MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Conference Room 'A'
Monday, September 23, 2013

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

Planning Commissioners Absent: Gary East *(excused)*.

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

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

Audience Members: Roy MacMillan *(Embarcadero Unit Owner)*, Keith Turner *(Nye Sands Unit Owner)*, Loren Joling *(Dolphin Realty)*, and Patricia Patrick-Joling *(Dolphin Realty)*.

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. Further discussion regarding changes to NMC Section 12.15.065 (SDC Credits). Tokos noted that the Commission had held a previous work session on this. He put together some changes that he hopes reflects in a manner that the Commissioners are comfortable with. He had included a draft in the packet. Looking at the mark-up copy for the SDC code, Tokos noted that we now have essentially two paths for credits; one for redevelopment if SDCs were paid in some manner, and one if SDCs were never paid but there was something on the property in the last thirty years. The League of Oregon Cities model code from 2010, a copy of which was included in the packet, doesn't bother to go down that path. They simplify it to what is on the property when redevelopment occurs. This is how he drafted it and only went back ten years. The revisions address further inequities. The existing code reads that if a house was built in 1983, and you want to replace it, SDCs would have been paid for everything but stormwater (which went into effect in 2008). Technically you would have to pay the stormwater SDC. He said that's not equitable. Today, we haven't been charging stormwater SDCs by themselves; if they paid SDCs previously, they didn't pay now. The existing code technically breaks it into categories. This cleans that up by eliminating that distinction and the thirty years, which is difficult to administer. Berman pointed out a typographical error in A(1) where the second word in the third line should be "then". Tokos continued that he eliminated the transfer. He noted that this is generally not used for the most part, and there is an administrative issue of trying to track them. He said that most jurisdictions don't allow them generally because the impact to the system in one area may be different than in another. Patrick said that was thrown in the existing code because there were some developers in the room, but it doesn't sound like we use it a lot. Berman asked then if development in one location has a different impact than in another, for the same exact commercial building would the SDCs be computed differently. Tokos said they are development-based; it depends on the scope of development. Patrick said it was set up that way because of a case in Portland where somebody moved across the street and was stuck with $50-60 thousand of SDCs. He said they were trying to set it up so that if a restaurant wanted to move across town they could. He said we generally don't have that circumstance; it's usually redevelopment of the same property or removal and replacement. Fisher wondered if in that case, a person could appeal to the Planning Commission or City Council and ask that to be forgiven. Tokos said not really. He said the most recent example of a restaurant moving is Sadas on the Bay Front. They paid the SDCs in the new location. The old location still gets the benefit, and based on how it's written there will be the benefit of a restaurant in the new location. Tokos said that most restaurants are leasing the property, and the property owner retains the fact that there was a restaurant use in their location. Patrick said there are some applications for the transfer, but we haven't really used it. Tokos said we have to balance those trackable credits with the cost of administration; and when we are trying to track those, it starts increasing costs.

Tokos said he is proposing a different approach with storm drainage. No credit shall be given for impervious surfaces that exist. They may be given if they have a design to reduce the impact of runoff. If they are reducing the impervious surface, or providing detention so they are managing stormwater on site; then they are eligible for the credit. This was discussed in the methodology but was never implemented. Stormwater SDCs just started in 2008. As was previously discussed, many times it is impossible to capture when impervious surfaces are being put down. We don't really want to get into the requirement of SDCs being paid for things that don't require permits. The simplest way is not to give stormwater SDC credit unless they are reducing the impact on the system. Patrick brought up the large remodel project that Gold Motors recently did and asked if they would have paid for all the pavement that exists there. Tokos said they would, but they never paid for that impact to begin with. Patrick asked that even though the work they did on the roof and the façade has nothing to do with the impervious surface. Then anybody for any permit will pay SDCs if they haven't paid before. He asked Tokos if he was looking forward to that. Tokos said that is an option. If the Commission is uncomfortable with that, they can think of something else. Maybe we can pro-rate it. He said that right

now the assessment is broken, and we are not collecting in an equitable way if at all. Fisher asked why we would get into that if their project hasn't changed the amount of water run-off. Patrick said looking at it from the point-of-view of credits, Gold might pave the rest of their lot before they come to get a permit so that when they come in to get their assessment, they wouldn't be assessed for it because it's already there even though they added it. Fisher asked that if they haven't changed where the water goes why put a fee on it now. He said that doesn't seem fair at all. They are better not improving the roof or windows if now they have to pay for pavement. He said it just seems unfair. Tokos said that the other argument is that our drainage system isn't static; it doesn't last forever. Also, there are federal requirements that the City upgrade our system to get better at pollution control. He said to take the approach that because asphalt is there now, they should always be able to have to not pay into the system is narrow-minded as well. Fisher said they are paying water fees every month, which is supposed to be for maintaining the water system. Patrick said that has nothing to do with stormwater. Fisher said he doesn't pay a separate storm drain fee on his monthly bill. Patrick said you were going to get assessed on how much impervious surface you have on your property, and that is why Gold and Sunwest were there. Tokos said that is in part why Walmart decided to take out part of their asphalt. He said a piece of this too is the incentive for other methods that reduce the impact on the system. He said maybe we need to scale this; a percentage of re-investment or something. At some point of substantial redevelopment, this can trigger. It's not often that they will rip asphalt out. Berman said that if two properties side by side had the same surface, one could sit for twenty to thirty years and not pay a dollar if they never get a permit; yet they have the same impact on the system. Tokos said if they are just leaving it as is and not redeveloping, they are sitting status quo and not getting hit; but if they tear it down and rebuild, they are good for another sixty years. There was some additional discussion about Gold's re-roofing and how they didn't change the impact to the total system. Small thought this is setting up a path that discourages improvement. If there are extra fees for improvements; rather than be penalized, they will leave things the way they are and let them deteriorate. Tokos said that SDCs are fees on new development and many times redevelopment. A retail use going to a restaurant will pay because of the impact to the system. McIntyre noted that if they redo a roof a permit is needed, and now they have to pay; yet they didn't increase or change the impact to the system. It was noted that there is a lot of asphalt going down without permits; and why should they get credit for asphalt put down without a permit. Fisher said that if in the development they have not put asphalt down, it seems unfair that you are going to charge them for it anyway.

Tokos said that one approach would be to scale it. The investment needs to be 50% of the current value of the property. Then at least it would be a substantial investment. The rationale being stormwater SDCs haven't been paid by much. It was just put in place in 2008. A building constructed in the 50s, 60s, or 70s is being torn down and they are rebuilding. They just extended the life of the impact on the system another sixty years. He asked if it is reasonable to say that the drainage system will last that long without improvement. He said no. He is trying to come up with something reasonable so that we don't have to drive around to find out where asphalt is being put down when there is no permit required. Fisher said this would be fair if they were putting down asphalt; but not if they are not putting it down. Patrick noted that the City owns half the impervious surfaces in town. Berman asked if you have to have a permit to lay asphalt; and it was noted that presently not. Tokos said something like a church paves its parking lot; that doesn't get caught. Dalton asked what other cities of comparable size do, or is it worth checking. Tokos said he has. Not all give credits across all categories. For stormwater, some don't but others do. They are all over the place. He said that when there is redevelopment, that is the time to reduce the impacts of stormwater runoff; and it is not an incentive if there is no charge in the first place. Patrick said that we are trying to catch the person paving their back lot versus someone like Gold. Tokos asked what about Walgreens. If there were an incentive, he bets they would have put in stormwater management. That is the time to incentivize that. Fisher agreed with that, but didn't agree with charging them when nothing happens. Patrick said he could see charging when something is being torn down and they are starting from scratch. Any addition will still get caught. A house gets caught on stormwater but nothing else. Berman asked if it would be practical to maybe require permits for impervious surface additions. Tokos said it isn't under the building code. We would have to come up with some justification for it and have some training of the public. Patrick said either that or do the 50% thing. He thought that if we do that, we will be lighting a fire storm sooner or later. Tokos said that he could write it that if there is redevelopment of 50% or more of the assessed value for now. That would be talking about a substantial reconstruction. The question was raised if 50% is the right amount. Tokos said he could scale it and research it a little bit for the Commissioners. Patrick said we need to do some work on that. He wants feedback before we do it. McIntyre noted that even if they pave the entire piece of property that is an improvement to that property and adds some value to the property. It also impacts the system. He agrees that is an area that definitely needs to be investigated. Berman noted that if we did this, then the City could encourage the use of other kinds of surfaces. Patrick said we could tie it to the geo hazard too where you want to be careful of on-site water disposal.

Tokos noted that the back end of this is a little more general. Incentive credits can be received by doing a retention system as opposed to infiltration on site; it is an option in either case. Detention is controlled release of water from a property. Tokos will bring back modified language. Then the last part is language that credits shall not be transferred, and then the maximum assessment. Patrick thought it was good and will also help with stormwater. He asked Tokos if he could bring back numbers of what the SDC fees would be if you were to impose it so that the Commissioners can have an idea of what numbers we are talking about. Tokos said right now for commercial it is $0.30 per square foot. Patrick asked if it's set up so that it is scaled, would that only apply to stormwater; and Tokos confirmed that it would be. For a replacement house that is the only one you pay. Tokos said that the code says the SDC can't exceed 10% of the construction value. He noted that the maximum assessment thing came

about as a result of the coffee house scenario where you are enclosing a deck and creating year-round restaurant seating. Right now for a house, it is a flat rate of $813. Tokos noted that the Commissioners would like to see scenarios on that.

Branigan asked if someone receives a credit for stormwater management, is the credit little or big. Tokos said it is determined on a case-by-case basis. It has to, depending on what they are doing; it is hard to put in black and white. He said that is probably why it wasn't implemented in the first place. Bill asked if there was a way to put language in there. Tokos said it could possibly be linked to the reduction of impact on the system. Developers will weigh it out. Patrick said a lot of it is that you have to force them to do the water detention because it costs a lot more than the fee.

Tokos said that he got just the two things that the Commissioners would like to see when this comes back; 1) provide scaled option on storm water with revised language proportionate to the reduction of the impact; and 2) some scenarios. Tokos said if the Commissioners are comfortable with this tonight, then they could indicate through a motion at the regular session to initiate the amendment process at an upcoming meeting.

Patrick asked if there is no change to the area, will there still be some fee. Tokos said the Commission wants to see a scaled option. If there is substantial enough renovation, you will not get credit for the amount of impervious surface already there. If you are essentially doing a big renovation or a wholesale redevelopment, you will have to deal with the impervious surface or reduce the impact; tear it out or modify the impact. Patrick said there is either 50% or scaled. Tokos said he can possibly give A and B options. McIntyre said it should be if there is an increase in impervious area; if they add additional roof over what used to be pervious land, then that is different. Tokos noted that we have a lot of impervious surfaces that never paid SDCs; and even after we had stormwater SDCs, there are a lot that haven't paid. Patrick said the Commission will take a crack at it. Tokos said the Commissioners could initiate the process and it would be brought back in the hearing process so they can consider it then.

2. Discussion about interpretation of code requirement for safety-glazed windows for VRD inspections. Tokos said this has come up in a few different scenarios. It has to do with the window glazing requirement in our endorsement code. He included a copy of the code in the packet. The vacation rental dwellings code has a list of health and safety standards that the rental must meet. This is in the zoning code; not the building code per se. The checklist items were borrowed from the building code; and where interpretation is needed is about the standard that says "windows within a 24-inch arc of doors shall be safety glazed." There have been a number of people that have swapped out windows to meet that standard. Tokos noted that there have been close to 80 fully-permitted vacation rentals that addressed those issues. The question is whether or not this applies to sliding doors as opposed to hinged doors. State building code indicates that it applies to both. The concept is that if the door were slammed, the glass could shatter and be a safety hazard. That is why this item is on the list. Tokos said that the Commission may receive a formal request for an interpretation. He wanted to get the Commissioners' thoughts on this standard; whether that makes sense or whether it's something that needs to be further clarified.

Hardy said the International Building Code, the Residential Code, and the Oregon Specialty Code all address the same thing differently. There are no diagrams showing a sliding glass door. She said it's okay if the window is 5 feet off the floor and breaks and stabs someone in the neck; but not at 18 inches where it could drop broken glass on their foot. She found a bunch of inconsistencies in talking to different building inspectors. When she first talked to the state, they said no it doesn't apply to sliding doors, and then they turned around and said yes. The International code says if there is a solid wall between the two it is okay. She said it is vague and very open to interpretation. Within inspections there have been variable interpretations; some units have been passed, and some have not. She said one facility built two years after the code didn't have safety glazing and passed. She said it is a consistency issue and needs to be one way or the other.

Tokos said that our inspectors are applying the State Building Official's interpretation that it applies to the moving part of a patio door or a hinged door. The code has more vague language just saying within a 24-inch arc of doors. This is implemented by the zoning ordinance, and we are free to write this language however we want; we are not implementing the building code in this case. This is about making vacation rentals safer. That is what this whole exercise has been about. He said if the Commission thinks this falls in the basket to make things safer for a facility that is rented, then you want to keep it a standard. If you think it's not needed, the Commission can ask or suggest that it be changed. These are standards put in place to make vacation rental units safer for guests.

Fisher recalled that we wanted this to be simple and clear; fire extinguishers, fire alarms, and things like that. If what we present is not easy for the common person to understand and follow, then we haven't done it right. He said if it's enforced differently, that isn't right either. We have an obligation to see that it's done consistently. McIntyre said we are talking about safety for guests. The guests aren't the ones that need to know if it's safe. Fisher said if glazing on windows by sliding doors isn't needed, why even put it in there.

Regarding the Embarcadero, Patrick said that when it was built, if they put bars in front of the windows they didn't have to put in tempered glass. One or two may still have bars; but others don't. Where these bars were protecting those windows, these owners are getting caught for the windows next to the doors having the original glass. Most glass companies won't replace these

windows without tempered glass; but that doesn't stop the Embarcadero crew from putting it in. Fisher said that if inspections are done by Hargie, someone out of Eugene, and the Fire Marshal fills in from time to time, we won't have consistency if we don't have one entity trained how we want it done. All three are looking at it differently, which isn't fair. Patrick said it is up to the Commission to interpret this in some manner. Fisher thought we want one type of trained inspector. Tokos said the issue for us is that is not always practical; we can't always have one person available when we want inspections. If you look at any kind of inspection, we don't expect consistency 100% of the time. But, enough stuff is getting caught that the value is still there. The unit is going to be safer because the inspection occurred. We do construction inspections all the time; and Hargie's not going to pick up the same thing on every house construction. The building code is so thick and contains so much. Tokos noted that VRD inspections cost $125 and $75 for re-inspections. Many people didn't have to pay. They had credit for being in operation prior to the code. The fees go into the general fund. State law doesn't allow the building fund to subsidize these types of activities.

Croteau said that the issue is that if the standard is ambiguous, we need an interpretation to clarify that ambiguity. If it's a safety issue, there is a purpose. Does it apply to sliding doors; if not then say hinged doors. The issue is to clarify to the extent we can what the inspector can say. Tokos said that is spot on. He said that right now the inspectors are basically applying the code to hinged doors and the moveable part of sliding doors. Even though the VRD code isn't that specific, that's the building code. Small said that toward that end it seems reasonable to require it for both doors. What is the down side of saying sliding doors? Berman said the down side is cost. Hardy said that when talking about meeting certain standards, she is unsure if they are safe for the people using them. She said there is a certain element of trying to level the playing field. Treat them like a hotel or motel that is inspected regularly. It's almost impossible to guarantee they remain safe unless they are inspected every year. She said it's not leveling the playing field; it's tipped it the other way and made it less competitive for the people that invest in vacation rentals. She suggested maybe a more moderate approach; maybe another approach for the way the rules are applied. She said there are safety conditions that aren't even addressed.

Audience member Roy MacMillan said that Tokos mentioned that the building code is so thick. The VRD checklist is only one page. Consistency is easy to achieve on the check list. He noted a unit that the Fire Marshal passed, and the inspector from Eugene failed one right next door. MacMillan said that the building code states that if it is a kitchen unit, then the bedrooms must have ground fault and arc flash capability. That is a big issue that these inspections don't address. Arc flash is a life and safety issue. The arc flash is changed out in the panel and senses if an arc is happening, where ground fault is the electric plug. He mentioned a situation where there was a treadmill in the basement that caught on fire and totaled the house and left three people dead. If there had been an arc flash, it would have tripped. It's the next generation. Patrick said the problem is that arc flash costs something like $40 a breaker. The other problem is that a lot of appliances, like some vacuums, will cause them to trip. Some plasma TVs will trip them. That's why in some high end houses people end up ripping them out because they can't keep anything operating. It is a good idea, but a little bit ahead of its time. They aren't refined yet. Croteau said if it's part of the building code, then it's appropriate. Patrick agreed that GFCIs are relatively inexpensive, handrails need to be there, and there should be accessible windows in the bedrooms.

McIntyre said this comes down to the interpretation. A window within 24" of a swinging door is fine. Is it necessary for a sliding door? Branigan said yes, from his experience. It has happened to him. Tokos said that is where the state building code is right now. Croteau agreed that students at Washington State slammed sliding doors and broke the windows all the time. Tokos said we can add verbiage to the check list and avoid doing a code revision. We can put in language that it is "from hinged doors and the sliding portion of patio doors".

From the audience, Loren Joling asked what timeframe is allowed for people to get corrections made before they can be issued a permit. Tokos noted that the language in the code gives the building official the option of allowing a unit to be used for vacation rental purposes if they put together a reasonable schedule to get it done. Tokos was asked the definition of reasonable, and he said the building official is dealing with it on a case-by-case basis. He noted that there were a number of units at the Embarcadero with the same issue; so the City went with a more extended schedule because Embarcadero is working it into a maintenance schedule. He said if it's one house or condos and things are minor, then maybe they don't need a year; maybe six months. Berman noted that the code says 30 days if they are already renting; and if it's a new unit, there is no timeframe. Tokos said but it does also say or "an alternative time acceptable to the building official". So it's up to him. He is looking at it on a case-by-case basis. It's not always the same issue. Berman asked if there are things the inspector notices that aren't on the list, if he will note them. Tokos said there are times when the inspector notes that even though it may not be one of the requirements, they suggest that the owner may want to address it.

Audience member Patricia Patrick-Joling said because they manage a lot of properties it is frustrating for them when one person gets approved and others don't. She noted that at the Embarcadero people are constantly coming in and out of the rental pool. They sold four or five Embarcadero units that were pulled out of the rental pool and then put back in after they sold. She said it constantly fluctuates. She said one way to tell if they were in operation prior to 2012 is to have them show their room tax revenues. Joling added that it costs the City to do these inspections, yet those in existence prior to 2012 were exempted from paying that inspection fee. Tokos said there was a time limit, which has passed. It was extended for the Embarcadero because

the City Council changed the code. The City allowed Embarcadero to come in without paying the fee even though it was past October because it wasn't fair to them that the code was changed. He said most are in.

McMillan said there were two units at the Embarcadero where one passed and one didn't and the owner couldn't figure it out. He said what is going on doesn't seem fair. Audience member Keith Turner felt the same. McMillan said the Embarcadero has no plan for making remedy; there is no plan to replace the handrails. Tokos said we have been assured a plan is coming. Joling asked what the timeline of the plan is. Tokos said five years, but we don't have the schedule yet. He said there are two separate pieces; the window egress issue and the safety-glazed glass. He believes one is to be three years, and one five. Things like the GFCIs, smoke detectors, and carbon monoxide alarms have to be done immediately.

C. <u>Adjournment</u>. Having no further time for discussion, the work session meeting adjourned at 7:06 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant