

Minutes
City of Newport Planning Commission Regular Session
Monday, February 23, 2009

Commissioners Present: Jim McIntyre, John Rehfuss, Teresa Atwill, Mark Fisher, and Dick Beemer.

Commissioners Absent: Jim Patrick and Dawn Newman (excused).

City Staff Present: Community Development Director (CDD) James Bassingthwaite, Senior Planner Meredith Savage, City Engineer/Public Works Director Lee Ritzman, and Senior Administrative Assistant Wanda Haney.

In the absence of the Chair and Vice Chair, **MOTION** was made by Commissioner McIntyre, seconded by Commissioner Fisher, that Commissioner Atwill, as the next most senior member, preside as Chair Pro-Tem for the meeting. The motion carried unanimously in a voice vote. Atwill called the meeting to order in the Newport City Council Chambers at 7:05 p.m.

A. Approval of Minutes.

1. Approval of the regular session Planning Commission meeting minutes of February 9, 2009.

MOTION was made by Commissioner Beemer, seconded by Commissioner McIntyre, to approve the minutes of the February 9, 2009, Planning Commission meeting as presented. The motion carried unanimously in a voice vote.

B. Citizen/Public Comment. There was no public comment.

C. Consent Calendar. There was nothing on the consent calendar.

D. New Business.

1. Initiation of Amendments to Newport Zoning Ordinance (NZO) (No. 1308, as amended) Section 2-4-6 (Flood Hazard Area). At their 6:00 p.m. work session meeting, the Commission had reviewed and discussed the proposed amendment to NZO Section 2-4-6. **MOTION** was made by Commissioner Rehfuss, seconded by Commissioner McIntyre to initiate the amendments to the NZO Section 2-4-6 (Flood Hazard Area) with the additional changes recommended by DLCD [the Department of Land Conservation and Development]. The motion carried unanimously in a voice vote. Bassingthwaite noted that the amendment will come back through the public hearing process before the Planning Commission and the City Council.

As mentioned at the work session, Bassingthwaite noted that the Planning Commission Citizens Advisory Committee has a position open with Dick Beemer's appointment to the Commission. There is one application from the last opening and has been one new application so far. A notice of the vacancy will be published in the Wednesday edition of the News-Times. The Commission will consider the applications at their March 23, 2009, meeting because the March 9th meeting includes a site visit to the Landwaves and OCCC properties at 4:00 p.m.

E. Public Hearings.

Atwill opened the public hearing portion of the meeting at 7:10 p.m. by reading the statement of rights and relevance. She asked the Commissioners for declarations of ex parte contact, bias, conflicts of interest, or site visits. Site visits to 12th Street were declared by Commissioners Rehfuss, Beemer, Fisher, and Atwill. Regarding the subject property of File No. 9-CUP-08, Commissioner Fisher again walked the site, and McIntyre drove by it. Atwill asked for challenges or objections to any of the Planning Commissioners or the Commission as a whole hearing this matter; and no objections were heard.

Quasi-judicial actions:

1. File No. 9-CUP-08. A request submitted by Coastal Investment Properties, LLC (Pavitt Land Use Consulting, LLC, authorized representative) for Approval of a Type I Conditional Use Permit per Section 2-2-1.025 (D) (13) "Residential Uses" of the Newport Zoning Ordinance (NZO) (No. 1308, as amended) to allow a 12-unit residential townhouse development of four buildings with three units each (only one building is currently constructed) to be used as vacation rentals (allowing for rentals of less than a month in duration and including overnight rentals) in an R-4 "High Density Multi-Family Residential" zoning district. The subject property is Tax Lots 13200, 13400 & 13500 of Lincoln County Assessor's Tax Map 10-11-29-BD (property fronting NW Gilbert Way, NW Agate Way, and NW Circle Way).

Atwill began this hearing at 7:13 p.m. by reading the summary of the file from the agenda. Bassingthwaite explained that the applicant had submitted a written request to continue the hearing to the March 9th meeting because the property owner was unable

to attend tonight. The applicant did send a copy of their letter to the people that had testified at the last meeting letting them know as well. The applicant also agreed to waive the 120 day rule for the two week extension to the March 9th meeting. **MOTION** was made by Commissioner Fisher, seconded by Commissioner Beemer to continue the hearing for File No. 9-CUP-08 to the March 9, 2009, meeting at 7:00 p.m. The motion carried unanimously in a voice vote.

2. File No. 1-SV-08. A request initiated by the Newport City Council at the request of Peter Lawson and Nancy Jane Reid (Dennis Bartoldus, authorized representative) for a proposed vacation of that portion of SW 12th Street just south of SW Abbey Street abutting property known as 1140 SW Abbey Street and 1206 SW Abbey Street and currently identified on Assessor's Tax Map 11-11-08-CA as Tax Lots 9800, 9500, and 9400 on the west and Tax Lot 6700 on the east. The Planning Commission will review and make recommendation to the Newport City Council on the proposed street vacation.

Atwill began this hearing at 7:15 p.m. by reading the summary of the file from the agenda and asking for the Staff Report. Bassingthwaite gave the applicable criteria from ORS and potentially the Bay Front Plan. He noted that the application was Council initiated at the request of the property owners. It is not a determination that the City Council will vacate the street. The City Council felt the property owners had met the criteria for the Council initiating the vacation request. Bassingthwaite noted that there is a potential issue as to whether or not the Bay Front Plan Goal 5 Policy 1 is applicable. That involves retaining rights-of-way on the hillside above the Bay Front to preserve vegetation. He noted that the staff report goes through the history of that goal. Previously Goal 5 was much more specific as to the area that couldn't be vacated. It was changed to provide more flexibility. There is some uncertainty of what is considered the hillside above the Bay Front. The applicant noted that they believe Goal 5 Policy 1 is not really applicable, and they believe the area is actually over the crest of the hill. The applicant also says that if Goal 5 Policy 1 is applicable, they feel that they meet the criteria. Bassingthwaite said that the Planning Commission should make a determination whether it is applicable or not as part of the recommendation to the City Council. Rehuss asked about the 5-2 vote at the July 2008 City Council meeting. Bassingthwaite said that the vote at the July meeting was whether to initiate the street vacation. Bassingthwaite gave a brief history of the Council initiated street vacation process. The City Council had a number of requests for Council initiated street vacations and the Council wanted to have a policy to provide guidance on when the Council should initiate a street vacation. By a vote of 5-2, the City Council found that these owners had met the policy. The Commissioners' packets included the minutes when the City Council initiated the vacation for these property owners. Part of the approval was that the owners obtain a geologic report. The applicant paid the application fee. City Council initiated applications have different criteria than property owner initiated applications. The City Council initiated street vacation does not require obtaining consents of property owners within the designated area. It can be a complicated process to get consents. The consents of the abutting property owners have been received. Responding to a question regarding the location of this street vacation to the previous 11th Street vacation, Bassingthwaite noted that this area would be closer in proximity to the Canyon Way requested street vacation where it was determined that Goal 5 Policy 1 wasn't applicable. In the Staff Report, Bassingthwaite had noted one issue with limited or no access for a couple of the lots. He had noted a couple of options to recommend either requiring an easement or a covenant requiring that the lots be sold in a consolidated manner. Bassingthwaite entered into the record the affidavit of mailing of notice on February 3, 2009, the proof of publication in the News-Times on February 11, 2009, the complete set of file materials, and the color versions of the photos submitted by the applicant. He noted a request received from Qwest regarding retention of any existing facilities and/or easements, which is a somewhat standard letter Qwest sends on most land use applications. The property owner usually follows up to find out if there are any services. The Council can address this. Bassingthwaite also noted that the Commission might want to address retention of vegetation as required by Goal 5 Policy 1 if this applies. He noted that the applicant is asking for 150 feet of street vacated, and not all of that is needed to replace the garage.

Proponents: Dennis Bartoldus, PO Box 1500, Newport, applicant's agent, and Nancy Jane Reid, one of the applicants, were present to testify in support of the application. Bartoldus said that he is pleased that Bassingthwaite's staff report talks about the City's different policies regarding street vacations. Bartoldus said that he thinks that the 5-2 City Council vote represents that two members didn't like the policy the Council adopted. He thinks they were more against the policy than this matter. He believes that the policy for City Council initiated vacations makes the procedure user friendly. Speaking from experience, Bartoldus said that getting signatures is very time consuming. The City Council policy expedites getting to hearing. Bartoldus explained that in this whole area it is common to find garages in the rights-of-way. He said that what they are dealing with is a house and garage built in the 50s. The house sits over the hill on a level area, but the garage is on the right-of-way. The applicant wants to replace the garage, and this is really the only feasible spot for it. The front of the garage is at street level, and the back sits on piers. He noted that there is a 50 foot drop from Abbey to the bottom portion to be vacated. Harbor Drive is down below. Bartoldus said that they didn't find any utilities within the area to be vacated, and comments received verify that there are no utilities. He said that there is no question that the request meets the ORS applicable criteria. He described the vacation as fairly simple. He added that the consent of both owners on both sides of the proposed vacation has been received. Bartoldus said that he thinks the history that Bassingthwaite covered in the staff report sets out whether the Bay Front policy is applicable to this application. He said that the question is if they are above the Bay Front or not. If Harbor Drive was not cut to go to the Bay Front, there is no question that they would be above the crest of the hill. He believes this was resolved by the interpretation given in the previous vacation referenced in the staff report. He said that basically all their vacation is above the 125 feet mark. 13th Street would be the limit under that definition. Bartoldus also noted that interestingly enough, when the Council changed the policy, one example used was that garages may be in the rights-of-way. He said that from a practical point, he sees the reason the Council wanted to preserve the vegetation. He noted that his clients plan on keeping the vegetation. Looking at it from Abbey, one or two shore pine may have to be trimmed or taken down; but they are hoping to keep those. They bought Tax Lot 9400 to preserve the trees. They don't intend

to damage vegetation. Another reason is to stabilize the hillside because it is very steep through there. Bartoldus said that he doesn't see how a street, bike path, or pedestrian path could be built there. He noted that a significant amount of excavation would have to be done to build a street. To clarify, Bartoldus said that as Abbey Street continues past his client's property, there are just a couple of driveways. Abbey going down toward the Bay Front goes over the hill. The streets wouldn't go in as planned. Summarizing, Bartoldus said that basically, they don't think the Bay Front Goal 5 Policy 1 applies; they think they are beyond the area included in that. They are planning on leaving most of the vegetation any way. He said that his clients are open to including a reasonable condition regarding vegetation. Nancy Jean Reid stated that they did purchase the property next door to the west to preserve the property as not being built. She added that as long as they own the property, the hillside will remain vegetated. Bartoldus discussed access and noted that both owners have consented to the vacation and would get half of the street, which gives an area to serve both lots. He also mentioned the alley and the natural flow of the land for access. Regarding retention of the vegetation, Bartoldus would like to see language providing for a certain percentage of vegetation to be maintained. He suggested draft language such as, "maintaining at least 50% of the trees that are 6 inches in diameter measured at a point 3 feet off the ground". He said that they would probably maintain more than that. If there was a massive blow down, they would replant up to 50%. They need some flexibility when trying to rebuild the garage. Bassingthwaite said that the Commission doesn't have to come up with the exact language. They can recommend that the Council look at some sort of easement with the property owner requiring some retention of vegetation; and then Bartoldus can present some language. Bartoldus explained that the garage is getting very old, but his clients don't want to put money into it when it is not on their property. They have no plans to sell the property. They would like to keep the garage in the same location, which may mean that they may have to get a variance or do a boundary line adjustment. They want to preserve the trees, but if they have to move it a little south, it may take a couple of trees. Atwill noted that the garage is on the first portion of the right-of-way and wondered if there was a reason to vacate all the way down that slope. Bartoldus said that he didn't see why the City would have any interest in retaining that property when it would just be chopped up. He said it would be better to get it in private ownership and get some tax revenue from it. He said this cleans up a whole problem and makes the ownership lines match the topography. It gives the owners more flexibility if they have to set back the garage. Bartoldus can't see why the City is going to use it. He said that it unifies things and makes the properties more useable. Bassingthwaite agreed that this would give more flexibility in setbacks. Because of the setback from the right-of-way, this may make the existing lots more acceptable for house improvements. Atwill said that she would like to see some language that allows access to all properties. Bassingthwaite said that it is in common ownership, but it could be sold. Bassingthwaite said that the Commission could recommend that the Council require that the lots be consolidated for sale or provide legal access through an easement for the interior lots. Bassingthwaite noted that there were three recommended conditions. One to address the access issue, one regarding Qwest's concerns, and one regarding retention of vegetation if Goal 5 Policy 1 applies. There were no other proponents present to testify.

OPONENTS OR INTERESTED PARTIES: There were no opponents or interested parties present to testify.

Atwill closed the hearing at 8:05 p.m. for deliberation. Commissioner McIntyre said that he believes the benefits of vacating the street are all in favor of the City. By the landowner having the property, tax benefits will increase to the City. The owner can improve the garage increasing property values, which benefits the City in more tax revenues. He said because the property is so steep, he doesn't see any benefit of having a street there. McIntyre was in favor of the vacation. Rehffuss said those were his feelings as well. He feels it is extremely unlikely that the City would put in a street. He doesn't see any reason not to grant the street vacation. Beemer agreed. Fisher agreed with the inclusion of the three conditions recommended in the staff report.

MOTION was made by Commissioner Beemer, seconded by Commissioner Fisher, to recommend vacation of that portion of SW 12th Street as described in File No. 1-SV-08 with the three conditions identified in the staff report to address those issues. The motion carried unanimously in a voice vote.

Legislative Actions:

3. File No. 1-CP-09. The Planning Commission will review and make recommendation to the Newport City Council on a proposed text amendment to the Public Facilities Section of the Newport Comprehensive Plan to adopt an updated 2008 Water System Master Plan. The City of Newport Comprehensive Plan Public Facilities Section contains data, text, inventories, and conclusions related to the provision of water based on a 1988 plan that the City wishes to amend to adopt an updated 2008 Water System Mater Plan prepared by Civil West Engineering Services, Inc.

Atwill began this hearing at 8:10 p.m. by reading the summary of the file from the agenda and asking for the Staff Report. Bassingthwaite noted that generally for legislative actions, just a staff memorandum is prepared; but the Comprehensive Plan requires certain findings. He noted that Lee Ritzman previously had made a presentation of the Water System Master Plan to the Planning Commission. Bassingthwaite entered into the record proof of mailing of the notice to DLCD on January 7, 2009, affidavit of mailing of notice on February 5, 2009, proof of publication in the News-Times on February 11, 2009, and the complete set of file materials. Bassingthwaite explained that Ritzman has noted some minor corrections of typographical and grammatical errors in the draft plan and noted that the Planning Commission could recommend approval of the plan including those minor corrections.

PROPOSERS: City Engineer/Public Works Director Lee Ritzman came forward to explain the draft plan and answer any questions. He reiterated that the Commission had received a presentation on the draft at an earlier meeting, and the plan is posted on the City's web site. He noted that we have not received any comments or concerns. Ritzman said that he went through the entire document and found a few little things that needed correction such as typographical and grammatical errors. These are nothing that change the content or message of the plan. Ritzman mentioned the members that sat on the committee that worked on the master plan. He said that there is still work to be done. There is an outlined water conservation and management plan involved, and the task force will continue to meet and implement that plan. The task force also has expressed that they would like to stay together to monitor construction of the new water treatment plant. In response to a question about a diagram from an earlier PowerPoint presentation and the location of the new plant from Commissioner Rehfuss, Ritzman noted that it just shows that it is feasible to build at the existing site. It is questionable whether the old building should be used because it doesn't meet current earthquake standards; but the new plant can still be on the same property. There were no other proponents present to testify.

OPPOSERS OR INTERESTED PARTIES: There were no opposers or interested parties present to testify.

Atwill closed the hearing at 8:16 p.m. **MOTION** was made by Commissioner Rehfuss, seconded by Commissioner McIntyre, to recommend to the City Council approval of the 2008 Water System Master Plan with the minor typographical and grammatical corrections. 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 8:17 p.m.

Respectfully submitted,

Wanda Haney
Sr. Administrative Assistant