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 3rd 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. <u>New Business</u>. No new business to discuss.

G. <u>Unfinished Business</u>.

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 27th, 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 27th. 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. <u>Director's Comments</u>. Tokos had no additional comments.

I. <u>Adjournment</u>. Having no further business to discuss, the meeting adjourned at 7:40 p.m.

Respectfully submitted,

Wanda Haney

Wanda Haney
Executive Assistant