

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room 'A'
Monday, August 12, 2013

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

Planning Commissioners Absent: Jim McIntyre (*excused*).

Citizens Advisory Committee Members Present: Lee Hardy and Suzanne Dalton.

Citizens Advisory Committee Members Absent: Bob Berman.

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. New Business.

1. Discuss changes to NMC Section 12.15 (System Development Charges (SDCs); more specifically Credits (12.15.065). Tokos noted that he had passed on examples of the credit portions of SDC ordinances of several different jurisdictions to see how they approach things. These same jurisdictions, with the exception of Bend, were in the presentation he gave the Commissioners at a prior work session. Tokos wanted to get the Planning Commission's sense of what direction we should go in making adjustments to the SDC credit options. He noted that as you go through these examples, you will see that it ranges; from jurisdictions such as Corvallis that only offer the statutory-required credit for public improvements to Newport which offers credits for qualified public improvements and also pre-existing uses that don't even exist anymore but did within 30 years. Tokos raised the question of whether we should be more conservative (more like Corvallis) and give credits only for those required under state law; or should we continue them for pre-existing improvements (things already on the property).

Fisher wondered if we wouldn't have a legal problem if somebody bought property believing that there had already been something there and they don't know that they can't continue the SDCs. Tokos said it would be no different than if they bought something under the current building code and then the building code changes; it's changing rules. Tokos said we probably would in those rare circumstances where we issued a credit letter already. Under current rules, they could transfer a credit to another site; and those we would have to respect if they have not already acted on that. Fisher gave an example of an abandoned house that somebody buys on a Sheriff's auction, and then because the house isn't usable they tear it down. He asked if the SDCs would have to be brand new then. Tokos said that under current rules, if there was a house there and they tear it down and replace it, the only SDC they are liable for is storm water because of the impervious surface; everything else is a credit.

Branigan asked that if we went the conservative route, how much money we would be gaining. Tokos said that is very difficult to figure out; if not impossible. The issue is to be fair and equitable. He said the question is are we requiring developers to pay SDCs when they are having an impact on the system; or is our method too generous. Patrick noted that there is also the question of fairness if they never paid an SDC fee in any period of time or the use goes away and then comes back (as in Teevin Brothers' case). Dalton wondered about management. She asked, not knowing how much time it takes now to manage, is that an increase in staff time and if so would the additional money be able to cover it. She wondered how much impact on City personnel that might make. Tokos said that there are a couple of things staff does that have a burden. He noted that he put Bend's code in there because former City Attorney Gary Firestone went to Bend when he left Newport. Their update looks identical to Newport's code, except that they went to 10 years not 30. Firestone probably had a role in drafting Bend's code. Another thing they don't do is transferability. Most jurisdictions don't do that because administratively it is too difficult. Tracking is involved, and it has to be tracked over time. The impact in one location might not be the same in another. Other jurisdictions don't typically give credit for things that are not on the property because that is burdensome. Everything has to be case by case because it is formula based. As long as we have detailed information from an applicant, we can give them a clear idea of what their cost is. Patrick agreed that a 30-year timeline is long, and he would be happier with 10 or 15. Tokos asked what if we don't give a timeline; what if it's just what's on there now? He said that's just an option.

He did include the memo he prepared to the City Council when they were working on the coffee house. It is language that he also has vetted with legal counsel and others. That language includes a provision that under no circumstances would SDCs be allowed to be over 20% of the construction cost. Croteau had a question about where it refers to credit for which an SDC has never been paid, and Tokos said he should probably be clearer there. He asked if we only want to offer credit for existing

structures where SDCs were paid or they would be eligible for some credit. He noted that there are lots of structures in the community that haven't paid into the system and will get credit on the next.

Patrick gave an example that if a restaurant is shut down, and a new one opens, it would be hit with \$30,000 in SDCs; so how many new restaurants are we going to get with a change in ownership. He said that the main reason the committee wrote the code the way they did was because they were looking at the numbers and what happens to a restaurant that is trying to open in this town. Fisher said that he doesn't like SDCs at all; but you are using the utility so you have to pay some money to hook up to it and use it. Patrick said SDCs are intended to collect for reimbursement for additional capacity in your system or to fund additional capacity in our system.

Tokos said that his last question to the Commission is that we may want to deal with storm water entirely differently. We didn't collect until 2008. We don't require a permit for somebody putting down impervious surface. We could offer those that never paid SDCs a reduction; say they pay only half the rate. He gave an example of a restaurant built in the 70s and had never paid SDCs. A new restaurant comes in there and they pay 50%; or we could just not require it at all; or we could require full payment. He said there are lots of options there. Tokos noted that if we grant too many broad exemptions, especially when they didn't pay in the first place, we can assume that no SDCs will ever be paid. Infrastructure doesn't last forever. If they don't pay, we assume that the system was capable of handling that development. Maybe that one was; but the next one, and the next one, etc? We can assume no payment at any time. Hardy wondered if we could prorate the impact on the system based on its life span. Tokos said that statute doesn't allow us to collect for maintenance of the system; only additional capacity. He added that every time we are replacing, we typically are upsizing. That is where those funds go. Hardy asked if we couldn't predict upsizing replacement. Tokos said that is what the CIP does. It includes a list of projects and their eligibility for SDC revenue. Fisher said that the City Council has said they want something simple enough and clear enough to use so they won't get appeals. If we put in a complex matrix, they will get a lot of appeals and they don't want that do they? The agreement was no. Patrick thought we could make a good case for 50% when SDCs were never paid to begin with and then roll over when they are actually paid. He thought the timeline should be cut down to something reasonable. Croteau asked why not remove it. Tokos said that a lot of jurisdictions don't go back; it is credit for what's there at the time they are ready to develop. Patrick mentioned if O'Reillys goes where the Big Guys Diner was; and Tokos added that O'Reillys won't be paying anything because of the Big Guys restaurant, which is a heavier hit.

Tokos said what he is hearing from the Commission is that the City shouldn't take the Corvallis approach, which is too conservative, and should continue doing something beyond that. We should offer credit for improvements that are on there at the time of redevelopment. If no SDCs were paid, they shouldn't get 100% credit, but it should be something else that is reasonable and makes sense. Tokos will come up with something reasonable to share with the Commission.

Giving Teevin Bros. as an example, Tokos said that we ended up getting to an equitable solution on SDCs in an awkward way. It was just under \$200,000. It shouldn't have been all storm water. It should have been some transportation with some storm water. NOAA paid some \$200,000 plus, which is just 4.5-5% of the cost of their development.

Tokos asked what about looking back? We could run into situations where somebody did tear down and now they lose everything. Fisher thought that even if a house is vacant for 10 years, they should get a credit if they tear down. Patrick agreed that just because somebody isn't living in the house, it is the existing use. If it's there, that is existing. It's only if the house is torn down and the ground sits there vacant. Tokos asked how about saying the last improvement on the property within the last 10 years; and everyone agreed that seemed fair. Tokos said that if we offer transferability, statute requires those to be acted upon within 10 years; so this falls in line with that. He said that if we lock somebody in and they sit on it for 10-15 years, the impact on the system is a little bit more expensive. Croteau stated 10 years, and then the clock starts again; but he asked if that was burdensome. Tokos said that 10 years is quite a bit better than 30.

Dalton asked about their payments. Tokos said that the City does offer a payment plan. It is not something that most developers will pursue because it is through Finance, and they are hit with something like a 10% interest rate. Part of that is to discourage the City's financing. The City would have to track that. He noted that the City hasn't been entirely consistent with that. For example, Pig 'n Pancake as part of a package to redevelop old city hall received 4.5-5% on theirs and is over 10 years he thinks. They received a little different deal. It was noted that one reason may have been because it was City property. Dalton said that as this is crafted, she would encourage consideration of more consistency and less packages.

Small said the City is encouraging redevelopment, and the Commission has had this discussion before. He recalls that part of that was urban renewal funds. Tokos said that was the situation in Gresham. We can't waive SDCs. They have to be paid from some pot of money. Gresham chose to pay them out of urban renewal. They also paid out of enterprise finds. Tokos noted that right now in the City Center area, buildings predate any SDC program; yet under the current code they would receive full credit for whatever is there. Most would not pay anything. He said that Walgreens is a good example. If they had received no credits, they would have paid around \$68,000 in SDCs, but they paid zero. Tokos said that he could bring a couple of examples of percentages that pre-existing uses would have to pay if no SDCs were previously paid. He gave an example of a restaurant in

City Center, like LaRoca, and something new comes in. He can show what that would look like with a couple of different percentages, say 30% or 50%, so the Commissioners can see if that looks like it would be reasonable.

Tokos asked if the Commissioners were comfortable limiting credits in terms of transferability. He said that administratively it is a headache. It's not used a lot. Mostly homes have used this option. The consensus was to leave it alone.

It was noted that nobody wants to pay SDCs. Tokos noted that for a single-family residence, the total SDCs are now around \$10,400, which is low compared to other communities.

East asked about possibly using a sliding scale for somebody that is doing affordable housing if they are going to meet certain things for workforce housing. He thought that maybe it could be adjusted by square footage. Tokos said the trouble with square footage is it would change our SDC methodology. East said then maybe a certain percentage of credit if they meet workforce housing requirements. Tokos said that a perfect example we got from Landwaves is one Portland does for affordable housing. He said if it works with EDUs and doesn't get into our methodology, he would be happy to bring examples. Otherwise, we have to redo our methodology. Fisher thought that there has to be some place to plug in a percentage of the value. Patrick said that a single family residence is an EDU, so you pay the same for an 800 square foot house as a 4,000 square foot house; but EDUs are easier to deal with than any other methodology the committee had on the table. Tokos said one way to get at that is the fixture-based approach, which the City used to do and Corvallis still does. He talked to Corvallis about that, and they said the problem they run into is that people don't pull permits for bathroom additions.

Tokos said that 20% of construction value gets to issues like the coffee house, which had a modest project but restaurant uses have such hefty SDCs. Patrick thought that we need to have some sort of charge for alfresco dining, like the coffee shop and Nana's. Tokos said that we can charge for impacts to the system that do not require a development permit. He noted that Nana's was on their own property so they didn't have to come for a permit. He said the problem is if a permit is not required up front, they go ahead and do the project and now we are engaging that individual. It is a difficult situation. Patrick wondered if Café Stephanie and Local Ocean Seafood have permits to use the sidewalk. Tokos said that Local Ocean definitely does. He said that drives at the inequity issue. They had to get a permit and had to pay SDCs. Nana's has a similar situation, but paid no SDCs. It was noted that Savory Café also has a couple of tables outside. Croteau felt it would be a nightmare to regulate where they don't get a permit. He appreciates the fairness issue, but thought it would be a burden to look after all of these situations unless they are brought to your attention. Patrick said that commercial is roughly based on square footage and a use. The use is defined by how much square footage you have. He gave an example of a restaurant that was 100 square feet and after adding exterior seating is now 200 square feet. They are serving twice as many customers. Croteau said that we can appreciate that, but the difficulty is whether they pull a permit to trigger the SDCs; it's not equitably based on use. Tokos agreed that no system is perfect. Tokos said the issue with the coffee house is what constitutes additional seating space. The Council determined that a screened-in porch wasn't.

Tokos said that his last question is about treating credits for some capital projects differently; storm drainage for instance. Teevin gave us a good sense that there needs to be something that gives credit for onsite storm water management. He said we might think about language that storm water will be handled differently, and any time you pull a permit you are going to pay for impervious surface on that property since we had never collected for storm water until 2008. Patrick agreed that made sense, but said you are going to hear about it. He thought it is a good point though. East asked what about requiring the developer to do their own storm water management plan so they are baring the cost. What that would say is they are required to put in an adequate system that would tie into the City's system rather than charging them a storm water fee. That way they absorb the cost on their own. Fisher noted that Teevin was going to put in their own system, and he was told it would come out cleaner than the Bay water and go into the Bay. They didn't want to have to argue over SDCs even though they didn't intend to use City facilities. Tokos noted that they did appeal but withdrew it because they knew that if they were not paying SDCs it would be a powerful issue with the community. Patrick said it is an inequitable situation where they should be paying those SDCs. He also thought we need to be careful where developers are doing onsite storm water management because there are a lot of slide blocks in this town, and that could make it worse. Tokos said this wouldn't authorize it, it's just if they were doing it and it was acceptable, then they get the credit. The geologic review will deal with it in hazardous areas. Tokos said that he senses there is some desire to see credit for onsite storm water management. The consensus was that seems fair.

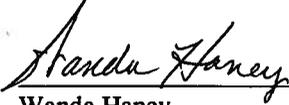
Tokos wondered about dealing with impervious surfaces. We don't have a way of catching it. If someone is paving their driveway, we have no way to catch that. That is the burden aspect of it. Unlike water, sewer, and streets, storm water didn't start until 2008; and there wasn't funding for storm water until about a year ago. Fisher noted that when Wilder put in their development, the Commission went up there; and they had put in black top that water permeates through. He wondered if a developer puts that in, would they pay. Tokos said that wouldn't be an onsite management credit. Patrick said back when the committee first talked about charging so much per impervious surface, the large car dealers came; so the Committee didn't get very far with that one. He asked if Tokos was saying that if Gold Motors sold, the new owner would have to come in. Tokos said that if no SDCs were paid on the impervious surface, the new owner would have to pay. He said there is asphalt going down all the time without permits. At the Aquarium Science building at the college, they had to pay SDCs on parking. But the South

Beach Church didn't; they got credit. Patrick said that maybe whatever we end up with, we could offer a credit on the storm water fee for existing uses. Maybe 50%; or tie back to what we do on the other side. That would at least allow us to start collecting on some of this stuff that is around town.

Tokos said it sounds like the Commission is on board with the 20% cap, and the consensus was that sounds fine. Fisher thought that might be too much. Tokos said that 10% is probably okay; 20% would take care of the egregious cases; most run between 4% and 6%. Patrick said that we could go with 20%; nothing is written in stone. Croteau said he would be fine with 10% if that is on the high end. Tokos said he can run some calculations to see that it's not too generous. He will try 10%. He thinks that will be fine.

C. Adjournment. Having no further discussion, the work session meeting adjourned at 6:53 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Wanda Haney". The signature is written in black ink and is positioned above a horizontal line.

Wanda Haney
Executive Assistant