added that nonconforming uses, structures, and lots are all different. He said that the reason we regulate nonconforming situations is that they don't conform to the existing land use policy, and we want to ensure that they won't adversely impact other neighborhoods that are consistent. Also, we want to gradually bring them into conformance. On page 1 of his memo, ways of determining if something

is nonconforming were listed. He said that it is the property owner's burden to prove that it is lawfully established. The current zoning ordinance doesn't include guidelines on how to determine if something is nonconforming, which would be helpful. Our code specifies, as most do, that after a period of 6 months of inactivity, a nonconforming use can be discontinued; structures only if demolished, and lots not unless they are vacated or enlarged. For discontinuance of a use, many jurisdictions will look at business licenses, utility bills, phone lists, tax records, advertisements, or photographs. Aerial photographs are very good. Tokos said that he would recommend changing to 12 months rather than 6 months. Because things can often sit on the market, he thinks 12 months seems more reasonable. If a use gets discontinued, it is gone; and whatever comes back has to be conforming. Tokos questioned whether we should allow a nonconforming use to be expanded. He said that most jurisdictions do to some degree. Our code only allows it in a pre-existing building. Changes often allowed without review are in-kind when destroyed by fire or changes for health and safety reasons or to meet ADA requirements. If the change falls under one of these categories, then the applicant doesn't have to go any further. Tokos said that alterations and expansions are often reviewed to determine that there is no greater adverse impact. Tokos noted that on the top of page 3 of his memo, there is a list of some typical criteria used for evaluation of those. Patrick added that he would like to have some criteria for residential uses to base decisions on. Tokos suggested perhaps using language stating that the visual appearance is comparable. He suggested possibly using light exposure (solar) and privacy as well. Tokos said that he will work up something to that effect. He noted that variance criteria weren't designed for nonconforming situations. Tokos asked if the Commissioners would like to have a percentage threshold so that all expansions or alterations of nonconforming uses don't have to come before the Planning Commission. Patrick thought that would be better. Tokos said that the local jurisdiction can specify that certain changes must conform, such as signage, landscaping, or parking. Regarding replacement of a structure after a fire, there was discussion as to whether to allow a larger replacement or simply within the existing footprint. It was the consensus that in case of fire loss, the use can be replaced in-kind within the existing footprint. It can be looked at for comparative visual appearance and height. It can be replaced in the same envelope as before, anything beyond that becomes an expansion of the nonconformity. If it is torn down and rebuilt larger, it will be looked at under enlargement. Tokos asked if design guidelines should be met on fire damage. Patrick thought that if there is an overlay zone, it needs to be complied with. There was discussion whether a nonconforming use could expand onto property that is not currently nonconforming. Small thought that was contrary to bringing things into conformity. However, Patrick gave an example that a nonconforming use may generate fewer trips than what a conforming use might. Tokos said that he could draft two clauses, and the Planning Commission can take their pick. Regarding whether a nonconforming use could be changed to another nonconforming use, Tokos said that his advice is to say no to this because he agreed that going from one nonconforming use to another is counter to getting to conformity eventually. Patrick said he could see situations where he could go one way or another on this. Tokos said that he thought he had received enough guidance from the Commissioners to draft an ordinance. He summarized that the Commissioners want expansion language; criteria for residential expansion; a list of things that would have to be brought into conformity like design standards, parking, and signage; and have a couple of options on the last two questions.

B. <u>Adjournment</u>. There being no further time, the meeting adjourned at 6:59 p.m.

Respectfully submitted,

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Wanda Haney
Senior Administrative Assistant