

Minutes
City of Newport Planning Commission Regular Session
Monday, February 22, 2010

Commissioners Present: Jim Patrick, John Rehfuss, Mark Fisher, Gary East, Melanie Sarazin, and Glen Small.

Commissioners Absent: Dawn Newman.

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

Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:00 p.m.

A. Approval of Minutes.

1. Approval of the work session and regular session Planning Commission meeting minutes of January 28, 2010.

MOTION was made by Commissioner Fisher, seconded by Commissioner East, to approve the minutes of the Planning Commission meetings of January 28, 2010, as presented. The motion carried unanimously in a voice vote.

B. Citizen/Public Comment. Because there were a lot of people present regarding the geologic hazards code update, Tokos noted that on February 17th he and State staff held a well-attended public workshop on the issue. He said there were roughly 95 people there. Staff took public feedback on the proposed amendments. At tonight's work session, Tokos had talked to the Planning Commission about how best to approach the March 8th hearing. Staff will be making changes to the proposed code to represent this public feedback and then present that modified code to the Planning Commission on March 8th. Tokos' recommendation is that the Planning Commission not take action on March 8th, but take testimony on the substance of that provision and continue the matter to a date certain that is two to four weeks out in order to give folks more time to take a look at the revised code. Tonight, the Commission will take testimony on the process only, not substantive testimony about the hearing.

Bonnie Saxton, 1081 SE 1st St., came forward with a question regarding the modified code and how people can give testimony on March 8th on something they haven't seen. Tokos noted that the modified code will be available on March 1st and will be published on the website, so folks will have it a week in advance of the meeting. He noted that the record will be left open longer than that date.

Dietmar Goebel, 147 NE Golf Course Dr, questioned why there is such a rush to have the hearing on March 8th. He asked why the public hasn't been invited at a much earlier stage than now. He personally thinks that the process has discouraged public input. He suggests backing up a little bit and starting with public input. He recommends not having the March 8th hearing because he would like the process opened up for public discussion before it goes to the Planning Commission. Tokos noted that the Planning Commission can cancel the meeting. We would have to re-notice and clearly post that the meeting has been canceled because this hearing has been noticed for some period of time. The Commission can open the hearing on March 8th and continue immediately or take testimony and then continue the hearing. Commissioner Fisher said that it is always in the best interest to hear what citizens have to say. Goebel said that the thing that bothers him is that there has been definite maps and an ordinance drawn up, and the City is asking the public to respond to that rather than have input on developing the proposed ordinance. The City is saying "here is what we have; and what is your input?" Fisher said that this initial document is also being given to him to be looked at; and the Commission may say lets throw the whole thing in the garbage. He thinks that everyone should be here and make an effort to get a copy of the proposed code. Fisher said that this is what this process is all about. The code is available on the website. Goebel said that he won't be able to be here on the 8th, and he would like to have an opportunity to present testimony. Chair Patrick said that it is pretty much guaranteed that there will be second hearing. Fisher added that written comments are especially good.

Roy Filby, 7381 N Coast Hwy, said that for many homeowners, this is catastrophic in terms of the economic impact. Existing structures will be grandfathered but will be nonconforming. If the home burns down or the owners want to sell, they won't be able to. There will be impact on property tax assessments. Filby said that the most logical thing for the Planning Commission to do with this ordinance is first to have a thorough economic analysis evaluation done. He said it seems the City should hire a consultant to do that. He proposes that this be a recommendation.

Georgia Dalon, 7407 N Coast Hwy, asked who is going to do an economic analysis of this situation and what impact it would have. She questioned that if no pressure is coming from the State, then who has the impetus to start this whole zoning change. Tokos explained that there are two primary reasons the City is moving this amendment at this point. The City is working on a comprehensive zoning code update, which was a City Council goal. The Planning Commission has been working on this for

seven years and are getting closer to wrapping it up. We are now to the geologic hazards section. The primary impetus is that for the upcoming periodic review we have to have this updated. In addition, the City Council set the goal for completing the zoning code update by the end of this fiscal year. Dalon asked if it would be possible to see the State's recommendation. Tokos said that he could provide the State's model code, which is what they ideally want to see, and can post it on the website.

Bob Berman, 180 NW 73rd Ct, was unable to attend the workshop, but he said that it seems that for a recommendation of this nature, a single information session is not enough. He said that he would very much like to know why this is being done when it has such a major impact. He wondered if it is only because of the potential mitigation of liability for the City if a house slides down a hill, and the owner walks away. In terms of the process, Berman would like to see another workshop where these questions can be asked before formal testimony can be taken.

Pat Parisi, 3947 NW Cherokee Ln, said that he came to the meeting the other night to observe; and what he observed was about 100 people, many of whom spoke against this process. He wanted to formally complain about the process. He agreed with an earlier speaker that the March 8th meeting be postponed until a committee that is representative of the citizens can be formed. Parisi said that it looks like the policy has already been decided. It seems that the City had some risk with people building in hazardous zones and the City having to clean it up. He doesn't know any other reason. He thought that some folks at the workshop proposed great ideas. He is protesting the fact that the March 8th hearing is a rush on a project that doesn't need to be rushed for at least two years. He respectfully asks the Commission to take a step back.

Janis Neigebauer, 4016 NW Cherokee Ln, said that she has a real concern about the time frame we are looking at. She has been contacted by clients that have property in the affected zones. Out of twenty-five, none were aware that this was going on. None were aware of the issues. A statement handed out at the last meeting was a question of what impact this has on existing homes, and the answer was that it is targeted to new development. She said that is not quite accurate. When you have a home in this zone, if it's changed so it has to be a manufactured home, that turns an existing site-built home to a nonconforming use. An appraiser she spoke with said that it will probably be difficult to get financing. There is concern about insuring homes built to current standards if it burns down and has to be replaced with a manufactured home. Neigebauer would like to see things slow down so we get more input from lenders, geologists, and insurance agents. She believes that there were a lot left out. A lot of people she talked with just found out how important this is, and they want to be here for all hearings. She said that there is no urgency and asked the Commission to slow down to give people time to come up to speed with it.

Patrick noted that notice of the March 8th hearing has already been published, and people may be planning on attending that hearing. His recommendation is to hold that hearing, but the Commission does not have to make a decision that night. He noted that we are doing a public process. He thinks we should hold the hearing and hear testimony as that is the proper place to hear both sides of the issue. Tokos added that he will make changes to the proposed draft based on feedback from the public open house. The revised draft will be available March 1st at the office and on the website. That is what he will be covering on March 8th. Tokos said that he has received a great deal of information from the work session, and he is compiling that. Again, his recommendation to the Planning Commission is not to take action on March 8th, but to take testimony and give additional time for the public to work through the revised draft before the continued hearing date. Fisher said that he thinks we are guaranteed at least a second evening of testimony. It was noted that we have to start somewhere. Commissioner Small said that perhaps a single information session is not enough and wondered if the March 8th meeting would be more of an informal session. Tokos said it will be the typical hearing format on March 8th. Testimony will be taken. The hearing could be continued four weeks, and in the two week interval we could hold a second open house to provide time to gather more input before the second public hearing. Small thought that would be appropriate.

Dietmar Goebel returned with a question whether it will be valid information they are getting. He noted that the only person doing any recording was a State man who took a few notes. He thought that a lot of testimony went into vapor space, and Tokos probably doesn't remember a lot of the conversation. It was explained that is typical for a workshop. Fisher added that a workshop is different than a regularly scheduled meeting. Tokos noted that what he is referring to is that he has seven pages of flipchart notes. Tokos said that a spreadsheet will be posted on the website listing these comments and addressing them.

Alan Butts, 210 NW 73rd Ct, said that he got in on the process a little late, but this reminds him of the hidden agenda on the health care plan. He just doesn't understand the emergency of this whole thing. He said that we are talking about millions of dollars of impact to homeowners on the coast. He wondered why Brookings, Coos Bay, Gold Beach, and Cannon Beach are not going through this process. He doesn't believe that the City is giving people who are involved in this time to prepare anything. The City is months ahead of the public.

John Stark, 1134 SW Mark St, said that to say this feels like a railroad job is an understatement. He came to the work session, and only one City employee was there, Tokos, who said that he is a staff person that assists the Planning Commission. The source of information for these drafts is supposed to be from the State's website. The State people said that it has been on the website for years, and no one has used it. At the workshop, Stark noted that Tokos gave a power point presentation and gave some testimony. The mapping is six years old. Stark said that there is no reason to do in two weeks what can be done in two years and give people a chance to go through and evaluate it.

Diego Mellerio, 2510 NW Pacific St, doesn't believe we can go through this whole thing in a single time. People that own homes here are in other states and need to have a chance to participate. He asked that however they decide to set the process now, to make sure that the notice is mailed to all houses so they are aware.

Fisher wanted the audience to know how valuable their comments are. The Planning Commission is updating a code book, which has been added to and deleted from year to year, in order to get it into a more usable format. He noted that these are very valid comments, and he is pleased to hear them. He said that the Commission is charged with doing this to the best of their ability. That is why the Commissioners have been appointed. Fisher added that he hopes all the folks will write letters in addition.

John Clark, 155 SW Elizabeth St, who was a former City Council member, said that the Planning Commission can do whatever they want. The meeting can be postponed and notice published again. Based on the testimony he has heard, he thinks we better have another workshop. The City needs to look at what can be built in these zones. The amount of dollars is incredible. Clark can't be here on the 8th, but will participate in any other hearing, meeting, or workshop. He said that Newport is not like every other city in Oregon. Each jurisdiction is a little bit different. It doesn't mean that we have the same requirements as Multnomah County or Salem. He said that the code doesn't have to be restrictive because the model ordinance says to do it. He told the Commissioners to think about what diminished property values will do to the county, the school district, and the city. He said that when the impact of this gets out and people realize what it is, the City will have a fire storm on their hands. If the City hurries it through, they will have no support from its citizens. He said it is a big deal. He warned the Commissioners to be cautious. He suggested that by not having the March 8th meeting and having another workshop, the City can still meet the guidelines with the State. Clark closed by saying "this is goofy".

Roger Wilson, 130 NW 73rd Ct, wondered what the public will get from the Planning office on March 1st. He thought that whatever has been suggested should be put together in a packet so that everyone can expect to get the same thing. Tokos noted that we will have the code with an explanation of the changes, a spreadsheet listing comments from the workshop and responses, minutes from this meeting, and the State's model code. Wilson wondered about a financial impact statement because he thought that financial impacts need to be considered before anything. Fisher asked if the Planning Commission would be considering financial impact; and if not, who would. Tokos said that it is a reasonable thing to consider. He said that reasonable testimony would be not to move forward unless that type of analysis is available. He said he would have to think about how to get this.

Bonnie Saxton returned noting that at the workshop, this was presented as a health and safety issue. She wondered about issues that have come up as safety and health in the past. She asked if the City had to clean up abandoned houses in the past. She said if those are issues and this is being based on that, then the public has a right to know if there are health and safety issues.

Bob Berman returned noting that there is a reference in the notice of the workshop that talks about an update of the boundary of the geologic hazard areas from the most recent maps of DOGAMI. He said that he didn't see updates on their website; there haven't been any maps available since 1994. Tokos said it is a 2004 study. He noted that a copy of the study is available in the office, and there is a study reference number. Tokos said that he can put the DOGAMI study on the website. He will talk to DOGAMI and see if they are comfortable with that.

Patrick closed the testimony at 7:45 p.m. His thought is that it is still better to have the hearing process. In that way, we have written record of testimony. He noted that if folks sign the log tonight, they will be included in the record of the hearing. He thanked everyone for their comments. Tokos reiterated that there will be a public hearing on March 8th, the Planning Commission will take testimony but will not take action and will continue the hearing to a date certain. There will be a second hearing date.

C. **Consent Calendar.** Nothing on tonight's consent calendar.

D. **New Business.** No new business to discuss.

E. **Public Hearings.**

At 7:50 p.m., Chair Patrick opened the public hearings portion of the meeting by reading a statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contact, bias, or site visits. Fisher, Sarazin, Patrick, and Refhuss declared site visits. Patrick asked for objections to any of the Commissioners or the Commission as a whole hearing this matter; and no objections were heard.

Legislative Land Use Action:

1. **File No. 13-Z-09.** A request submitted by Landwaves, Inc. (Bonnie Serkin, authorized representative) for the Planning Commission to review and provide a recommendation to the City Council on a proposed legislative text amendment to the

Newport Zoning Ordinance (NZO) Section 2-2-9 (Temporary Structures Permit) to allow temporary vending carts in certain portions of the city, and text amendments to the following Municipal Code sections: Chapter 10.10 (Signs) to allow portable signs within rights-of-way in portions of South Beach for more than 5 consecutive, and 10 calendar days and to clarify that the number of allowed portable signs corresponds to the businesses on the property rather than just one sign per property; Chapter 11.05 (Buildings) to clarify that as vehicles, temporary vending carts are exempt from the building code; and Chapter 12.15 (System Development Charges) to clarify that as vehicles that are not permanently affixed to a foundation, temporary vending carts are exempt from SDCs. In conjunction with this request, the City is proposing to clarify and consolidate the regulations for temporary structures contained in Section 2-2-29 of the Zoning Ordinance including moving the requirements for special events structures into the Newport Municipal Code.

Patrick opened the public hearing for File No. 13-Z-09 by reading the summary from the agenda. He asked for the staff report. Tokos noted that this request involves legislative amendments regarding vending carts that was proposed by Landwaves. The City Council recognizes that we need to work on the special events code; so the two were merged to move forward at the same time. Tokos noted that this item was presented to the Commission at their work session on January 11th. At that time, there was some concern about proposed vending carts being specific to the Wilder development. Tokos made some changes on Page 2 of Exhibit A under temporary vending carts by putting in two options for the Planning Commission to consider. He has shared these with Landwaves, and they are comfortable with either. The first option is the half mile from eating or drinking establishments. With this option, it may not be just limited in this location. The second option allows vending carts in certain geographic areas that includes Wilder area, but just South Beach area. Tokos noted that on the next page, after discussion with the city attorney, there's an addition that the recommendation from the Planning Commission should include that they have insurance coverage of not less than one million dollars. This is something we need to run past our own insurance people and may need to be adjusted before this is presented to the City Council. Tokos explained that the special events section of the municipal code is packaged with this because we are pulling out criteria for evaluating and issuing special event permits from the zoning code and putting into the municipal code where fee waivers and other things of that nature are already housed so that it's all in one location. The fee waiver is not something normally going before the Planning Commission. There may be some changes on that before going to the City Council. Tokos listed four letters of support of vending carts in the vicinity of the college that were included in the Commissioners' packets. Fisher said that he is not convinced that Section A, which talks about fee waiver, should be involved. He wondered if that is set by the City Manager, why the Commission should be involved. Fisher thought that Section A regarding special events is not clear enough, and he is not sure that the Commission should be doing it. Tokos said that the Commission could forward a recommendation to the City Council that the Planning Commission didn't consider that and assume it will be addressed by the City Council. Small also had concerns with the proposed language change for special events. He is not sure that is the language to include. He said that he couldn't forward a recommendation with that language included. He wanted to register his specific objection to that special events language.

Proponents: Bonnie Serkin of Landwaves, PO Box 12085, Portland, appeared as the proponent. Serkin noted that they are building a village up by the college, and are starting with homes. The village center is very important; but with what they are doing, it will be 2011 before the first commercial building exists. She noted that in the meantime, there is a college full of faculty, staff, and students that have to go quite a ways away to get anything to eat. That is why they are proposing changing the ordinance as far as food carts to be able to provide coffee and grab-and-go foods until the village center gets established. She noted that construction of the houses is slated to start in late spring, and the apartments right after that. Eventually when the commercial center develops, there may be restaurants that don't feel hospitable to food carts. She would not advocate that food carts exist side by side with restaurants. She said that either option for location would be fine. If the option chosen is to allow within Wilder without the half mile restriction, then they could exist side by side. As the master developer, they would not want to do anything to discourage a restaurant. Perhaps the cart vendor would be the first restaurant in a building. For the moment, they would like to have carts to feed the college population. In addition, they are proposing a change to the provision of the sign code to allow sandwich board signs as allowed in Nye Beach and on the Bay Front. Restaurants will probably like to put signs out as well. The other provision is that SDCs would essentially be waived for vehicles; and regarding the building code, that carts require no inspection because they are not a permanent building. In response to a question from Commissioner East as to what form these vending carts would take, Serkin explained that in Portland there is a lady bug pulled by a smart car, some look like the little sheds that are for sale on Highway 101 in South Beach. She said that she cares a lot what it looks like, so it will look as good as she can require it to look. East asked if there were specific pads for it to set up on. Serkin said that it would be along College Way. There is a provision that it could encroach into the public right-of-way with permission. There is a little paved area off 40th Street that is a continuation of the multi-use path. They have talked about clearing trees where overflow parking would be. She said that they do have some flexibility. Some of it would depend on the cart owner, but she would prefer a pad. Fisher asked about placing it on the college parking lot if the college approved; and Serkin noted that it's probably physically possible, but she didn't believe the college is the proper zoning. It needs to be in a commercial or industrial zone. Small questioned who would have the right to lease, Serkin replied that any enterprising person who can prepare food and coffee. She noted that this originated back in the fall when someone wanted to put in a coffee cart. She has talked to about half a dozen interested people. Landwaves would lease or license the space, and it is then up to the owner of the business to apply for permit. There is a two-year lease provision, but Serkin said that she believes they may go less than two years. Rehfuss said that he objects to not allowing carts in other parts of town. Serkin said that she would be thrilled to have them elsewhere. They didn't want to be exclusory at all; it's just that they exist where no other restaurants are present. Tokos said that it depends on which option the Commission chooses. Option one is not specific to Wilder. Tokos noted the

options on page 2 of 6. The first option would not allow carts within one-half mile of permanent eating establishments. Existing carts would be fine. Serkin said that they would limit the duration of the cart, and then they could renew or bring the cart into a restaurant. They probably would not continue after a restaurant opens unless everyone was enthusiastic.

Pat O'Connor of OCCC, 400 SE College Way, said that they are very excited about this proposal. They do have a number of faculty, staff, and students. Enrollment is up over 25% over last year. He would like to encourage them to eat things other than vending machine food. He thinks this could jumpstart the commercial area and make this area grow. O'Connor said that he is often asked why the college doesn't build a cafeteria. One thing the college does is encourage the private sector to do what they do best. Regarding space in the college parking lot, O'Connor noted that an aquarium science building will be going in an area of it. The parking lot is already filling up. There is the green factor where this would encourage people to stay on site and not have to travel down the hill. This should encourage entrepreneurship. We won't know what kind of mix will be in the commercial area, and this is a good way of experimenting to see what will be the best fit for this area. The college is getting a better mix of part-time and full-time students. Houses will be built. This goes along with it. Vending carts will help minimize trips because the people can have nutritious food without having to drive away from the college. There will be more of a local feel.

Don Huster, PO Box 800, South Beach, disclosed that he is working with Landwaves on designing homes and apartments; and they are looking forward to getting started in the spring. He said that the Landwaves folks have put together a wonderful vision for a village. There is a process to go through, which takes time, work, and energy. People will be living there, working there, and going to school. There will be a demand for this type of food opportunity there in the long term; but there is a need now. He encouraged the Planning Commission to think of this as part of the process to accommodate people and realize the end vision, which can be two to three years down the road.

Fisher noted that in all of South Beach there is no service station and wondered if Landwaves had any plans to place one. Serkin said that the commercial area of Wilder is just where you turn to go into the college, and there is not one planned there. Maybe one could go closer to 101. Fisher said that he would like to see one in South Beach. Serkin said that there had been some discussion about locating a convenience store and gas station at 101 and 40th, and a big box retail store, a supermarket, and a strip shopping center have expressed interest in locating there. She thinks someday all of that will happen. In the Wilder village center, they are not counting on people coming up off the highway unless it is a destination. She sees the village center having the coffee shop, the pub, the wellness center, or the general store (more like gathering and eating places). She also would love to have an electric charging station.

There were no other proponents present wishing to testify.

Opponents or Interested Parties: There were no opponents or interested parties present wishing to testify.

Chair Patrick closed the public hearing at 8:20 p.m. for deliberation. Small said that he likes the village concept, and it is going to be interesting to watch this develop and grow. He said that his hope is that there will be restaurants and shops that fit in there that will be unique and will be gathering places. In the meantime, he believes there is a real need for food and beverage vendors in that area; specifically for the college. He said that he is in favor of that concept and that part of the proposal, but as he mentioned before, he is concerned about the special events language that is tied to the whole thing. He is in favor of vending carts, which makes it a temporary solution. Rehfuss said that he is in favor of the proposal, but he does not favor limiting it to the Wilder area. He is in favor of the idea, but wants it citywide. Fisher and East agreed with Small and Rehfuss. Sarazin agreed and said she is in favor of using option one where it would be citywide. Patrick agreed saying that he also likes the half-mile rule, but he thought that maybe it should read within half a mile of an "operating" restaurant. Then if it folds, a food cart could be brought in. He added that if the permit is for two years and a restaurant starts, he would like them to have two years after that to be able to extend two years past the opening of the restaurant. Fisher agreed with that. He said that he is happy to have the food cart portion go through, but some of the other things like special events, he is not ready to sign off on. He wanted to know if these could be separate. Tokos said the recommendation could be worded that with respect to special events, the Commission signs off on moving the temporary use language only and would leave the balance to the City Council to address. He noted that the only reason this was brought up was because that language is being moved out of the zoning code. Patrick agreed that we would be moving this out of the Commission's jurisdiction. Tokos said whether it is a land use or not is a judgment call. Sarazin asked whether subsection F under signs should be less specific to area since they are choosing option one, but Tokos said that would be problematic.

First, **MOTION** was made by Commissioner Small, seconded by Commissioner Sarazin, to forward to the City Council a recommendation that with respect to special events, the Commission signs off on moving the special events language only and ask that certain provisions be carefully looked at and adjusted before final action is taken; specifically the definition of special event. The motion carried unanimously in a voice vote.

Secondly, **MOTION** was made by Commissioner East, seconded by Commissioner Fisher, to forward a recommendation to the City Council to allow temporary vending carts on commercially zoned property that is at least ½ mile from an operating

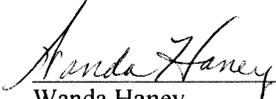
permanent eating and drinking establishment; and, should a permanent restaurant open within that area, that vending carts can continue to operate in their location two years after a restaurant opens. The motion carried unanimously in a voice vote.

And finally, **MOTION** was made by Commissioner Sarazin, seconded by Commissioner Fisher, to forward to the City Council a recommendation to accept the changes to the municipal code regarding signs, SDCs, and building requirements. The motion carried unanimously in a voice vote.

F. Unfinished Business. There was no unfinished business to discuss.

G. Adjournment. There being no further business to come before the Planning Commission, the meeting adjourned at 8:35 p.m.

Respectfully submitted,



Wanda Haney
Senior Administrative Assistant