

MINUTES
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
November 13, 2018

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

Planning Commissioners Absent: Jim Hanselman (excused)

City Staff Present: Community Development Director (CDD), Derrick Tokos; City Attorney, Steve Rich; 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 5:00 p.m. On roll call, Commissioners Hardy, Berman, Franklin, and Branigan were present.

2. **Approval of Minutes.**

A. Approval of the Planning Commission work session meeting minutes of October 22, 2018.

MOTION was made by Commissioner Berman, seconded by Commissioner Branigan to approve the Planning Commission work session meeting minutes of October 22, 2018 with minor corrections. The motion carried unanimously in a voice vote.

B. Approval of the Planning Commission regular session meeting minutes of October 22, 2018.

MOTION was made by Commissioner Berman, seconded by Commissioner Branigan to approve the Planning Commission regular session meeting minutes of October 22, 2018 as written. The motion carried unanimously in a voice vote.

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

4. **Action Items.**

A. **File No. 1-GP-18-A.**

Patrick asked the PC for their comments. Hardy stated there had been better geological reports submitted in the past and this report lacked any reference of the impact uphill on the site. Berman stated that he had reviewed the audio, video, and materials from the first public hearing and felt he was familiar enough to give a vote. He read his testimony into record stating that when he was making his decision he was only looking at the requirements in the Newport Municipal Code. Berman said he would vote to override the Director's decision. He stated he thought it may be possible to develop on this site but thought they needed a new geological report. Berman encouraged Lund to resubmit a new application with new data for consideration.

Patrick read a statement from Commissioners Croteau and Hanselman into the record as they were not present for the hearing. Croteau listed additional studies that he felt were needed for the geological report data and felt if these were done he could approve the application. Hanselman listed his concerns with the geological report and thought a more thorough report needed to be completed.

Franklin agreed with everything that had been stated and thought there needed to be actual studies on the site where the house would be built. Branigan stated that he had reviewed the audio, video, and materials from the first public hearing and said he was up to speed to give a vote. He acknowledged all the testimony that had been given and noted because he wasn't a geologist, he relied heavily on Newport Municipal Code (NMC) 14.21, NMC 13.05, KD Engineering, and HG Schlicker for his decision. He concluded that these had met the criteria. He felt the recommendation to do additional borings would mitigate any potential issues. He felt that Mr. Lund's delay on responses to the City to get various permits should be dealt with harshly and would leave this up to the City.

Patrick said there was four ways the PC could rule on the matter. He felt the first argument, for the need of additional housing, wasn't a proper argument in this case when health and safety was involved. He didn't want to set a precedent. Patrick said they also could rule the application incomplete and wasn't complete. The third choice was to uphold an appeal based on the thought that the information provided didn't apply to the site to be built on. The fourth option would be to accept the geologic report but apply conditions. Patrick stated he was in favor of options three or four. Tokos reminded the PC they needed to be as explicit as possible when doing a motion for the final order and findings.

Patrick asked if the PC upheld an appeal, would the process for the appeal be done. Tokos said it meant it would be brought to the next PC meeting for final order and would be subject to an appeal to the City Council (CC). Berman asked if the PC approved the appeal, the motion and final order were prepared, and there was no appeal, would Lund be able to start over with a new application to prepare materials to address areas of concern. Tokos said Lund would have the right to appeal to the CC and if he didn't he would be able to submit a new application for the property.

Franklin asked what the difference would be to view this as an incomplete application. Tokos said it was just a different reason to uphold the appeal. Patrick asked if the PC could add in the concerns about the hydrologic report. Tokos cautioned the PC to be careful about going outside of the context of the code and encouraged them to not put this in as a reason for denial.

Steve Rich addressed the PC and said he echoed what Tokos said. He said to make sure the reasoning was in the code and said that the concerns about the hydrologic report would be outside of the criteria. Berman felt the fact that the geologic report didn't apply to the current development plan was reason enough. Tokos asked if Berman was saying that he wanted to see additional borings around the specific development. Berman agreed and said they couldn't have a development plan and then have a geologic report that didn't speak to the development plan. Patrick asked if this could be the basis of the appeal. A discussion ensued regarding what to base the PC decision on. Berman said the code states that the geological report needed to be based on the intended development report and it didn't. Tokos noted that the plan that was included in the report showed the sites outside of the Jump Off Joe's right-of-way. The applicant said in their report that if they were successful in the right-of-way being vacated, they would like to move back to the prior location. Tokos asked if the PC was saying it wouldn't be complete if they went back to their prior location and this wasn't on the plans, or were they saying borings were not done in specific locations where they show the home sites on the site plan. Berman stated it was because the geological report was done under the assumption of the original home site location and the home sites were moved after the geologic report was done and didn't match. He said if Lund was able to get the vacation and the homes would be able to move back, then that point would be moot.

MOTION was made by Commissioner Berman, seconded by Commissioner Franklin to uphold the appeal and request that the applicant Mr. Lund, should he choose, submit another detailed geological report to address the issues pointed out in prior testimony that was insufficient for File 1-GP-18-A: Appeal of Geologic Permit (File 1-GP-18) West of NW Spring St (Lincoln County Assessor's Tax Map 11-11-05-BC, Tax Lots 1800, 1900 & 1903). Hardy, Berman and Franklin were a yes. Patrick and Branigan were a nay. The motion carried in a voice vote.

Tokos said the next steps were to prepare a final order and findings to uphold the appeal on a basis that there are elements of the plan of the geologic report prepared by the applicant that comport to their prior plan of building where the road is as opposed to the location illustrated on the plan set that was provided to the PC. The PC was in general agreement with this. Tokos said the final order and findings would be presented at November 26th PC meeting.

The PC took a break at 5:28 p.m. and reconvened at 6:00 p.m. Commissioner Croteau arrived to the meeting at 6 p.m.

5. Public Hearings. At 6:00 p.m. Chair Patrick opened the public hearing portion of the meeting.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Berman, Croteau, Patrick, Franklin and Branigan 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-SUB-18/4-GP-18.

Tokos gave his staff report and listed the conditions of approval. Berman asked for clarification on "the agency" in the report. Tokos said it was a typo, the applicant would be the one to finalize this. Berman asked about the steep

slopes on the property, and how the grading and layout of the driveway was going to be approved. Tokos said the applicant would have to provide a detailed grading plan, which would have to be approved before permit issuance.

Proponents: Dylan McEntee addressed the PC and said he was present to answer questions. Branigan asked if it was his intent to build up the back lots so they didn't exceed City height limits but would allow them to gain a view. McEntee said all four townhomes would enter from 5th Street and the slope would be pretty minimal. The units would be two stories high, won't exceed 30 feet, and the land would be cut away to do this. Berman asked if all the old fill and everything they found there would be taken out. McEntee said this was correct.

Opponents: None heard.

Patrick closed the hearing at 6:10 p.m. Branigan said he missed the first hearing but reviewed the materials. He said NMC codes found that the H.G. Schlicker report and mitigating comments of the Director filled all the requirements and he was in favor of the application. Franklin thought the report was thorough and said he would approve it. Croteau thought all applicable requirements were met and had no issues. Berman agreed with the other PC members. Hardy thought the report was thorough and had no problem approving it. Patrick agreed with the other PC members.

MOTION was made by Commissioner Croteau, seconded by Commissioner Franklin to approve File No. 2-SUB-18/4-GP-18: Four Lot Townhouse Subdivision with conditions. The motion carried unanimously in a voice vote.

B. File No. 5-Z-17.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of actual or potential financial interest they might have related to the agenda item. Hardy reported two potential conflicts. She managed an VRD and would benefit if there was a cap. She noted she did not do online booking so she didn't think there was a chance she would be taking on any additional VRDs, meaning an expansion wouldn't impact her. Berman stated he had been a generator of several complaints for a problem VRD in his neighborhood in the last 10 years. Croteau read a statement about what short term rentals provided for Newport. He was sensitive of the housing needs of Newport and the hope of keeping the integrity of neighborhood character. He currently lives in a R-2 zone. Croteau stated that there was a prohibition of motels, hotels, and boarding houses in single family R-1 and R-2 zones. He thought this would be the basis of prohibiting VRDs in R-1 and R-2 zones, and felt it was the best solution. Croteau stated he had no financial conflicts of interest or other biases. Patrick reported two potential conflicts. His mother, sister and niece ran Dolphin Real Estate that managed VRDs in the past, but no longer managed them. He said he did the books for Dolphin Real Estate and ran and maintained a computer program for them. He also owned Dolphin Construction where he worked on VRDs and bid projects on them. Patrick noted that this was work he would be doing anyways. Franklin reported that he had no conflicts. Branigan reported he had no financial conflicts but lived in a neighborhood that had a VRD with numerous complaints that Berman had mentioned.

Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard. Patrick read the requirements for the PC to hold a hearing and how the CC would be taking testimony at a later date. He then opened the hearing for public testimony.

Michelle Longo Eder addressed the PC and stated she owned two VRDs, and some month to month rentals. She was concerned about transferability of a permit and was in favor of B.3. She would be in support of grandfathering in VRDs but noted that some VRDs wouldn't fit into the most restrictive options. Longo Eder supported density restrictions of around four to five percent, and occupancy limits of two per bedroom plus two, excluding under three. She said in the event overlay districts were created, she opposed options that sought to eliminate an owner's current permit to operate a VRD. Longo Eder felt homeshares were commercial enterprises but stated her experience with them was that they had the same impact as VRDs. She said the notice and contact requirements for someone to be able to be there within 30 minutes would mean she wouldn't be able to leave the area for 75 percent of the year. She felt this wasn't a reasonable restriction. She also thought a 24/7 response time was excessive and thought the Police Department could enforce this.

Frank DeFilippis addressed the PC. He thought transferability meant the license would stay with the house and thought it should stop with the sale of the property in order to open up a spot for another VRD. He noted that Newport had a housing issue and VRDs were displacing people from living in Newport. DeFilippis thought that enforcement was another issue and the current 48 hour response time was a problem because in 48 hours the renters would be gone

before they could be dealt with. Enforcement needed to be a priority. He wanted to see businesses in commercial zones not residential. He also wanted language that said VRDs should be spread around with a percentage cap.

Patti Littlehales addressed the PC and commended the Ad-Hoc Work Group's work. She objected to Alternatives 1, 2 and 3 and supported Alternative 4. She liked limiting the number of VRD licenses. Littlehales noted that in San Diego they adopted what was called the "Mayor's Compromise" that created a license base for VRDs and implemented a per night fee for VRDs that generated income. She asked the PC and CC to consider this.

Richard Rainery addressed the PC. He said he operated a home stay VRD that hadn't had any issues or complaints. He didn't think it was fair to penalize someone who had abided by rules and regulations with the threat of facing a loss of that investment. Rainery didn't think that the housing shortage would be solved by eliminating a few VRDs. Nationally the people who had VRDs were owners who needed the supplementary income to stay in communities. He asked the PC to look at the least restrictive options and reasonable costs for enforcement and issues. Franklin asked if his rental property was in a residential zone. Rainery said it was in a R-1 zone.

Cathey Briggs addressed the PC. She wanted to acknowledge the work of the Ad-Hoc Work Group and commended the City staff on their efforts. Briggs said she had an issue with housing and affordability. She thought the PC should go with homeshares as the option to keep a friendly vibe and not change the feel of Newport. She read a portion of the Newport Comprehensive Plan that talked about cost of housing and submitted it for the record. She also submitted an analysis on Lincoln County in general from the Oregon Housing Alliance on affordable housing and the increase in homelessness. Briggs noted she had been on the Strategic Plan Steering Committee and read what the committee agreed to do, which spoke to the priorities of housing and the need for options for housing. She noted House Bill 2140 concerning remitting taxes to the jurisdiction and reminded the PC this was something to keep an eye on. Briggs stated that seasonal visitors were not a protected class but seasonal workers were.

Larry Lacy addressed the PC. He wasn't in favor of his property value going down because of the amendments. He didn't rent his home but wanted to know he could rent it as a VRD if he wanted to.

Darlene Croteau addressed the PC. She read a statement about the frustrations she had with VRDs and stated she wanted them out of R-1 and R-2 zones. She also wanted a city wide cap on VRDs.

Ann Dennison addressed the PC. She said she didn't have anything to say but wanted to be notified of the next hearing.

John Simpson addressed the PC. He said the VRD he owned didn't have any big parties and wanted the PC to know there were good things happening with VRDs.

Vince Pappalardo addressed the PC. He said he had two VRDs located on either side of him and wasn't opposed to them. He didn't think the amendments would add housing for Newport. He noted the VRDs by his house wouldn't open up to housing if they weren't VRDs because the owners would be absorbing the costs of not having the income from their VRDs. Pappalardo said he was sensitive to bad VRDs and thought there needed to be ways to manage these. He wanted to see data on how much it would increase the rental property or housing market if they enforced this. He felt the amendments would be transfer problems around in different areas.

John Oksenholt addressed the PC. He noted that there hadn't been any facts on VRDs taking away from workforce housing. He stated he believed that VRDs helped workforce housing. His wife's company, Meredith Lodging, relied on the tourism industry. Oksenholt was sensitive on anything that affected VRDs adversely. He felt few people would use homes suitable for workforce housing as VRDs. Oksenholt agreed with Littlehales about adding a per night fee on VRDs to help affordable housing. He supported well managed VRDs and having a 24/7 response time.

Don Rairigh addressed the PC. He said he had a parent living in a home they built that was being used as a VRD to help pay for property taxes and keep the property. He said the sentiment to eliminate VRDs was a bad thing.

Wendy Engler addressed the PC. She said was speaking as a current resident and noted that she was a current City Council member. She spoke about the Nye Beach neighborhood and stated that it was a dumping zone for VRDs because of the C-2 zone. Engler thought it shouldn't be a dumping ground because it was a neighborhood. She suggested using the R-3 and R-4 spacing and density requirements in the C-2 zones. She showed the PC a map that she received from Tokos which showed a spacing density requirement applied to C-2 zone areas. This allowed significant numbers of VRDs in the area because a large building of condos would be counted as one unit. She didn't

feel that dumping VRDs in the Nye Beach area was right and said it was against the Comprehensive Plan. Engler also stated that the Newport 2040 Vision Plan supported mixed use neighborhoods. She wanted to see Newport do more for walking neighborhoods and asked that the R-3 and R-4 zone density requirements have the higher density of VRDs. Engler requested that the map Tokos provided to her be added to the record. Tokos would do this.

Nancy Warneke addressed the PC. She said her house was surrounded by VRDs that had problems. Because of this, she wanted to sell her home but said she wouldn't get the best resale value because of the disclosure of being near VRDs. Warneke felt that VRDs should be in areas other than residential zones. She thought that VRD owners that weren't local didn't maintain landscaping and thought there needed to be a balance for neighborhoods.

Sandy Phillips addressed the PC. She had a homeshare and understood the negatives and positives of VRDs. As a homeshare, they had a lot more pride, responsibility and investment in keeping a VRD. Phillips felt VRDs and B&Bs were separate than homeshares and they should be in their own category. Branigan asked if she rented her house out for more than 30 days. She said they rented on a nightly basis, under 30 days.

John Tesar addressed the PC. He thought some restrictions were necessary and the solution was to have tighter enforcement. Tesar felt a cap was difficult for purchasers because they wouldn't know if the property qualified to be a VRD.

Norm Ferber addressed the PC. He stated he owned Fairhaven Vacation Rentals and was on the Ad-Hoc Work Group. His issue was with transferability and minimum days of occupancy. He was in favor of two per bedroom plus two. Ferber stated the homes he owned and rented as VRDs were created as a business and weren't right for long term occupancy. This was a business for him and how he made a living. Ferber noted the Ad-Hoc Work Group represented all sides of the community and felt the media reporting at the beginning of the process was wrong. He said they made it feel like there was a bias and that the Ad-Hoc Work Group wasn't able to reach consensus. Franklin asked for clarification on Ferber's units not workforce housing. Ferber explained the homes were built like hotels with the intention of renting them out short term. He didn't feel he should be punished for other VRDs abusing the system.

Ona McFarlane addressed the PC. Said she didn't like her neighborhood anymore because of the VRDs there. She was in favor of phasing out VRDs in her residential neighborhood.

William Chenoweth addressed the PC. He lived in Nye Beach across from a B&B and some VRDs. He stated he wasn't for or against VRDs. Chenoweth said that 40 percent of Newport was elderly and on fixed incomes. He asked the PC to take this into consideration.

Glenda Akins addressed the PC. She lived in the Nye Beach neighborhood and was concerned about what her children would have to do with her house when she was gone. She hoped the PC was generous enough to take into account people with fixed incomes and was against having a restrictive cap that would mean her kids couldn't use her property as a VRD. Akins didn't think VRDs were a bad thing but did think there needed to be something done about affordable housing.

Wendy Engler addressed the PC again and requested the hearing be left open for 14 days and requested the PC hold a hearing when they whittled down some of the possibilities so the public could have a chance to weigh in.

Chuck Victor addressed the PC. He recommended looking at current overall zoning in Newport, when these zones had been created, and what was in each of the zones. Victor thought before any decision was made, the PC should look at the city and how the zones look like today instead of when they were created.

Richard Kilbride addressed the PC. He urged the PC to consider keeping VRDs out of R-1 and R-2 zones. R-1 zones were established for single family residences and VRDs were a business and outside of the intent of the zoning ordinance. Kilbride felt these zones were not business oriented areas.

Patrick asked Tokos how to proceed with Engler's request to keep the record open. Tokos said the hearing continuance would accommodate this. Patrick suggested the PC go to another work session, and then hold another public hearing for testimony. Tokos said this would mean a work session meeting on November 26th and then another public hearing on December 10th. He said if the PC wanted additional time to review, it would push the public hearing to January 14th. Franklin thought there should be two work session meetings. Croteau wanted to keep things open until after the

work session on November 26th, and come back for a hearing on December 10th. The PC was in general agreement with this.

MOTION was made by Commissioner Branigan, seconded by Commissioner Franklin to hold a Planning Commission work session meeting on November 26, 2018, and a continuation of the public hearing on the December 10, 2018 Planning Commission regular session meeting for File No. 5-Z-17: Newport Short-Term Rental Ordinance Amendments (Draft Ordinance No. 2144). The motion carried unanimously in a voice vote.

6. **New Business.** None were heard.

7 **Unfinished Business.** None were heard.

8. **Director Comments.** Tokos reviewed the work program with the PC. He asked the PC if they wanted to start the November 26th work session meeting at 5 p.m. The PC was in general agreement with a 5 p.m. start time for the work session. Tokos reviewed the two public hearings scheduled for the December 10th regular session meeting.

Tokos reviewed the 120 day process pertaining to geological permit appeals. He said if the city didn't issue a final decision within 120 days the applicant had the right to take it to circuit court. Tokos said the applicant hadn't filed to go to circuit court and didn't know what he would do. A discussion ensued regarding the 120 day process and the appeal process for the geological appeal.

Tokos suggested the PC should revisit the geologic permit appeals procedure and recognize the 120 days and whether or not the structure was the best structure. He noted there was an appeal beyond the CC and they would have to deal with the 120 days as well. Tokos stated that they could not require the applicant to waive the 120 days. He thought it wasn't ethical to even ask unless the applicant was asking for additional time. Patrick asked if an appeal could skip the PC in these instances and have the hearing go straight to the CC. Tokos said the PC could talk about this and he would have to give it more thought. He said there wasn't much they could do with a peer review. Patrick thought if appeals skipped the PC it would help with the 120 day timeline. Tokos said the PC could tie the discretion down tight so that an appeal peer review would have to show something more specific and make it more prescribed to overturn a report. Croteau asked if there were guidelines from the State. Tokos said there wasn't really and they didn't have a whole lot of guidance. The City could do their own peer review or put someone on retainer. Croteau thought it would be better if it could be more of a qualified neutral peer review. Tokos said to do this, they would have to put out a request for proposals and put someone on retainer. A discussion ensued regarding geologic reports and the PC's mechanism for reviewing the reports. Tokos said he would add this discussion to a work session meeting.

Tokos noted that the PC would be talking about tiny homes and the State's permitting requirements at a later date. He said it would mean there would be smaller homes on lots. The PC would be looking at zoning standards and how to tackle them. Croteau asked about safety for tiny homes from the State. Tokos explained how the Oregon Reach Code had a reach down provision for tiny homes.

9. **Adjournment.** Having no further business, the meeting adjourned at 8:17 p.m.

Respectfully submitted,



Sherri Marineau
Executive Assistant