

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room 'A'
Monday, January 14, 2013

Planning Commissioners Present: Jim Patrick, Mark Fisher, Rod Croteau, Bill Branigan, Jim McIntyre, and Glen Small.

Planning Commissioners Absent: Gary East.

Citizens Advisory Committee Members Present: Bob Berman.

Citizens Advisory Committee Members Absent: Lee Hardy, Suzanne Dalton, Lisa Mulcahy.

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 6:03 p.m. and turned the meeting over to CDD Tokos.

A. New Business.

1. Discussion about the proposed expansion of the Newport Urban Growth Boundary to include the City reservoir properties (File No. 2-UGB-12) for potential action at regular session. Tokos had provided the draft application and wanted to walk through it with the Commissioners. He noted that initially, we talked about a 1,000-foot buffer for protection to insure that activities occurring around the reservoirs are not impacting the quality of the water. He put together that buffer zone on a map. He put straight lines around it, because we don't want to do the UGB based on curved lines. He noted that it came out to be about 1,075 acres. That is the proposal, and there is a whole series of analyses explaining why. The City met with State urban specialists, farm and forest specialists, and regional representatives. They were taken back by how large that expansion was and made it clear that they would be opposing it at that size. Tokos said that the buffer is the weakest of our arguments, and it is unlikely we would prevail. The State would say that we can achieve water quality with acquisition of the land. We decided to start the conversation with the State with this, and then we could pull back making them feel that they got something out of it. We will redo it to look like something shown on the second map. The red line is intended not to bring in any more forest land than necessary. This only impacts two or three property owners; not as many and to a small extent. The dash line shows city-owned property. Some 80+ percent is already city-owned; which makes it harder for the State to say we are impacting owners' ability to do commercial timber harvest. The State is taking the position that this is not an urban facility. Their other argument is the needs test; why public facilities need to be inside the UGB. Under the needs assessment, we must look at what we can accomplish under the existing timber rules. Their view is that we can accomplish the reservoir expansion through a conditional use permit with the County, so they are asking us what our justification is. The city's position is that there is no such test as part of a facilities case. There is no court case; that doesn't exist. The issue we have is that there are not a lot of cases out there for public facilities. UGB expansions are not something jurisdictions typically do for urban facilities; they're more for housing, and the State mentioned setting precedence. We will make the case that there is a public safety issue. Lots of jurisdictions have service reservoirs as part of their system often located many miles outside of the city, but Tokos thinks Newport's situation is different because half is in the city and the other is not; it's on the line. Berman asked if the state recognizes we will be working on these dams. Tokos said they do, but say we can accomplish that through a conditional use permit. We don't want a capital project with that level of public investment being in a conditional use permit process. It may come in pieces, and we don't know how complicated it is and all its facets. Anytime there is a discretionary process, it could get controversial. The more discretionary, the more darts could be thrown, and it gets more complicated. If we adopt rural use, then we still have a conditional use process; and we don't know what kind of arguments will get thrown at it. Berman noted that if there was catastrophic failure, it means immediate attention is needed; and if it were all within the UGB, we would have better ability to react to that. Tokos said the big test is the needs analysis. We have to demonstrate the need for having the public facilities within the UGB; and again Tokos noted that there just are not a lot of cases out there where the UGB was expanded strictly for public facilities. What that need is an open question.

Patrick said the State needs to give more information other than they just don't want it. Small asked if by scaling back, we would have a better chance. Tokos said it would. It gives us a stronger argument and still meets our primary objectives. If we go with the larger, it would be a land acquisition target; and we would have to pick them up incrementally. McIntyre noted that could take years to accomplish. Tokos has talked to City Engineer Gross, and he believes this meets our primary objective of getting the reservoir in the UGB and getting to an out-right use in a public zone rather than a conditional use. We also still have a regional parks need. This proposal meets that because we can get a trail in, which justifies taking it beyond the inundation boundary. Although Gross is not excited about having sanitary services there, Tokos said we could also argue that we need sewer there because we can't have septic this close to the watershed; and you can't extend sewer outside the UGB.

Our legal counsel told Tokos to be clear with the policy-making body that this is not a given. This could be contested by the State. Goal 14 was in 2006, and we don't have a lot of cases to provide guidance on what the bar is. If the State or someone else objects, we don't know how it will play out. Tokos thinks we have strong arguments. The State would have to appeal our decision, and it would go to LUBA. Fisher said that he doesn't see how they could turn this down when the City already owns the property. He thinks if this went into court, the judge would laugh at them. Tokos said the City has put in a lot of work, resources, and time to get this. McIntyre noted that in Table 2 it shows sixteen different parcels. Of that, a majority (380.9 acres) is from public-owned lands. He wondered if we have to negotiate with each of the owners to acquire the other bits and pieces. Tokos said this would be a two-step thing. First we get them into the UGB. They have the opportunity to participate. Small asked if there was a financial impact if they are annexed. Tokos noted that for the UGB there is none. Patrick noted that some of that land would be lost under water. Tokos said that he already had a conversation with one of the property owners, Norm Ferber. At this point we don't know about the nature of the work and exactly how it will impact the properties. Bringing the land into the UGB is the initial step. Down the road, we will have a better idea. It will be years before this is answered. Tokos said we know this is going to be a very expensive solution. It will take a while to get a funding package together. There will probably be some engagement from the locals. Fisher asked what the suggestion is for setback. Tokos said source water easement for DEQ is 1,000 feet, and we feel that is enough specific to our watershed. The focus is on the domestic water supply. Fisher asked if this would have to be fenced to keep animals out. Tokos said it is not fenced today. He said security has more to do with what humans are going to put in it. He said that Gross has said that it may mean access gets limited if we receive directives from Homeland Security.

Tokos said if the Planning Commissioners elect to initiate this action tonight, he will set the public hearing for February 25th, and we will start walking through the process. With this UGB amendment, unlike the code changes the Commission will see this month, this has to go to both the City and the County; the City first, and the County will follow. The City will talk more to the County on Wednesday at a joint meeting of the City Council and the County Commissioners. The County has the understanding of the City's position and will try to make it as easy for the City as possible as long as we deal with the road and allow access to the reservoir to the extent that we can. Gross is to the point that realistically if we have to inundate, we will have to relocate the road and it's probably better to have control over it anyway. There may be water quality regulation under non-land-use statute outside our jurisdictional limits. Tokos said this application was modified relatively quickly, so he will clean it up before it gets to the hearing. It gives a sense of what the next steps are. It primarily points out public safety and the critical conditions of the dams; not necessarily only for future growth, but our existing population. Tokos said that the State already acknowledged the policy for a regional park in the past. Seventy-five acres was the park requirement. He doesn't think they will force us to prove we have more than 75 acres. This plan says here is the reservoir and a little bit of buffer, provides a trail, and cleans up the line so it can be aligned when we do annexation. We have to do legal descriptions, and we don't want it so complicated that we can't get the legal descriptions done.

McIntyre said that this says that the park requires 6 acres per 1,000 population. He wondered if that 75 acres is more than what is required based on the 2030 population base of 11,909 people. He noted that twelve times six is seventy-two; and wondered how it came out to be 75 acres. Tokos said he would have to go back and look at it. It is something that ECONorthwest came up with. Seventy-five acres may be referenced in the existing policy somewhere.

Tokos said this application will get a little more targeted on boundary analysis. We have to identify sites that could potentially serve as domestic water storage and explain why they are not reasonable. This is the only reasonable place. We have to offer that up to the State, and there is some additional detail that goes into that. The State does believe that we don't have to do goal exception; all we have to do is Goal 14 (needs). Historically for goal exceptions, you had to demonstrate you met one of the exceptions to get out of the forest designation. We believe we could pursue the exceptions rule, so we will keep the exceptions argument in there. At least it gives us something to fall back on; especially when dealing with the needs study. Tokos said this application is what the City is recommending. He said he is happy to make changes to the map's red line if it makes sense. It lines up with our City ownership where it could; and where it couldn't, it's kept as close to the inundation line as possible.

Tokos said we didn't have a middle ground. We could argue a smaller buffer, but we have to link it to something. The State threw out an option of cutting it off at the upper reservoir; but we would still need a conditional use permit for other areas. He said we could always come back later to try to bring more land in. The State did say that they are making changes to Goal 14; which could play out to our advantage.

Berman wondered if anybody had verified that there is actually room to make that trail. Tokos said no, we should probably take a look at that. Patrick said if we keep at least 100 feet from the water line, we could probably get a trail somewhere or another. Croteau asked if the park could be in sections. Tokos said that the Parks Master Plan calls for a looped trail system with activity centers. What Gross is comfortable with is a looped hiking trail. Tokos said this will go out to the State, and they will have to provide comment as this moves forward. We will have the benefit of DLCDC feedback for the hearing. They have to share their thoughts.

Small asked what the time line is then. Tokos said that February 25th is the earliest for the public hearing. He said that seems like a reasonable time to provide feedback to that. We could even push it back. Small asked if the State has to approve or disapprove this before the hearing. Tokos said they have to comment, and there can be more as we move through the public hearing process. So we know their thoughts, they would have to provide comments why they think it meets the requirements or doesn't; and if not, what we need to adjust and why. If they are saying they are comfortable with it, then they will be fine with it.

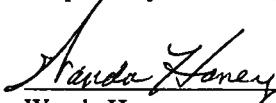
Tokos said we have two packages moving right now. The one involves changes to Comprehensive Plan policies to update with Goal 14 that the Commission initiated at the last meeting. This is the result of that. The first package will be at public hearing later this month. That piece goes to the City Council, but not the County. For this package, at minimum, there is one hearing before the Planning Commission, one before the County Planning Commission, one before the City Council, and one before the County Board of Commissioners. The Commission doesn't have to make a recommendation following the first hearing if they are not compelled to act at that first hearing. January 28th will be the public hearing on package one.

Croteau asked what kind of protection we have over our watershed when it is on timber land. Tokos said what we own is what we have. Under the Forest Practices Act, the State Department of Forestry has some standards so forest practices don't affect water quality. Hancock owns most of the land on the north side, and they could clear cut it. Patrick said he knew there is a boundary around creeks and lakes. Tokos agreed that there are requirements, but what size of creek warrants that, he doesn't know. Turbidity is our concern where they are doing clear cutting.

Tokos said that the Commission has this as an agenda item tonight and will have to decide whether to initiate this amendment. The Commission will have to take action to get it started. Tokos said he expects the neighboring property owners to show up at the hearing. Whether they object is hard to say. He knows they are concerned with what happens down the road. Tokos said the department will let them know what this is about and offer ourselves to answer any questions. Tokos said that he wouldn't be surprised if something didn't come down through the State from the Federal Government for the protection of domestic water.

B. Adjournment. Having no further discussion, the work session meeting adjourned at 6:45 p.m.

Respectfully submitted,



Wanda Haney
Executive Assistant