

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room 'A'
Monday, June 24, 2013

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

Planning Commissioners Absent: Jim McIntyre and Gary East (*both excused*).

Citizens Advisory Committee Members Present: Lee Hardy and Bob Berman.

Citizens Advisory Committee Members Absent: Suzanne Dalton (*excused*).

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 6:02 p.m. and turned the meeting over to CDD Tokos. Tokos noted that he had included in the packet a letter received from some Nye Beach residents. The Design Review ordinance requires that a public hearing be held before the City Council by the end of the year to determine whether there is a need to do anything to the Nye Beach code. When the City Council held their town hall meeting recently in Nye Beach, they were approached by some of these folks about that ordinance; and the Council has asked that before that hearing is held that Tokos meet with the Nye Beach Merchants Association to find out if there are specific concerns so there is some focus when that meeting is held. The City Council will discuss whether there is sufficient need to direct the Planning Commission to do an ordinance review. Tokos noted that the letter mentions a Transportation and Growth Management Grant, and he agreed to meet with these folks later this week. Tokos said that he will fall back to what the City Council asked him to do. He felt that this letter is getting ahead of the game in presuming there is a need for change when that hasn't been determined yet. Because Patrick was copied, Tokos just wanted to share this letter with the entire Commission. He said there are a few people in the district that feel there is a need for changes; but he doesn't feel there is a strong desire in the larger Nye Beach area to do a full re-do of the overlay code. He feels that what we are seeing is more their frustration with the slowing in the pace of development, which is a function of the economy more than anything. He agreed that there are some things in the code that need to be cleaned up. Parking is one. The concept when the code was drafted changed a bit when the parking district formed. These things are more targeted than doing a whole new neighborhood plan. He doesn't see that happening, but the process is set by ordinance. Fisher asked if Nye Beach can't do another urban renewal district. Tokos said that they could seek to form a new district that includes portions of Nye Beach. There are limits on the amount of a city that can be in urban renewal districts; and that could be an issue. The north side district of US 20 and 101 came out of the economic analysis as the place to focus. There is no hard and fast rule that they can't put Nye Beach in a new district. It gets into how much of the land in the City is in urban renewal.

A. New Business.

1. **Draft Presentation on System Development Charges (SDCs).** Tokos said that the City Council asked for this overview, and he will be presenting this to them on July 1st. He wanted to get the Commission's take on this and if it makes sense and to get their thoughts on how the City's process to adjust the methodology should be. Tokos handed out a sheet with questions and answers on SDCs from the League of Oregon Cities. In his presentation he didn't spend a lot of time on that. He noted that five years have passed since the new methodology was adopted. Going through the slides, he noted that the purpose of SDCs is to impose a portion of the cost of capital improvements on developments and redevelopments that create the need for or increase the demands on capital improvements. He said these can be considered upgrades to the capital system. These fees are assessed on new development so they can help cover the enhancements. SDCs are driven by growth. These are improvements above what would normally be paid for. The thought is that at least some portion should come from new development. The definition of SDC is a reimbursement fee, an improvement fee, or a combination that is assessed at the time of increased usage of a capital improvement or issuance of a development permit, building permit, or connection to the capital improvement. He noted that the City can't charge SDCs for activities that we don't collect for a building permit; and that has been a rubbing point. The capital improvements are broken into five categories; wastewater, water, drainage, transportation, and parks and recreation. Newport is collecting all that jurisdictions can by law. Not all jurisdictions are doing that. He noted that on the League of Oregon Cities website, they have a 2010 study that lists what a lot of jurisdictions do. Capital improvements do not include costs for the operation of routine maintenance of these facilities; rates are supposed to cover that. SDC fees have to be kept in separate accounts and have to be spent in accordance with a plan. They can only be spent on SDC projects and only at the amount SDC eligible. He gave an example of restructuring the John Moore Road and Bay Blvd. intersection. Only 10% may be SDC eligible because of existing development. Tokos said the City has been charging SDCs as long as statutes have been in place; at least since 1981, maybe even earlier. How we calculated them was different back then.

There are two types of fees: improvement where we collect fees to build facilities; and reimbursement where the facility is already built using other funds, but now a certain amount can be paid back to cover future growth. He added that the City doesn't do that enough. Giving the history of SDCs, Tokos noted that it used to be fixture-based for water and sewer (how many fixtures were being added to a structure). Off-street parking demand was how it was assessed for streets, and it was based on dwelling units for parks. The City didn't collect for storm drainage until 2008 with the new methodology. That is when it was changed to an equivalent dwelling unit (EDU) basis. It was an impervious surface based approach for storm drainage; everything else was EDU. Water usage and number of vehicle trips was quantified in the methodology for nonresidential uses to establish equivalent units. For instance 1,000 square feet of restaurant would be equivalent to four dwellings. Fisher asked if that means that for gravel parking someone wouldn't be paying storm water SDCs; but for pavement they would. Tokos said that if a use adds five or more parking spaces, it has to be a paved surface on the lot. A new restaurant would be putting in pavement and would be paying for that. Patrick, having been on the committee reviewing SDCs back in 2008, noted the huge increase in fees for a single-family residence with total fees more than doubling. Tokos noted that homebuilders ran into situations where jurisdictions were all over the board with their SDC methodologies. They, along with others, convinced legislators there was a need to set ground rules for collecting SDCs. Every jurisdiction has to do it a certain way so they are treated as fairly as possible. State law does provide certain ground rules. SDCs have to be based on a Capital Improvement Plan for those systems, which notes that these are the projects we need to construct, and those capital projects should be based on growth projections. There needs to be evidence that capacity needs to be improved and that projected costs have to be passed on. We determine certain projects need to be done, and then the projected cost is what we base the SDC on. It is only taken on the new development portion because it is attributed to future demand. To determine the amount of SDC fee to charge per EDU, we take the SDC eligible cost and divide it by the projected growth in EDUs. Patrick noted that the Parks SDC turned out to be the biggest, but got cut in half. Tokos noted that jurisdictions are not required to collect 100% of eligible costs.

Tokos presented a slide showing a chart that provides an example of the SDC eligibility for water. It lists all the projects that are in the water system master plan that do not have dedicated funding sources. At the time this methodology was created, the City knew there would be an obligation bond for the water treatment plant, so it was taken off. Tokos said one conversation to have with the Council is now that the water treatment plant is constructed, the City should think about setting that up as a reimbursement fee. A portion for future growth is eligible for reimbursement. Each project is given a percentage of eligibility. The reimbursement fees are listed. Both are tallied up to get the maximum reimbursement SDC and the maximum improvement SDC. These are divided by the total growth EDUs to get the SDC fee per EDU. Tokos noted that this was in 2007 and adopted in 2008. The methodology suggested more robust development would occur than has in the last five years. Your SDC goes way up when you look at this. Tokos said that periodically we need to think critically if everything on that project list is needed. If they are not needed within 20 years, they shouldn't be on the list and we shouldn't be collecting an SDC for it. We need to look at growth projections and see if they are realistic. If it is overly rosy, we won't be collecting a lot in SDCs. Tokos said that he thinks a five year window is reasonable time to assess the methodology and decide whether certain projects should remain on the list. After five years, we are where we can take a hard look at how close we are; or if we have to make an adjustment. There is no requirement by statute for how often we review an SDC. The replacement of the dams is not in here. We would need to know the likely costs and what the timeframe will be. We can use SDC funds to update the capital plan itself. We could use the SDC for the parks master plan update for instance.

The next slide explained how the eligibility of capital projects for SDC assessments is determined. Based on the maximum daily demand and the projected demand, a ratio is established to determine the percentage that is for replacing existing capacity and the percentage to satisfy growth needs. Only that portion that is needed for future capacity is eligible for expenditure of SDC fees. Patrick noted that why a lot of this got taken out was the potential effect of this because the numbers hadn't been changed for ten to fifteen years. He said that now we are far enough along that we can add some of those back in. Croteau asked when the fees are paid. Tokos said that the fees need to be paid before the City can issue a building permit. Tokos said that part of this gets at managing the program. He said that a program can cost almost as much to administer. They have to get a building permit, so that is a good time to collect SDCs. It is easier to do it that way. The reason the City is not collecting on those where a building permit is not required is that we can't collect SDCs if we don't know something exists until someone tells us. By then, it has already been constructed and we hit them up to do what they should have.

Tokos discussed what triggers an SDC assessment, which would be new construction or alteration, expansion or replacement that increases usage. Fees are payable upon issuance of a building permit. Fees would trigger if someone connects to water or sewer systems or if there is a development permit. If someone goes and does it without a building permit and one was required, they have to pay and get a building permit.

The next couple of slides showed what we have collected since the new SDC system went on line; by year from 2008 to current, and by type. Small wondered at what point the level of the SDCs would actually discourage development. Tokos said it is tricky, but on the balance, he doesn't think it really has much. It would be more discouraging to small-scale development. The challenge with SDCs is that we can't treat small-scale development differently. Small said that the economy is driven by the small-scale; not the big developments. Patrick noted that on a remodel of a house, if there is an existing residence, they don't pay. Tokos noted that the fees are not fixture based anymore; so if someone is adding a bathroom, they are not paying SDCs. Tokos said the

storm drainage has fundamental problems with the methodology right now. Most projects don't pay; but the City didn't collect fees for storm drainage until 2008. Something to think about is why we are giving credits for something that was never paid for. A lot of those projects happen without permits. Someone (like the South Beach Church) paves a parking lot with no storm drainage; there is no permit, so they don't pay the SDC fee. If they take out a plumbing permit for storm drainage, they pay for adding impervious surface. Tokos said it's not fair. How can the City collect if we don't know it's occurring? We maybe would pick it up at a later date when they came in for something that requires a permit. Tokos said that SDCs are not coming in in a meaningful way.

Next, Tokos presented a graph showing how Newport stacks up against our peers; and he noted that we are on the inexpensive side. He noted that some jurisdictions have different costs based on elevation. Most jurisdictions are sitting in the \$12,000 to \$15,000 range; and we are sitting at \$10,400. He said the point is that this chart is helpful to see where we are in comparison with others. When looking at a change in the methodology, we don't want to be close to the \$30 thousand per EDU where West Linn is in some cases. Those that have similar terrain to us could have challenges similar to us. He noted that Newberg is mostly flat; but Depoe Bay is pretty similar to us. He said that Portland has similar issues, and they are at \$18 thousand per EDU. Lincoln City is ahead of us by a couple of thousand dollars base. Not all of these jurisdictions are EDU based. Some are fixture based, but on their website they provide what a typical number of fixtures are per dwelling unit.

Tokos had a pie chart showing how heavily influenced our collections are by large projects. It showed the amount collected for the NOAA MOC-P compared to all other projects in FY 2010 and FY 2011. Next, Tokos showed a comparison of collections versus transfers to capital projects. He noted that one of the things in the last few years is that we transferred funds to capital projects a lot more than what was collected; and that has to stop. Those water and sewer accounts are tapped out; there are no more SDC monies in the bank. The next pie chart showed the percentages collected by construction type. Most were paid on residential. Institutional was 16%. Patrick suggested that Tokos also run a slide showing the comparison in money. The next slide showed how much we are eligible to collect. Berman suggested that if it refers to a 20-year period, it should say that on the slide. Tokos said that this second slide shows that if we continue to collect at the rate we have been, after 20 years, we will have collected a little over 10% of what we said we need to for water; over 30% for sewer; less than 10% for streets; less than 10% for parks, and about 10% for storm drainage. Patrick said that means that realistically we would have to add 90%.

Tokos said that he is not trying to say to jack up the SDCs. That is way too hard. There is no way we are close to pulling all the SDCs. The projected need is driven by growth. This was the project list and what is SDC eligible back then. Tokos said the water treatment plant can be put back in as reimbursement SDC. Patrick thought that we could realistically cut the projects in half given the current growth rate. Tokos agreed that we have more projects on the list than the growth justifies right now. Growth projections are a little lower than was predicted. There have been some inappropriate credits that have peeled away revenue. He said that this feeds into the City Council conversation about having other revenue sources. There has been a lot of discussion happening about the 15% increase in water rates for example. That doesn't assume that we get a dime of SDCs. Public Works doesn't rely on that when pitching that. When they are looking at those rates, they are looking to cover capital projects with rates. We need to look hard at what we assume we need to build and make sure it is realistic in terms of need and thinking. Tokos said the question is if that list makes sense and is that what we really need. Maybe we can get by with a list that is more modest and reasonable. Berman wondered where the list comes from. Tokos said typically in the master plan updates. He said the storm water master plan will be fired up relatively soon; and there will be a sewer master plan, which hasn't been done since the 80s or early 90s. The water master plan was done in 2008, but it certainly needs tweaks. The transportation plan was just done. Patrick said that he knows there are projects that have been in there a while. Tokos said that just because a project is in the master plan doesn't mean it is in the SDCs. They are 20-year plans and have timing of 1-5 years, 5-10 years, and 15 plus years. It had different categories. It is taken from that into here. It will be a separate piece of that contract to work on the SDC methodology. Fisher wondered if the County have similar fees. Tokos said that he didn't look at the County. They have different development; they are rural. He would have to see if the rules are the same. Patrick thought the County has fees for streets. They are limited; they can't do water and sewer.

As far as amending SDC fees, some adjustments can be made without notice by resolution. Annually the methodology calls for adjusting the SDCs based on the construction cost index. Generally they go up; but one year they went down. The adjustment is a very small percentage. Changes to the methodology or an addition of a project that increases SDC fees requires a public hearing before the City Council with at least a 30-day notice to people requesting written notice. Nobody has made that request at this point.

Branigan asked what happens to fees collected and then a project disappears. Tokos said they are not on a project-specific basis. They are collected as a sum total. We collect based on total number of projects. Once complete, we have administrative responsibilities. We are not required to take them off the list per se. If collecting for a 20-year period, we are still collecting this rate for 20 years. There is a matter of housekeeping, like with the water treatment plant, by moving it into reimbursement fee as opposed to eligible fees. Berman wondered if fire protection falls into the same when a new fire station or new equipment is needed. Tokos said that state law defines the scope of what we can collect SDCs for, and that would be what we do.

Regarding authorized expenditures, reimbursement fees may only be spent on capital improvements associated with the systems for which the fees are assessed; improvement fees may only be spent on capital improvements that add capacity to the system (SDC eligible) and must be funded out of the account into which like type fees were collected. Any capital improvement receiving SDC funds must be included in the CIP and list of SDC eligible projects. Fees may be expended on updates to CIP and activities necessary to comply with SDC statutes. We collect 4.18% administrative fees. Patrick noted that transportation has all those projects, and some were to be done in five years. We still have to hold them on the list; but it's about what part should get into the SDC list.

Tokos talked about SDC credits. He noted that there is one that is required by law, which is if a developer has financed qualified public improvements. It is a dollar-for-dollar credit. None of the others are required; although a lot of jurisdictions do the second and third credits listed on the slide. If SDCs were paid in the past, a developer receives credit for what was paid. Credits are deducted from what is due. We go a step further and do something a little more generous. We provide credits for existing uses or development on the property that didn't pay SDCs. Walgreens paid zero SDCs; although the existing structures predated the SDC code, and SDCs were never paid. Tokos said that we need to take a hard look at being more generous than other jurisdictions are. We give credits for prior uses or developments that existed within the last 30 years; and no other jurisdiction does that. Because there was a log yard there 22 years ago, Teevin Bros. paid zero for transportation SDCs. They are putting in new asphalt so they are on the hook to pay the storm water SDC because there never was pavement. Tokos said because of this 30-year credit, we get weird things. There was a water meter left out there that was never utilized, but Teevin gets credit for a 2 inch meter. Patrick said a lot of this came about because of how high the SDC fees changed. It was a trade-off at that time. Berman wondered if SDCs could trigger with a change in ownership; but Tokos said that is tough. Tokos noted that any SDC credit that has been given has to be expended in 10 years so someone can't pay their SDC fees and hold off a long time on development in order to avoid higher fees. Tokos noted that because of what happened with the coffee shop where their SDC fees were going to be 40% of their overall project, we may want to add a cap of 20%. That is close to the 25% of project value that the State has for how much a developer would have to pay in terms of ADA accessibility on a project. We could set a credit that in no case can SDCs exceed 20% of the value of the project. NOAA was at about 4% of their project cost; Teevin is about 4.5% on storm water.

Small noted that you are paying the same \$10,400 SDCs whether you are doing a \$200,000 or a \$300,000 house; and he thought that seems discouraging for affordable housing. Tokos said that he is not saying that it's not worth looking at. It would require changing the methodology. Sometimes fixture-based gets at that, but that's still not perfect. Patrick said that any low-priced house has higher impact than a higher-priced house. The higher-priced homes are usually ocean view vacation homes; and the people are here only half the year. It's not the same impact as with workforce housing. Croteau agreed we could get bogged down looking at this. Patrick said that is why the committee went with EDUs; it's simpler.

Tokos went to the last slide listing recommendations. These are to deal with credits independently and consider revising them to eliminate those that are eliminating SDCs. Reviewing the CIP list to see if a project is actually needed in 20 years is important. He said it seems to make sense to do that review for the storm water and the sewer as those master plans are developed. For others that we are not looking at for a while in their master plans, such as transportation, we could do those separately. We might want to look at growth projects and if they are accurate. Tokos asked if these recommendations seemed reasonable. Patrick thought Tokos might want to add cutting the 30-year window for credits down to 10 years or something more reasonable. That ties into the 10-year life for SDC credits. Tokos wondered if we may want to charge some percentage for those that never paid SDCs to begin with. We could set a flat 50% if we want; it would have to be formula based. He said that could be a discussion.

Fisher asked if the City Council is bound by these or if they could just adjust the SDCs. Like if there is an appeal, they have flexibility of 25%. Tokos said the legislature put limits on SDCs to make sure we weren't treating people differently; so there wouldn't be too much flexibility. He said the only appeal option is if someone took offense with how the City spent SDC money. Small wondered if there was a way to build in incentives like in the Deco District to encourage people to address that. Tokos said we can't geographically say we are offering the city center credit. The way it has been done, like in Gresham, is that they waived the SDC in the city center as a business incentive. Then they actually used urban renewal funds and utility rates to pay them; but they couldn't waive the fees. They were paid by other city revenue sources so the developer didn't have to pay. Small thought it seemed like a legitimate urban renewal project. Tokos agreed that they are being used to offset development costs.

Tokos wondered if the structure of this presentation made sense. When he presents this to the City Council on July 1st, he will make similar recommendations to them. He said some of the information will also be digested by the task force working on paying for infrastructure. The presentation is to show them what SDCs are, how they perform, where we currently are in terms of how the system is working, and how they relate to urban renewal, utility rates, and bonding.

Tokos said that as the next step, we will probably be redoing the methodology for storm water at the same time as we work on that master plan. We will likely see changes done in bits and pieces; or we could push for a more holistic way. The challenge is knowing what Public Works is moving forward. Tokos knows that the storm water master plan is about to move; so it doesn't make much sense to do something on that separately. Sewer may come a year later as a master plan piece. We can tackle the

credits and how long we hold them, and reimbursement of the water plant. Transportation is done. He said the comparison chart is good tool to make sure we are not out of sync with our peers. We need to do something about growth projections. That was done as part of the housing and economic studies; and it's just a matter of working it back into here. If we reduce the projected growth, we should be taking projects off the CIP. Patrick thought for now we should stay away from sewer and parks, but definitely take a look at water and transportation projects.

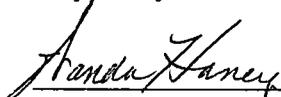
B. Unfinished Business.

1. Additional information regarding park models. Tokos noted that included in the packet was a minimum code change, which might address the immediate need. He wanted to see if the Commission was in agreement, or if more work is needed. What he did was a targeted change to eliminate the 5,000 square-foot minimum lot size in manufactured dwelling park space size and that it be at least an acre in size. The existing code requires at least one acre of contiguous land, no more than six spaces per acre, and that each dwelling has at least 5,000 square feet of space. That issue came up during testimony when the manufactured dwelling code was being cleaned up to comport with state law. The thought was that if we require 5,000 square feet, there is no way they would use park models. Tokos is proposing to eliminate the square footage requirement that says your park has to be so big and each lot has to be divided a certain way, and just go with density. It can't exceed the maximum density permitted in the district. The change requires that there be at least some common space. Portland took that route and does require at least some common open space so they are not stacking up. It is number of units; how many units per acre. The other change he's proposing has to do with the recreational vehicle provision, which is that you are allowed to let RVs in manufactured dwelling parks if you want to do so. It is a clarification piece.

Fisher noted that on page 1, it says a manufactured dwelling is allowed in any residential district, but it doesn't say it has to meet the standard setbacks and such. Tokos said they are still subject to setbacks. He said that he didn't set the code up for going with park models on individual lots. He couldn't find any examples where other jurisdictions allowed that. Small asked if this is consistent with what we are talking about for ADUs as well. Tokos said this is targeted to parks, and he can't see ADUs in parks. Patrick added that park models can't be put in as ADUs because they can't meet the requirements for ADUs. We can't permit it because it is an RV. Tokos said why jurisdictions don't allow park models on individual lots is the liability. If a park model burns down and takes out a block and the city has allowed it, does the city have liability for damages? But this code makes it so you can use park models in RV parks. Tokos said that he isn't optimistic that we will see a lot of change; but if the park owner were motivated to do park models, they would have the ability. Tokos said he can bring this forward as a package of code changes.

B. Adjournment. There was brief discussion about the intent of appeal to LUBA that has been filed for the approval of the Teevin Bros. TIA; and having no further discussion, the work session meeting adjourned at 7:45 p.m.

Respectfully submitted,



Wanda Haney
Executive Assistant