

MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
March 26, 2018

Planning Commissioners Present: Lee Hardy, Bob Berman, Rod Croteau, Jim Patrick, Mike Franklin, Jim Hanselman and Bill Branigan.

City Staff Present: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order & Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners Hardy, Berman, Croteau, Patrick, Hanselman, Franklin, Hanselman and Branigan were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission work and regular session meeting minutes of February 26, 2018 and the work session meeting minutes of March 12, 2018.

Croteau noted minor corrections to the minutes.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve the Planning Commission work and regular session meeting minutes of February 26, 2018 and the work session meeting minutes of March 12, 2018 with minor corrections. The motion carried unanimously in a voice vote.

3. **Citizen/Public Comment.** No public comments.

4. **Action Items.**

A. **File No. 1-MRP-17-A.** Tokos reviewed the Final Order for File No. 1-MRP-17-A. He advised the PC talk amongst themselves to see if there had been any ex parte contacts and see if there were any disclosures that needed to be made. He said they could then decide whether or not they wanted to reopen the record to accept testimony. Tokos said the PC was at a point where they would be able to deliberate between the two sets. Hardy wanted to see the hearing reopened. Berman didn't think reopening was necessary and thought there was enough information in the reports. Croteau asked if Tokos had anything to say in response to the memo. Tokos said he did not. He suggested that before the PC took further action, they go back through the ex parte contact and disclosure piece. Patrick asked if any PC members had ex parte contact. Hardy said yes, she was contacted by Mr. Freeman after the last hearing to find out how the meeting went. No other ex parte contacts were heard. Croteau said he did a site visit, which he stated at the last meeting. Patrick thought that since there was a hearing already, the letter seemed to add more things, and he didn't think they should reopen the hearing.

MOTION was made by Commissioner Hardy to reopen the hearing for File 1-MRP-17-A. The motion died for lack of a second.

Deliberations for the final order began at 7:07pm.

Croteau asked for the opinions of other PC members. Franklin said he was confused at the last hearing with the attorneys saying opposite things. Patrick noted that if they took the appellants order, they would be negating all further non-remonstrance agreements and he wasn't comfortable with that. He thought the City Council should make the decision and didn't want to set a precedent. Franklin agreed. Berman agreed and said the Newport Municipal Code laid out the criteria that needed to be met for approval. He said the consent to the agreement was one of the criteria. He thought the appellants hadn't met all the conditions that were necessary.

Croteau said he struggled with the legal arguments and didn't think the City was asking for much. Hardy thought the timing of the non-remonstrance agreement was ridiculous when talking about portioning land to get excess property.

She said it would be on the buyer to do the non-remonstrance agreement because they would build those costs, if any, into their resale price once the land was further divided or partitioned. She didn't think it was a black and white decision but felt the ordinance was poorly applied. Hanselman said the PC had to follow the municipal code. He thought the PC should move it along and have the CC make the decision.

Branigan recused himself because he wasn't in attendance at the hearing and didn't think it was fair for him to vote on the decision.

MOTION was made by Commissioner Berman seconded by Commissioner Franklin to approve the Final Order by Staff for File 1-MRP-17-A as written. The motion carried in a voice vote. Hardy was a nay. Branigan abstained.

B. File No. 1-ADJ-18. Tokos reviewed the Final Order for File No. 1-ADJ-18. Franklin asked if any PC members drove out to look at the location. Croteau said he tried to look and said it was hard to imagine what it would look like. He didn't think in the long run it would make any difference in construction and thought the developers could come in under the height limit. Franklin said that Building 4 would be the lowest structure and the others were taller but were protected behind natural trees. He wished the developer could have done a better job by presenting a 3-D model to show height and the position to the neighborhood. Patrick said he didn't want to set a precedent across the board and was why he wanted the discussion on a PC work session.

Hanselman said even though Criterion #1 was met and they expanded the setbacks used to minimize the issue, it didn't change the height of the building. Franklin felt it was the equation on how the height was determined that was the problem and didn't think the decision should be turned down. Patrick said the developer had ways to make the heights different and they made a mistake. He felt they had to be able to make it right. Franklin said there were examples of over height buildings that were on flat properties that were granted adjustments. He felt the developer did his best based on the grading of the ground. Hanselman didn't think it was fair that a developer came in with a design that didn't fit the standards and thought they didn't do their homework. He said it wasn't hard to fix the mistakes before the decision came to the PC. Croteau thought it was case specific and felt if he could have granted on this case, he would have. Franklin noted that the PC was against the OSU vertical evacuation building having the top floor as an event space, but when OSU came in with their plans they showed it as such and the adjustment was still approved by the PC.

MOTION was made by Commissioner Croteau seconded by Commissioner Berman to approve the Final Order for File 1-ADJ-18. The motion carried in a voice vote. Hardy and Franklin were a nay.

5. Unfinished Business. No Unfinished Business.

6. Public Notices. At 7:25 p.m. Chair Patrick opened the public hearing portion of the meeting by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Croteau, Berman, Patrick, Hanselman and Franklin reported site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

A. File No. 2-ADJ-17. Patrick opened the Public Hearing for File No. 1-ADJ-18. Tokos gave his staff report for File No. 1-ADJ-18 and reviewed the criteria for approval. Berman said in Criteria 1, point #4 it said there would be a 10 foot separation from the property line that extended the curb line. He asked if the 10 feet on the right-of-way would be treated as private property. Tokos said driveways need to approach the ROWs, and many properties had a part of their driveways in the ROW. He said in this case, there would be at least 20 feet of driveway and they would still be able to construct curb and a sidewalk. Berman asked what the typical size of sidewalks were. Tokos said five feet. Patrick asked if the dotted line represented what the actual paving was. Tokos said yes and showed the logical extension of the curb.

PROPOSERS: John Tesar addressed the PC and asked if they had any questions. Branigan asked if the property would be owner occupied. Tesar said yes. Branigan asked for clarification on if it was a garage or not. Tesar said he moved the property forward five feet because the topography was severe in the back, and at that point it made the dwelling in compliance for setbacks but the garage wasn't in compliance of 20 foot setback. He said if he didn't get approval it would be a shop. Berman asked if the 15.2 feet was the distance from the garage door to the property line. Tesar said yes. Berman asked if the other 10 feet to the radius of 50 feet was the maximum that the City would need.

Tesar said that was correct and there was currently a curb there that the surveyor measured. Berman asked if the existing curb was on the drawing. Tesar said yes and explained its location on the drawing.

OPPONENTS: No Opponents.

Hearing closed at 7:38pm.

Branigan said he didn't have a problem with request for approval. Hanselman said the lot was interesting to work with and why the PC could move favorably with these types of approvals. He didn't think there were any concerns for safety and was comfortable with approving it. Franklin said it wasn't the original location the applicant wanted the structure and they had moved it. He said the property lends itself for a long driveway and was why he was fine to approve it.

Croteau said he was in approval. Berman said he was in agreement and didn't see any problems. Hardy didn't have a problem but said it was setting another precedent. Patrick said he didn't have a problem with it and if it was less than 20 feet it would be an issue. He pointed out that the photo showed two cars sticking out on the street but didn't have a problem with it.

MOTION was made by Commissioner Croteau, seconded by Commissioner Hanselman to approve the adjustment for File No. 2-ADJ-17. The motion carried in a unanimous vote.

7. New Business.

A. Nominate Member to Assist with Review and Scoring of the Transportation System Plan Update Consultant Proposals. Tokos noted that this was for the Transportation System Northside. He said the RFP was put out by the State and the consultants had to come off of a preapproved list from the Oregon Department of Transportation and it closed on April 23rd. He said the committee would have seven members with two CC members, one PC member, one Bike/Ped Committee member, Tim Gross, Spencer Nebel, and Tokos. Patrick asked for volunteers. Croteau asked if the commitment was for only scoring the consultants. Tokos said yes. Croteau volunteered. Croteau asked if there would be a set of criteria they would follow. Tokos said yes.

MOTION was made by Commissioner Berman, seconded by Commissioner Franklin to appoint Commissioner Croteau as the Planning Commission member to the review and score committee for the Transportation System Plan Update consultant proposals. The motion carried unanimously in a voice vote.

8. Director Comments. Tokos said Peggy Hawker sent out the annual the ethics disclosures forms and asked if the PC had returned them. The PC said they had all completed them.

Tokos said he wanted to speak about the Central Lincoln PUD minor replat item. He reminded the PC that it was final order, not a staff report. He said they had an opportunity to request the record be left open, but chose not to. Tokos noted that CLPUD had seven days to provide final argument and they chose not to. In going through this exercise and looking at the procedural code, he didn't see a provision that allowed the CC to call up a decision they might disagree with. Tokos said a standing to appeal was for people receiving notice and participating in the process. He said he didn't have standing and neither did the City Attorney. He explained that if the PC had accepted the appellant's argument that it was unconstitutional, the CC couldn't pull it up as it was a final decision. He said it couldn't be further appealed because the only person in standing was the appellant. He said the PC might want to add something to the code that allowed the CC to call up, or if the PC ran into a situation where they felt they would be making a decision that might be of importance to the CC, or if the PC didn't like what was offered by staff on appeal. Franklin was confused on why CLPUD was fighting against this. Berman said because of the buyer. Tokos said when doing a land division, under State law, you couldn't enter into a purchase agreement to sell a lot before you had recorded the plat. He said there was a provision that gave an exception that said when doing a partition, they could enter into a purchase agreement but couldn't sell it until the plat was recorded.

Berman asked if the PC needed to take a look at what the appellant was presenting and have different criteria going forward. Tokos said the PC could revisit non-remonstrance agreements and said he wanted it very clear that the City was on very solid ground that the agreement was a financing tool and was not an exaction. Berman asked in the interest of fairness and to benefit people who end up in these situations, should there be a path where they could proceed without that non-remonstrance agreement with the developer being on the hook to sign the agreement. Tokos noted a

CLPUD project off of 73rd Street. He said the non-remonstrance agreements committed property owners to participate proportionally in the signalization of 73rd Street when it was warranted and there was no other way to do that. Tokos explained that non-remonstrance agreements gave the City the opportunity to require improvements across multiple properties. Hardy said she had a problem with Limited Improvement Districts. She said when they are talking about improving infrastructure, which was public, you would get the whole City to participate because they all benefited. Tokos said this was a policy discussion and depended on the improvements. Hardy said she had worked with a lot of homeowner associations where there were common areas. She said everyone owned the common area and was responsible for the cost of maintaining it, whether it was pertinent to their house or not. Tokos said what Hardy was talking about was a policy call.

Franklin asked if the future buyer did not have to sign a non-remonstrance agreement and they wanted to keep the use of the land very similar, and another neighbor was required to do improvements, would they be required to be a part of the improvements. Tokos said if this was the case the buyer of the CLPUD property would have to participate. He said when you look at most of the non-remonstrance agreements they were committing people to participate in their portion of a larger project. Croteau asked if proportionality was determined by the PC. Tokos said if anyone didn't believe it was roughly proportional they could submit a land use application, force us to put things in writing, and if they didn't like the decision they could appeal it to the PC. He said most people didn't want to do frontage improvements. Hardy didn't think that was true.

Tokos noted that the Wyndhaven adjustment was there as a matter of code and if anyone wanted to seek an adjustment to a dimensional requirement they had a right to apply for an adjustment. If they meet the standards they got the approval, if they didn't they were denied. He said a legislative process could change these standards. Berman said if all of the buildings were 10 percent or less would the neighbors be able to appeal. Tokos said it would have been a staff decision where they would be notified on the decision and could appeal it to the PC. Tokos said notices went out and they had an opportunity to comment before the hearing. Tokos noted that the applicants owned their performance at the hearing and were going to conform. They said they would be submitting modified architectural drawings to have ceiling heights on all three floors be eight feet, keep the roof pitch the same, and modify their grading to do some backfill. He said their mistake equaled \$70,000 was something they were using to leverage some relief on public improvements fees. Patrick didn't feel the applicant made a good argument. Franklin asked Patrick if he thought the public made a good argument. Patrick said not really, because most of the arguments were about view. He felt their best argument was that they built under the 35 foot standard, so why should the developer get to build over the limit.

9. Adjournment. Having no further business, the meeting adjourned at 8:04 p.m.

Respectfully submitted,



Sherri Marineau
Executive Assistant