

Minutes
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
Monday, January 26, 2015

Commissioners Present: Jim Patrick, Lee Hardy, Bob Berman, Rod Croteau, Gary East, and Bill Branigan.

Commissioners Absent: Mike Franklin (*excused*).

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

A. **Roll Call.** Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 6:00 p.m. On roll call, Hardy, Berman, Croteau, Patrick, East, and Branigan were present. Franklin was absent but excused.

B. **Approval of Minutes.**

1. Approval of the Planning Commission work session and regular meeting minutes of November 24, 2014, the work session minutes of December 8, 2014, and the joint City Council/Planning Commission work session minutes of January 12, 2015.

Croteau noted a couple of minor corrections on the minutes of the November 24th work session.

MOTION was made by Commissioner Berman, seconded by Commissioner East, to approve all sets of Planning Commission minutes with the corrections as noted. The motion carried unanimously in a voice vote.

C. **Citizen/Public Comment.** No public comment.

D. **Consent Calendar.** Nothing on the Consent Calendar.

E. **Action Items.**

1. **Election of Planning Commission Chair and Vice Chair for 2015.**

MOTION was made by Commissioner Berman, seconded by Commissioner Branigan, to retain Commissioner Patrick as Chair and Commissioner Croteau as Vice Chair. The motion carried unanimously in a voice vote.

F. **Public Hearings.**

Patrick opened the public hearing portion of the meeting at 6:04 p.m. by reading the statement of rights and relevance applying to all hearings on the agenda. He asked the Commissioners for declarations of conflicts of interest, ex parte contact, bias, or site visits. Berman, Croteau, East, and Hardy all declared site visits. Branigan and Patrick declared a site visit to one; 17th Street. Patrick called for objections to any of the Commissioners or the Commission as a whole hearing this matter; and none were heard.

1. **File No. 2-MRP-14-A.** Appeal of the Community Development Director's decision of approval for File No. 2-MRP-14, a minor replat of portions of Lots 1 and 4, Block 1, Nye & Thompson Addition as submitted by Bret Fox. The Appellant, Bret Fox, is challenging Condition of Approval No. 2, which requires widening and reconfiguring of the property's access to SW 2nd Street, removing and revegetating an "abandoned" portion of the 2nd Street right-of-way, and replacing the sidewalks along the property's Olive Street and 2nd Street frontages.

Patrick opened the hearing for File No. 2-MRP-14-A at 6:05 p.m. by reading the summary from the agenda. He called for the staff report. Tokos said, as the Commissioners gathered from the packet material, the City has been working with Bret Fox and his attorneys, and they would like to sort out a solution in a manner that's workable for both the City and the applicant. Mr. Fox is in the process of doing some financing on that property. His objective is to create a third parcel where the Courthouse Café used to be. By creating that as a separate parcel, it would not be involved in the financing he is arranging for the larger property, which includes the developed portion. Given the timing on his financing, it would be difficult for him to get all of these improvements in place. We talked with them about a development agreement; and we were going down that path. However, Fox and his attorneys have indicated that they

may want to pursue a different matter. They may want to drop the replat and try a different route through a property line adjustment or simply forego doing anything further with the property reconfiguration at this time until he gets a better sense of how or when he might be able to get that Courthouse Café piece ready to develop. He has no qualms with the need for restoration that have been identified by the City Engineer as part of that approval packet; it's just that he's not in a position to do them right now because of the financing he's working on. Especially in particular with the Courthouse Café piece, he may want to approach the City to vacate a portion of 2nd to better reconfigure where that clock is. That clock is sitting on state right-of-way; it's not something that's the City's. We maintain it, but it is state right-of-way. He is thinking that might help with respect to reconfiguring the access. It needs to be corrected, and he recognizes that. He's just not sure that now is the best time for him to make that investment given where he is at with positioning properties. For now Fox is trying to sort out how to best proceed and ran out of time and asked for a continuance. Tokos noted that, as the Commissioners can see in the email put forward today, the attorneys agreed to stay the 120-day clock for purposes of City decision-making while they sort through their options and get back to us.

Patrick didn't think there were any objections to that on the Planning Commission's part. Croteau said this seemed like a fairly reasonable way to deal with the appeal. He asked what the consequences would be if they didn't move forward with what they promised but were obligated to do within that timeframe. What does the City do in a case like that? Tokos said we have limits. The filing of the final replat is our hammer to make sure improvements are in place before the additional parcel is created. We have the option of doing a development agreement, but that's limited to a one-year timeframe. Fox has to post a bond or provide a letter of credit. We told him we could throw a conservative number in there for bonding purposes that would cover this; but he was concerned that the banks may want more detail that he's not ready to provide now with respect to how he intends to develop that property. In the latest iteration that we're talking about, we told him he might grant across access easement for the newly-created Parcel 3 so they can legally utilize the access on 101. Right now it can because it's not a separate parcel, and it has historically used that. The way he's proposing to create this, it's only legal access would be off 2nd. What we were talking about was what if he puts an across access easement in there to provide a legal way of access and then agrees to barricade the access to 2nd for the time being. He could then forego having to do improvements to the driveway at that location and to the sidewalk; and just make the sidewalk improvements up on Olive, which is a potentially lower cost. Then when he is actually ready to come in and develop, we could talk about lifting the barricade at that point and hook him for fixing the access and the sidewalk on the south side when he's ready to develop the property. That's what we're sorting through. Croteau said he can see it will take some time. Berman asked if continuing it just two weeks would be enough time. Tokos said that seemed to be acceptable to them; they asked for the next available date. The ball's in their court, and we're just kind of working off that. Hardy asked what kind of sidewalk improvements Tokos was talking about. Tokos said just reconstruction along 2nd because it is beat up; as is the sidewalk up on Olive.

MOTION was made by Commissioner Croteau, seconded by Commissioner Berman, to continue the hearing for File No. 2-MRP-14-A to February 9th. The motion carried unanimously in a voice vote.

2. File No. 2-SV-14. Consideration of a request submitted by Rex and Theresa Capri for a proposed partial street vacation of the northern 30' wide portion of NW 17th Street abutting lots 16, 17 & 18, Block 8, BEACH PARK ADDITION (a portion of Tax Lot 7901 of Tax Map 11-11-05-BA) and the southern 30' wide portion of NW 18th Street abutting Lot 7, Block 8, BEACH PARK ADDITION (also a portion of Tax Lot 7901 of Tax Map 11-11-05-BA). The Commission will forward a recommendation to the City Council on this matter.

Patrick opened the hearing for File no. 2-SV-14 at 6:11 p.m. by reading the summary from the agenda. He called for the staff report. Tokos noted that in the staff report he outlined the relevant approval criteria listed in State Statute. He said the first is whether the consents of the owners in the required area were obtained, which is 200 feet to either side of the road being vacated and 400 feet from the terminus ends of the right-of-way. He noted that there is a map exhibit showing the notification area. The second criterion is whether notice was duly given for the hearing; and that is shown in here. The last criterion is whether the public interest will be prejudiced by the vacation of the right-of-way. Tokos said the consent area was properly identified by the applicant. The map shows that the owners of 2/3 of the land within the area have consented to the vacation. The abutting property owner, who is the petitioner in this case, has consented. So the application satisfies the statutory requirements for consents. Tokos said the main consideration then is whether the public interest will be prejudiced by the vacation of the right-of-way. He noted that there is a letter included in the packet from City Engineer Tim Gross indicating that the right-of-way is needed to maintain utilities that are in place in both locations and pointed out that 17th may be extended at a future date; which is relevant because if you consider if the public interest will be prejudiced when doing a vacation, you have to look at that in perpetuity. If a street is going to be expanded or enlarged at some point, that is an important consideration; and Gross indicated that it may be extended or widened at some future date to connect up with Grove Street, which has been partially constructed as part of the preparatory work done by those commercial developers. The extension of that

street would create a looped street system, which is desirable both for emergencies and for public convenience. Tokos told the Commissioners to keep in mind that the City's TSP sets out minimum right-of-way widths for the purpose of constructing local roads. The minimum right-of-way width is 50 feet. This petition if granted is suggesting a right-of-way smaller than what is permissible in the City. That's an issue that you would have to address. There is also the issue Gross pointed out with having flexibility for dealing with maintaining utilities there. When dealing with rights-of-way, he needs the flexibility and ability to deal with a number of issues in maintaining and expanding utilities; not the least of which is dealing with terrain issues in some areas. They may need significantly more area than where the specific utilities are located to deal with that. Tokos said those are some of the things to think about. He said to also think about what is the public interest in this case. The petitioner indicated that one of their desires is to preserve the canyon, which happens to be largely owned by the City. This is one of several sites discussed in the workforce housing study, but it has significant terrain issues. It was discussed at that time as having constraints for workforce housing; but the City hasn't established a specific use for those properties at this point in time. Tokos said the Commission needs to think about, if we vacate the right-of-way, for what purpose. What is it actually accomplishing. If it's preservation of the canyon, how is that more effective under private ownership as opposed to City ownership? Tokos noted that the petitioner has put together some responses to staff comments, which were distributed prior to the meeting. He encouraged the Commissioners to read through it and contemplate that before making a recommendation to the City Council whether or not the right-of-way should be vacated. He said if the Commissioners believe it is in the public interest to vacate the right-of-way, you would have to recommend that utility easements be reserved. Tokos said, regarding the location of the utilities, he sees the petitioners point that they did utility locates. Even with utility locates, the exact location of utilities and the area that would be needed to be reserved to adequately maintain them, there is no legal description of what that would be short of retaining utility easements over the entire area that is proposed to be vacated. That's typically how it's done. Unless the petitioner proposes an alternative legal description, your default is to retain a utility easement over the entire right-of-way proposed to be vacated. That's something else to consider if the Commission believes it is in the public interest to vacate the right-of-way in the first place. Tokos told the Commission that after taking public testimony, you need to weigh how you want to recommend this forward to the City Council. They will have another public hearing and will be the final decision-maker on this petition.

Hardy asked if there was any geologic analysis done on that canyon. Tokos said not to his knowledge. He said that there was quite a bit of work done by the developer who put a lot of sand fill at that location. They did some analysis on their compaction methods. He didn't know how thorough that was and didn't evaluate that prior to this meeting. Hardy asked if that sand fill and compaction was monitored for appropriateness. Tokos said not by the City. We don't have a code that required that. The property's not in a geological hazard area. If it were we would have had a geologic permitting process. So, it would default to an erosion control code, which we don't have. Croteau asked if there are any issues with access by fire or other emergency vehicles in a future development that came up in discussion. Tokos said the Fire Department did receive notice, but didn't provide comment at this point in time. He said that may have just been an oversight. The Fire Department wants to make sure accesses are wide enough to accommodate their vehicles and can handle the load weight of their heavier vehicles. He said that they don't care for dead-ends so much; they are happier with more than one way in and out. Hardy thinks there are challenges there in that regard in that neighborhood. Patrick asked that he understood correctly that even if we vacate the right-of-way, we'd still retain a utility easement. Tokos said you would need to; otherwise you would be leaving them hanging out there in the wind. You would put the City and the other utility providers in a position where they may need to do work on those utilities outside the right-of-way, basically on private property. Then they would have to secure easements from the Capris. Once vacated, that would become the Capris' property. What usually happens is when it's vacated it accrues to the adjoining property. Typically when you see a street vacation, you see the entire width of the right-of-way being vacated. Half accrues to one side and half to the other. They've only requested half the right-of-way be vacated; the part that would accrue to them.

Berman asked, assuming the original drawings were as wrong as it seems to be indicated on the latest handout, if Tokos had a sense of how that came to be. He asked if it would really take a physical survey. Tokos said it does. The representations we have in the GIS system are not survey accurate. This was their initial round of locating their stuff to identify where it is generally in the right-of-way. Even from the photos Capri attached with his information you can see you have rights-of-way with utilities on both sides of the actual traveled gravel roadway at this point in time. These aren't all in one trench; they're scattered around. Even with utility locates, they are good in so far as there are tracer wires in the lines that they are locating. We commonly run into infrastructure that's more dated that doesn't have tracer information. Utility locates are helpful as they give you a general sense of where those utilities are and that you have to be careful there; but they don't always pick up everything that's in the ground. Berman said that he noticed that most streets up there are as narrow as what would be remaining after the proposed vacation. He asked if Tokos had any sense for how much very narrow used streets (actual developed streets) there are and how exceptional this would be to add another couple hundred feet of 30' wide streets. Tokos said typically where the City has found it's not going to be prejudiced, and Abbey Street in back of the hospital is a good example, those are areas where the

terrain is so steep that a street would never be extended through there; and in these cases we didn't even have utilities in those locations because it's so steep. It's highly irregular to vacate half of a right-of-way and not the other half. Typically what you'll have is a right-of-way that extends over very steep terrain, and there are no plans or no need for the public to extend a street in that location. Croteau noted that there are a lot of streets that are 30 feet and gravel, but the right-of-way is not. Tokos said it's not uncommon to have underdeveloped streets. Sometimes it's terrain, and sometimes it's an underdeveloped area where the developer couldn't afford to construct a proper street. Also, we are on a program of fixing gravel streets and fully paving those and putting in sidewalk; like over by Dutch Bros. for example. He noted that what's there today is not necessarily what will be there in twenty or thirty years. That's why one of the things the Planning Commission needs to think about is when you vacate a street, it's gone forever. The only way it gets picked up again if it's ever needed is it gets repurchased at cost to the City. Branigan said that particular property is very steep and asked what the practicality is of ever extending a road through there. Tokos said that 17th is not as terrain constrained as 18th is. It's not inconceivable that 17th would be connected through to Grove; 18th probably wouldn't be connected, and there's no purpose. It would be very difficult for it to be extended. However, as Gross mentioned, he believes it's in the public interest to retain that right-of-way for maintaining the street that is there. You do have traveled streets on both sides here; these aren't undeveloped rights-of-way adjacent to the petitioner's property. So to maintain the street on 18th and to maintain the utilities that are in place there, he has requested that it's not in the public interest that they vacate that right-of-way. It's not that Gross has any immediate plans to do anything there; it may sit that way for the foreseeable future. The question in front of the Planning Commission is if it's in the public interest to maintain the right-of-way in its present condition, or is it the public's interest to vacate it and convey it over to the neighbor.

Proponents: The petitioners, Rex and Theresa Capri, 255 NW 17th Street, came forward to testify. Capri said they live just on the south side of 17th Street across from the lots they own that are in the canyon. He said the idea was that they own four lots in that canyon and maintain it by cutting grass and brush on the sides there. He said that both of these pieces they are asking to vacate are still in their natural state and haven't been disrupted. The only thing on 18th is an overhead power line. He noted that if you look at the picture they provided, on page 4, the pink tape they placed on these pictures shows basically where the 30-foot center of right-of-way would exist. He said that on the picture you can see pretty much it's in a natural state except under the power lines. That was cut one year ago when they asked if they could come in and cut under there. Before then that was all natural vegetation too. Page 2 shows 17th Street looking east and west. On the shot looking west, across from his truck on the left is where their house is. They have lived there almost thirty years. He said that where his truck is is undeveloped property over there too except where the pickup is parked because he filled in there and made a place to park. He intends to make another one where he can park vehicles. Also, some of these trees that you see on page 2 in the bottom photo will be removed so he can plant some fruit trees. Also, at some point in the future, it may be that if he develops parking spots there he may want to put a carport or garage there to protect those vehicles. He said it's the same on 18th Street on that piece. On both page 2 and page 3 utilities are in these existing streets. Those shots from the street show the markings representing the utilities. He called attention to the bottom photo on page 2 where it's looking to the west, where you will see in the distance fencing at the top of that very steep bank. He said that was placed there last fall because there was a sewer line placed from Agate Beach Wayside up through Ocean View Drive and then up through that section on 17th and down that steep bank continuing down Nye Street down to 12th where it terminated. He said there was no problem for the equipment to come in on that little section on that steep bank to put in the new sewer line. He said, so the contention by the Planning Staff Report that they need the full 60 feet to do utility work is unfounded. Looking at this work that was done, they put a major sewer line in a street no wider than what you are looking at here. Capri said that Tokos had said that it's unusual to ask for a partial street vacation. He said the bottom photo on page 2 is shot from the end of the street, and it stops there; it's brush beyond there. On that parcel on 18th, shown on page 4, he doesn't intend to take down any of those trees above the tape there. He said just beyond that looks like an ideal place to plant some more fruit trees, some berries, and possibly some garden. He does some leveling on that, and because that's the highest piece it would be good for that. In the future he may want to put a small shed to hold tools and gardening or pruning gear or whatever. If he places these buildings on something that is still public and they decide to take them down, he would incur that expense. The fact is that these rights-of-way have never been used before, and the roads that are there seem to adequately provide access for the people who live there now. When they went out and collected signatures as part of the requirement for this petition, there were a number of people on both streets that said they would like to keep those roads the way they are. If the City decides to come in and open roads, he suspects there would be opposition from the local property owners there. They feel that 30 feet to go through on 17th and even 18th would be plenty adequate for what you are dealing with there. He said another point that Tokos stated was that 17th could be developed to a full 60-foot width. He said as you saw on the topography map, this is very steep and drops off very steep off the edge there. On page 2 in the top photo you can see a white marker off in the distance. When the City did all that fill from Walmart, they built a little road and dumped a lot of fill down in that canyon. There was no drainage pipe put in that canyon and no compacting when the fill was done. The only pipe was after the fact and only a piece of green plastic sewer pipe 50 feet long about 8 feet higher above the bottom of the canyon abutting where

the City filled. Two weeks after, there was a rainstorm that plugged that pipe. It also slid a section just beyond this log you see in the top photo on page 2. You would have to do some major repair work even to punch the road through on 17th as you see it existing right now. He said there are major issues.

Capri said that one of the problems here also on 17th was on Grove Street right behind TLC and across from Newport Plumbing there was a real steep canyon that headed to the north through there that has been filled in over the years. There was a natural stream that came out of there. There was never any provision made for any drainage from that stream. When the fill was placed there in those canyons with no drainage it caused that stream to push underground, and now it pushes up out of the ground on the eastern edge of their lots there; basically just beyond where he is standing against the pickup in the picture back by that white marker. He said if the City wants 60 feet, it would be right in that stream where it exists now. He said on the other side of the canyon, which is drainage from the highway, Sea Towne, and San-Bay-O and skirts around to the north, they did a lot of work when they filled in that vacant lot between TLC and O'Reillys. They had to come in and dig down way deep and put in correct drainage pipe, and that routed it. There are two streams there; one right over to the bank on the north side, and one on the south side. They run 24/7, 365. They were wetlands; and there was never any mitigation or requirements for drainage to be placed in there. There was no compaction of the soil that was placed in there. What that initially caused when it rained and the sand filled in, it filled in the lots they had. It filled everything and caused all that drainage water to just be a big swamp. Over the years he has dug channels. He said there would be a huge cost to mitigate those problems right there and ever make a 60-foot right-of-way and ever build a house there. It would require digging down and putting in proper piping. It also would be burdened by wetland requirements there. He's not saying it can't be developed; if it could, then fine. He said they think a 30-foot right-of-way just past the piece they are asking would be adequate and the most logical. If housing was built on the City property, it would be better to come in on Grove Street. It's one block off the highway. It's the best access for fire, and for water and sewer and utilities. He said for those reasons, he thinks they are being more than fair in their request to vacate.

Croteau said from the overhead map he notes that the Capris do have considerable property as it stands now. He said it seems like plenty to accommodate the needs Capri spoke of; parking, a shed, an orchard, and a garden. Croteau asked Capri to tell him what this vacation would provide him that he doesn't have now. Capri said he wouldn't be able to grow what he's asking to grow in the canyon or park down there. It would require a huge expense to go in and put in drainage. He said the previous City Engineer told him he would have to put in 2-foot culvert piping; and the expense of putting in that kind of piping, and there would be a huge amount of fill to make developable lots would be an expense that wouldn't be worth what you would hope to sell the lots for. Croteau said, so it would be for your convenience because you wouldn't want to bear the expense to make it usable for your purposes. Capri said there's nothing more than a part of it in the bottom of that canyon. To be able to park and for growing things, the only reasonable places are the higher elevations near the street. Croteau said, so the issue is really not one of preservation, but rather one of acquiring usable land for your own purpose. Capri said it would be preserved the way it is. Croteau asked if Capri is concerned that that land would not be preserved. Mrs. Capri thought they went with that area because it's right next to their property; and they can't ask the City to vacate the property next to theirs. Berman asked, if this vacation were to be declined, what activities might you not be able to do. You mentioned that you might want to build a shed and the City may say take it down. Other than that, what would you not be able to do because this vacation wasn't approved? Capri said he didn't know. Berman asked if Capri could park in the right-of-way; and Tokos said people park in the rights-of-way all the time. Berman said he could understand carports or structures; but if everything remains status-quo for the next twenty years; he asked Capri what he wouldn't be able to do. Capri said if he planted trees and berry bushes and things of that sort there. Tokos said currently the only area where you would have an issue is 18th because of the overhead utility lines. The utility company would have limitations on what could be planted underneath their utility lines. Currently there is nothing limiting planting in the right-of-way. Branigan asked Capri if basically he is wanting the 18th Street property for trees and plantings; and the 17th Street for additional parking. Capri said, yes; but he would be taking out a few trees east of where his truck is parked on 17th and putting in fruit trees there also. Branigan said but mainly 17th for parking and 18th for orchard; and Capri confirmed that.

Capri asked if the Commission could stay their decision until the members had a chance to go out and visually take a look for themselves to see what this involves. Patrick said that all of the members had made a visit to the site.

There were no other proponents or opponents present wishing to testify; so rebuttal was waived. Patrick closed the hearing at 6:50 for Commission deliberation. Branigan said that he understands what the Capris would like to do. He said it's certainly not in the public interest; it's in their own interest. Branigan said that land is valuable property within the City of Newport; we don't have enough. The rights-of-way are City-owned property. Branigan said he really doesn't think the public interest is going to be served by vacation of the rights-of-way. He said he would have to recommend not to do the vacation. East said he would like to hear from Tokos about a garage on City-owned property and what the future is for that. He would also like to hear from the Fire Department and get their input on

their access; their ability to turn around depending on what the City is going to do. If everything can be accessed from Grove and it would be geologically sound, then maybe he would consider it. East thinks for right now, he would like to see more information of what the City has planned and get feedback from the Fire Department. Croteau has a difficult time in voting for this because frankly the public interest isn't served. On the other hand, he doesn't see the City doing vast improvements on this land for quite some time. He would be happy to see the Capris build a shed and put in a garden and use the right-of-way for that. By the time the City gets to putting 17th through and developing that land, everyone in this room will be long gone. So he wishes Capri luck in using the right-of-way in a way the City accepts and can deal with. That way, Capri's objective is taken care of, but at the same time we're not giving up something that the City may regret at sometime in the future. Berman concurred with Croteau. He pointed out that the chances of 17th going on through or anything serious being done with 18th Street is about zero given the budget priorities and the fiscal condition and the other issues that really should be addressed by the City long before this. Berman also encouraged Capri to go on with his plans in conformance with City regulations. He said there doesn't seem to be a lot stopping Capri from doing what he wants to do on those two little bits of rights-of-way. He told Capri to go for it and best of luck to him. Hardy said she had mixed feelings with respect to the feasibility of the City doing anything easily for development up there. She said she has been up there in an ambulance about thirty-five years ago; and it's really difficult to access anything. She said to further hinder that for emergency response vehicles she thinks would be irresponsible. She is inclined to go with a vote against the vacation. She also encouraged the Capris to take whatever advantage they can of this green space without any issue with respect to using it; do well, but don't abuse it. Patrick agreed with the majority of the Commission and said it doesn't fill any public need. He thought the Commission actually will need to do a policy on street vacation; take the time and go through it. He said as he recalls, we've only done one that way and actually approved it. Tokos said there are a couple; Abbey Street and one by Walgreens. Berman said, and OMSI did too. Tokos said that was more comprehensive code cleanup. Patrick said for those others there were no existing utilities in the ground. Given the fact that here you have utilities in the ground and overhead, which means they would have to give utility easements; and 18th is overhead, which means they really can't do anything with it anyway. They can put something there like landscaping, but the utility companies reserve the right to take it out. Tokos said utility companies are cautious about things that could grow up and interfere with their ability to maintain their lines. Patrick said granted there is no chance of any of this getting approved right now; but fifty years from now is another story. A lot changes. He's seen people put a house on things he never would have believed they could put a house on. Maybe he could see it if it was vacating the whole street; but he's never done half a street. Patrick said he feels for the Capris and understands why they want the vacation; but he doesn't see any public interest in it that benefits the City of Newport. Croteau said that he certainly is sympathetic to the Capris' cause, but when he looks at the evidence and the testimony he had to make a motion for denial.

MOTION was made by Commission Croteau, seconded by Commissioner Branigan, to make a recommendation to the City Council for denial of the partial street vacation as requested in File No. 2-SV-14. The motion carried unanimously in a voice vote.

3. File No. 5-CP-14. Consideration of legislative text amendments to the Housing element of the Newport Comprehensive Plan to include new policies and implementing measures to encourage the development of multi-family housing, including student housing, as recommended in the Newport Student Housing Report, prepared by ECONorthwest, dated November 2014. The Commission will forward a recommendation to the City Council on this matter.

Patrick opened the hearing for File No. 5-CP-14 at 6:57 p.m. by reading the summary from the agenda. He called for the staff report. Tokos noted that included with the staff analysis is a draft ordinance that would amend the "Housing" element of the City's Comprehensive Plan to incorporate the policy recommendations that came out of the Student Housing Study. He drafted it in a manner that incorporates the recommended policy and three implementation measures more or less verbatim from the Study with just a little bit of transitional language. When the Housing Study was presented to the City Council, they adopted a resolution, which is included in the packet, where they accepted the study and referred it to the Planning Commission to consider whether or not this policy and implementation measures should be incorporated into the "Housing" element. Tokos noted that the policy on page 51 of the Housing Study states that "The City of Newport will encourage development of multi-family housing, including student housing, throughout the City in areas that allow multi-family development. Increasing the supply of multi-family housing is crucial to meeting the needs of Newport's workforce and lower-income households, as well as to support student growth at the HMSC. The City will identify and implement appropriate tools to support multi-family and student housing development." Then it sites three specific implementing measures. Measure number 1 states that "The City of Newport will work with Lincoln County to evaluate the use of the multiple unit tax exemption to support multi-family development. If the City and County choose to offer the multiple unit tax exemption, they will work together to identify the area(s) to apply the tax exemption, develop criteria for offering the tax exemption, and set criteria for using the program (such as a programmatic cap)." Implementation Measure number 2 states that "The City of Newport

will work with Lincoln County to evaluate the use of CDBG funds and Section 108 funds to support development of subsidized low-income and where applicable workforce multi-family housing.” Finally, Implementation Measure number 3 states that “The City of Newport will work with property owners around the Wilder development and ODOT to coordinate the amount, type, and density of residential development in this area. If necessary, the City of Newport will adjust the zoning in this area to allow for development of student housing and other multi-family housing.” Tokos said the Commissioners will recall that the Student Housing Report was something that was initiated by the City of Newport, Lincoln County, and OSU. Lincoln County brought some funds to the table to pay for that; as did the City through a grant with the State of Oregon. A stakeholder group was put together to provide guidance as ECONorthwest did their work. That stakeholder group included representatives from the cities of Lincoln City, Depoe Bay, Waldport, Yachats, and OSU from the HMSC side and OSU Housing from Corvallis. Lee Hardy served on the committee as an individual on the property management side of things and also happens to be a Planning Commission member. City staff was involved as well. Tokos noted that the members are listed in the Housing Study that is included as an attachment in the packet. He said if this does get included in the Comp Plan as a policy and implementation measures, then that basically gives us marching orders to pursue these three implementation measures. One of them, the multiple unit tax exemption, we’ve already had preliminary discussions to get a sense of how receptive the County might be and what that might look like and how that might be structured.

Berman noted that measures 1 and 2 specifically talk about coordination with Lincoln County. He asked if that’s saying it must include Lincoln County or if they balk, is there any reason the City couldn’t proceed. Tokos said there’s no reason the City can’t proceed. It’s more effective if the County participates. Their property taxes also would be abated. He said in either one of those measures, the City is committing to engaging the County; but beyond that, if the County doesn’t want to participate, there’s no reason the City couldn’t pursue one or more of those options by ourself. Berman asked, especially with the tax abatement, would all the other entities have to be involved and sign off; or are you saying just City and County would make that decision. Tokos said we would want to cast as broad a net as possible. There’s a good chance that most of the taxing entities would be receptive to that. If for no other reason, just for the simple fact that if it’s structured such that it applies to vacant property, they’re not realizing any property taxes of consequence on vacant property right now. If you can do a tax exemption that’s going to provide an incentive to multi-family development on what otherwise is going to continue to be vacant property, then there’s an advantage to offering the exemption for a period of time because at the end of that period you will actually get property taxes that you may not have otherwise ever collected if no development happens. You at least have that dynamic. He said it’s a little trickier when you’re talking about development of existing multi-family units. He said there is a decent chance that the smaller taxing entities would be willing to participate if the right parameters are put into place; including caps so the hit’s not too bad. Branigan asked if the tax exemption is set up for twenty years or for ten; or is that down the road. Tokos said he would have to take another look at the rules in here; there may be a limit. He thinks ten years was generally what was discussed. He doesn’t know how much flexibility there is. If there is flexibility then that would definitely be part of the conversation. Croteau thought the Study was comprehensive and a well-constructed document. He said he would be interested to see eventually if we form an oversight group to make this work in the long run because there are so many players and a lot to be done; but this is a great beginning.

Testimony: From the audience, Attorney Dennis Bartoldus came forward. He said he hasn’t read everything yet. He has a client who is planning on redeveloping some property down in South Beach. He said that waiving any type of SDCs is a sensitive issue. The City wants to charge his client over \$100 thousand to redevelop his property. When he sees other fees being waived, his client can’t help thinking that he is picking up part of them. SDCs are extremely high right now. He said the City has to be extremely careful how we handle those. It says this is to encourage businesses down there, and a restaurant is one of them; which is what his client is planning on putting in. With over \$100 thousand just in permit fees how is that encouraging things to go into that area. He said we need to get everything all coordinated here. Bartoldus said when he saw this was on the agenda and he was able to time it quite right, he thought he would swing by on his way to the County Planning Commission meeting because this is a sensitive issue. He said we had the one down on the Bay Front where to put a wall around the deck the City was going to charge \$7500 in SDCs. The permit fees were approaching 50% of what it was going to cost to do the job. He said it is a real sensitive issue for people who are trying to develop their property and add to the community.

Hardy said if you’re talking about the encouragement of development of residential property, which multi-family is, and one of the drawbacks of developing in South Beach is no grocery store or no large restaurant; Bartoldus makes a bit of a valid point. Do you want to encourage just one side of the equation or both sides? Berman asked if there wasn’t some discussion about some kind of mitigation of the development charges as one of the strategies that could be used to develop this kind of housing. Tokos said there was some discussion about that. He expects that will be further discussed. The City Council will be looking at the methodology generally; not just for affordable housing but the full extent and how it plays with commercial development and things of that nature. Berman asked if Implementation Measure 1 could be broadened to include not just taxes but other costs of development. Tokos said

it could be if the Commission wants to. He was just taking it verbatim from the Study. Berman said maybe a fourth implementation measure. Patrick thought we're better off setting that up as a separate measure. He sat on the committee that implemented the current SDCs. He pointed out at the time that looking at those numbers, you're not likely to ever get a restaurant built in Newport again unless it's a chain restaurant. The flip side on that particular issue is that you have to pay for this stuff somehow, some way. Patrick asked the Commissioners if we want to add a fourth implementation measure. Branigan said he didn't see where it would hurt. Berman said if generally we are trying to reduce costs associated with redevelopment and development in the City; then all the costs should be investigated. Tokos said if you are going to add it, he would suggest to add it in the context of the Housing Study discussed on page 50. We don't want to add something that talks about nonhousing things in the Housing element; it's just bad form. These are changes that are being made to the Housing element. SDCs for commercial development isn't covered under that part of the Comp Plan. It could be in the Economic Development section, which may already be there. What you are looking at now are amendments to the Housing element of the Comp Plan, so any policy or implementation measure in this chapter draws its authority from the analysis about housing. It's just like we wouldn't put infrastructure-related policies in the Population and Forecast section of the Comp Plan. It's a structural issue. Patrick thought the Commission was better off to pass the existing implementation measures and make a note to go back and make a pass at the SDCs. He thinks there are some concerns being voiced both for commercial and residential that the numbers are too high and are having an effect on some people. Croteau said Bartoldus' point is well taken; but this is not the place to do anything about those fees. Tokos told the Commissioners that they will be doing their goal setting at their next meeting. That would be an opportune time to discuss that as a potential goal you would like to see the Council take up in the coming year. Croteau and Patrick said put it on the list. Patrick said maybe also doing something about street vacations; set up parameters. We have to make it clear that you have to have a really good reason for the vacation. Tokos said he didn't have an opportunity to have a conversation with the Capris before the petition was filed or else he would have been cautioning right off the bat for the reasons we discussed. Croteau said it is a difficult one to wrap your arms around in a comprehensive way. But, we've done this a few times in the past. We do have at least some examples of where it was a worthy vacation for the public interest. If we can't do it comprehensively, maybe a few examples here would at least help us and refine how we interpret these things. Tokos said he can certainly forward copies to the Commissioners of the policies that were adopted for the City Council initiated vacations. There are two ways this can happen; a petition, or the Council can initiate it. For the Council initiated ones there are a whole bunch of policies that were adopted back in 2008 to frame under what circumstances the City Council will initiate a street vacation. He said we can codify the Statutes and put standards in place just like you do a lot of other processes. It may be a worthy exercise to go through.

MOTION was made by Commissioner Croteau, seconded by Commissioner East, to move forward a recommendation to adopt the legislative text amendments to the Housing element of the Newport Comprehensive Plan described in File No. 5-CP-14. The motion carried unanimously in a voice vote.

G. New Business. No new business.

H. Unfinished Business.

1. Tokos said, with respect to workforce housing, the Lincoln Community Land Trust (LCLT) did not hire an executive director in the conventional meaning in the sense that they didn't hire one individual. He said the Commissioners would recall that three jurisdictions, City of Newport, Lincoln County, and the city of Lincoln City, had partnered and put in \$30 thousand a piece over a three-year period to catalyze workforce housing. Part of that was a discussion about the Trust hiring a local executive director. The Trust couldn't find someone suitable. Instead they worked out an arrangement with Proud Ground, which is the big land trust in the Metro area. They have the organizational capacity to begin to expand outside the Metro area and provide staffing services to smaller land trusts in the state. So LCLT elected to contract with them to utilize their extensive resources. Tokos said there are two things we are working on in workforce housing. One is, at the Council's direction, he needs to do some additional work with Habitat for Humanity on maybe a parcel-specific type one house or maybe two on a city-owned piece. That's not going to solve huge amounts of workforce housing; but it's a message. He needs to work with them because Habitat, unlike the Land Trust, doesn't guarantee affordability of that unit in perpetuity. Someone can go into a Habitat unit and later flip it when they leave and sell it for market rates. So, we have to work on that. Tokos said the other thing is that he expects we will look to submit a CDBG application using this partnership we have with the other jurisdictions to support getting additional federal funds for Direct Buyer Grants. So, instead of building all of the units, this approach basically is that for a property owner in that 80% of median family income scenario that can't afford to buy a house at market rate, if you give them a buyer grant then they can. The catch is that then the property goes under a land lease. It's the same model; just a different end game. In that case you're talking about getting to the end game faster because you're talking about buying an existing house on the market. That goes a long way toward getting at the ten units that Commissioner Hall indicated is the target for the Trust. The Trust is pursuing those two

avenues, and it just takes time. Berman asked what the \$30 thousand times three is being spent on. Tokos said a small portion goes toward Proud Ground to help position us for applying for the block grant funds. Some is going into an account for the time being. It bolsters your chances of getting CDBG funds because you can demonstrate that there are three jurisdictions that are partnering to make something happen; and the Federal Government likes to see that kind of coordination in these types of things.

2. Regarding parking districts, Tokos noted that he talked to Nye Beach, and they want to reauthorize the economic improvement district. He will be working with them to get an extension to the five years. He shared with them about the discussion the Planning Commission had at work session about needing to make near-term changes to the parking code otherwise payment in lieu of pops up again, and nobody wants that to happen. They were supportive of the parking study. They recognize one outcome could be metered parking on the Bay Front and in Nye Beach, but that there may be other recommendations for funding coming out of it that doesn't lead to metered parking. It's not a foregone conclusion, but is something that will be looked at closely as part of the parking study. They liked that the study will provide a sense of utilization and turnover and what some of the capital needs are to maintain this. He explained to them that if we waive off-street parking requirements entirely, the City would only be doing it in a zoning context with the understanding that we are using public assets to make up for what would otherwise be parking provided by the private sector. In doing so, we have to have some funding mechanism to make sure those public assets are available; otherwise you have no parking. Tokos said they are thinking it's okay to use some district money for the study; but not all of it. They think that some room tax money should also be dedicated for this purpose given the context of what we're talking about; and Tokos will pick up that conversation with the City Manager. Tokos still needs to set up meetings with the City Center and the Bay Front districts. He said the Commission can anticipate that this will probably be coming up at the second February Planning Commission meeting.

3. As far as following up with the Urban Renewal District, Tokos said the City Council indicated that they are looking for a recommendation from the Planning Commission on a couple of different things. He will try to package that up for one of the Commission's February meetings in anticipation of the City Council taking up resolutions to initiate the process at their first March meeting. He will get letters out before the end of the week to the different taxing entities with the information we put together letting them know here is their opportunity to weigh in and provide specific recommendations to the City Council on things like the maximum indebtedness level and the boundary. So hopefully they will weigh in. The City Council will look for Planning Commission feedback in terms of the appropriate task force structure; and there was something else that he will go back through his notes to make sure he picks it up when we get this on as a discussion item in February. Patrick said they had him confused by the end of that. He heard two different things. One would be that the Planning Commission would be doing it and advising on it; or that they would be setting up a separate task force. Tokos said that's right. There's the task force near-term to assist with putting the district together; then there's in the long-term should there be an advisory body to the City Council. If there should be an advisory body, what should that body look like? Tokos said that he is still of the opinion that it should be the Planning Commission for the very basic reason that the Commission is responsible for or at least has a role in any kind of substantial amendment to the Urban Renewal Plan by finding that it is consistent with the Comp Plan. The Commission has a pretty good handle of what is in all our different facilities plans, which are what feed your projects list. In general you can't have major projects in an Urban Renewal Plan that aren't in your facilities plans. That's why the Planning Commission has to find that the project lists are consistent with the Comp Plan and make sure what the Urban Renewal Agency is going to be doing isn't counter to what all of your other facilities plans are trying to accomplish.

Patrick said he could see the Planning Commission doing that. He couldn't figure out if they were talking about us becoming the Urban Development Commission. Tokos said no. Patrick said, so they just want to keep that and just want our advice on it; that's doable. He said that wasn't what it sounded like they were talking about. Tokos said he doesn't know that there is consensus among the City Council. He doesn't know how many Councilors want to do an advisory committee. This came up from Commissioner Allen. It's a fair point, but Tokos doesn't know how strongly the full Council feels about this issue. He can appreciate that they're going to want some advisory assistance, especially going to two districts. That makes a ton of sense. But he doesn't know that there is consensus about how that should happen. They may want it as a separate advisory committee that's more developer-oriented as opposed to the Planning Commission, which can't have more than two people in any particular profession. Croteau said that he would like to see function reside in the Planning Commission but still have the option of increasing our advisory capacity when we encounter things where we would feel more comfortable with additional advisors. Patrick said he had an idea of something going down that path too. Kind of like our citizens advisory committee that sits in on most of our stuff; if we had an Urban Renewal advisory committee, we could call them in when we have Urban Renewal stuff. It would allow us to bring in opinions of those people we would want to listen to. Tokos said that's a good thought. He said the concern from staff level is that we are not adding staff but are taking on more standing meetings, which is difficult for us to do. If it could be done where it's a regular Planning Commission meeting, that would

negate that concern. It also addresses the issue that the Planning Commission has a tangible role and needs to be plugged in on a regular basis; if not, the Commission gets disconnected and doesn't have the context of the minor amendments that have been done.

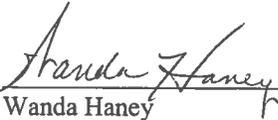
Berman said the only involvement the Planning Commission gets in the South Beach district is when Tokos reports what's going on. It seems there could be a somewhat greater role. Tokos said the City Council is looking for an additional citizen policy making body to provide them a recommendation so that they don't feel they are the only ones having to make that decision without having the benefit of somebody else weighing in and giving them some advice. Berman said the Planning Commission always runs the risk, as has happened in the past, that we could study a particular project list and say it's right and is a good fit with the plans; then when everything is sent to the City Council they just tear it up and throw it out. Tokos said the Planning Commission always runs that risk as a recommending body. It's certainly true that they may or may not follow your recommendations. But the Council always values your recommendation. Croteau thought the more we broaden our base when we need to in this area, the more credibility we have and the better interaction we have with the public. Patrick said he thinks of our advisory committee as our farm team. Tokos agreed that it had served that purpose so far. Berman said it wouldn't have to be a separate group; that citizens advisory committee could also include Urban Renewal. Patrick thought we could keep the same advisory committee but add that extra Urban Renewal to that same work session type of thing where we bring in the other people. That way you keep your regular advisory people up to speed but allows you to expand that out. Tokos said his only concern is if you get the membership up too large, it becomes a little unwieldy. Croteau agreed, but said if we're going forward with something like this that's complex, he would rather error on the side of largeness. Berman said maybe if we picked advisory committee members with an eye toward Urban Renewal functionality because that is going to be a big part. Tokos said that in the past when the City had an Urban Renewal Agency that didn't really have any staff dedicated, the community paid the price. The north side URD was in effect for forty-some years. He said there's no reason a district should be in place forty years and have a tax increment locked up for forty years. There was a gap there in the 90s when nothing was done. To do it and do it right, you need to ramp it up, you have your projects, they're phased in three-year intervals, and after nine or ten years shut down the new projects. That requires active management, and it requires active engagement of the policy-making bodies. You have to move it along. That is how it's most effective.

Patrick said we will talk about it in work session. He thinks there's some way we can set it up. He said that sounds workable to him. Berman said it sounds like we have a consensus that the Planning Commission would be the appropriate advisory body. Tokos said or a Planning Commission plus kind of concept. He thinks that makes more sense than an independent body. His fear is with an independent body you run the risk of that body making recommendations that are inconsistent, and the Planning Commission is not linked in with them; and then you have three policy-making bodies that have their fingers in Urban Renewal for different reasons. In his mind it's not as efficient. Croteau thought that Patrick's idea of the Planning Commission with an expanded advisory body would sell. Tokos told the Commissioners they might want to put some thought individually to what role those additional seats should be; what background do you need to fill out the advisory body. Berman said both geographically and professionally. Patrick said that will be the interesting part; who's opinion do you really need? Berman thought that the hospital is a good example. Patrick said the Planning Commission would be the advisory body for the South Beach district too; we will be doing both. Tokos thought it would be hard putting on all of the major taxing entities that would be impacted or have major projects; you would be adding too many. Berman said he was talking organizationally, commercially. Tokos said definitely the taxing entities should be on the group that helps form the project list. Patrick said the people who set up the project list are probably not going to be the Commission, right? Tokos said you will probably have one or two representatives on there. Patrick said, but the Commission won't be developing the project list. Berman said that was the two different kinds of advisory groups they were talking about at the joint meeting. Tokos said there were two recommendations they were looking for; one had to do with what the makeup of the task force should be. He can provide some options there; but the Commissioners may want to think as well just in terms of who you would like to see on there. Then there's the makeup of the ongoing advisory body. Patrick thought that's probably doable. He said he was confused at the work session and couldn't figure out exactly what they were talking about. Tokos said that in advance of sitting down to discuss this, he needs to get the Commission some information about how other jurisdictions deal with it. He will get them some different structural models.

I. Director's Comments. No additional comments.

J. Adjournment. Having no further business to discuss, the meeting adjourned at 7:35 p.m.

Respectfully submitted,


Wanda Haney
Executive Assistant
